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Message:

NOMINATION OF JOHN S. R. SHAD

HEARING BEFORE THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

THE NOMINATION OF JOHN S. R. SHAD TO BE A MEMBER OF
THE SECURITIES AND EXCHANGE COMMISSION FOR THE RE-
MAINDER OF THE TERM EXPIRING JUNE 5, 1982; AND TO BE A
MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION
FOR THE TERM OF 5 YEARS EXPIRING JUNE 5, 1986

APRIL 6, 1981

Printed for the use of the
Committee on Banking, Housing, and Urban Affairs

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(11)

NOMINATION OF JOHN S. R. SHAD

MONDAY, APRIL 6, 1981

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS,
Washington, D.C.

The committee met at 2:30 p.m. in room 5302, Dirksen Senate Office Building, Senator Jake Garn (chairman of the committee) presiding.

Present: Senators Garn, D'Amato, and Sarbanes.
Also present: Senator Daniel Patrick Moynihan.

OPENING STATEMENT OF CHAIRMAN GARN

The CHAIRMAN. The Committee will come to order.

Mr. Shad, we are happy to welcome you before the Senate Banking Committee today for your confirmation hearings. I am very pleased, personally, with the President's nomination. I think he has made an excellent choice for you to be Chairman of the Securities and Exchange Commission.

I must admit I am proud that you are from my State, although I must be truthful and admit that I did not know that until your nomination came up, so I can't take credit for getting a fellow Utahan a nomination from the President. I guess I have to take it off my list of successes down at the White House though. Although I can't take credit for it, I am proud of the fact that you are from our great State.

Before we start with your statement and testimony, if you stand, I will swear you in.

[Witness sworn.]

The CHAIRMAN. I am so used to being here alone today, I sat right next to Senator D'Amato and was going to ignore him completely. I will correct that oversight and turn time over to him.

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. Mr. Chairman, I am particularly delighted to have the opportunity to introduce John Shad as a nominee to the Commission. John is a friend, although someone I met only recently. But to know John Shad is to know a person of quality, integrity, someone who exudes confidence, and something that we need so much in this Nation, the ability to give of himself.

For the record, Mr. Chairman, Mr. Shad makes a great, great financial sacrifice in seeking this position. He epitomizes excellence in

citizenship, not just rhetoric, when he makes the kind of financial sacrifice, not only in terms of income loss on an annual basis, but in terms of the consequences of the divestiture that is required of him.

It is certainly a pleasure to know John Shad and to consider him a friend. I am sure he is going to bring to the Commission, as a result of his experience, ability and, related responsibilities, great credit.

This committee has been furnished with detailed information about John's credentials. And I do not intend to list them all.

In summary, his distinguished career includes extensive experience in the securities industry, with concentration in the mobilization of capital and a wide variety of businesses, as well as service on the boards of directors of publicly owned corporations. I believe this experience will serve Mr. Shad and the Commission well.

Of course, I am delighted that John had the good sense to move from a great State to a State that has its own pride. We are delighted that he has become one of our great resources.

The CHAIRMAN. We try to infiltrate other States. [Laughter.]

Senator D'AMATO. John is a graduate of the University of Southern California, Harvard Business School, and New York University Law School. He will be dealing with and leading the Commission in a number of very controversial matters, not the least of which is the national market system, and its implementation. I know it will require a person with a great deal of wisdom and judgment. I am confident that John Shad is a good choice to head the SEC, based on his experience, his competence, and above all, his integrity.

I know he will approach these issues with temperance, and will use all of the resources available to him to insure that these controversial issues will be resolved in a manner that will reconcile the differences and protect the national interest.

I look forward to working closely with Mr. Shad on this and many other issues. I am proud to introduce him.

The CHAIRMAN. Pat, your timing is perfect.

Senator MOYNIHAN. Mr. Chairman, it gives me another opportunity to remind you that New York is where those people in Utah came from [Laughter.]

It is a pleasure to welcome back—

The CHAIRMAN. Not all of them. Some of them came from Pennsylvania.

Senator MOYNIHAN. The leadership.

[Laughter.]

STATEMENT OF SENATOR MOYNIHAN

Senator MOYNIHAN. Mr. Chairman, I have heard my distinguished colleague, who has spoken so wonderfully of John Shad, and we soon will be calling him Mr. Chairman as well.

I would not detain you except to add that I think one of the special qualities that he brings to this work is a small—I have taken the liberty of asking about it—a distinguished body of writings in this field. Mr. Shad has not only been an investment banker, but he has been part of the academic community that seeks to understand the process and to set it forth in ways that are more accessible to the people. The kinds of things which in fact he will be doing as Chairman of the SEC.

The only question I hope somebody will ask about—he has a vita that is startling in that he has been able to do so many things. It is disturbing in only one respect. The nominee, Mr. Chairman, is a member of something called the National Republican Senatorial Trust.

Has the Justice Department Antitrust Division been advised of this? I didn't know there was one. Does the Senator from Maryland know that there is one? I think I had better leave that to your deliberations. It has been an honor to have this opportunity to introduce Mr. Shad. We look forward to working with you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Moynihan.

Mr. SHAD. Senator Moynihan, I would like to express my sincere appreciation for your and Senator D'Amato's generous introductions. My adopted home, New York State, is indeed fortunate to have such distinguished senators.

The CHAIRMAN. Senator Sarbanes, do you have anything you would like to say?

Senator SARBANES. No.

The CHAIRMAN. Please proceed.

Mr. SHAD. May I make a few opening remarks?

The CHAIRMAN. You certainly may.

STATEMENT OF JOHN S. R. SHAD, NOMINEE, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

Mr. SHAD. In addition to the two distinguished Senators from New York, I would also like to express my appreciation to Chairman Garn, the members of the committee, and the staff for the courtesies extended to me in the preparatory period for the confirmation proceedings.

My qualifications are set forth in attachment E of the Senate questionnaire. Senator D'Amato has already summarized some of them. I would only add that over the past 30 years as an investment banker I have assisted many companies in consummating billions of dollars of corporate financings, mergers, and acquisitions. I have also served on the boards of 17 publicly owned corporations which have ranged from small domestic to multinational concerns. Thus, I have some experience with the disclosure and corporate governance issues that confront both industry and the SEC.

In this litigious age, I feel fortunate in not having been the subject of any securities litigation or proceeding by a Federal, State or self-regulatory authority.

In the course of recent meetings at the SEC, I requested the staff to review the Commission's files on the 17 publicly owned corporations of which I have been a director. There have been a few instances in which entities with which I have been associated have been the subject of proceedings. However, I had no prior knowledge of the matters in question and neither I nor anyone under my supervision was involved.

I understand the SEC's General Counsel and the Enforcement Director have similarly so advised this committee.

The CHAIRMAN. If I could interrupt you at that point, Mr. Shad. May I compliment you on your forthrightness in bringing this

not only to the committee's attention, but requesting this yourself from the SEC. Let me read part of the text of a letter from the General Counsel of the SEC, and then include it in its entirety in the record:

Dear Chairman Garn: In connection with the nomination of John S. R. Shad, to be Commissioner and Chairman of the Securities and Exchange Commission, your staff has requested that I advise you concerning Commission enforcement proceedings against entities with which Mr. Shad had some relationships.

They list them, and then:

From a review of the available documents in these cases, it appears that Mr. Shad's conduct was never a matter of question in any of these proceedings. Moreover it appears that none of these proceedings involved persons under Mr. Shad's supervision. Mr. Shad is not now the subject of any Commission inquiry, nor enforcement proceeding. I have consulted with Stanley Sporkin, the Director of the Division of Enforcement, who concurs in these conclusions. If I can be of further assistance, do not hesitate to contact me.

That will be made a matter of record, and that letter came as a request from the committee, and we appreciate this. (See p. 33.)

Please continue.

Mr. SHAD. Thank you. In conclusion, I would like to add that my present detailed knowledge of many of the complex issues before the Commission is limited. I have much to learn, but I bring to the position for which I have been proposed, 30 years of experience in the securities industry, an honest, open mind, and a desire to properly discharge the responsibilities of the office. Thank you.

The CHAIRMAN. I am impressed that you could be in business 30 years and not be sued for something. [Laughter.]

Mr. Shad, the committee has received from Fred Fielding, Counsel to President Reagan, a letter concerning the terms of office to which you have been appointed. I would like to read that letter into the record and make certain that we understand that this is consistent with your intentions:

Mr. Chairman, this is to explain and confirm the President's intentions with regard to the nomination of John S. R. Shad to be a member of the Securities and Exchange Commission. He has been nominated to fill the remainder of the unexpired term of Harold Williams and on June 5, 1981, to succeed into the term expiring June 5, 1986. Mr. Shad has agreed to resign on June 5th, 1981, the term expiring June 5th, 1982. It is the President's intention to accept that resignation, thereby allowing Mr. Shad to succeed into the full 5-year term expiring June 5, 1986.

Not only for your and my understanding, but the understanding of the committee, of exactly what the President's nomination means in terms of these two different situations, is that consistent with your understanding?

Mr. SHAD. Yes, I am being nominated to be confirmed to serve as Chairman of the SEC until June 5, 1986. I will serve until June 5, 1981, under Harold Williams' unexpired term and then succeed into the term expiring on June 5, 1986.

The CHAIRMAN. We will also include that letter from Mr. Fielding, Counsel to the President, in the record.

[The document follows:]

THE WHITE HOUSE,
Washington, April 1, 1981.

HON. JAKE GARN,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is to explain and confirm the President's intentions with regard to the nomination of John S. R. Shad to be a Member of the Securities and Exchange Commission.

Mr. Shad has been nominated to fill the remainder of the unexpired term of Harold Williams, and on June 5, 1981, to succeed into the term expiring June 5, 1986.

Mr. Shad has agreed to resign on June 5, 1981, the term expiring June 5, 1982. It is the President's intention to accept that resignation, thereby allowing Mr. Shad to succeed into the full five-year term expiring June 5, 1986.

Sincerely,

FRED F. FIELDING,
Counsel to the President.

The CHAIRMAN. Mr. Shad, in your statement filed with the committee, it is my understanding that you will resign from all positions which might conflict with your responsibilities at the SEC; is that correct?

Mr. SHAD. That is correct.

The CHAIRMAN. Additionally, I understand that you have agreed to sell all of your financial interest in E. F. Hutton within 120 days of taking the oath of office and transfer the balance of the securities owned by you and your wife into qualified diversified trusts and qualified blind trusts; is that correct?

Mr. SHAD. That is correct.

The CHAIRMAN. Will your dependent children's shares be disposed of in E. F. Hutton?

Mr. SHAD. Yes.

The CHAIRMAN. You will recuse yourself from all matters which directly affect E. F. Hutton until you have completely diverted your holdings?

Mr. SHAD. Yes; as set forth in attachment G to the Senate questionnaire which is included in the record.

The CHAIRMAN. And you will recuse from companies that you are presently serving as a board member?

Mr. SHAD. Yes; as set forth in attachment G to the Senate questionnaire.

The CHAIRMAN. You own securities in at least two, but possibly three companies which represent too high a percentage of your portfolio to be included in the qualified diversified trust. Are you willing to place those securities in the blind trust or reduce the holdings to the required level in order to avoid the appearance of conflict?

Mr. SHAD. Yes.

The CHAIRMAN. Additionally, when appropriate, are you willing to recuse yourself from any decisions which would directly affect any of the companies whose securities will be placed in the qualified blind trust until you are notified by the trustee the market value of the holdings in the particular company is below the acceptable statutory level?

Mr. SHAD. Yes; as set forth in attachment G to the Senate questionnaire.

The CHAIRMAN. It is also my understanding that you and your wife will be resigning from the positions as trustees of previously established trusts and that independent trustees will be appointed and be given the power to manage and control the trust assets. Is that correct?

Mr. SHAD. Yes.

The CHAIRMAN. It is my further understanding that you will receive a waiver of disqualification with respect to certain holdings of these trusts; is that correct?

Mr. SHAD. The waiver has been requested. I do not know the status of it. I will comply.

The CHAIRMAN. You will not retain your affiliation with any group or organization which would create an appearance of conflict of interest?

Mr. SHAD. Yes; I will not engage in activities which I view to pose a possible conflict of interest.

The CHAIRMAN. Do you presently have any arrangements under which you will receive compensation after your confirmation?

Mr. SHAD. I will receive termination compensation in conformity with my firm's practices.

The CHAIRMAN. No ongoing?

Mr. SHAD. I will be entitled to a pension, which is fully vested and independently administered. It does not start until I reach 65.

The CHAIRMAN. So you're saying you will not continue to be active or directly hold assets that might be in conflict with your position at the SEC, and that when appropriate you will recuse yourself from all matters which would have the appearance of conflict?

Mr. SHAD. That is correct.

The CHAIRMAN. And if confirmed, you would agree to appear before this committee and any other committees of Congress that requested your appearance?

Mr. SHAD. Yes.

The CHAIRMAN. Senator Sarbanes? Senator D'Amato?

Senator D'AMATO. John, at the present time the Securities and Exchange Commission has in existence an advisory committee to deal with corporate communications questions. I hope that you will undertake to see that that advisory committee addresses that question promptly. Are you familiar with that?

Mr. SHAD. I am not very familiar with it. It is my impression that it deals with the problem posed by shares that are held by securities firms for the beneficial owners. Does the question concern beneficial owners' receipt of annual reports and proxy statements?

Senator D'AMATO. That is correct. I would ask that you address yourself to that question as it has begun to pose itself as a problem in two ways. No. 1, the inability of the various corporations to communicate quickly and expeditiously with the stockholders, and second, the fact that a great deal of money might be saved by the corporations without jeopardizing anybody's rights.

Mr. SHAD. I appreciate the problem. It should receive prompt attention.

Senator D'AMATO. Presently there is before the Subcommittee on Securities S. 289, which would impose margin requirements on foreign investors using borrowed funds if they were purchasing significant quantities of stock in U.S. companies. The foreign investors would thus have the same margin requirements as American investors. What are your views on that subject?

Mr. SHAD. I have not studied it, but it seems to me that fairness suggests that foreign acquirers of U.S. companies should not have competitive advantages over U.S. citizens.

Senator D'AMATO. One of the matters that the Commission has indicated should be reviewed, and I concur, and again there is pending legislation, is the matter of the Foreign Corrupt Practices Act, and this proposed legislation attempts to be more definitive concerning the kinds of allowable actions by American companies doing business

abroad. The current statute and how they should be treated has begun to create and pose quite a problem to the American businessman abroad, as to whether or not certain actions might some day be interpreted as criminal. Do you have any views in that area?

Mr. SHAD. As you have said, the business community is concerned over these issues. I understand the General Accounting Office has also recently issued a report endorsing some of these concerns. I am also aware of legislation proposed by Senator Chafee to clarify and limit the scope of the antibribery prohibition and to commit its enforcement exclusively to the Justice Department. The accounting provisions have also caused industry concern. The requirement to account in such great detail, they say could require the expenditure of \$1 million to find a \$1,000 questionable payment. I do not know the extent of this problem. As mentioned by the General Accounting Office and others, I do feel the FCPA poses competitive problems abroad for American industry. Translated into economic terms, that means problems for American investors and workers, in terms of our ability to compete in the world economy.

Senator D'AMATO. Mr. Shad, it seems that the registration statements and prospectuses used in the sale of securities today are getting more and more complex, given to more detail, more minutiae, and the average investor is in many cases coming out more confused than ever before.

I won't ask if you agree or not, but there have been a number of suggestions put forth to streamline these procedures. I am wondering if you would agree that maybe it is about time that we take a comprehensive look in terms of simplifying registration procedures and disclosure statements. Is that one of your concerns?

Mr. SHAD. I agree with the observation. Voluminous proxies, prospectuses and 10k's, carded with disclaimer statements and boilerplate, are of limited help to investors. Even security analysts and professionals find it difficult to sift through such material and form sound conclusions.

I do not think it is entirely due to the regulations. I think it is in part due to the concerns of corporate attorneys, which cause some to more than comply with the regulations in order to protect their clients.

I view registration statements and 10k's as exceptionally useful documents, if they are well prepared; if they not only make full disclosure of material negatives, but also characterize the company in terms of its position within its industry and also provide affirmative facts; so that investors can obtain a balanced view. This is an area that requires some work. The question is how to simplify and make disclosure documents more informative and effective.

Senator D'AMATO. Mr. Chairman, I would just like to conclude by saying that the more you speak to John Shad the more impressed you are with the fact that he has the ability to handle a very sensitive area. I am delighted to have had the opportunity to exchange some of these thoughts with you, Mr. Shad.

The CHAIRMAN. Thank you. Senator Sarbanes?

Senator SARBANES. Thank you, Mr. Chairman.

Mr. Shad, I wanted to touch on a couple of things in your personal statement. Did you grow up in Utah? I say this for the benefit of the Chair. [Laughter.]

Mr. SHAD. I was born in Brigham City, Utah. At an early age, my parents moved to southern California, but I spent my summers in Utah for many years. I have a large number of very close relatives that live there. A month or so ago, I visited a dear uncle there who was in a terrible automobile accident. Yes; I have close ties to Utah.

Senator SARBANES. You were in the Navy in the war, I take it?

Mr. SHAD. Yes.

Senator SARBANES. And then you went on to the Harvard Business School and from there to New York, and that is where you have been since?

Mr. SHAD. That is correct.

Senator SARBANES. I note that at one point in your career, you went back to law school. I take it you were in law school at the same time you were engaged in full-time employment. Is that correct?

Mr. SHAD. Yes.

Senator SARBANES. What prompted that?

Mr. SHAD. Well, the other participant in that activity is here today, my wife, Pat. We decided it was more interesting to go to law school together in the evening, than to watch television. [Laughter.]

As a young investment banker on Wall Street, I often found financings and mergers I had negotiated were not closing because of legal and tax problems. In order to recognize such problems earlier and solicit expert advice, my wife and I attended law school together in the evening, while I was working during the day. It has proven very helpful. I have not practiced law, but I have engaged and worked closely with leading law firms.

Senator SARBANES. Newsweek, in its issue of March 9, had a column headed "Serving up Shad for the SEC." It shows the lengths to which you go to get a catchy headline, but anyhow, I want to quote that a little bit, and it will lead me to some questions.

A Washington securities expert was appalled, by a surprisingly harsh analysis in a report by the Reagan administration's transition team that advocated a drastic reduction of the staff and enforcement activities of the Securities and Exchange Commission. If the recommendations are followed, the skeptics fear the most highly regarded regulatory agency in Washington might be undermined.

It was with considerable relief that securities experts greeted the news last week that the administration nominated investment banker, John S. R. Shad, 57, to become SEC Chairman. In part, the appointment was a reward for Shad's service as Chairman of Reagan's campaign finance committee in New York State, but his credentials are impressive. As Vice Chairman of the E. F. Hutton Group, Inc., he has built a reputation as a hard-working, straight-laced businessman devoted to maintaining the integrity of Wall Street with tough-minded enforcement when necessary. Given Shad's background as one of Wall Street's own, says Ralph D'Nunzio, President of Kidder, Peabody & Company: "John will have to work overtime to avoid the appearance of favoritism toward the industry."

My first question is, How much of a problem for you do you think this question of the appearance of favoritism toward the industry will be?

Mr. SHAD. I do not think it is a problem. I intend to do what I think is right—to discharge the responsibilities of the position for which I am being considered.

The press may say, whenever there is an issue that involves the industry—and there will be many—"He is acting in behalf of the industry," or some might say I am acting in the other direction. That cannot be prevented, but I intend to do what I think is in the national interest.

Senato. SARBANES. I noticed in response to the series of questions put to you by the chairman that you will, in effect, in every way possible terminate your connections or divest yourself of your interests. To that extent, you will eliminate—both the reality and the appearance of any continued involvement. Is that correct?

Mr. SHAD. That is correct.

Senator SARBANES. Is the pension plan to which you alluded a separately administered pension fund?

Mr. SHAD. Yes. It is not administered by my firm, but by the Bank of New York. It is fully funded, and my interest is fully vested. It does not start until I reach age 65.

Senator SARBANES. It would not start until after your tenure as Chairman, unless you were to be back before us for further tenure. I don't want to paint that bleak picture for you, but in any event it is beyond the length of term contemplated here. You will not be serving as Chairman of the SEC on the basis of this confirmation and at the same time be drawing a pension from your former employment, even though that pension would be a fully vested and separately administered one.

Mr. SHAD. That is correct.

Senator SARBANES. I also note, with reference back to this article, and also to your statement, your extended involvement in political contributions and political fundraising. I noted your reference—let me just find it—to this participation where you went on to state that all these contributions were in compliance with the Federal Election Campaign Act. I simply want to say that I think your participation in this sense politically is to be commended and is not a basis for criticism.

I say that even though it is participation on the other side of the aisle, as far as I am concerned. If highly responsible citizens such as yourself don't take part in the political process, I don't know who is going to do it. Therefore, I do not perceive this nomination as a reward for doing that, and in any event, it seems to me the important questions are the other aspects of your career and service. I wanted to make that point.

Mr. SHAD. Thank you, Senator.

Senator SARBANES. Now one of the questions raised here that I guess you will have to address is the question of the national market system. I wonder whether you want to make any comments on that question.

Mr. SHAD. I could make an extensive comment or a very brief one. Which would you prefer?

Senator SARBANES. Why don't you do the brief one to start with, and then we will see? [Laughter.]

Mr. SHAD. Well it is a very complicated subject to which I have had little personal exposure, but at the risk of oversimplification, I will summarize some of the issues, as I presently understand them.

America has by far the most efficient securities markets the world has ever known. They are more efficient today than they were yesterday. Billions of dollars of securities change hands daily and at extremely low execution costs, lower than in virtually any other area of the economy.

The national market system is the linkage of all of the exchanges and the over-the-counter market, with the objective of creating even more efficient markets for the benefit of the investing public.

The risk is that this system will fractionalize the central market by, among other things, diverting a substantial volume of transactions to upstairs execution by major brokerage firms. This potential problem has not as yet been resolved, to my knowledge.

I think some are concerned over the possibility of such internalization of brokerage transactions and also the lack of equality of regulation. The specialists affirmative and negative obligations to maintain orderly markets are not fully shared by off-the-board market makers. If you reduce the depth of the market and also do not have as broad responsibilities for maintaining orderly markets, as at present the question is: Will it result in greater volatility, to the detriment of the investing public?

Senator SARBANES. You have been in New York for more than 30 years. What can the people in the industry who are regionally based expect from you as SEC Chairman?

Mr. SHAD. There are many strengths in the regional securities industry. They range from the services rendered within local communities to their role in economy. It is a broad question. If you would, amplify it.

Senator SARBANES. Do they have any reason to think that they need fear your chairmanship since they might feel that you come with a very strong New York perspective or New York bias?

Mr. SHAD. I would hope that the facts will demonstrate otherwise in the course of my tenure.

Senator SARBANES. You would anticipate being sensitive to their concerns, though? How important do you see the role which they play in the operation of our financial system?

Mr. SHAD. I think they play a very important role. It ranges from small security dealers throughout the Nation to the major regional and national exchanges. It is a total fabric of facilities to serve the investing public and industry.

Senator SARBANES. Sometimes they express a concern that they don't have as much or feel that they don't have as much access to express their views and to be heard out, and of course that concern is likely to be compounded when they see a Chairman who has come right out of New York.

Would you make a special effort to address that question of listening and of seeing the regional houses have access to the Chairman of the Commission to express their views?

Mr. SHAD. I think they should.

Senator SARBANES. Mr. Shad, we have worked closely here with the Commission for a number of years now in their effort to consolidate their location here in Washington. And after considerable debate, a number of feasibility studies, it seems that that problem is on its way to being resolved.

How important do you regard it in terms of the internal operations of the Commission? And can we expect that you will carry forward the effort to bring about a satisfactory resolution of this matter?

Mr. SHAD. It is my understanding that the four prior Chairmen, who include both Democrats and Republicans, have endorsed a

new office building for the Commission because its present operations out of four dispersed locations are inefficient.

I understand a study demonstrates that there would be about a \$500,000 a year direct cost saving and a multiple of that in indirect cost savings through greater efficiency, I do not know the new occupancy and other costs, but I have seen the benefits of consolidation. E. F. Hutton & Co. had multiple facilities in lower Manhattan. Bringing them together in a single location dramatically improved our efficiency.

Senator SARBANES. You would agree that it is probably desirable on principle to group it all together, if that makes economic sense, wouldn't you?

Mr. SHAD. Yes.

Senator SARBANES. What is your view on how we should proceed on the Federal Securities Code, prepared under the auspices of the American Law Institute—Professor Loss' formulation.

Mr. SHAD. I have been impressed with the monumental accomplishment of Professor Louis Loss of the Harvard Law School. He has consolidated into two volumes a virtual library of securities laws, regulations and decisions.

I understand that in its present form, the code has been endorsed, not only by the American Law Institute, which sponsored it, but also the American Bar Association, the SEC, and a cross section of State securities administrators.

I have heard groans from the SEC bar over the necessity to relearn the citations with which they are so familiar. My understanding is that there are few major substantive changes; that it is principally a codification of existing decisions and regulations, that it simplifies definitions and eliminates conflicts and overlapping areas.

It will take an enormous amount of Congress time, congressional and staff time, to go through it. I do not know what will emerge from such a review, but I believe it warrants serious consideration by Congress.

Senator SARBANES. Do you think that the Commission, under your chairmanship, should begin a review of the code and its position on it? Or so you think the position it has heretofore taken is acceptable and should remain the Commission's position?

Mr. SHAD. My impression is that it has been given great deliberation at the Commission. I know of no material opposition from those who have spent considerable time reviewing it. That suggests to me that it should be pursued in its present form.

Senator SARBANES. What is your view on the question of jurisdiction over options and futures trading as far as Federal regulatory agencies are concerned?

Mr. SHAD. Between the SEC and the Commodity Futures Trading Commission?

Senator SARBANES. That is the one that leaps to mind, obviously. [Laughter.]

Mr. SHAD. It is an area in which I have had no direct involvement, but it seems to me that if you are charged with regulating the cash market, you should have some responsibility for the derivative market. One is a function of the other. It is an area in which I have to learn more. I have not dealt in options or futures, as such. Nor have I had administrative responsibilities in this area.

Senator SARBANES. So you would approach it with an important analytical distinction with respect to what the basic underlying market is; is that correct?

Mr. SHAD. Yes.

Senator SARBANES. Last year the Commission transmitted some legislation to the Congress dealing with the question of tender offers. What is your view on that issue? Would you expect the Commission to continue to pursue the matter? What do you think is necessary, if anything?

Mr. SHAD. I am familiar with the Williams Act, of course, but not with the proposed legislation.

Senator SARBANES. My time has expired on this round. I will defer for just a moment.

The CHAIRMAN. Mr. Shad, money market funds have become a significant factor in the financial system. It has been suggested they should be subject to more regulation than is now the case. We discussed this at great length this morning with Dick Pratt, the nominee for the Federal Home Loan Bank Board.

I don't want to get into the whole repetition of this morning's hearing but many of these issues arise with respect to money market funds. They are really beyond the SEC's jurisdiction. The funds are regulated by the SEC. Do you believe the money market funds are now adequately regulated from the standpoint of investor protection?

Mr. SHAD. I do. I appreciate that some have raised questions about reserves and other requirements, but I wonder if these are not efforts to balance the competitive aspects of the funds with those of the savings and loans and savings banks.

The CHAIRMAN. That is why I asked you the question about protection. It is another issue on whether they are involved in banking functions or not, which is not within the SEC's jurisdiction. But it follows then, the question: What is your opinion about the appropriate degree of regulation of money market funds and competing financial products, such as the thrifts that you just mentioned?

Mr. SHAD. Could you please amplify the question?

The CHAIRMAN. There are obviously two ways you can solve the problem. And I am specifically looking at them getting involved in third-party, checkwriting transaction accounts and things of that nature.

There are obviously two ways to do it. You can place reserves, regulations of one sort or another that are similar to the financial institutions, on money market funds. Or you can reduce regulation on the existing financial institutions, the thrifts, so that you are redressing the competitive in balance that is caused by Government regulation.

Mr. SHAD. I favor reducing the burdens on the thrift institutions, but I think the problem is that there is not enough time. I think the severity of the problems with which the thrift industry is confronted necessitate fairly immediate response.

The CHAIRMAN. You would feel in the longer run that deregulation is the better answer, but in the short run it would be necessary to place some additional restrictions on money market funds?

Mr. SHAD. I would not go in that direction yet, that is, to put restrictions on the competitive ability of the money market funds. There are other alternatives.

From a broad perspective, some financial institutions are in difficult circumstances today, in part because of the regulatory burdens under which they have had to labor.

Now, are you going to impose additional burdens in another area to deal with the problems caused by previous burdens? How long does this go on? Is more and more regulation the solution to problems created by past regulations?

Reserves are a possibility, but I note that some money market funds are increasingly investing in smaller CD's that are covered under FDIC insurance. They are also directing money into regional banks and are a source of large deposits, certificates of deposit, to the thrifts. In some cases, they are directing money out of the money market centers into the regional banks around the country.

The CHAIRMAN. I won't press you further on it, because basically what I am talking about is without the jurisdiction of the SEC. And as I announced this morning, we will be holding some very detailed hearings within a month on this and other regulatory problems within the whole financial community.

Do you believe that the Federal Government should set standards for determining the kinds of peoples who serve as directors of publicly held corporations?

Mr. SHAD. I have a problem in the corporate governance area. The Supreme Court has held that a breach of fiduciary duty by a director is a matter of State law, not Federal. In this area, the SEC's authority, is generally limited to requiring disclosure. Some question whether the results to date have been more form than substance, and what the longer term consequences will be. Perhaps there will be long-term benefits. I am not sure about that today. I have more to learn about corporate governance.

I am on seven New York Stock Exchange-listed companies boards. I know that boards do not function well as debating societies. I know you need well-informed men who are willing to devote their efforts to assisting a company in a keenly competitive environment. I know that in some cases board committees are "make-work" groups that accomplish little.

The CHAIRMAN. I am speaking in general. There has been a lot more interest, obviously, in directorships and how they are controlled, more Government looking at it. Certainly in the banking field we have the Bert Lance bill, which I happen to think was a great overreaction to the Bert Lance problem and interlocking directorships and all that sort of thing. And so, really, the question is Government has looked at it more carefully the last few years. Do you think that has resulted in better corporate directorship? Is there better performance as a result of Government taking a closer look?

Mr. SHAD. I have not seen a broad objective analysis of the consequences of the Government's greater involvement. The opinion has been expressed that if we keep expanding the time and the exposure of directors, we are going to end up with judgment-proof boards of junior people of limited means.

If we are going to keep demanding more and more time, more and more legal exposure, very successful men who have something to bring to companies are not going to be willing to serve on boards.

There are tradeoffs. Nothing is free. Where there are benefits on one side of corporate governance, there are prices that have to be paid on the other side. I have not assessed the risks and the rewards of this effort.

The CHAIRMAN. I would agree with you. I remember several years ago, before I ever got into the Senate, I agreed because I had had a number of years of experience in the life insurance business to become a director of a small life insurance company that was having some difficulties, to take advantage of my background and expertise in that area. The very first board meeting I attended I found out we were being sued, and I was one of those being sued. I have not been on a corporate board since. [Laughter.]

The CHAIRMAN. I walked in there and was subject to execution the first day something I had nothing to do with and did not know anything about, but I happened to be one of the board members at the time. So, I agree in a very small way from that personal experience. You'll have to be careful of where the balance occurs or we scare some good people away who could contribute to the success of many businesses.

The Commission has taken several steps recently to ease the burden of regulation on smaller businesses seeking to raise capital. I previously have discussed on a number of occasions in this committee one of those initiatives, and that was the creation of form S-18. I have done this with other members of the Commission. Form S-18 cannot be used for securities issued by limited partnerships.

As I am sure you know, many issuers in Western States are in limited partnership form and are organized for energy and real estate development projects. Should a measure like form S-18, which is designed to streamline the securities registration process, be available to all kinds of issues rather than setting out a guideline that says you cannot do it with limited partnerships?

Mr. SHAD. I am not familiar with the rationale that would justify not making the equivalent benefits available to limited partnerships as to comparable companies.

The CHAIRMAN. After you become Chairman, I would appreciate it if you would look into that. I have made the same request of every SEC Commissioner that has come before this committee, so I assume all of you will be looking into it, and someday I will get an answer of why limited partnerships cannot use the abbreviated form, I suppose.

Senator D'Amato?

Senator D'AMATO. I have a number of questions, and I'm wondering if I might submit them to Mr. Shad, and he would have an opportunity to answer them in writing at a later date.

The CHAIRMAN. We would be happy to do that. Do you have another question?

Senator D'AMATO. Just one possibly on the question of market oversight, and the surveillance system.

Mr. Shad, if you would have an opportunity to give us in the future—maybe not even now—your observations as to whether or not to go ahead. There are those critics that say of the system that it is duplicative kind of effort, that the industry should be called upon to do this, we should utilize industry as opposed to having the Commission, the taxpayers resources, to be the extent of some \$12 million

that it will cost. I am wondering, after you are there for awhile, if you would focus in on that and let us know what your thoughts are.

Mr. SHAD. I will. Thank you.

The CHAIRMAN. Senator Sarbanes?

Senator SARBANES. Mr. Chairman, perhaps I will proceed first to follow up Senator D'Amato's question. It was not a subject that I had thought of getting into, but I will in view of its being raised. This committee and the Commission and the industry engaged in an extended discussion, dialog I think one might even call it, on the question of MOSS. As a consequence of all of that, the authorization request of the Commission was reduced, on the premise that the Commission would proceed with the development of MOSS with the stages that that permitted, that that would give both the Commission and the industry an opportunity to better assess the impact on the capabilities of MOSS. I think there is an extended discussion of that in the legislative history on the authorization legislation that was an effort to respond to all of the various concerns that were expressed.

In view of that, I wondered what your position is with the development and implementation of the MOSS system as agreed upon in the course of that authorization legislation, by, I think it fair to say, all of the relevant parties.

Mr. SHAD. I am not familiar with the areas that were reviewed and agreed upon. I think the questions are whether it is required for the SEC to fulfill its congressional mandate; whether it is cost effective; and whether it is a duplication of the New York Stock Exchange and other self-regulatory organizations' capabilities.

If these questions have already been resolved, I should be able to bring myself up to date on them quickly.

Senator SARBANES. You're not familiar with the modifications that were made to take into account some of the concerns that were raised?

Mr. SHAD. No; I am not.

Senator SARBANES. What is your view on adjusting the fee schedules of the SEC in a way designed to produce sufficient revenues to, in effect, offset the SEC budget?

Mr. SHAD. The SEC is presently self-supporting, as I understand it, to the extent of about 58 percent of its budget. The question is whether its fees should be increased so that it will be more self-sufficient.

The SEC's functions inure to the benefit of more than just those who are being charged. The SEC functions in broad areas of national interest. It would seem to me appropriate that some portion of the SEC budget be borne by other than just those who file registration statements and execute securities transactions.

Senator SARBANES. Do you think the Commission's budget is adequate to its responsibilities?

Mr. SHAD. That is a big question that would require a lot of work to reach a meaningful conclusion. The SEC has essential functions in the areas of disclosure, antifraud enforcement, and regulatory oversight. I have looked at the expenditures for these activities, but I cannot say whether resources are being efficiently utilized or whether they should be increased. I am a total outsider at this point.

Senator SARBANES. I want to ask a couple of general questions. The first is, what is your general view and evaluation of the agency of which you are about to become the Chairman?

Mr. SHAD. I think it enjoys great respect within the business, financial, and legal communities. It is a proud agency. I also believe the vast majority of businessmen believe in compliance, not only with the letter, but the spirit of the securities laws. They want to see those who lie, cheat and steal exposed and prosecuted. They want to compete in a fair environment in which the rewards go to those who deserve them.

Senator SARBANES. My second—first a specific question. Were you involved in or a part of the team that put together the transition report on the Securities and Exchange Commission?

Mr. SHAD. No; I was not.

Senator SARBANES. My general question then is, what is your view of that report?

Mr. SHAD. I have read the report. I am looking forward to reviewing carefully the conclusions and recommendations with the Commissioners, the staff, and others who are thoroughly familiar with the issues posed.

Senator SARBANES. Would it be fair to say that you do not regard the report as providing a guideline or a path or a map as to how you should approach the Commission and its activities.

Mr. SHAD. Yes.

Senator SARBANES. Can I carry that a step further and ask whether it is fair to say that you have a sufficiently detached view of the report so that it is not necessary to specifically question you about various aspects of its proposals that might have caused some concern, not only among Members of the Congress, but I think generally in the industry?

Mr. SHAD. Yes.

Senator SARBANES. So much for the report. [Laughter.]

What do you see is the relationship between the Commission and the States' authorities?

Mr. SHAD. My impression is that they have had a generally favorable working relationship.

Senator SARBANES. The legislation on venture capital that we passed last year which involved a great deal of the time and attention of the Subcommittee on Securities called for a Commission-sponsored conference with both the small business and with the State securities people. I wonder how important a part of the Commission's responsibilities you regard that?

Mr. SHAD. My impression is that it was not adequately provided for in the budget. Is that correct?

Senator SARBANES. You have suffered budget cuts, and you are being given additional responsibilities. That is one of the problems I think the Commission has faced over a considerable period of time.

Its budget and its manpower has probably not been sufficiently adjusted, in view of the additional responsibilities placed upon it, something I frequently have commented to industry people. They should be as much concerned about this as Government, if not more so, because often it is the industry that cannot get a decision within a reasonable period of time in which to carry out their own activities. I think this goes to discharge the Commission's responsibilities.

Mr. SHAD. You asked my views earlier concerning the budget. It is going to take a good deal of time, in consultation with the members of the Commission, the staff, and others, to determine how best to utilize the resources of the Commission today.

Senator SARBANES. The article I referred to earlier says, in talking about you, close associates say he wants to ease the reporting burdens the SEC imposes on publicly held companies, and that he will support the Enforcement Division zealous pursuit of corporate wrongdoing. I assume that is an accurate statement of your objectives, among others.

Mr. SHAD. I do not know the sources of those quotes. I avoided discussions with the press in anticipation of these hearings. However I would like to see the disclosure burdens reduced.

Senator SARBANES. I assume you—

Mr. SHAD. By that I mean, I would like to see more effective disclosure. Disclaimer registration statements, proxies, and 10K's are not very illuminating to investors. I would like to see the disclosure mechanism used to more effectively inform investors. I would not suggest "zealous" enforcement. Zealousness is not necessarily good, but I think effective enforcement is essential.

Senator SARBANES. A strong pursuit?

Mr. SHAD. I would like to use the word "effective." There should be effective antifraud enforcement.

Senator SARBANES. Do you regard, by and large, the enforcement activities of the Commission to have been effective?

Mr. SHAD. I have not had an adequate opportunity to form an opinion as to whether the enforcement activities could be more effective than they have been.

Senator SARBANES. Generally speaking, would you say it commands respect, though, in terms of its enforcement in the protection of investors?

Mr. SHAD. Yes. The enforcement activities of the Commission have been widely referred to in the press and elsewhere as the most effective in Government. But some have criticized such activities as heavyhanded and overzealous.

Senator SARBANES. Mr. Chairman, I come back to the comment that Mr. Shad has built a reputation as a hardworking, straitlaced businessman devoted to maintaining the integrity of Wall Street with tough-minded enforcement when necessary. I also note, they quote you here, but maybe that is not accurate either:

Shad insists that his goals in life are learning, earning, and serving. He has accomplished the first two rather neatly, and he had better be prepared for the third—namely, the serving.

This opportunity is now here, and we look forward to a wise and effective, judicious exercise of your powers as Chairman of the Commission.

Mr. SHAD. Thank you very much, Senator Sarbanes.

The CHAIRMAN. That's the kind of people we produce in Utah to send to New York to get things squared away. We will send you some more, too. Al.

I just have two or three more questions, Mr. Shad. The Small Business Investment Incentive Act was passed last year. It contains provisions designed to assure close cooperation between the SEC

and State security regulators in order to foster capital formation and reduce any unnecessary duplication in State and Federal law.

Do you agree that this is an important objective?

Mr. SHAD. Yes.

The CHAIRMAN. I understand that the Commission has adopted a type of exchange program in order to enhance the coordination between Federal and State regulations. Do you support that activity?

Mr. SHAD. I am not familiar with that activity, Senator.

The CHAIRMAN. According to your answer to my first question, you probably would support that in trying to cut down the overlap and duplication to coordinate with State and Federal regulations?

Mr. SHAD. Yes.

The CHAIRMAN. There has been controversy recently about the ability of the SEC to discipline attorneys and accountants. The SEC has a rule, rule 2(e), which permits it to censure or disqualify lawyers who engage in unlawful conduct involving securities transactions.

Are you familiar with the concerns which have been expressed by some about the SEC's rule 2(e) which is used to discipline attorneys, accountants, and other professionals practicing before the Commission?

Mr. SHAD. Yes; I am familiar with it.

The CHAIRMAN. What are your general views about the relationship between accountants, attorneys, and the SEC?

Mr. SHAD. I understand the Commission's staff has petitioned for reconsideration of the *Carter/Johnson* case. I probably should not comment on matters the petition raises since I may be involved in the rehearing of that case.

The CHAIRMAN. The Commission maintains an office called the Directorate of Economic and Policy Analysis which is responsible for advising the Commission on economic issues.

Have you had an opportunity to familiarize yourself with that office?

Mr. SHAD. I have seen some of its reports.

The CHAIRMAN. You believe that major Commission actions can be improved by greater use of that kind of a resource?

Mr. SHAD. Yes. My feeling is that it should be contributory to a broader perspective. An analytical facility to develop broad perspectives on the economy and the consequences of the Commission's activities, is very desirable.

The CHAIRMAN. Mr. Shad, even if you were not from Utah, you have been an impressive witness today, and I think the President has made an excellent choice for this particular office.

Unless you have something to add to the hearing, there will be some questions submitted to you for your response in writing. Is there anything else you would like to add?

Mr. SHAD. No. Thank you, Senator Garn.

The CHAIRMAN. Thank you very much. The Senate Banking Committee is adjourned.

[Whereupon, at 3:45 p.m., the hearing was adjourned.]

[Additional material for the record follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Shad John S. R.
(LAST) (FIRST) (OTHER)
 Position to which nominated: Chairman Securities and Exchange Commission Date of nomination: _____
 Date of birth: 27 June 1923 (DAY) (MONTH) (YEAR) Place of birth: Brigham City, Utah
 Marital status: Married Full name of spouse: Patricia Pratt Shad
 Name and ages of children: Leslie Anne Shad (23), Rees Edward Shad (16)

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	University of			
	Southern California	1943-44		
		1946-47	B.S.	1947
	Harvard Business			
	School	1947-49	M.B.A.	1949
	New York University			
	Law School	1955-59	LL.B.	1959

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Investment Banker of the Year (1972), Finance Magazine

Beta Gamma Sigma (academic honorary)

Phi Kappa Phi (academic honorary)

University of Southern California - Cum Laude

Memberships:

List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
See Attachment A		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

1963 to date	The E. F. Hutton Group Inc., NYC; investment bankers and brokers; Vice President 1963-1967; Senior Vice President 1968-69; Executive Vice President 1969-70; Vice Chairman of the Board since 1970.
1957-63	Shearson, Hammill & Co., NYC; investment bankers and brokers; corporate finance Associate 1957-59; General Partner 1960-62.
1955-57	Textron, Inc. (holding company); corporate acquisitions.
1953-55	Reynolds & Co., NYC; investment bankers and brokers; corporate financings.
1950-53	Shields & Co., NYC; investment bankers and brokers; Account Executive 1950-51; Institutional Account Executive 1951-53.
1949-50	Arnold Bernhard & Co., NYC; investment advisers; Security Analyst.

Government
experience:

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

See Attachment B

Published
writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

How Investment Bankers Appraise Corporations,
Commercial & Financial Chronicle, 1962.
Critical Considerations for Companies Going Public,
Commercial & Financial Chronicle, 1964.
Business and Financial Fundamentals of Mergers,
Practising Law Institute, 1969.
The Financial Realities of Mergers,
Harvard Business Review, 1969.
Stock Repurchase Programs,
New York Law Journal, 1975.

Political
affiliations
and activities:

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

See Attachment C

Political

contributions:

Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

See Attachment D

Qualifications:

State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

See Attachment E

Future employment
relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

If confirmed, I will sever all connections with my present employer, except my interest in a fully vested, qualified pension fund administered by the Bank of New York.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

None

3. Has anybody made you a commitment to a job after you leave government?

None

4. Do you expect to serve the full term for which you have been appointed?

Yes

Potential conflicts
of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None except an interest in a fully vested, qualified
pension fund.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

See Attachment F

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

See Attachment G

Civil, criminal and
investigatory
actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

Sheppard-Pollack v. Shad and 535 Park Ave. Corp., Civil
Court of the City of New York, Civil #35-33, 1978;
\$6,412.54 claim by contractor. Settled for
\$3,300.

Eristol v. Shad, District Court of Denver, 1979; \$10,000
claim for alleged damages to a rented vehicle. Dismissed.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

ATTACHMENT A

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

<u>Organization</u>	<u>Office Held (if any)</u>	<u>Dates</u>
Investment Club (U.S.C.)	President	1946 to 1947
Beta Gamma Sigma	Member	1947 to date
Phi Kappa Phi	Member	1947 to date
Alpha Kappa Psi	Member	1947 to date
Finance Club (H.B.S.)	President	1948 to 1949
Harvard Business School Club	Member	1949 to date
Harvard Club of N.Y.	Member	1950 to 1967
Investment Assoc. of N.Y.	Member	1951 to 1955
New Park Mining Company	Director	1956 to 1961
Lawyers Club	Member	1960 to 1967
N.Y.U. Grad. Bus. School	Faculty	1961 to 1962
Shearson Hamill Assets Corp.	Director	1961 to 1962
King's Department Stores	Director	1961 to 1963
Burgmaster Corp.	Director	1961 to 1965
Crippled & Disabled Inst.	Adv. Counsel	1962 to 1969
Investment Bankers Assoc.	Commentary Dir.	1963 to 1964
Elgin National Watch Co.	Director	1964 to 1965
Louisiana & Southern Life Ins.	Director	1964 to 1968
Volkswagen Insurance Co.	Director	1964 to 1971
Firth Sterling Inc.	Director	1965 to 1968
535 Park Cooperative	President	1965 to 1977
Fairfield Partners	Gen. Partner	1965 to 1973
Defense Orientation Conf. Assoc.	Member	1966 to 1968
Scudder Duo-Vest, Inc.	Director	1966 to date
Navy League	Member	1966 to date
Pratt-Shad Foundation	Director	1967 to date
Wall St. Club	Member	1967 to 1971
University Club of New York	Member	1967 to date
Kaufman and Broad, Inc.	Director	1968 to date
First Liberty Investors	Gen. Partner	1968 to 1977
Second Liberty Investors	Gen. Partner	1969 to 1977
VICO Corp.	Director	1969 to 1977
SSP Industries, Inc.	Director	1969 to 1978
Triangle Pacific Corp.	Director	1969 to date
Katy Industries Inc.	Director	1970 to date
N.Y. Plaza Club	Member	1971 to 1977
American Housing Partners	Director	1971 to 1972
Electro Audio Dynamics	Director	1971 to 1979
Economic Club of New York	Member	1972 to date
General Housewares Corp.	Director	1973 to 1974

(Continued)

ATTACHMENT A

(Continued)

<u>Organization</u>	<u>Office Held (if any)</u>	<u>Dates</u>
N.Y.U. Law Alumni Assn.	Exec. Com.	1973 to 1977
Stockbridge Country Club	Member	1973 to 1979
Bond Club of New York	Member	1974 to date
A-T-O Inc.	Director	1975 to date
Metropolitan Museum of Art	Member	1975 to date
U.S. Naval Institute	Member	1975 to 1977
N.Y.U. Law Sch. Securities Inst.	Advisory Bd.	1975 to 1978
N.Y. County Sheriff's jury	Member	1975 to 1979
Scudder Duo-Vest Exchange Fund	Director	1978 to date
India House (luncheon club)	Member	1978 to date
Sheller-Globe Corporation	Director	1979 to date
Greenwich Country Club	Member	1979 to date

ATTACHMENT B

Government

Experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

- 1943-46 U.S. Navy; served to Lieutenant (j.g.) in the Pacific and China.
- 1966 Department of Defense; Joint Civilian Orientation Conference (one week).
- 1967 U.S. Army War College; National Strategy Seminar (one week).
- 1968 U.S. Army War College; National Strategy Seminar (one week).
- 1970-75 Department of Transportation; National Railroad Passenger Corp. ("Amtrak"), Financial Investment Advisory Panel.
- 1975 U.S. Navy War College; Current Strategy Forum (3 days).

ATTACHMENT C

Political

affiliations

and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Registered Republican.

Speaker, New York Young Republicans, 1948-52.

Contributions and funds solicitations for Presidential candidates: Dewey, Eisenhower, Goldwater, Nixon, Ford and Reagan.

Trustee, Republican Senatorial Trust, 1978 to date.

Chairman, Reagan New York Finance Committee, 1979-80.

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ATTACHMENT D

Political
contributions: During the last eight years, contributions ranging from
\$500 to \$5,000 have been made to:

Richard M. Nixon	Alfonse D'Amato
Gerald R. Ford	Jacob K. Javits
Ronald Reagan	Robert Packwood
Howard H. Baker	John G. Tower
James Buckley	James R. Thompson

National Republican Senatorial Trust
A-T-O, Inc. Political Action Committee
Republican Senatorial Inner Circle
Federal Republican Club
Eastside Conservative Club
United Republicans

None of the foregoing contributions were in violation
of the Federal Election Campaign Act.

ATTACHMENT E

Qualifications: State fully your qualifications to serve in the position to which you have been named.

As an investment banker, a director of seven New York Stock Exchange listed corporations (including a securities firm and an investment company), a manager of substantial portfolios and a former security analyst, retail and institutional account executive, I have had 30 years of experience in the principal industries regulated directly by the Securities and Exchange Commission, and with broad cross sections of investors and issuers of securities.

As a result of having structured and consummated billions of dollars of corporate financings, mergers and acquisitions and having served on the boards of seventeen publicly owned corporations (ranging from small domestic to large multinational concerns), I am also familiar with operational, financial and regulatory problems in a number of industries.

I am a graduate of the University of Southern California, the Harvard Business School and New York University Law School; have addressed legal, business, financial and academic groups; written articles on relevant subjects; and participated in financial and economic meetings here and in eastern and western Europe, Latin America, Africa, the Middle and Far East.

The foregoing experiences have convinced me that in order to maintain our competitive position in the world community and improve our standard of living, we must accelerate our rate of capital formation by: providing greater incentives to save and invest; reducing our regulatory burdens; and maintaining investors' confidence in our public markets through effective disclosure and anti-fraud enforcement.

ATTACHMENT F

Potential conflicts
of interest:

2. List any investments, obligations, liabilities or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

I am an officer or director of:

Vice Chairman and a Director of the E. F. Hutton Group Inc. and E. F. Hutton & Company Inc.
Director, A-T-O Inc.
Director, Katy Industries, Inc.
Director, Kaufman and Broad Inc.
Director, Pratt-Shad Foundation
Director, Scudder Duo-Vest Inc.
Director, Scudder Duo-Vest Exchange Fund
Director, Sheller-Globe Corp.
Director, Triangle Pacific Corp.

My wife, dependent child and I hold investments in:

A-T-O Inc.	Katy Ind.
American Housing Part.	Kaufman & Broad Inc.
Atlantic Richfield	Last Chance Fund
Browning Ferris Inds.	Leverage Fund Boston
Cash Reserve Mgt. Fund	Eli Lilly Co.
Chrysler Fincl. Corp.	Mar Tierra Inc.
Chaparral Ltd.	MGF Oil Corp.
Citicorp	N.Y. Muni. Asst. Corp.
Clark Equipment Co.	N.Y.S. Tax Anticipation Note
Craig Corp.	N.Y.S. Gen'l Oblig.
Crow, Denware Assoc.	Syracuse NY bonds
Data General Corp.	Northgate Realty Inv.
De Luxe Check Printers Inc.	Omicron Films Inc.
Eastman Kodak Co.	Payless Cashways Inc.
East Stroudsburg Assoc.	Pfizer Inc.
French Apartments	Putnam Duo Fund
Exxon Corp.	Raychem Corp.
Framingprime Assoc.	Raytheon Co.
Gen'l Reins. Corp.	SSP Ind. Inc.
Georgia Pacific Corp.	Schlumberger Ltd.
E. F. Hutton Group Inc.	Scudder Duo-Vest
Hyster Co.	Sheller-Globe Corp.
Indian Wells Drilling	Sigma Aldrich Corp.
Intel Corp.	Tempe Apartments
I.B.M.	Triangle Pacific Corp.

(Continued)

ATTACHMENT F
(Continued)

Tymshare Inc.	Bethlehem Steel
Wang Labs.	CSX Corp.
Wheelabrator Frye Inc.	Caterpillar Tractor
Scudder Cash Investment Tr.	Dome Petroleum
Fidelity Daily Income Trust	General Motors
Canada Southern Petro.	International Paper
Lawson Products	Kennecott Corp.
Merchants Natl. Bank	Mobile Oil
N.Y. St. Power Auth.	National Detroit
Speer Hardware Co.	Phillips Petroleum
United Canso Oil & Gas Ltd.	Texas Utilities
American Cyanamid	Virginia Elec. & Pwr. Co.
American Home Products	

Potential conflicts
of interest:

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

- a. If confirmed, I will resign as an officer and director of the E. F. Hutton Group Inc. and its subsidiaries ("Hutton"). I have no understanding to return to Hutton and have elected to retire and receive retirement pay at age 65 from a fully vested and funded pension fund administered by the Bank of New York.
- b. While divesting my Hutton shares (which will be completed within 120 days after taking office), I will recuse myself from all specific matters involving Hutton. Thereafter I will recuse myself from exemptive orders concerning transactions to which Hutton is a party or participant and enforcement proceedings against or relating to Hutton concerning matters which occurred during my tenure with Hutton.
- c. I will resign my directorships and recuse myself from matters concerning actions taken by such boards while I was a member and on a case-by-case basis from other matters concerning such companies which occurred while I was a director.
- d. I will recuse myself on a case-by-case basis from other matters as necessary to avoid the appearance of impropriety, despite the lack of actual conflicts.
- e. The securities held by my wife and me will be placed in Qualified Trusts. To the extent required by the SEC's regulations or applicable law, I will recuse myself from matters involving companies whose securities are held for the benefit of myself, my wife or dependent child, except to the extent that such securities are not considered to raise conflicts of interest because they have been placed in trusts qualified under the Ethics in Government Act, or waivers of disqualification under the law have been received or neither my wife, dependent child nor I have knowledge of them.
- f. In order to discharge effectively the obligations of my office, I will not recuse myself from Commission deliberations involving general policy issues, legislation or rule-making proceedings.



SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 6, 1981

The Honorable Edwin Garn
Chairman
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Garn:

In connection with the nomination of John S. R. Shad to be a Commissioner and Chairman of the Securities and Exchange Commission, your staff has requested that I advise you concerning Commission enforcement proceedings against entities with which Mr. Shad had some relationship. Those actions and Mr. Shad's relationship to the named entity were:

1. In the Matter of E. F. Hutton & Co., Inc.,
Administrative Proceedings File No. 3-5637
(Findings and Order, 1979)

In the Matter of E. F. Hutton & Co., Inc.,
Administrative Proceeding File No. 3-5579
(Findings and Order, 1979)

In the Matter of E. F. Hutton & Co., Inc.,
Administrative Proceeding File No. 3-1822
(Order, 1969)

Mr. Shad has been a director of E. F. Hutton & Co., Inc., from 1965 to the present; and a director of its parent, The E. F. Hutton Group, since 1974. None of these matters involved Hutton senior management.

2. SEC v. Katy Industries, Inc., et al., Civ. Action
No. 78C-3476 (S.D. Ill. 1978)

Mr. Shad has been a director of Katy Industries from 1970 to the present.

3. SEC v. A-T-O, Civ. Action No. 77-1324 (D.D.C. 1978)

Mr. Shad has been a director of A-T-O from 1975 to the present.

The Honorable Edwin (Jake) Garn
Page Two

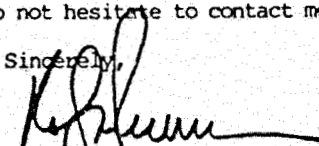
4. In the Matter of Merrill Lynch, Pierce, Fenner & Smith, Inc., et al., Administrative Proceeding File No. 3-1680 (Findings, Opinion and Order, 1968)

Fairfield Partners was one of the institutional respondents in this action. Mr. Shad was a non-managing general partner of Fairfield Partners from 1965-1969, and a limited partner from 1969-1973.

From a review of the available documents in these cases, it appears that Mr. Shad's conduct was never a matter of question in any of these proceedings. Moreover, it appears that none of these proceedings involved persons under Mr. Shad's supervision. Mr. Shad is not now the subject of any Commission inquiry or enforcement proceeding.

I have consulted with Stanley Sporkin, Director of the Commission's Division of Enforcement, who concurs in these representations. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Ralph G. Ferrara
General Counsel

THE WHITE HOUSE

WASHINGTON

May 29, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Legality of Nominations for the Unexpired
Remainder of a Term and the Next Subsequent
Full Term

John Herrington has asked for an opinion on the legality of the practice of submitting nominations to the Senate for the unexpired remainder of a term and next subsequent full term. Senators Cranston and Metzenbaum have objected to a floor vote on the eleven pending nominations to the Board of Directors of the Legal Services Corporation, on the ground that six of the nominations are for the remainder of terms expiring on July 13, 1984, and for the full terms commencing on that date and expiring on July 13, 1987. Senator Baker has requested Senate Legislative Counsel to prepare an opinion on the issue, and Herrington has asked our office to do so as well. According to Herrington, Baker will bring the nominations to the floor after these opinions are completed.

Pursuant to 42 U.S.C. § 2996c(b), "[a]ny member appointed [to the Board of Directors of the Legal Services Corporation] to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term." This provision, which has counterparts throughout the U.S. Code, is designed to preserve "staggering" in the expiration of terms of service. On March 19, 1984, the President submitted nominations for the Board of Directors of the Legal Services Corporation, separately listing six individuals for the remainder of terms expiring on July 13, 1984, and the same individuals of the full three-year terms beginning on that day (Tab A).

The legality of this practice was specifically addressed and approved by the Office of Legal Counsel in 1960 (Tab B). The question addressed in the OLC opinion was precisely the one before us, *viz.*, "whether the President may without legal objection submit a nomination, for confirmation by the Senate, of the appointment of an individual to a vacancy for an unexpired term of office and at the same time to the vacancy for the full term which immediately follows." The opinion noted that there could be no objection to the

nomination for an unexpired remainder of a term, so the issue was simply whether the President could submit a nomination for an office that will not become vacant until a future date (in this case, July 13, 1984). The opinion concluded that the President possessed such power, provided that the full term began during his own period of office. The President regularly submits nominations for the reappointment of incumbents prior to the expiration of their terms, the opinion noted, and:

Consistently with the foregoing it must be concluded that a nomination may be made at the same time for an unexpired term and a full term of office to follow upon each other. The fact that the nominee is an individual not theretofore appointed, rather than an incumbent in office, may be an element for the consideration of the Congress, but it cannot be said to affect the application of the principle which has become established; i.e., that in the absence of a specific law to forbid it, the President may make appointments to offices which will become vacant within the time when he has the power to fill them.

The President's power to submit nominations for prospective vacancies was also thoroughly reviewed by the Department of Justice in the course of the ill-fated nominations of Justice Fortas to succeed Earl Warren as Chief Justice and of Homer Thornberry to succeed Fortas. Warren resigned effective upon the qualification of a successor, and President Johnson nominated Fortas to be Chief Justice and Thornberry to succeed Fortas. Senator Ervin objected that neither vacancy yet existed, since Warren still held office, as did Fortas. A lengthy Justice Department memorandum submitted for the record at the Judiciary Committee confirmation hearings concluded that "it is well established that the President has power to nominate, and the Senate power to confirm, in anticipation of a vacancy." The memorandum reviewed many of the instances from the earliest days of the Republic when this occurred, and noted that the practice avoided continual gaps in the holding of important offices. According to the memorandum, "[t]here is nothing inconsistent with the Constitution in the practice of anticipatory nomination and confirmation.... To the contrary, this practice is sanctioned by the Constitution and the experience under it throughout our history." Hearings Before the Senate Committee on the Judiciary on the Nominations of Abe Fortas and Homer Thornberry, 90th Cong., 2d Sess. 365, 381 (1968).

The question of the President's power to nominate an individual for an unexpired remainder of a term and a subsequent

full term was prominently presented at the beginning of this Administration, with the nomination of John Shad to the Securities and Exchange Administration. You will recall that Shad was nominated on April 1, 1981, for the remainder of a term expiring on June 5, 1982, and the full term running from June 5, 1981 to June 5, 1986. Shad agreed to resign the term expiring June 5, 1982, on June 5, 1981, and succeed into the full five-year term commencing that day. On April 8, the Senate confirmed Shad both for the unexpired remainder and the full term opening up on June 5, 1981.

The Shad case presented an unusual wrinkle, in that Shad resigned his unexpired remainder term before it expired to succeed into the next full term vacancy on the SEC, rather than the full term succeeding his unexpired remainder term. This procedure was considered advisable in light of the length of the unexpired remainder term, some 15 months. The Shad case, however, clearly demonstrates Senate consideration and acceptance of the practice in question.

Indeed, it has been fairly common over the course of several Administrations for nominations to be submitted and approved for the unexpired remainder of a term and the next subsequent full term. A random sampling of 23 such instances compiled by the Executive Clerk's office (Tab C) indicates that the practice dates at least from 1930. The average length of the unexpired remainder term in the sampling (excluding the unusual Shad case) is about three months. The unexpired remainder term in the instant case was just under four months at the time of nomination, and is now only six weeks.

In sum, logic, documented past practice accepted by the Senate, and prior opinions by the Department of Justice all establish beyond doubt that it is proper for the President to submit nominations for the unexpired remainder of a term and the next subsequent full term. The only legal limitation is that the subsequent full term must commence during the President's tenure in office (and, although the question has not come up, perhaps during the same Congress), and as a policy matter it seems best to avoid the practice when the unexpired remainder term is longer than a few months. None of these potential problems are present in this case. The Senate is, of course, completely free to confirm a nominee for the unexpired remainder term and not the subsequent full term, although I am aware of no instance in which it has done so.

A memorandum for Herrington is attached for your review and signature.

Attachment

The following are some examples of the President having nominated an individual twice on the same day, for the remainder of a term and for a full term:

CIVIL AERONAUTICS BOARD

Barbara E. McConnell -- nominated 8/31/83, for the remainder of the term expiring 12/31/83, and for the full term expiring 12/31/89.

James Robert Smith -- nominated 7/25/80, for the remainder of the term expiring 12/31/80, and for the full term expiring 12/31/86.

Elizabeth E. Bailey -- nominated 7/8/77, for the remainder of the term expiring 12/31/77, and for the full term expiring 12/31/83.

Gloria Schaffer -- nominated 7/13/78, for the remainder of the term expiring 12/31/78, and for the full term expiring 12/31/84.

CONSUMER PRODUCT SAFETY COMMISSION

Samuel D. Zagoria -- nominated 9/29/78, for the remainder of the term expiring 10/26/78, and for the full term expiring 10/26/85.

Stuart M. Statler -- nominated 6/14/79, for the remainder of the term expiring 10/26/79, and for the full term expiring 10/26/86.

FEDERAL HOME LOAN BANK BOARD

Anita Miller -- nominated 4/7/78, for the remainder of the term expiring 6/30/78, and for the full term expiring 6/30/82.

Andrew A. DiPrete -- nominated 6/1/79, for the remainder of the term expiring 6/30/79, and for the full term expiring 6/30/83.

Richard T. Pratt -- nominated 4/1/81, for the remainder of the term expiring 6/30/81, and for the full term expiring 6/30/85.

FEDERAL TRADE COMMISSION

David A. Clanton -- nominated 7/20/76, for the remainder of the term expiring 9/25/76, and for the full term expiring 9/25/83.

INTERSTATE COMMERCE COMMISSION

Charles D. Mahaffie -- nominated 12/3/30, for the remainder of the term expiring 12/31/30, and for the full term expiring 12/31/37.

Willard Deason -- nominated 8/18/65, for the remainder of the term expiring 12/31/65, and for the full term expiring 12/31/72.

NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS

Herman J. Russell -- nominated 9/6/78, for the remainder of the term expiring 10/27/78, and for the full term expiring 10/27/81.

Alfred J. Fleischer, Sr. -- nominated 9/8/82, for the remainder of the term expiring 10/27/82, and for the full term expiring 10/27/85.

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH

Paul Copperman -- nominated 8/20/82, for the remainder of the term expiring 9/30/82, and for the full term expiring 9/30/85.

Donald Barr -- nominated 6/2/82, for the remainder of the term expiring 9/30/82, and for the full term expiring 9/30/85.

NATIONAL COUNCIL ON THE HANDICAPPED

Robert V. Bush -- nominated 8/17/82, for the remainder of the term expiring 9/17/82, and for the full term expiring 9/17/85.

NUCLEAR REGULATORY COMMISSION

John Francis Ahearne -- nominated 5/19/78, for the remainder of the term expiring 6/30/78, and for the full term expiring 6/30/83.

SECURITIES AND EXCHANGE COMMISSION

Richard B. Smith -- nominated 3/14/67, for the remainder of the term expiring 6/5/67, and for the full term expiring 6/5/72.

William Lucius Cary -- nominated 2/28/61, for the remainder of the term expiring 6/5/61, and for the full term expiring 6/5/66.

Harold Marvin Williams -- nominated 3/30/77, for the remainder of the term expiring 6/5/77, and for the full term expiring 6/5/82.

John S. R. Shad -- nominated 4/1/81, for the remainder of the term expiring 6/5/82, and for the full term expiring 6/5/86.

SECURITIES INVESTOR PROTECTION CORPORATION

Adolph Philip Schuman -- nominated 9/1/78, for the remainder of the term expiring 12/31/78, and for the full term expiring 12/31/81.

THE WHITE HOUSE

WASHINGTON

May 29, 1984

MEMORANDUM FOR JOHN S. HERRINGTON
ASSISTANT TO THE PRESIDENT
FOR PRESIDENTIAL PERSONNEL

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Legality of Nominations for the Unexpired
Remainder of a Term and the Next Subsequent
Full Term

You have asked for an opinion on the legality of the practice of submitting nominations for the unexpired remainder of a term and the next subsequent full term. On March 19, 1984, the President nominated six individuals to be members of the Board of Directors of the Legal Services Corporation, for the remainder of terms expiring July 13, 1984, and for full three-year terms expiring July 13, 1987. You have advised this office that Senators Cranston and Metzenbaum have objected to this procedure as improper.

There is no doubt that the President may submit nominations for the unexpired remainder of a term and the next subsequent full term, so long as the full term commences during the President's term of office. The Justice Department Office of Legal Counsel considered this precise question in 1960, and concluded that "a nomination may be made at the same time for an unexpired term and a full term of office to follow upon each other." There is no question concerning the President's authority to submit a nomination for the unexpired term, so the legal issue is simply whether the President may submit a nomination prior to the commencement of the full term. It has generally been accepted that the President possesses such power. The only instance in which it was seriously questioned was in 1968, when Chief Justice Earl Warren announced his resignation, effective on the confirmation of a successor, and President Johnson nominated Justice Fortas to be Chief Justice and Judge Thornberry to succeed Justice Fortas. The Department of Justice submitted a 30-page memorandum for the record of the hearings on these nominations, establishing that the President may submit nominations in anticipation of a vacancy. As the memorandum noted, a contrary conclusion would result in continual gaps in the holding of important offices. The Justice Department memorandum concluded that the practice of submitting nominations before a vacancy actually exists "is sanctioned by the

Constitution and the experience under it throughout our history." Hearings Before the Senate Committee on the Judiciary on the Nominations of Abe Fortas and Homer Thornberry, 90th Cong., 2d Sess. 365, 381 (1968).

As noted, the practice of submitting a nomination for the unexpired remainder of a term and the subsequent full term is nothing more than a combination of the clear authority to submit a nomination for the unexpired remainder of a term and the equally unobjectionable authority to submit a nomination -- in these cases, of the same individual -- for the anticipated vacancy that will occur upon the expiration of that remainder. The practice of simultaneously nominating an individual for the unexpired remainder of a term and the succeeding full term has been fairly common over the years through different administrations, as evidenced by the attached compilation of examples. In sum, logic, documented past practice dating from at least 1930, prior Justice Department opinions, and Senate acceptance all establish beyond any doubt that the President may nominate an individual for the unexpired remainder of a term and the succeeding full term. In this case, there is no doubt that the nominations for the Board of Directors of the Legal Services Corporation submitted by the President on March 19, 1984, were proper.

Attachment

FFF:JGR:aea 5/29/84

cc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

FG 168

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1/1

Name of Correspondent: Robert C. MacKuchan, Jr.

☐ MI Mail Report

User Codes: (A) (B) (C)

Subject: Seal Service Corporation -
Confirmation of Board of Directors

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
W Holland	ORIGINATOR	84/10/24	WS	-	1/1
WAT 18	Referral Note:	D 84/10/24	WS	S	84/10/24
	Referral Note:				
		1/1			1/1
	Referral Note:				
		1/1			1/1
	Referral Note:				
		1/1			1/1
	Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered C - Completed
B - Non-Special Referral S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments:

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOb).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

THE WHITE HOUSE

WASHINGTON

May 24, 1984

228568 *u*

MEMORANDUM FOR DICK HAUSER

FROM: JOHN S. HERRINGTON *JSH*
THROUGH: ROBERT C. MacKICHAN, JR.
SUBJECT: LEGAL SERVICES CORPORATION - CONFIRMATION OF
BOARD OF DIRECTORS

All eleven nominees have been polled out of committee. However, Senators Cranston and Metzenbaum have objected to a floor vote, arguing that the nomination of 6 of the members for the remainder of the unexpired term and the subsequent term is improper.

Prior to the hearings of the last four nominees, we asked the Clerk's Office to prepare the attached list of circumstances when this was done. It was introduced into the record during the hearings. Senator Baker has now asked Legislative Counsel to prepare an opinion regarding the legality of this practice, and our Legislative Affairs Office has asked Presidential Personnel to ask your office to do the same.

Senator Baker is prepared to bring all eleven nominees to the floor as soon as these opinions are completed.

John D. Calhoun

Assistant Deputy Attorney General

Robert Kramer, Assistant Attorney General

Office of Legal Counsel

Prospective appointments by the President.

This will refer to your telephone inquiry in which you raised the question whether the President may without legal objection submit a nomination, for confirmation by the Senate, of the appointment of an individual to a vacancy for an unexpired term of office and at the same time to the vacancy for the full term which immediately follows.

1. There is no question of the President's authority to fill the unexpired term, so the question becomes one of whether the President may make a nomination to fill an office which will not become vacant until a future date. The precedents and authorities we have examined support the authority of the President to submit for confirmation a candidate for a prospective full term of office, provided the full term begins within the period during which his appointing power may be exercised.^{1/} To put this principle into current focus:

1/ Whitney v. Vanduekirk, 40 N.J.L. 463, 469; Hechen, Public Offices and Officers, § 133; Throop, Public Officers § 92; 42 American Jurisprudence, Public Officers § 99. See also 67 C.J.S. Officers, § 30, in which numerous cases are cited and in which it is stated,

"The general rule is that a prospective appointment to fill a vacancy sure to occur in a public office, made by an officer who, or by a body which, as then constituted, is empowered to fill the vacancy when it arises, is, in the absence of a law forbidding it, a valid appointment, and vests title to the office in the appointee. An appointment to a new office to take effect on the establishment of such office may be made before the law establishing such office goes into effect. * * *" (p. 159)

The President is authorized to make prospective appointments to any office the term of which begins before January 20, 1961.^{2/}

Appointment in anticipation of a vacancy occurring after the authority of the appointing power has expired is objectionable as an effort to forestall the rights and prerogatives of a successor. As characterized by one court,^{3/}

" * * * an appointment thus made by anticipation, has no other basis than expediency and convenience, and can only derive its binding force and effect from the supposition that there will be no change of person, and consequently of will, on the part of the appointing power, between the date of the exercise of that power by anticipation, and that of the necessity for the exercise of such power by the vacancy of the office.

" * * * we hold it to be entirely inadmissible * * * that the Governor and Senate can forestall the action of their * * * successors in office, * * *."

A court in a quo warranto action against a member of a railroad commission upheld the "rule of the common law" that an officer clothed with power of appointment cannot make a prospective appointment to fill an anticipated vacancy in an

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- 2/ The matter of congressional attitude toward confirmation is not, of course, a consideration in this memorandum.
- 3/ Ivy v. Lusk, 11 La. Ann. 486 (1856). See also Board of Trustees v. Rarabeval, 45 S.W.2d 846, 242 Ky. 1; Board of Education of Boyle County v. McCluney, 32 S.W.2d 26, 235 Ky. 692; People v. Dathloff, 28 N.E.2d 850, 283 N.Y. 309; People v. Fitzgerald, 73 N.E. 55, 180 N.Y. 269.

office the term of which begins after his own term and power to appoint have expired ^{4/}

2. The practice currently followed, with respect to the renewal of appointments to incumbents in offices with stated terms, conforms with the foregoing. The President regularly submits to the Congress prior to the expiration of the incumbent's term a nomination for his appointment to the full term which follows expiration of the term he is currently filling. For example, there is presently pending before the Senate the nomination of Richard A. Chappell to the Board of Parole. Submitted on March 21, 1960, the nomination is for the six-year term ending September 30, 1966. Mr. Chappell's current term will not expire until September 30, 1960 ^{5/}

Perhaps a more striking example of the President's exercise of the authority to fill offices in which the vacancy is prospective is illustrated by the pending prospective nomination of a life-tenure federal judge. William H. Timbers has been nominated to become a United States District Judge in Connecticut when that office becomes vacant upon elevation, following confirmation, of J. Joseph Smith. Judge Smith was nominated at the same time to become a Judge of the Circuit Court of Appeals. ^{6/}

^{4/} State v. Sullivan, 90 N.E. 146 (Ohio, 1909); Eberle v. Clark, 87 Conn. 537, 89 Atl. 172.

^{5/} This illustration could be duplicated in numerous instances. See e.g. Board of Parole members Grout and March serving terms ending September 30, 1959, nominated on August 4, 1959, for terms to end on September 30, 1965. See also Interstate Commerce Commissioners Freas and Goff, nominated on August 11, 1959, while serving in unexpired terms, to new seven-year terms ending December 31, 1965.

^{6/} Cong. Rec., January 11, 1960, p. 210.

Consistently with the foregoing it must be concluded that a nomination may be made at the same time for an unexpired term and a full term of office to follow upon each other. The fact that the nominee is an individual not theretofore appointed, rather than an incumbent in office, may be an element for the consideration of the Congress, but it cannot be said to affect the application of the principle which has become established; i.e., that in the absence of a specific law to forbid it, the President may make appointments to offices which will become vacant within the time when he has the power to fill them.

The White House,

MAR 19 1984 19

To the

Senate of the United States.

I nominate The following-named persons to be Members
of the Board of Directors of the Legal Services Corporation for the
terms indicated:

For the remainder of the terms expiring July 13, 1984:

William Clark Durant III, of Michigan, vice
William J. Olson.
Paul B. Eaglin, of North Carolina, vice
Robert Sherwood Stubbs, II.
Pepe J. Mendez, of Colorado, vice
Peter Joseph Ferrara.
Thomas F. Smegal, Jr., of California, vice
David E. Satterfield, III.
Basile Joseph Uddo, of Louisiana, vice
Howard H. Dana, Jr.
Michael B. Wallace, of Mississippi, vice
George E. Paras.

For the remainder of the terms expiring July 13, 1986:

Hortencia Benavides, of Texas, vice
Ronald B. Frankum.
Leanne Bernstein, of Maryland, vice
Albert Angrisani.

For the terms expiring July 13, 1986:

Lorain Miller, of Michigan, vice
Milton M. Masson, Jr.
Claude Galbreath Swafford, of Tennessee, vice
Robert E. McCarthy.
Robert A. Valois, of North Carolina, vice
Donald Eugene Santarelli.

For the terms expiring July 13, 1987:

William Clark Durant III, of Michigan. (Reappointment)
Paul B. Eaglin, of North Carolina. (Reappointment)
Pepe J. Mendez, of Colorado. (Reappointment)
Thomas F. Smegal, Jr., of California. (Reappointment)
Basile Joseph Uddo, of Louisiana. (Reappointment)
Michael B. Wallace, of Mississippi. (Reappointment)

RECEIVED