United States Senate

COMMITTEE ON ARMED SERVICES

October 19, 1949

Dear Amon:

Enclosed are two items from the Congressional Record which I thought you might like to see. One is Mr. Arthur Krock's column from the New York Times about the Leland Olds debate, the other is my statement to the Senate about Mon Wallgren's nomination.

I particularly wanted you to see Mr. Krock's column. Before the floor debate, the New York Times had been critical of my committee's decision. After reading the Record, however, Mr. Krock seems to have reached a different conclusion.

With my best regards.

Sincerely,

Lyndon B. Johnson

Mr. Amon Carter
Fort Worth Star-Telegram
Fort Worth, Texas

A Needed Kick in the Pants for Santa

EXTENSION OF REMARKS
OF
HON. JAMES P. KEM
OF MISSOURI
IN THE SENATE OF THE UNITED STATES
Monday, October 17, 1949

Mr. KEM. Mr. President, I ask unanimous consent to have printed in the Appendix to the RECORD an article entitled "A Needed Kick in the Pants for Santa," published in the Tupelo Daily Journal, Tupelo, Miss., on October 7, 1949.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A NEEDED KICK IN THE PANTS FOR SANTA

Until recently we never thought we would feel obliged to speak harshly of Santa Claus. And if he limited his visits to one or two a year we still wouldn't think of doing such a thing.

But when he starts banging on the door with a gift every time we try to settle down to work, even Santa can become a nuisance.

Thus it is with the most recent proposal that Uncle Sam pays two-thirds, rather than one-third, of the cost of building local hospitals.

Under Mississippi's present hospital-construction program each community puts up one-third of the cost of the building, the State adds another third, and the Federal Government puts up the final third of the cost.

That is a reasonably sound method of local, State, Federal cooperation. And under it Mississippi has led America in developing a program to provide a modern hospital for almost every community which wants one.

Though this three-way fund-matching plan was working with complete success even in Mississippi, poorest of all the States, the House of Representatives has now voted by the overwhelming margin of 236 to 43 for Uncle Sam to pay two-thirds of the cost of hospital construction, leaving only a third to be financed jointly by States and local communities.

For Tupelo that will be just like a gift of $300,000 if the Senate goes along with the big House majority in approving the measure. And it's mighty hard to raise a voice of protest against such a generous hand-out from Uncle Sam.

But if Santa Claus keeps dashing down from Washington with another bag of money every time we start showing a little community initiative of our own, we will soon stop assuming any responsibility at all on the local level. The tendency then will be merely to sit around and talk about the things we need until Santa knocks on our door and passes out the dough.

As long as a community has to put up half, or at least a third, of the cost of a project, it will think twice in determining how costly to make the venture.

But when a community's share in a project dwindles to one-sixth or less of the total cost, refusal to accept the biggest Federal and State hand-outs that can be obtained is like kicking old Santa in the seat of the pants.

If Congress approves the new $150,000,000 hospital-construction bill—as it probably will—we in Tupelo will no doubt eagerly ask for our share. That is only natural, for we would be needlessly cutting our own throats to do otherwise.

But there are a couple of things we can't understand about Congress' way of thinking:

1. If poor old Mississippi can make outstanding progress in hospital construction under the old program of dividing costs into three equal shares, why can't the other 47 wealthier States do the same?

2. And if local communities don't have the money to build twice as large hospitals as they are now planning, where does Uncle Sam get the idea that he has the money to do the job for them? For he already is scheduled to spend $14,000,000,000 more than he takes in during the next 2 years.

Nomination of Leland Olds

EXTENSION OF REMARKS
OF
HON. ERNEST W. McFARLAND
OF ARIZONA
IN THE SENATE OF THE UNITED STATES
Monday, October 17, 1949

Mr. McFARLAND. Mr. President, I ask unanimous consent to have printed in the RECORD a column entitled "A Senate Debate That Came to the Point," by Mr. Arthur Krock, which was published in the New York Times, on October 14, 1949.

The New York Times, of course, is one of the world's most outstanding newspapers, and Mr. Krock has frequently been honored as the most influential writer reporting the Washington scene. In this column, Mr. Krock presents a very fair, objective, and well-reasoned review of the Senate debate on the nomination of Mr. Leland Olds to the Federal Power Commission. Obviously, Mr. Krock took time to examine the record before he wrote, and the result of his study is a real credit to Mr. Krock, his profession, and the fine newspaper for which he writes.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A SENATE DEBATE THAT CAME TO THE POINT

(By Arthur Krock)

WASHINGTON, October 13.—In a discussion last night of the qualifications of Leland Olds to continue as a Federal Power Commissioner, a debate that filled 30 pages of the CONGRESSIONAL RECORD, the Senate, by a vote of 53 to 15, registered the following conclusions on the issues raised by his reappointment:

1. Party discipline, mentioned by the President, did not require any Democratic Senator to support the nomination if his convictions were to the contrary; and thus abandon a Senator's constitutional prerogative to decline in such circumstances to consent to a nomination.

2. The appointment could not be established as a party matter for Democrats by a mere announcement to this effect by a President who belongs to that party.

3. The fact that Mr. Olds twice (in 1939 and 1944) was confirmed by the Senate for the same office, after he wrote the anti-capitalist articles for the Federated Press on which for the first time he was thoroughly questoned by the committee in 1949, did not make rejection on this ground inconsistent this year because—

(A) No hearings were held on the nomination in 1939 and the existence of the articles was not called to Senate attention; (B) in 1944 they did not enter the discussion until confirmation was before the Senate, there were few Members on the floor and Mr. Olds' term was to expire next day.

4. The Commissioner, after having for 9 years "interpreted the Natural Gas Act exactly as it was written," now "has advocated the assumption of complete Federal control of natural independent gas producers * * * and that he has this authority" which "the act says he does not; the legislative history says he does not; his own words say he does not; the courts say he does not." (The quotations are from Senator JOHNSON of Texas, chairman of the subcommittee which unanimously rejected Mr. Olds.)

5. He wrote the violent attacks on capitalism when he was 40 years old, which does not fit the parallel cited by Senator Morse and others of "those who in a spirit of bitterness expressed such extreme views [in the same period]" and then "modified" these "and became stanch suporters of our capitalistic system and democratic processes."

GROUNDS OF REJECTION

The Senate, after listening to the long and interesting debate, concluded by a large majority that Mr. Olds had neither repented nor recanted what he wrote for the Federated Press in the twenties; that he planned secretly to nationalize the industries under his control by administrative violations of the law; and that he had stimulated a campaign of smearing against fellow commissioners and FPC staff members who obstructed this design. All these considerations were fully set forth in the discussion by opponents of Mr. Olds to absolve themselves from the charge that rejection was based solely on what this newspaper termed "the false issue of communism" or "the foolish one of party discipline."

Senator JOHNSON of Colorado carefully explained the circumstances by which the Federated Press writings of Mr. Olds were "for the first time brought to the attention of the Senate and the country," and complimented the subcommittee under his Texas namesake for a hearing than which none "more searching, and at the same time more equitable" was ever held by a congressional group. He said that he, as a member of the subcommittee in 1944 voted for a favorable report on Mr. Olds' nomination, was "surprised" when former Senator Moore, of Oklahoma, quoted from them that year on the Senate floor. And he agreed with Senator McFARLAND, of Arizona, that "by reason of the fact Russia was then our ally the charges were not taken as seriously as they should have been."

Senator JOHNSON of Texas addressed himself further to this point, saying:

"Is Mr. Olds to secure an exemption now from an honest, thorough scrutiny of his record, merely because twice before he has escaped scrutiny and because twice before he has been confirmed?"

THE CHARGE OF ILLEGALITY

This struck the Senate as a good reply to those who said that, because little was made of these articles in 1944, and the few then offered to the subcommittee were not even put in the report sent to the floor, they were not fairly an issue today.

But the size of the vote against confirmation, despite the political pressures applied to Democratic Senators by the President and the Democratic National Committee, was doubtless increased by the statement of Mr. JOHNSON of Texas that Mr. Olds intended to apply FPC regulation to the production and distribution of natural gas. The Texan capped his argument that this would be illegal by quoting the following from a Supreme Court opinion of June 20, 1949, dealing with this section of the act:

"The legislative history of this act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the States. * * * Failure [by the FPC] to use such an important power for so long a time indicates to us that the Commission did not believe the power existed."

The argument here made and won was definitely against Mr. Olds' current acts and policies as a Federal Power Commissioner.

Omnibus Disabled Veterans' Benefits Act (Public Law 339, approved October 10, 1949)

Amending existing law, this act increases compensation for World War I presumptive service-connected cases, provides minimum ratings for service-connected arrested tuberculosis, increases certain disability and death compensation rates, liberalizes requirement for dependency allowances, and redefines "line of duty" and "willful misconduct."

Youths and Crime

EXTENSION OF REMARKS
OF
HON. HARLEY M. KILGORE
OF WEST VIRGINIA
IN THE SENATE OF THE UNITED STATES
Monday, October 17, 1949

Mr. KILGORE. Mr. President, I ask unanimous consent to have printed in the Appendix of the RECORD an editorial entitled "Youths and Crime," which appeared in the Charleston (W. Va.) Gazette of October 13.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

YOUTHS AND CRIME

It does not speak well for those who control the routine work of the Congress that they should allow a measure of the importance of the youth corrections bill to gather dust in the files on Capitol Hill so long.

But it speaks well for the fate of the bill that Senator HARLEY M. KILGORE, of West Virginia, has dug it out and now is putting pressure behind it. We feel that there is full sincerity in Senator KILGORE'S interest because he was identified with child welfare and youthful correctional work long before he was even thought of as a national figure. So he is eminently qualified by experience to correctly appraise the provisions of the proposed measure and to fight through for it.

The bill is sponsored by the Judicial Conference of the United States which in itself would seem to guarantee its importance. We are informed that the pressure of this influential organization is now being directed toward the measure.

The bill would create a Federal Youth Correction Board composed of the Director of the Bureau of Prisons and two other Presidential appointees. Judges would not lose their power to pass specific sentences but could also sentence youths under the age of 24 to the custody of the Board instead of sending them to prison.

Each youth so sentenced would be sent to a classification center where he would be carefully studied by competent workers. The object would be to discover the underlying causes of his delinquency and investigate his mental and physical health, traits, capabilities, past record and other characteristics that would help in mapping a course of correctional treatment, rehabilitation, and planning for his future as a good citizen.

The Board would study the report of the classification center and would decide whether to send the youth to a training school, farm, forestry camp, hospital, or prison of a specified type, or to confine him under conditions deemed essential for the protection of the public, or whether to release him under supervision. No youth could be confined for more than 4 years and every youth would have to be released unconditionally from the custody of the Board at the end of 6 years.

Upon studying criminology one is at first surprised and alarmed at the fact that a high percentage of our criminals are young. We have fought the problem from the standpoint of preventing juvenile delinquency and have not given enough attention to curing it after it appears. When it develops into criminality we have considered punishment too much in the light of revenge and with little effort to arrive at an understanding of the causes of the problem and the cure. This has resulted in an increasing horde of confirmed criminals.

"The chief trouble with the present system is that many youthful offenders are hustled off to prison without much consideration for what the effect will be," says the Washington Post in a helpful editorial. "Some of these young men need a rather stiff dose of correctional medicine. Others can best be reclaimed to useful lives by very mild punishment. Obviously it is impossible for a judge to know in advance just what treatment to prescribe in each case. Under the measure which the judicial conference is sponsoring and which has wide support among judges and correctional officers, the task of making the punishment fit the needs of the youthful offender could be left to a Federal youth correction board."

It has been asserted by competent authorities that instead of 70 percent of our youthful offenders developing into hardened criminals, more than 70 percent can be rehabilitated and made useful members of society.

Congress owes it to humanity that Government be taken out of the horrible business of punishing young men for having made one mistake and place its force behind saving them for useful lives.

We hope Senator KILGORE will ride this bill good and hard from now on in to the end that it be enacted early in the next session. We know he is busy with a lot of things of great importance, but what could be more important than this measure?

We suspect that the Senator has resolved to do this.

Eight Points on the Equal-Rights Amendment

EXTENSION OF REMARKS
OF
HON. MARGARET CHASE SMITH
OF MAINE
IN THE SENATE OF THE UNITED STATES
Monday, October 17, 1949

Mrs. SMITH of Maine. Mr. President, I ask unanimous consent to insert in the Appendix of the RECORD an article from the July–August 1949 issue of Equal Rights entitled "Eight Points on the Equal Rights Amendment."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EIGHT POINTS ON THE EQUAL RIGHTS AMENDMENT

(By Florence A. Armstrong, Ph. D.)

Important changes have occurred which have altered the position of the equal rights amendment in the eyes of many people. Some of these improvements in position are:

1. The Supreme Court in the Darby Lumber case reversed its stand on the constitutionality of legislation on wages and working conditions of men. Hitherto the Court had held that men (but not women) had freedom of contract in such matters. This change removed the only important reason for excluding men from protective legislation. Now such legislation if desirable can be extended to include all workers, not merely women. If it is not desirable, such legislation should be eliminated completely. Organized labor now has power to attend to this aspect of protection as it sees fit.

2. The Attorney General has stated publicly that the equal rights amendment ought to be incorporated in the Constitution of the United States, to bring it into accord with the Charter and other documents of the United Nations which the United States has ratified without reservation, and which affirms as its purpose to promote human rights without distinction as to sex.

3. It has become generally recognized that the area of discrimination against women is far greater than the area of protection of women. Since the former reason (if any) to protect some women, in industry, has now disappeared, there is no longer even the semblance of justification to discriminate against all womankind as to fundamental rights in order to favor a little, a segment of womankind.

4. Furthermore, it has become evident that the equal rights amendment would have no effect at all on the legislation in the welfare field which is based on need, not on sex; such provisions as veterans' benefits, mothers' pensions, children's benefits, etc., are not under sex legislation, do not constitute a denial or abridgment of rights.

5. The present generation of women is profoundly unsettled and discontented on account of their peculiar status—having the right of suffrage, but no other constitutional rights. For over 100 years the women of the United States have struggled for these rights. They have seen women in other countries given constitutional equality, and they are deeply wounded psychologically at this time. Only the most careless observer can fail to sense this profound dissatisfaction and distrust. The psychological value of the equal-rights amendment would be incalculably vast and precious to the United States.

6. It is generally the view of scientists that the tendency of human evolution is toward the development of individual dignity and character. The equal-rights amendment—as the sequal to the suffrage amendment—would supplement and complete and fulfill the aim of generations of women to gain equal justice for every citizen; opportunity for full development without discrimination; the privileges of education; the right to earn a living and hold property without discrimination or hindrance; the right to worship according to conscience; and the right to make contracts, hold office, and share in the control of local, State, and Federal Governments. When the equal-rights amendment confers on women equality before the law and in the participation of the blessings of the rights covered in the Constitution of the United States, from which they are now so unjustly excluded, the psychological tone of American womanhood will immeasurably improve. The effect on our society will be vastly beneficial.

7. The equal-rights amendment would insure that in the future, governmental attempts to submerge women could not stand. Recent discriminatory State laws, and pending Federal proposals to discriminate on a national scale against women—as in proposed alterations in the social-security law—would not stand against a clear-cut constitutional amendment like the equal-rights amendment. Hence the future of womankind in the United States would be far safer than it is at present. Women, who have contributed so greatly to our civilization, deserve this protection which, as one educator expressed it, "should have been our birthright."

8. As years have passed, it has become clear that to remove discriminations State by State, as some opponents of the equal-rights amendment recommend, cannot be relied upon. States can restore discriminatory provisions as well as remove them. As Susan B. Anthony saw so clearly, only a Federal amendment can secure equal justice to women.

In other words, the United States Court of Appeals for the Fourth Circuit on August 22, 1949, after the Supreme Court had acted in the Cement and Rigid Steel Conduit cases, and after I had introduced S. 1974, said just what I said to you on November 30, 1948, that where freight absorption and delivered prices do not involve conspiracy, combination or practices intended to restrain trade and suppress competition, the Federal Trade Commission can issue no order or complaint because they are not a violation of law.

With every good wish.

Sincerely yours,

JOSEPH C. O'MAHONEY.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Illinois [Mr. DOUGLAS] to postpone further consideration of the conference report to January 20, 1950.

Mr. SALTONSTALL. Mr. President, I should like to ask the Senator from Maryland whether, in his opinion, it would be advisable to suggest the absence of a quorum before the motion is acted upon? So far as I know, we on this side of the aisle think it unnecessary.

Mr. O'CONOR. I know of no reason why it would be necessary, I may say to the Senator from Massachusetts.

The PRESIDING OFFICER. The question is on the motion of the Senator from Illinois [Mr. DOUGLAS].

The motion was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Swanson, one of its reading clerks, anounced that the House had passed, without amendment, the following bills of the Senate:

S. 509. An act to provide for the advancement of commissioned Warrant Officer Chester A. Davis, United States Marine Corps (retired) to the rank of lieutenant colonel on the retired list;

S. 1560. An act to authorize the appointment of Col. Kenneth D. Nichols, O–17498, professor of the United States Military Academy, in the permanent grade of colonel, Regular Army, and for other purposes; and

S. 1660. An act providing for the conveyance to the Franciscan Fathers of California of approximately 40 acres of land located on the Hunter-Liggett Military Reservation, Monterey County, Calif.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H. R. 6303) to authorize certain construction at military and naval installations, and for other purposes.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1267) to promote the national defense by authorizing a unitary plan for construction of transsonic and supersonic wind-tunnel facilities and the establishment of an Air Engineering Development Center.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 4146) making appropriations for the National Security Council, the National Security Resources Board, and for military functions administered by the National Military Establishment for the fiscal year ending June 30, 1950, and for other purposes, and that the House had agreed to the Senate amendment numbered 99 to the bill and concurred therein with an amendment, in which it requested the concurrence of the Senate.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills and joint resolutions, and they were signed by the Vice President:

S. 443. An act to authorize the construction and equipment of a radio laboratory building for the National Bureau of Standards, Department of Commerce;

S. 939. An act to remove certain lands from the operation of Public Law 545, Seventy-seventh Congress;

S. 1385. An act providing that excess-land provisions of the Federal reclamation laws shall not apply to certain lands that will receive a supplemental water supply from the San Luis project, Colorado;

S. 1829. An act to authorize the Secretary of the Interior to transfer to the Crow Indian Tribe of Montana the title to certain buffalo;

S. 2316. An act to authorize the construction and equipment of a guided-missile research laboratory building for the National Bureau of Standards, Department of Commerce;

S. 2360. An act to amend the Federal Airport Act so as to authorize appropriations for projects in the Virgin Islands;

H. R. 212. An act to extend to the Territory of Alaska the benefits of certain acts of Congress, and for other purposes;

H. R. 1370. An act to authorize the appointment of three additional judges of the municipal court for the District of Columbia and to prescribe the qualifications of appointees to the municipal court and the municipal court of appeals, and for other purposes;

H. R. 2186. An act providing for a location survey for a railroad connecting the existing railroad system serving the United States and Canada and terminating at Prince George, British Columbia, Canada, with the railroad system serving Alaska and terminating at Fairbanks, Alaska;

H. R. 2369. An act to authorize an appropriation to complete the International Peace Garden, North Dakota;

H. R. 2517. An act directing the Secretary of the Interior to convey certain land to Palm Beach County, Fla.;

H. R. 3155. An act to amend Public Law 885, Eightieth Congress, chapter 813, second session;

H. R. 3300. An act for the relief of Mary Thomas Schiek;

H. R. 3718. An act for the relief of George Seeman Jensen;

H. R. 3816. An act for the relief of Alexis Leger;

H. R. 4059. An act to clarify exemption from taxation of certain property of the National Society of the Sons of the American Revolution;

H. R. 4090. An act to extend the benefits of section 23 of the Bankhead-Jones Act to Puerto Rico;

H. R. 4749. An act to remove the requirement of residence in the District of Columbia for membership on the Commission on Mental Health;

H. R. 4789. An act to provide for the issuance of a license to practice chiropractic in the District of Columbia to Abraham J. Ehrlich;

H. R. 5105. An act to authorize the sale of certain allotted inherited land on the Pine Ridge Reservation, S. Dak.;

H. R. 5170. An act to further the policy enunciated in the Historic Sites Act (49 Stat. 666) and to facilitate public participation in the preservation of sites, buildings, and objects of national significance or interest and providing a national trust for historic preservation;

H. R. 5305. An act to increase the retired pay of certain members of the former Lighthouse Service;

H. R. 5319. An act granting a renewal of patent No. 40,029, relating to the badge of the Holy Name Society;

H. R. 5489. An act to ratify and confirm act 251 of the Session Laws of Hawaii, 1949;

H. R. 5674. An act to extend the time for the collection of tolls to amortize the cost, including reasonable interest and financing cost, of the construction of a bridge across the Missouri River at Brownville, Nebr.;

H. R. 6185. An act to amend the Federal Credit Union Act;

H. R. 6213. An act to authorize reimbursement to the appropriations of the Bureau of Narcotics of moneys expended for the purchase of narcotics;

H. R. 6259. An act to provide for the installation of a carillon in the Arlington Memorial Amphitheater, Arlington National Cemetery, Fort Myer, Va., in memory of World War II dead;

H. J. Res. 230. Joint resolution authorizing the Secretary of the Navy to construct and the President of the United States to present to the people of St. Lawrence, Newfoundland, on behalf of the people of the United States, a hospital or dispensary for heroic services to the officers and men of the United States Navy;

H. J. Res. 302. Joint resolution to amend the act of June 30, 1949, which increased the compensation of certain employees of the District of Columbia, so as to clarify the provisions relating to retired policemen and firemen;

H. J. Res. 337. Joint resolution extending the time for payment of the sums authorized for the relief of the owners of certain properties abutting Eastern Avenue in the District of Columbia;

H. J. Res. 340. Joint resolution to clarify the status of the Architect of the Capitol under the Federal Property and Administrative Services Act of 1949; and

H. J. Res. 353. Joint resolution authorizing the Commission on Renovation of the Executive Mansion to preserve or dispose of material removed from the Executive Mansion during the period of renovation.

NOMINATION OF MON C. WALLGREN TO BE MEMBER OF FEDERAL POWER COMMISSION

Mr. JOHNSON of Texas. Mr. President, I am very happy to announce to the Senate that, a few moments ago, the Senate Committee on Interstate and Foreign Commerce unanimously approved the President's nomination of Mon C. Wallgren to be a member of the Federal Power Commission. There were 10 members of the committee present or represented by proxy, and there were 10 votes cast to report favorably the nomination to the Senate. I now submit the report to the Senate.

The PRESIDING OFFICER. Without objection, and as in executive session, the report will be received, the nomination will be placed on the Executive Calendar.

Mr. JOHNSON of Texas. Mr. President, this, in my opinion, is a fine appointment, which is in the public interest.

The nominee has been honored, frequently and highly, by the people of the State of Washington. He has served in the House of Representatives, he has

producers, and a purchaser anywhere in the country can purchase at the same price including freight from any producer. It is argued that all this is the result of the free play of economic forces, but the Commission did not think so; and this is just the sort of question that Congress intended the Commission to decide. As was said by the Supreme Court of a similar argument in the Cement Institute case:

"'The Commission did not adopt the views of the economists produced by the respondents. It decided that even though competition might tend to drive the price of standardized products to a uniform level, such a tendency alone could not account for the almost perfect identity in prices, discounts, and cement containers which had prevailed for so long a time in the cement industry. The Commission held that the uniformity and absence of competition in the industry were the results of understandings or agreements entered into or carried out by concert of the institute and the other respondents. It may possibly be true, as respondents' economists testified, that cement producers will, without agreement express or implied, and without understanding explicit or tacit, always and at all times (for such has been substantially the case here) charge for their cement precisely, to the fractional part of a penny, the price their competitors charge. Certainly it runs counter to what many people have believed, namely, that without agreement, prices will vary—that the desire to sell will sometimes be so strong that a seller will be willing to lower his prices and take his chances. We therefore hold that the Commission was not compelled to accept the views of respondents' economist witnesses that active competition was bound to produce uniform cement prices.'

"Petitioners contend that even though the order of the Commission be upheld, the fifth paragraph, which relates to the practice of freight equalization, should be stricken therefrom on the ground that it will interfere with the independent use of the practice of freight equalization by petitioners individually. The prohibitions of paragraph 5 have application, however, only to acts done in carrying out a 'planned common course of action, understanding, agreement, combination, or conspiracy.' We dealt with the question here involved in *American Chain & Cable Co.* v. *Federal Trade Com'n* (4 Cir. 139 F. 2d 622), where petitioner had suggested to the Commission, without success, that it clarify a similar order by inserting a declaration that nothing therein was intended to prevent a manufacturer from independently continuing to engage in a given course of action. In affirming the action of the Commission, this court, speaking through Judge Soper, after pointing out the history of the present form of the order and the fears of arbitrary action entertained by the petitioner, said:

"'It does not seem to us that the order needs further clarification. It is of course true that a cease and desist order must be certain and unambiguous in its prohibitive terms because businessmen must operate under it at their peril. * * * But, there can be no doubt that to sustain a charge of violation of the order in this case it must be shown that the prohibited acts have been performed as the result of an agreement or conspiracy, or as the result of a common course of action, that has been agreed upon or planned between two or more persons. If, as the result of such agreement or plan, the petitioners continue to cooperate in a common course of action which has been found to violate the statute, they make themselves liable to the prescribed penalties; and they have no just cause for complaint if in appraising the evidence in any case the triers of fact seek to determine whether there is any relation or connection between their past illegal acts and the conduct under examination. If such a relation or connection is found it may properly be condemned as a continuance of an unlawful conspiracy. Of course, the influence of changed business conditions must be taken into account in reaching a decision; but there is no reason to believe that the Federal Trade Commission will fail in its duty in this respect or that the courts will hesitate to modify or reverse an order that is based on inferences not supported by the evidence.'

"As we have already indicated, the Commission consents that its order be modified so as to eliminate the individual petitioners. We think it should be modified, also, to eliminate its application to cork discs. There is no sufficient evidence of any conspiracy or combination in restraint of trade with respect to cork discs, and no finding sufficient to support the application of the order to dealings therein. The evidence discloses that most of the manufacturers of crown bottle caps manufacture the cork discs which they use; and the inclusion of the latter commodity in the order does not seem to have any practical significance.

"The order of the Commission will be modified by striking therefrom the names of L. C. McAuliffe, E. J. Costa, Joseph C. Feagley, and Benno Cohn and by striking the words "or cork discs" from the main body of the order and from the paragraph No. 1; and, as so modified, the order of the Commission will be affirmed and enforced.

"Modified and as so modified affirmed and enforced."

EXHIBIT 2

UNITED STATES SENATE,
Washington, D. C., October 14, 1949.

Mr. ROBERT D. PIKE,
Gurley Building,
Stamford, Conn.

DEAR MR. PIKE: Because of your deep concern with the possible results of the conference committee amendments upon the enactment of my bill to clarify the legality of the individual use of delivered pricing and freight absorption, I feel it would be helpful again to review the legislation in the light of its purpose.

This is desirable in order to avoid the confusing technical criticisms which both proponents and opponents of the measure are raising in the heated atmosphere of the closing days of Congress. At this time particularly, we need to exercise both good will and intelligence as a means to guide our actions and avoid the pitfalls of the technical legalistic approach which through the medium of unsupported assertions concerning possible judicial constructions of the language of the Clayton Act is again being used to becloud the issue.

You will recall that when you appeared before the Capehart Committee on November 30, 1948, I stated to you publicly, for the record, that any delivered pricing system independently used in the Green River trona operations, which would give due allowance to the geographical situation of your buyers, would not and could not be regarded as a violation of law. There has never been any law or decision which held the contrary, nor has a complaint ever been brought by the Federal Trade Commission involving freight absorption and delivered prices which did not also involve collusion or bad faith. However, at that time, and to an even greater degree after the split decision of the Supreme Court in the *Rigid Steel Conduit* case, businessmen and their legal advisers felt that the point was not sufficiently certain to justify business decisions involving large investments of capital.

My bill, as introduced in the Senate, was offered to resolve that uncertainty immediately after the Rigid Steel Conduit decision. Its purpose, overwhelmingly agreed to, was, first to preserve the vigor of the antitrust laws, and secondly, to give certainty to the interpretation of the law as expressed by the Federal Trade Commission and the Department of Justice that freight absorption and delivered pricing are not per se illegal. The bill which I introduced and the bill as reported by the Judiciary Committee of the House attained those objectives and each substantive section served to assure businessmen that the Federal Trade Commission Act, the Clayton Act, and the judicial interpretations of the words of general meaning in those acts would continue to have the same meaning they have had for more than 20 years. In other words, the law was to remain unchanged, but the uncertainty stemming from dicta in recent decisions was to be avoided.

If, however, Congress is unable for any reason to agree upon the bill as amended in the conference, I am confident that the decisions of the Federal courts and the course of action of both the Federal Trade Commission and the Department of Justice will continue to support the view that freight absorption and delivered prices are not in themselves illegal.

This confidence is immeasurably strengthened by a decision of the United States Court of Appeals for the Fourth Circuit, announced on August 22, 1949, in the case of *Bond Crown & Cork Co.* v. *Federal Trade Commission*. This decision has received none of the widespread publicity accorded to the dicta of the Cement and Rigid Conduit cases. It has not been broadcast by any of those who would have sought to convince producers that the Cement and Rigid Steel Conduit cases now require f. o. b. pricing or uniform mill not pricing. The decision is so important, however, that it ought to be known to you and your associates as well as to all others who in good faith desire to absorb freight or establish delivered prices without violation of the antitrust laws.

The opinion in this case was written by Chief Judge John J. Parker. It states:

"There has been a great deal of argument with regard to the practice of freight equalization. It should be noted in this connection, however, that the question in this case is, not whether such practice may be enjoined as constituting of itself an unfair trade practice, but whether it may be considered along with the other facts and circumstances to which we have adverted as tending to establish the conspiracy and combination in restraint of trade, which is the only charge of the complaint. We think it was properly considered for that purpose" (p. 12).

"The practice of freight equalization might be all right if used by the manufacturers individually, but not when used in connection with standardization of product, patent control, price publication, and uniformity of discounts and trade practices in such way as to destroy price competition" (p. 10).

"Petitioners contend that even though the order of the Commission be upheld, the fifth paragraph, which relates to the practice of freight equalization should be stricken therefrom on the ground that it will interfere with the independent use of the practice of freight equalization by petitioners individually. The prohibitions of paragraph 5 have application, however, only to acts done in carrying out a "planned common course of action, understanding, agreement, combination or conspiracy" (pp. 15–16).

It is true, of course, that the second quotation above is, strictly speaking, a dictum, but if the Cement and Rigid Steel Conduit cases really had the legal effect attributed to them in the publicity which followed their publication in 1948, this language could not possibly have been used by the court, nor indeed, would the court have denied the striking of the fifth paragraph of the order above referred to in the manner in which it was done.

they could get, and that it is reasonable in every way.

Mr. SALTONSTALL. How does it compare with the amounts in the bill passed by the Senate, and the amounts in the bill as passed by the House?

Mr. JOHNSTON of South Carolina. As I stated a moment ago, it is $28,000,000 less than the amount contained in the bill which passed the Senate. The House bill, as the Senator will recall, called for an expenditure of $100,500,000. It is therefore approximately between the amounts approved by the two Houses.

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the report was considered and agreed to.

ADDITIONAL BENEFITS FOR CERTAIN POSTMASTERS, OFFICERS, AND EMPLOYEES OF THE POSTAL SERVICE—CONFERENCE REPORT

Mr. JOHNSTON of South Carolina. Mr. President, I submit the conference report on House bill 4495 to provide postal employees' benefits. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read.

The report was read.

(For conference report, see p. 15024 of House proceedings of October 17, 1949.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. JOHNSTON of South Carolina. The conference report provides a flat increase for each individual of approximately $120 more. The bill passed by the Senate provided $100. The House bill called for $150 increase.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

INCREASE IN EQUIPMENT MAINTENANCE ALLOWANCE TO RURAL CARRIERS

The Chair laid before the Senate the amendments of the House of Representatives to the bill (S. 1232) to increase the equipment maintenance allowance payable to rural carriers, which were to strike out all after the enacting clause and insert:

That subsection (e) of section 17 of the act of July 6, 1945, as amended (Public Law 134, 79th Cong.), is amended to read as follows:

"(e) In addition to the salaries provided in this section, each carrier in the rural delivery service shall be paid for equipment maintenance a sum equal to 8 cents per mile per day for each mile or major fraction of a mile scheduled. Payments for equipment and maintenance as provided herein shall be at the same periods and in the same manner as payments for regular compensation to rural carriers."

SEC. 2. The amendment made by this act shall take effect on the first day of the first calendar month beginning after the date of enactment of this act.

Amend the title so as to read: "An act to increase the allowance for equipment maintenance of rural carriers by 1 cent

served in the Senate, and he has served as Governor of his State.

Never during his long tenure in public office has Mon Wallgren worn the brand of the private power lobby. Instead, the great Bonneville and Grand Coulee projects of the northwest stand as a monument to his forceful and tireless leadership here in Congress.

Contrary to the propaganda that was spread over the country during the recent Senate consideration of another nominee to the Federal Power Commission, Mon Wallgren's appointment and his approval by the Interstate Committee is a final and definite answer to the "wolf-cries" that the power lobby would take over the Commission if Leland Olds were not confirmed.

The nominee's long and rich experience as a legislator in the House and Senate, and his service as an executive in the office of Governor, have taught him where the writing of law ends and where administration of the law begins. I am sure that Mon Wallgren understands the pitfalls and the folly of one-man law—and we shall have no more of that with Mon Wallgren on the Commission.

I am sure also, because of what I know of the nominee, that with Mon Wallgren on the Commission the era of backbiting and gossip, the era of fear and intimidation, the era of selfish power-seeking will come to an end. Mon Wallgren will have the respect of his colleagues and his staff, and I am sure he will return that respect in full measure.

I cannot speak for other Senators, but insofar as the junior Senator from Texas is concerned, I wish to congratulate the President for making the appointment. Mon Wallgren will serve the public interest well.

If anyone wishes to force competitive bidding for securities of natural-gas companies, that is all right with me. I am introducing a bill to bring this about. If anyone wishes to extend Federal jurisdiction over production and gathering of natural gas. I have no objections to the case for such extension being presented fairly and properly to the Congress, where it can be decided on merit.

I do object—and the Senate, by its vote last week, objects—to such matters being settled outside the halls of Congress by ambitious, designing men who seek to take the legislative powers into their own hands. I do not believe Mon Wallgren is such a man.

It was my privilege to sit as a member of the Armed Services Committee earlier this year when hearings were held on Governor Wallgren's nomination to the National Security Resources Board. While he was not approved for that position, objection were based almost entirely on his lack of a military background to cope with the many complex security questions presented to that agency.

I am confident Mon Wallgren will be an excellent member of the Federal Power Commission. I hope that the Senators will give their advice and consent promptly to this nomination.