

THE FOREIGN SERVICE ACT

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS
OF THE
COMMITTEE ON FOREIGN AFFAIRS
AND THE
SUBCOMMITTEE ON CIVIL SERVICE
OF THE
COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS
FIRST SESSION
ON
H.R. 4674

JUNE 21, 28; JULY 9, 11, 17, 18, 24; SEPTEMBER 6, 7, 11, 19,
20, 27; AND OCTOBER 16, 1979

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U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1980

52-083 O

For sale by the Superintendent of Documents, U.S. Government Printing Office
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THE FOREIGN SERVICE ACT

THURSDAY, JUNE 21, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees met at 9:40 a.m., in room 2172, Rayburn House Office Building, Hon. Dante B. Fascell (chairman of the Subcommittee on International Operations) presiding.

Mr. FASCELL. Today the Subcommittees on International Operations and on Civil Service initiate a series of hearings on a proposal by the administration to reform the Foreign Service personnel system of the Department of State, the International Communication Agency and the Agency for International Development.

I must say this has been a long time in coming but I want to congratulate the Secretary of State and Secretary Read for their diligence in persevering with a problem that has too often been relegated to the bottom of the heap because nobody wanted to deal with it. The Secretary has made good on his longstanding commitment to give attention to this matter.

I am delighted that we are having these joint hearings with the Subcommittee on Civil Service. On behalf of the Subcommittee on International Operations, I welcome my cochairman, Hon. Pat Schroeder, and the members of her subcommittee.

Pat.

Mrs. SCHROEDER. Thank you, Dante. I am pleased that our committees are having these joint hearings. I think that the cross-fertilization of our personnel law perspective with yours on foreign affairs will result in meaningful and responsible consideration of the legislation. I particularly am pleased to be cochairing this with my good friend, Dante Fascell.

Mr. Secretary, I welcome you and I wonder where you find the time just 3 days after the signing of SALT in Vienna to update the Foreign Service. We are delighted to do this jointly to try and conserve your energy and everyone else's.

I want to raise at the very beginning some questions that we are going to have about the Foreign Service before we go full speed ahead to fix it. I think a lot of people want to know what's broken and why this legislation is really needed and why we are doing this at this time.

The Foreign Service selects new officers under procedures which are loose and changeable. This concerns me very much and I wonder if this selection procedure is valid. I have a feeling sometimes that it screens out disproportionate numbers of women, blacks, and Hispanics.

Promotion in the Foreign Service is often done on a collegiate basis and I often wonder if this is an effective system of peer rating or is it really the old-boy Princetonian network as we know and love it.

Are adequate provisions made for spouses of Foreign Service officers? My heart goes out to Jane Dubs who was left penniless after her former husband was tragically assassinated in Afghanistan. I am concerned about whether this legislation goes far enough in dealing with cases such as hers.

Is there adequate protection for employees in the Foreign Service? I am talking about the protection of the right to organize and bargain collectively, the protection of the right not to be subject to arbitrary dismissal, the protection of the right to register dissent.

I think those are all very important. We have just finished doing some major civil service reform in our committee. I am not sure this legislation goes as far as what we have done. I think we are going to want to go that far unless you give us many really good reasons why we should not.

I have some other things. I just thought to save time I would point out some of the things I am really going to focus on. Again I thank you for appearing and being here this morning.

Mr. FASCELL. Mr. Secretary, I think there are some questions left, I am not sure, but I will work on that as we go along. I think that Mrs. Schroeder has put her finger on some major problems of concern.

We basically are all interested in doing one thing and that is to make certain, as President Eisenhower once said, that the State Department and the people who serve in the Foreign Service should be of the highest moral character and we should do everything that we can to insure that their morale is high, so that they perform their best.

We want to get and keep qualified people because the Service is so demanding. Therefore, this effort, while it might be boring for some, is going to be very important for a lot of people and for the Government and for the country, so we will just go at it step by step.

Mr. Secretary, I know that you have a prepared statement so you may proceed.

STATEMENT OF HON. CYRUS R. VANCE, SECRETARY OF STATE

Secretary VANCE. Thank you very much. First I would like to express my great appreciation to the chairperson for the early scheduling of these hearings on the proposed new Foreign Service Act to which I and all of us in the Department attach such great importance.

No one has a more profound appreciation of the necessity for a vital Foreign Service, and no one has a deeper personal obligation than I to maintain its vitality. From my tenure as Secretary of State and earlier Government experience, I know that the country and its leaders depend upon a strong and vigorous Foreign Service. And I believe a strong Foreign Service needs this act.

The Rogers Act of 1924 which created the modern Foreign Service, and the Foreign Service Act of 1946, which established its present form, were landmarks in their time. They served us well.

The 1946 act created the personnel system which now supplies three-fourths of our Ambassadors. This administration, as have all administrations since World War II, depends on it for the people who represent our international interests—from the most sensitive missions down to the simplest, yet essential, day-to-day tasks.

But times have changed since 1946. We must be sensitive to the shifts which have taken place in the environment that affect the Foreign Service career, and we must look ahead to the challenges our Foreign Service will face in the future.

Diplomacy has always been a risky business. From the days of Benjamin Franklin and the Committees of Correspondence, our diplomats have quite literally risked their lives in the service of their country.

At no time since 1946 has service been more difficult than it is in so many posts today, or as dangerous—as the senseless deaths of able officers in the last few years tragically demonstrate.

The 1946 act gave us a Foreign Service that answered the demands of that day. But today's circumstances are significantly changed. The number of independent governments has more than doubled during that period and the range of multilateral institutions and efforts in which we are engaged has grown enormously.

Our international commerce has vastly expanded and the international dimension of economic issues has become increasingly central. Major new areas of concern such as nuclear nonproliferation, narcotics control, environmental protection, and science and technology have emerged.

And new emphasis has been given to traditional concerns of American foreign policy such as the advancement of human rights. Americans are traveling abroad in record numbers, with a commensurate increase in the demands for consular services.

The Foreign Service has had to respond to these increasing demands with roughly the same number of people as it had 20 years ago.

At the same time, personnel management is influenced now in ways that were hardly foreseen in 1946. Formal employee-management relationships only emerged in the Senate Department within the last 10 years.

A change has also taken place in the perceived advantages of overseas service. The quality of life in many foreign capitals has deteriorated while the threat to personal safety has increased. The declining value of the dollar and high inflation in many nations have made our task more difficult.

Moreover, with a growing number of families in which both spouses are pursuing professional careers, there is understandable increasing family reluctance to leave the United States for foreign posts.

All these developments underscore the obvious fact that the Foreign Service is confronted by dramatically different circumstances than prevailed a third of a century ago. The Service must adapt to these new conditions if it is to meet new responsibilities, now and in the years ahead.

And yet the structure of the Service has not kept pace. Obsolete, cumbersome, and frequently anomalous organizational arrangements and personnel distinctions have tended to sap its traditional strength and hinder its performance.

We need a personnel system which takes account of new realities. We need the discipline and the incentives that will preserve, strengthen, and prepare our Foreign Service for the complex challenges ahead.

The Civil Service Reform Act passed by the Congress last year strengthens and modernizes the conditions of employment as well as the management efficiency of the Civil Service in all departments and agencies, including the Department of State and the foreign affairs agencies.

In recognition of the fundamentally different mission and conditions of the Foreign Service, it was exempted from many of the basic provisions of that act.

This has given us a rare opportunity to draw from the features of the 1978 Civil Service Reform Act where they are adaptable to the unique requirements of the Foreign Service.

The bill we are proposing for your consideration today is directly responsive to a 1976 congressional request calling on the Department to submit a "comprehensive plan" to improve and simplify our personnel arrangements.

The proposal represents 3 years of study, suspended only during congressional consideration of the civil service legislation last year, but resumed and intensified during the last 7 months. It represents extensive consultation within the executive branch and with interested members and staff on the Hill.

I have devoted many hours to this process and I am confident that we are submitting a bill which will substantially strengthen the Foreign Service.

Let me summarize the major features of the bill.

First and foremost, it links the granting of career tenure promotions, compensation and incentive pay, as well as retention in the Service more closely to the quality of performance.

The bill would require all persons seeking career status to pass a rigorous testing process before being awarded such status.

It restores an effective "up or out" policy essential to attracting and keeping the most qualified people and assuring them the opportunity to move through the ranks at a rate which reflects their ability.

Some procedures, such as selection out for substandard performance, would be applicable for the first time to all Foreign Service personnel from highest to lowest ranks.

Other procedures, such as limited career extensions for persons at the highest ranks of their occupational categories, are new. They would be administered on the recommendations of annual selection boards and would provide greater flexibility in assuring that the Service retains the ablest people and the essential skills it needs.

Present voluntary and mandatory retirement features, both essential for an effective Service, are retained without change.

The bill would create a new Senior Foreign Service, with rigorous new entry criteria for the highest three ranks. Membership in the Senior Foreign Service would involve greater benefits and risks based

on performance. With adaptations, the incentive provisions are modeled on the senior executive service provisions of the 1978 law.

Second, the bill recognizes the clear distinction between the Foreign Service and the Civil Service. It clearly limits Foreign Service career status only to those people who accept the discipline of service overseas.

Today, there are several hundred members of the Foreign Service in the Department alone who have entered the Service without any real expectation that they would have to serve abroad, and who have not served abroad. The bill would convert these persons to civil service or senior executive service status, with pay and benefits preserved.

Third, it improves the management and efficiency of the Service by reducing the number of personnel categories for more than a dozen to two. There would be a single pay scale for both. In general, our personnel laws would be consolidated, rationalized, and codified to meet current needs.

Fourth, it places employee-management relations on a firmer and more equitable statutory basis, establishing a new Foreign Service Labor Relations Board and a Foreign Service Impasse Disputes Panel.

Fifth, it would underscore our commitments to mitigating the special hardships and strains on Foreign Service families, and to advancing equal employment opportunity and fair and equitable treatment for all without regard to race, national origin, sex, handicap, or other considerations.

Sixth, it would improve the economy and efficiency of Government by promoting maximum compatibility and interchange among the agencies authorized to use Foreign Service personnel. It would also foster greater compatibility between the Foreign Service and the Civil Service.

There are many other features of this bill which will be described in more detail by others who follow me, including USICA Director Reinhardt and Acting AID Director Robert Nooter.

The mission of the Foreign Service in the years ahead will be complex and difficult. It will face great demands, both physical and emotional.

But freed by this new proposed charter from the organizational obstacles to which I have alluded, I am confident that it will be able to do its essential work for the Nation with distinction. For the vast majority of its members at all levels are people of uncommon professional ability, experience, and dedication.

I know you share my view that the country needs a strong Foreign Service. I believe that when you have completed your examination of this proposed legislation, you will share my view that a strong Foreign Service needs this act.

Thank you.

Mr. FASCELL. Thank you very much, Mr. Secretary.

Mr. Secretary, how much of this could be done, if any, through purely administrative action?

Secretary VANCE. Some of it could be done by administrative reform, but I believe that extensive legislation is required and not just administrative reform. I say that because I think legislation is neces-

sary in order to do a number of things, and let me list what they are.

First, to affirm authoritatively the essential contemporary role of the Foreign Service.

Second, to convert to civil service status without the loss of benefits Foreign Service personnel in the State Department and in USICA who are obligated and needed only for domestic service.

Third, to place employee-management relations on a statutory basis.

Fourth, to create a Senior Foreign Service with rigorous promotion and retention standards which will be closely related to performance with appropriate linkages to the Senior Executive Service and with similar risks and benefits, including performance pay.

Fifth, to create a single Foreign Service pay scale.

Sixth, to combine more than a dozen Foreign Service personnel categories and subcategories into categories of two.

Seventh, to provide similar requirements for providing tenure, promotions based on merit principles, and selection out for substandard performance for all members of the Service from top to bottom.

And eighth, to recodify and consolidate major personnel legislation relating to the Foreign Service.

For all of those reasons I believe that a comprehensive bill such as this is required.

Mr. FASCELL. Well, may I suggest another reason. If you try this without the Congress, you would probably be in trouble anyway.

Secretary VANCE. I am sure that is right.

Mr. FASCELL. Mrs. Schroeder.

Mrs. SCHROEDER. Thank you very much.

I have many many questions and I never know quite where to begin but let me start with one of my pet projects. First of all I want to compliment you in allowing spouses to work in embassies abroad, but in the interim, as you know, we went through a whole period where one's career was based on how one's spouse performed. Spouses got report cards and if they earned their own jobs, the careers of their spouses would be jeopardized.

So I have introduced an annuity bill. My understanding is that the State Department did not see fit to go that far and I was wondering what your position was on the annuity rights bill that I have introduced?

Secretary VANCE. This is a very important matter and one which has been a matter of deep concern to me. This bill acknowledges that the direct contribution made by Foreign Service spouses should give them a vested right in a survivor annuity after 10 years of accompanying their spouse. In this regard the bill specifically provides that there can be no waiver without the express consent of the spouse under those circumstances. I think this is of fundamental importance.

Mrs. SCHROEDER. And you are not insisting on a court order first for that to take place?

Secretary VANCE. That is correct.

Mrs. SCHROEDER. Women, blacks, and Hispanics. I asked your AID colleague in my committee about equal employment opportunities in the Foreign Service and was told that they didn't like to travel.

Secretary VANCE. I think that we have not done an adequate job in this area which is very obvious from any scrutiny of the personnel records in the Department. As a result of that, one of the principal tasks that I and my colleagues undertook when I became Secretary of State was to establish a review panel to take a look at the affirmative action programs of the Department and to come up with a specific program for putting into effect a strong affirmative action program. That has been done.

We have been having regular followup meetings with the affirmative action task force to check on the progress that is being made. I think that at a number of levels we are making good progress. In some we are not making adequate progress, and it is something that we simply are not going to tolerate. We are going to insist that the programs be carried out and be carried out effectively.

I am not satisfied with the progress yet, but we are on the right track and our people are wholeheartedly behind it.

Mrs. SCHROEDER. I think one of my problems has been why the Foreign Service relies so much on promotions being decided by the selection boards. It seems to me that it is similar to the military. It is very difficult to crank out that old-boys network which I think people are not even aware of a lot of times. It is kind of a cultural conditioning. There are a lot of things that you cannot just objectively analyze. It is a subjective thing. That worries me here because I don't see us breaking away from that kind of collegial board and those kinds of problems.

So if you want to furnish affirmative action, you may have to say "no" to some of your boards. Yet, presumably, the boards are the authentic way and there is no way to measure whether or not the board is biased.

Secretary VANCE. Let me answer by giving you several different points. First, I felt it was essential that we should include in this bill which is before you, a legislative statement of our goal with respect to affirmative action and the importance of affirmative action, so it is specifically stated in this bill that one of its objectives is to foster the development of policies and procedures which will facilitate and encourage entry into and advancement in the Foreign Service by persons from all segments of the American society with equal opportunity and fair and equitable treatment for all without regard to national origin, race, sex, marital status or handicapping condition. I think it is important for the Congress to put its stamp on this, too, and to say this is a fundamental principle that guides us.

Now in connection with the implementation of that fundamental concept which is stated in this legislation, we have made it very clear and we make it clear in the precepts to the selection panels that this is an important factor that should be taken into account. When it comes to appointments to deputy assistant secretaries, for example, I have charged those who come with recommendations to me to make sure that on those lists there is a broad representation of not only minorities but women as well, so that when we make the selection I am sure that we have before us across-the-board representatives and not just people who are known to their colleagues.

Mrs. SCHROEDER. Do you agree with President Carter's statement that our embassies abroad are overstaffed?

Secretary VANCE. Insofar as the State Department is concerned, we now have it pared down to what I think is really the minimum. We are operating with the same number of personnel that we did some 20 years ago, and this despite the facts that the problems which we face are much more complex and that we have so many more countries to deal with than we did in the past.

If you are talking about the total number of people who are carried in the mission in a country, yes. I think they are still overstaffed, but that is because we have elements from many other different agencies and departments which are included in the total mission.

We have been going through a review during the last year in which we have been trying to cut down and we have cut down on the numbers. We have not cut sufficiently and we are going to continue to prune and reduce the size.

Actually, Ben points out to me that the State Department constitutes less than 20 percent of personnel contained in the average embassy.

Mrs. SCHROEDER. I think some of the main problems our committee is going to have with this legislation, in all candor, are: We feel very strongly that part of the whole reform of the Federal Government is to bring in the notion of pay for performance. Yet, it appears that you have discarded the notion of merit pay for upper level Foreign Service officers.

The SES model has not really been followed in the same way.

There is also some question as to why you need another group, why you can't rely on the FLRA for your labor-management system. Why do we have to create a new one?

There is some concern about whether or not the employee protections that have been extended to the Civil Service through the Office of Special Counsel can be utilized also in the Foreign Service. Since we are using title VII in the Panamanian legislation and title VII for all civil service employees in the continental United States, why is title VII not also adequate to pick up and superimpose on the Foreign Service?

I realize these are all very complex and we probably can't answer them here, but I think there are things that we are going to be really fine tuning and asking as we go through this legislation. I think it would be less than fair if I didn't point that out.

I think we are also concerned to find out whether or not you think that Foreign Service officers are underpaid.

Whether or not we are really doing anything in this legislation for the Consular Corps which has been of great concern.

Now there are other people wanting to ask questions but that is where we are coming from.

Secretary VANCE. We are prepared to answer all of those questions.

I do want to comment on the first point you made because I have made a very difficult decision which I made myself on whether or not to include merit pay for the younger officers.

I support very strongly performance pay for those who will be in the Senior Foreign Service. I think that that is an excellent idea.

However, when I took a close look at the question of merit pay at the middle levels, and I discussed this with many, many midlevel and junior officers and I discussed it with senior officers as well, I was convinced that there is a clear distinction between those at that level being awarded merit pay in lieu of step increases and those being awarded performance pay at the higher level.

Why? Let me give you two of the reasons. In the first place, I think it is much more difficult at that point to be able to select in terms of monetary compensation pay which would be meaningful to one mid-level officer as against another.

Second, there is a grave concern that if this is done, the net result will be that there will not be the usual salary increases to compensate for cost-of-living increases and that the Congress will simply not permit that to go forward. The result is that the people in those grades are going to be hurt rather than helped.

Mr. FASCELL. Mr. Buchanan.

Mr. BUCHANAN. Thank you, Mr. Chairman.

Mr. Secretary, I want to welcome you to the committee and I am sure you understand the importance of this legislation. I happen to believe that with all its deficiencies we already have the finest Foreign Service in the world and it is my hope whatever we do here will serve to strengthen and not confuse that situation.

I begin, Mr. Secretary, by associating myself with the concerns of the gentlewoman from Colorado pertaining to affirmative action and its importance throughout the Government. Then second, section 333 entitled "Family Member of Government Employees," contains a somewhat watered down version of the language that already passed in this area. As you know, we had expressed some concern about the resources that were available among family members of Foreign Service officers that we were not utilizing. Now a good many talented people might well serve our country and it is my understanding you decided to try the program on an experimental basis in 15 posts. It is my further understanding that although some 15 to 20 jobs were originally identified as jobs suitable under the program, by the time the regulations were sent to the post last month, some 9 months after they were enacted, there was only one job open and it was not sure even a family member will get that. So it seems to me this is not a good pilot.

I wanted to ask if there can't be further action toward implementation. I am pleased this section is in the bill, but I wonder if there can't be some more substantial implementation of the present law. Even on a pilot basis it seems this is pretty high.

Secretary VANCE. First let me say that I do not consider section 333 to be a watering down, I think it reflects the current law.

As to the details of some of the matters that you have raised, Mr. Buchanan, I would like to ask Ben Read to comment on them.

**STATEMENT OF HON. BEN H. READ, UNDER SECRETARY OF
STATE FOR MANAGEMENT**

Mr. READ. As you know, Mr. Buchanan, we do have a very limited pilot program underway. I agree with you that we can get more life

and steam into it, and I will be glad to report on the progress made and the intent to carry it out beyond its current status at a suitable time.

Mr. BUCHANAN. I just think if we have some of the people who are not U.S. nationals—and we do have some really talented people we are not using—I think it might be good for everybody if we could have a stronger use and a stronger attempt perhaps to reach out to those people and use those facilities.

I have no further questions at this time, Mr. Chairman.

Mr. FASCELL. Mr. Pritchard.

Mr. PRITCHARD. Thank you, Mr. Chairman.

We appreciate your coming up here to the Hill, Mr. Secretary, when you are under so many problems these days.

Let me just say that as a basic philosophy I would hope that Congress in this type of an area would say how do you want to run this thing and if it is within reason we say OK go ahead and then we keep your feet to the fire and judge you on results.

Mr. FASCELL. Oh, that is too easy.

Mr. PRITCHARD. I am all for that, it is better management, but it is very difficult for Congress to operate in a management approach so we do get into a lot of nitpicking.

On a matter of policy I have a couple of questions.

We all know how important morale is to the small Foreign Service Officer Corps and the significance of maintaining a separate identity and role for our diplomats. Now does the new Foreign Service Act tend to blur the identity of the new FSO Corps within the larger Government personnel system and if true, would this not have a negative impact on Foreign Service morale?

Secretary VANCE. If that were the fact, it would. In my judgment it does not. It does the contrary. I think it reaffirms the importance of the Foreign Service and of excellence in the Foreign Service and it takes the necessary steps to make sure that that in fact is what is going to be carried out.

I think it strengthens rather than derogates from the Foreign Service and the personnel within the Foreign Service, and I think that as a result of the passage of this act we will have a stronger Foreign Service.

Mr. PRITCHARD. I understand that you want Congress to complete consideration of the Foreign Service Act this year. What timeframe do you envision and will the State Department be ready with the machinery to implement such a mass of complex procedures and regulations once the proposal becomes law? What is your timetable here?

Secretary VANCE. The answer to your first question is "yes," we are prepared to and will be able to implement when the Congress acts on this. I hope very much that the Congress will act this year and if they do, then we are prepared to implement.

Mr. PRITCHARD. Would you say that it is very important that we act this year?

Secretary VANCE. I think it is very important that you act this year.

Mr. PRITCHARD. Thank you. I would agree with you. I am concerned about what I feel is an attitude of pushing this and pushing it down.

Secretary VANCE. Well, one of the reasons I wanted to come up and testify today even though it is just a couple of days after I got back from Vienna and I have to testify or appear at the OAS meeting this afternoon with the Foreign Ministers is because I consider this to be of fundamental importance to our Foreign Service. The sooner we get at it and get this legislation passed, the better off all of us are going to be.

Mr. PRITCHARD. Thank you.

Mr. FASCELL. All right. I must say at this point that the Secretary has to my knowledge devoted a great deal of his time to this matter, not only in reviewing the legislation but in the intensive work that went on for a long time within the administration.

Now this is not a matter that has been delegated to very able people like Ben Read and others. This is something that the Secretary himself has interested himself in and I think that is the reason we are moving on this finally.

Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

First I would like to commend my colleague and chairman from Florida and the chairwoman, Mrs. Schroeder, for joining these things together to save us both time on this. I understand the seriousness of the subject and the need to act immediately.

Also I would like to commend the Secretary. You have been before our committee on numerous occasions and I think your preparation, particularly after having gone through the SALT negotiation, on this is excellent.

I might just mention that one of the questions that went through my mind immediately after your testimony and the chairman's first question was you had eight points that you answered very precisely from that little blue book and then the chairwoman asked a question and you had very good points. My question is who prepared the little blue book?

I will pass on that one.

I would like to know and share some concern. First, what is the projected cost basically of the old system?

Secretary VANCE. The projected cost in terms of actual dollars I will ask Mr. Read to give you, but I can tell you that the net cost or the objective is that there will be no direct net cost increase.

Now when performance pay is authorized and when it is determined within the executive branch how much the performance pay will be, in other words how much will each of the departments be permitted to devote to that, then I could give you that figure but other than that it is no additional cost, no promotions or demotions flowing from this. In other words, we are trying to do it on the basis of the status quo insofar as cost is concerned.

Mr. MICA. Within the Foreign Service personnel is there great support or opposition to this proposal?

Secretary VANCE. Within the Foreign Service I would say that I think that there is a substantial majority that supports the legislation. There are some who disagree, as one would expect, with various parts.

Some people do not agree with the concept of a Senior Foreign Service which I happen to think is of great importance and I think

that the majority of people believe that it is of great importance. I think there is a broad majority consensus in favor of many of the principal features of the bill.

Mr. MICA. At least 51 percent?

Secretary VANCE. I think greater than that. I think the affirmation of the role of the Foreign Service and its importance as a distant entity and not something that should be consolidated into the civil service, the idea is that there should be a separate Foreign Service, has broad support.

There is broad support for conversion to civil service status of the Foreign Service personnel who are not going to be serving overseas. There is broad support for the labor management provisions of the bill which we have put before you.

There is broad support for a single Foreign Service pay scale.

There is broad support for the consolidation of the multiple Foreign Service personnel categories into two categories.

The new procedures to assure that up-and-out rules will be carried out and carried out effectively is broadly supported.

So on these fundamental essential principles I think that you will find, and you will see this from those who come to testify before you, that there is broad support and that is more than 51 percent.

Mr. MICA. Basically we are being told there will be good management and it will cost no more.

Secretary VANCE. You are being told this. But you will also find that there are provisions of the bill with which some will disagree. I have consulted with AFSA and they will be coming to testify before you.

Mr. MICA. Are they supporting you?

Secretary VANCE. They will have to speak for themselves on this. I know on a number of issues they will support it. I think they should speak for themselves and I should not try to speak for them, but I have benefited, I can tell you, from my consultations with them.

Mr. MICA. Have they taken a public position for or against the entire bill?

Secretary VANCE. Not in its current form that is before you now. They ought to speak for themselves on its current form because we sent drafts to them as we went along. They commented on those various drafts. They pointed out areas which they did not disagree with.

I sat down with them after having studied what they were against and in some cases said, yes, I agree with you and changed what there was in the draft. In other cases I disagreed and said no, and gave my reasons why I did not agree with them and did not accept their recommendations. So they should speak for themselves.

Mr. MICA. Thank you. Just one final comment. In our first meeting here—

Secretary VANCE. Let me say one more thing that you should have in answer to your question. The Board of the Foreign Service has endorsed the bill as I am presenting it to you.

Mr. MICA. In our first meeting here we discussed the Iranian situation and I indicated to you that I had had feedback from professionals who had a feeling that there was a policy, although unwritten, that feedback to the Department was being stifled, was not encouraged, and that to a certain extent caused some of our misreadings of the Iranian situation.

I realize that this does not get into the details of this legislation, but I would hope that every portion of this legislation and any other legislation dealing with the Department would encourage all segments of the Foreign Service to have some type of input. I understand it must be logical and systematic and so on, and proper protocol, but I think possibly along with the Ambassador, the clerk at the front desk in an embassy may have some insight as to what is going on in a nation and ought to have some way to get that information back to appropriate channels.

The information I continue to get is that there is a reluctance and a feeling within the Department not to do this, that if you contradict even unofficially the senior officials that it may reflect fully on your career.

Thank you.

Secretary VANCE. As far as I am concerned I welcome criticism, I welcome suggestions, and I find that I learn a great deal through what is reported to me from embassies and from what I hear when I go to the various embassies and talk with the personnel there. I think that the only way you can run an organization is to have a free and open channel where people can express their differences or their suggestions as to how to improve the system.

I have been around long enough to know that this does not always get through, and I am sure that a lot of people feel that they are not being listened to, but they are and should be as a matter of principle, and let me say the provisions of the bill support this principle.

Mr. MICA. Thank you.

No further questions, Mr. Chairman.

Mrs. SCHROEDER [presiding]. Congressman Leach.

Mr. LEACH. Thank you, Madam Chairman.

I have certain concerns about the approaches outlined in this bill, but I would like to say that I strongly appreciate your personal view and say that as a former Foreign Service officer I was often struck by the negligence of top management of the Department of State in dealing with the Foreign Service. Your involvement and interest is extraordinary and much to be commended.

I might say that this bill does two things in effect. One, it deals with design of structure. Second, it deals with method of compensation.

In 1971 I wrote a study for AFSA on compensation. As you know comparability is a very difficult thing to achieve. One approach to comparability, with which my particular study dealt, is simply comparability with the civil service. Partly because of management negligence, partly because of a lack of understanding and too much desire to be independent, the Foreign Service really didn't realize how much it had started to lag behind the civil service in general.

It is very difficult, as almost anyone knows who deals with this issue, to come up with jobs comparable to what a Foreign Service officer does. Therefore, one of my original theories was to say let's just compensate people on a comparable basis with what they would be earning in the civil service per se.

In any respect it is very clear that the Foreign Service today is inadequately compensated, and therefore it is with a little bit of surprise that I listened to you comment that there will be no net cost increase.

Are you saying that you are going to turn your back on the Hay Associates study or that you will not be attempting to establish compensation comparable to the civil service?

Secretary VANCE. There will be comparability, but as you know the pay study has just come in. We have transmitted it to the Congress. We are in the process of reviewing it within the executive branch, not only within the Department of State but obviously within the Office of Management and Budget. That will take a while to do.

In addition, AID and ICA are going to have to review the study. Until we have been able to review this matter entirely within the executive branch, I think we are just going to have to stay where we are at this point. If at the end of that review we conclude that other steps are necessary to be taken, I am going to be first to say let's go forward and do it but at this point there is no final decision.

Mr. LEACH. Let me just say that when you develop the methodology to accomplish the conversions contemplated in the bill and there is a tie-in between your top three positions, for example, and GS-18, the second and third positions with GS-16, or possibly GS-15, an immediate salary increase is implied. If it is done across the board and done correctly because the study demonstrates that current salaries are lower than they should be, I don't know how the mathematics can work out so that there is no increase involved, unless you perhaps are contemplating staging it in overtime.

Secretary VANCE. On the mathematics of that I would like to ask Mr. Read to comment on it and flesh out what I have to say.

Mr. READ. The Office of Management and Budget people, Mr. Leach, made it very clear that in their role as one of the two pay agents of the President that they were the ones that would look at the pay study and determine the correctness of its methodology and concur or not concur with the evidence of inadequate pay comparability that is strongly provided in some cases but not in other cases, as you will see from the study which has been submitted. But they were willing to let the bill go forward saying that when an administration position was developed, it would be submitted without delay to the Hill.

Mr. LEACH. Let me say, just in doing my own mathematics, it strikes me as completely inconsistent to say that the bill can stand as proposed without the recognition that it will cost more because it clearly will cost more. If it does not cost more, then you are going to have to go through some sort of convoluted process whereby you transfer current Foreign Service officers, possibly at a lower step, into the new system.

One of the things that I was looking at in an earlier version of this legislation, considered by the Department, was the truly critical issue of how the initial transfers take place—to what grades you transfer people. That initial proposal was of monumental consequence. The program could have been carried out in positive fashion. On the other hand, it could have been carried out in negative fashion.

Unless one is willing to make a strong statement about the likelihood that it will cost more—and it might be that you would want to come up with a staggered 3-year period, hopefully not 4 or 5, but say 3 years with the recognition of greater costs over the long term—I would be gravely concerned that the Foreign Service system would be taking a step backward rather than forward.

I might say in this regard that if you go by direct cost, rather than the comparability figure, you are going to be behind the eight ball. I suspect that with regard to any issue vis-a-vis the Foreign Service, the top echelon in State is going to have to take an extremely strong stand on the comparability issue with the OMB. If the Foreign Service is not defended on this issue, what we could see is a new structure but not one which is beneficial or encourages advancement.

Mr. READ. I would like to say that I have given that commitment to the Foreign Service and will fulfill it. I consider it a matter of good faith to do so, but what I am not in a position to do today is to say what will be accepted or not accepted as the administration position.

Mr. LEACH. I would only respond by saying that as a Member of Congress it would be very difficult to vote positively or negatively on this bill unless the economic ramifications were clearly spelled out and the support of OMB or the position of OMB made definitive.

Mr. READ. The OMB is setting up a task force and has promised to proceed without delay to consider the study and its implications. It is an extremely thorough study as you will see when you examine it and looks not only at the rest of the Federal service but at the overseas private sector. It contains many points of reinforcement along these lines.

Mr. LEACH. Thank you. I don't want to belabor the point. I appreciate your coming and particularly, Mr. Secretary, your involvement in this. I think there is an enormous opportunity for you to make a majestic impact on the whole future of the U.S. Foreign Service and your involvement and interest is something that I think will redound to your great credit.

Secretary VANCE. Thank you.

Mr. FASCELL. Mr. Barnes.

Mr. BARNES. Thank you Mr. Chairman.

I am not a member of either of the subcommittees. I am very grateful to you and to the gentlelady from Colorado, too, for inviting the Foreign Affairs Committee, and I am grateful to have the chance to be here.

Particularly I am pleased that the Secretary of State this week in the midst of all that is going on would take the time to come to the Hill and to stress the importance of this legislation. I want to take my moment here to commend you, Mr. Secretary, for the great success of the past 10 days or so and hope that our colleagues on the other side of the Hill see the wisdom of what you and the President have achieved with respect to the negotiations with the Soviet Union. I think it is a great achievement for our Nation and I, just as one Member of Congress, want to publicly commend you for your leadership and very important role in what has taken place.

Secretary VANCE. Thank you, Mr. Barnes.

Mr. BARNES. I had just a couple of questions with respect to the legislation that is being considered by the subcommittees in this joint hearing.

How will the enactment of the legislation. Mr. Secretary, affect the existing relationships among State and AID and ICA, and does the Department have the support of AID and ICA in the present revision of the legislation?

Secretary VANCE. What we have strived to do is to achieve the maximum compatibility that is possible and to integrate the steps that

we are taking here with those which would be taken by ICA and by AID.

Both John Reinhardt and the Acting AID Director, Bob Nooter, will be testifying before you. Yesterday I sat with them as we prepared a statement to our respective personnel in the three various agencies. All of us at that time expressed support for the bill as developed. John and Bob should speak for themselves precisely on any details, but as far as the overall bill is concerned, I can say that we are all in support of the action which we are proposing to you.

Mr. BARNES. Will this continue to apply to AID under the new IDCA structure?

Secretary VANCE. The answer is "Yes."

Mr. BARNES. Thank you very much, Mr. Secretary.

Mr. FASCELL. Do you have any other questions?

Mrs. SCHROEDER. Mr. Secretary, let me say that my ranking minority member, that you have now met, Mr. Leach, is a real expert on this. He will be guiding us very carefully through this, and I am sure he will ask many questions. Thank you again for coming this morning.

Secretary VANCE. Thank you very much, Mrs. Schroeder.

Mrs. SCHROEDER. Mr. Secretary, thank you very much. Let me add my commendation to you for your distinguished service to the country in a very troublesome time. I am sure there will be a Cy Vance Award. I guess you heard about the colloquy on the floor yesterday. There are many eager recipients and you might want to consider it.

Secretary VANCE. Thank you very much.

Mrs. SCHROEDER. Mr. Read.

Mr. READ. Thanks very much, Mr. Chairman, Mrs. Schroeder, other members of the committee. This is the end of a long effort and the beginning of another, and I am delighted to be here to present this bill to you in slightly expanded form from the Secretary's presentation this morning.

Secretary Vance has described for the committee the principal features of the proposed new Foreign Service Act. With your consent, I will concentrate on three aspects of the bill which represent the most significant departures from existing law and practice:

One, simplification and rationalization of the Department's dual Foreign Service-civil service personnel systems;

Two, the Foreign Service career performance requirements for tenure, compensation, promotion, and retention; and

Three, employee-management relations and related matters.

I think those opening remarks will answer two of the main points of concern that Mrs. Schroeder referred to in her statement to the Secretary.

Turning first to the Foreign Service-civil service relationship in the Department of State, the bill would resolve a longstanding dispute by its acceptance of and clear distinction between the Department's dual Foreign Service-civil service systems.

Advocates of the dual systems as well as advocates of inclusion of both worldwide and domestic categories in a single Foreign Service system have seen their competing views reflected in various congressional, executive branch, public, and private studies spanning three decades.

The dual systems, which was an underlying premise of the Foreign Service Act of 1946, were supported in three major reports by the Wriston Committee in 1954, by AFSA in 1968, and by the Murphy Commission in 1975.

The unitary worldwide system was backed by the Hoover Commission in 1949, the administration-supported but unsuccessful Hays bill in 1965-66, and the "Diplomacy for the Seventies" report in 1970.

Starting in 1971, the Department and USIA (now USICA) initiated an administrative personnel policy based on a limited single service concept. Special inducements, including both partial or complete exemption from overseas service, were offered to civil service employees in both agencies who converted to Foreign Service status.

By 1975 the Department was criticized in a report by the Civil Service Commission for its neglect and lack of career opportunities for its civil service employees.

The problems with making the single service system work were recognized explicitly at the end of the Ford administration in the Department's interim report on January 10, 1977, to Congress in response to the 1976 enactment calling for a "comprehensive plan" to improve and simplify its personnel systems.

That report found that: "* * * A central reality which no earlier study or plan has changed—although some may not have faced it fully—is the existence of a domestic category of people in the Department and USIA who supply essential skills and continuity of service which cannot be met effectively by a worldwide service.

"Our examination of past efforts to create a single service has made clear that the Foreign Service Act cannot serve as an instrument to manage a domestic service. Efforts to implement this program have not been successful. Uniformity has not brought equity or management efficiency."

We agree fully with these conclusions. The lack of success of the administrative policy to achieve a single system is illustrated by the fact that there were approximately 3,100 civil service personnel in State when the policy went into effect in 1971. There are approximately the same number today.

Many persons providing policy and support assistance essential to the Department's ability to conduct foreign affairs are needed and willing to serve in Washington only. But 600 persons with such purely domestic orientation in State have been given Foreign Service status; 900 in USICA, with the resulting cited management inefficiencies.

The Civil Service Reform Act of 1978, as the committee well knows, provides numerous improvements in the conditions of civil service rank-in-position employment in all departments and agencies, including State and USICA, with new opportunities, risks and benefits linked to performance, particularly in the new Senior Executive Service.

But as you will also recall, the Foreign Service was exempted from many of the provisions of the 1978 act in recognition of its basically different conditions of service, in particular the need for frequent rotation from position to position and the consequent reliance on a rank-in-person system.

The pending bill would recognize the dual Foreign Service-civil service systems and the need to restore a rational and equitable divi-

sion between them, while promoting compatibility and interchanges between the systems under common principles whenever appropriate.

A transition objective of the bill is to convert Foreign Service "domestic" employees to the civil service system, if they are not obligated to accept and are not needed for worldwide, rotational assignments, and to do so as quickly as possible; but at the same time, to guarantee the protection of individual rights and the preservation of existing pay and benefits.

This conversion plan would permit Foreign Service "domestic" employees with skills designated by the Secretary as needed abroad, and who are willing and otherwise qualified to accept true worldwide obligations, to elect to remain in the Foreign Service system.

Other Foreign Service domestic employees in the Department of State would have a 3-year period in which to accept conversion to the civil service system or to leave the Department.

Conversions to the civil service would take place under the following conditions: No loss in salary, and with unlimited protection against downgrading as long as the employee did not voluntarily move to another position; the right to remain in the Foreign Service retirement and disability system (for those already members), or alternatively, to elect to move to the civil service retirement system; and the kind of appointment offered on conversion would parallel that currently held—i.e., career Foreign Service would receive career GS appointments, career candidates would receive probationary or career conditional GS appointments, and those on time-limited appointments would be offered GS time-limited appointments.

Second, I would like to emphasize and illustrate the reasons for the features of the bill to which Secretary Vance and I attribute highest importance: Linking the grant of tenure, advancement, compensation, and incentive pay, as well as retention in the Foreign Service more closely to high levels of performance.

The interaction of basic elements of a well-working career personnel system and the absolute necessity for closer linkage of such elements to performance than at present has been painfully illustrated during the last 3 or 4 years, as the committee knows full well.

I refer to the impacted situation at senior levels which has caused pervasive problems at all levels and revealed serious structural flaws. This situation has been particularly alleviated in recent weeks, but could recur at any time under slightly different circumstances, and I would like to examine it with some care.

For years, many persons in the most senior positions in the Service have been exempted from annual performance evaluation and selection out for substandard performance. This placed heavy reliance on voluntary and mandatory retirement as the primary means of senior attrition which in turn largely determined the limits on promotions in all junior and middle ranks.

In February of 1977, a long-delayed executive pay raise granted by Congress went into effect and resulted in more than a 50-percent drop in voluntary retirements because many members of the Service who were considering such retirements understandably decided to serve for 3 years at the new salary rate to obtain fullest pension benefits.

In June of 1977, a lower court decision prohibited use of the 60-year retirement limit set in the 1946 act on constitutional grounds, and until the ruling was reversed by the Supreme Court in April of this year, mandatory retirements stopped altogether.

Thus, largely by the coincidence of two events completely beyond administrative remedy, senior departures from the Service slowed to a mere 5 percent.

This situation was aggravated by two additional factors: an administrative move in 1976 to extend to 22 years the combined permissible time in classes 1 and 2, and the actual or virtual cessation in several recent years of selection out for substandard performance.

The combination of all these factors required us to set the lowest promotion rates since World War II and to reduce intake accordingly. Obviously, this had a crippling effect on morale, and some excellent and most promising younger persons were lost to the Service as a result.

That the Foreign Service has performed as well as it has under the circumstances I think is a tribute to its highly dedicated personnel.

To prevent recurrence of such situations, we are suggesting a multi-faceted approach in the bill to achieving higher performance requirements for all aspects of Service life.

The bill would establish a new Senior Foreign Service for the highest three ranks, paralleling with adaptations the new senior executive service. Present career ministers and eligible FSO/FSRU/FSR-1's and 2's who are obligated and needed for worldwide service could elect to join the Senior Foreign Service within 120 days of the date of enactment of the bill.

Membership in the SFS during and after transition would involve greater benefits and risks based on performance. Performance pay would be available for outstanding service within the same limits as provided for the Senior Executive Service in the 1978 law, but with greater stress on analysis, policy advice, and the other factors which determine success in the Senior Foreign Service.

Variable short time-in-class rules and selection out of relative substandard performance on the recommendations of annual selection boards are procedures which are retained and tightened and made applicable for the first time to all members of the highest three ranks of the Service.

Current voluntary and mandatory retirement provisions of the law, which are vital for the proper operation of the Service, are retained without change.

Under a new proposed procedure, members of the Senior Foreign Service and other members of the Service whose maximum time in class expires after they reach the highest class for their respective personnel categories, may continue to serve under renewable limited extensions of their career appointments, not to exceed 5 years.

Such extensions would be granted only on the basis of selection board recommendations and the needs of the Service.

A rigorous SFS threshold procedure is proposed under which members of the Foreign Service at the new threshold class (FS-1) must request consideration for promotion into the SFS and then would remain eligible for a period of time, say 5 years, which would be specified by the Secretary.

If not promoted on the recommendation of the selection boards during that time, the member would be "passed over," a concept borrowed from the military—and they would no longer be eligible for promotion into the SFS. This, it is expected, could enable such persons to make more timely second career decisions than now permitted under our current system.

Middle and junior ranks of the Foreign Service are also more closely tied to performance. After transition to the new system, selection out for substandard performance would be applicable for the first time to all Foreign Service personnel.

The bill would require all persons seeking career Foreign Service status at any level to pass a strict tenuring process. A career status is presently conferred almost automatically in many cases.

Within-class salary increases could be added or withheld for outstanding or poor performance on the basis of selection board recommendations in the middle grades.

All of these performance-related features and others would enable the Foreign Service to overcome and avoid the crippling structural defects, such as the ones I have cited, which now encumber the system and deter advancement and retention of the ablest.

I am confident that it would produce a stronger, more professional, and efficient Service better equipped to meet its heavy future requirements.

And third, the bill includes a new chapter 10 governing employee-management relations, replacing Executive Order 11636 which has covered such matters since 1971.

Mr. FASCELL. We have a rollcall vote. We will recess and go vote on the Kramer of Colorado amendment.

We will be back momentarily.

Mr. READ. Thank you.

[Whereupon, at 10:53 a.m., the joint subcommittees recessed, to reconvene at 11:10 a.m.]

Mr. FASCELL. Mr. Secretary.

Mr. READ. Mr. Chairman, picking up—I had just gotten to the third and final one of the three major points that I wanted to stress in my statement, employee-management relations and related matters.

I was saying that we are proposing a new chapter 10 in the bill before you to govern such relationships, replacing Executive Order 11636 which has covered such matters since 1971.

The Department favors placing employee management on a sound statutory basis for several reasons.

The existing executive order states that the Foreign Affairs agencies should take into account developments elsewhere in the Federal Government.

It would be unfair to deny Foreign Service employees a legislative labor-management program when one has been granted to over 2 million other Federal employees in the Civil Service Reform Act of 1978.

The chapter is an essential element of the bill in that it adapts to the special needs of the Foreign Service the labor-management program provided for other Federal employees.

It guarantees employees the right to participate in matters which have a direct bearing on their careers. The chapter differs from the present Executive order in the following key aspects.

It creates an independent Foreign Service Labor Relations Board consisting of the chairman, Federal Labor Relations Authority and two public members.

It excludes certain personnel, security, inspection, and audit officials from the bargaining unit.

It gives the exclusive representative organization the right to be present at formal meetings between management and employees.

It provides for judicial review of decisions by the Foreign Service Labor Relations Board.

It provides for the negotiation of an organizational disputes resolution mechanism which is new.

In a related provision in chapter 11 on grievances, the exclusive employee bargaining organization must represent or agree to other representation in the processing of employee grievances. In addition, only the exclusive representative may invoke access to the Foreign Service Grievance Board.

There are, of course, many other important features of the bill, such as the provisions for reducing to two below the Senior Foreign Service the more than a dozen existing personnel categories and subcategories and for placing them under a single service pay scale; for Foreign Service spouses; and family members; for equal opportunity; and for greater compatibility among the personnel systems of the agencies authorized to use Foreign Service personnel.

But I think you may find it preferable to get at those issues through the summaries and section-by-section analysis we have submitted and through your questions.

In approaching this task you may find it useful, as we have during the last 7 months, to distinguish between certain kinds of issues and questions: (a) General ones relating to the purposes of the bill and its background; (b) those set forth in the 12 chapters of title I of the bill relating to the proposed future Foreign Service Act personnel system once fully implemented; and (c) transitional problems covered in title II which relates to moving from the existing to the proposed system. Finally, there are a set of closely related nonstatutory questions not covered by the bill which have to do with questions of present and future administration and implementation of the proposed new act.

We have found that questions tend to blur these distinctions and it may help for you to think of them in those categories.

Harry Barnes, Director General of the Foreign Service and Director of Personnel, Jim Michel, Deputy Legal Adviser and principal draftsman of the bill, and I will be glad to try to respond now or later to any questions or requests for additional information which would be of assistance to members of the committee.

Thank you very much for your attention.

Mr. FASCELL. Thank you very much, Mr. Secretary.

I think this is a matter of procedure. We will go to general questions first and then if it is agreeable with Mrs. Schroeder we will go into the detail of the bill.

Mrs. Schroeder.

Mrs. SCHROEDER. I am not sure which of my questions will be qualified as general and which are qualified as specific.

Mr. FASCELL. Ask them anyway.

Mrs. SCHROEDER. Let me ask a question that we have been asking a lot in our committee.

In our committee we have had trouble with OMB wanting to look at everybody's testimony on the bill when they bring it up and we call that kissing through a picket fence. So what I want to know is whether you have cleared this with OMB or not at this point?

Mr. READ. Yes.

Mrs. SCHROEDER. What did it look like before and what did it look like after it came through the picket fence?

Mr. READ. I am delighted to say that the changes were stylistic and not substantive that were suggested yesterday.

Mrs. SCHROEDER. However we could see those stylistic changes to make sure that we would have the same interpretation, do you think?

Mr. READ. If you request, I will seek such authority.

Mr. FASCELL. Just an abundance of caution, you understand, Mr. Secretary.

Mrs. SCHROEDER. I have many, many specific questions. I don't know quite where to begin.

Well, in selecting candidates for the Foreign Service I have been really surprised to look at your tests and find out how differently each year you have weighed different segments. Our committee has been going into civil service tests for quite a bit of time. I have never seen a test that one year you weigh one section this amount and the next year you do something else and it appears to be incredibly haphazard. Do you have any comment on that and is there any way to get that under control?

Mr. READ. I will ask Harry Barnes to comment in more detail, but it has been a process which I have seen worked on and efforts made to perfect over a 10-year period. We have sought and obtained the advice of the Educational Testing Service at Princeton to help us remove from the questions any element of bias that may be part of the examination.

The exams are gone over with enormous care to remove any vestiges of such bias remaining in them. I would note that this is an administrative implementation area, not a statutory one, but we have made strenuous efforts to improve. Harry Barnes could probably provide more details.

STATEMENT OF HON. HARRY BARNES, DIRECTOR GENERAL OF THE FOREIGN SERVICE

Mr. BARNES. The changes that have been brought in in the last couple of years have been very many, a number in connection with EEO concerns.

Mrs. SCHROEDER. See, that is what bothers me. I cannot figure out what in the world it is that you are doing. If you change the rating every year, maybe women do better on language portions, therefore, we will take in more women. I think in the private sector you would get in great trouble doing that. I hear you saying that and

yet I really do not see from the statistics that you have taken in more minorities or more women because of this. I tried to figure whether the test is geared toward the job performance. I have heard your commitment to affirmative action but I have not heard any result that has made that work.

Mr. BARNES. Let me clarify what I was trying to get at. The types of changes I am talking about have been largely initiated through the assistance of the Educational Testing Service at Princeton getting at those factors which would seem to prejudice, which would seem to cause difficulties for minorities or women. If you like, that is a type of screening, a type of verification.

The other thing we have been struggling with in the past couple of years has been trying to make the tests more job related. Here it is in part the reflection of some of our own concerns as to whether we have been giving tests that tie in closely enough to what we require. To go into perhaps somewhat more detail, in the Foreign Service Officer Corps we have been trying to find the right balance and I would submit this not so much haphazard as perhaps an attempt to find the right mix and not being satisfied we had found the right mix. The combination of those tests which will show what skills people have that make them probably better suited, say, for the consular functions, say, as compared to the economic function. Those tests which provide the type of general background, say, on such questions as American culture and history would be a requisite for everyone concerned.

We have also been making some adaptations. I don't know whether you were thinking just in terms of written examination. We have been making some adaptations to the oral examinations again in order to get a closer approximation of the sorts of people we think we need.

If we could comment on one of your specific points in terms of sort of results showed, we are increasing the number of people who are coming in through the examination process, both in terms of women and in terms of minorities. You are also familiar, and I can go into more detail, with the affirmative action program as we have which are focused in that area.

Mr. FASCELL. Will you yield right there at that point?

Mrs. SCHROEDER. Yes.

Mr. FASCELL. Will you supply for the record the total number of personnel you have in the Foreign Service. number of women, minorities, and by grades so that we can have before us some kind of a guide?

Mr. READ. Yes.

Mrs. SCHROEDER. And the rate of progress through the promotion boards and whether or not they like to travel.

Mr. BARNES. You notice we stress worldwide availability. We like to travel.

Mrs. SCHROEDER. Good.

Mr. FASCELL. You guys do better than the Congress, I will tell you that.

[The material referred to follows:]

NUMERICAL SUMMARY OF THE FOREIGN SERVICE
 [By category, grade level, male/female, and minority group representation]

	Dec. 31, 1977			Dec. 31, 1978			Percent difference
	Total	Women	Percent	Total	Women	Percent	
FOREIGN SERVICE OFFICERS (FSO)							
CA.....	39			38			
CM.....	341	8	2.3	335	11	3.3	+1.0
FSO-1.....	310	8	2.6	315	9	2.9	+1.3
FSO-2.....							
Subtotal, senior level.....	690	16	2.3	688	20	2.9	+1.6
FSO-3.....	655	39	6.0	683	40	5.9	-1.1
FSO-4.....	803	51	6.4	773	57	7.4	+1.0
FSO-5.....	590	85	14.4	613	94	15.3	+1.9
FSO-6.....							
Subtotal, middle level.....	2,048	175	8.5	2,069	191	9.2	+1.7
FSO-7.....	397	75	18.9	486	104	21.4	+2.5
FSO-8.....	318	57	17.9	160	26	16.3	-1.6
FSO-9.....	61	14	23.0	11	3	27.3	+4.3
Subtotal, junior level.....	776	146	18.8	657	133	20.2	+1.4
Total, FSO.....	3,514	337	9.6	3,414	344	10.1	+1.5
FOREIGN SERVICE RESERVE (FSR)							
FSR-1.....	60	3	5.0	49	3	6.1	+1.1
FSR-2.....	126	6	4.8	119	11	9.2	+4.4
FSR-3.....							
Subtotal, senior level.....	186	9	9.8	168	14	8.3	+3.5
FSR-4.....	198	19	9.6	178	15	8.4	-1.2
FSR-5.....	285	51	17.9	270	35	13.0	-4.9
FSR-6.....	378	64	16.9	430	72	16.7	-2.2
FSR-7.....							
Subtotal, middle level.....	861	134	15.6	878	122	13.9	-1.7
FSR-8.....	462	105	22.7	476	87	18.3	-4.4
FSR-9.....	534	110	20.6	592	106	17.9	-2.7
FSR-10.....	183	20	10.9	130	24	18.5	+7.6
Subtotal, junior level.....	1,179	235	19.9	1,198	217	18.1	-1.8
Total, FSR.....	2,226	378	17.0	2,244	353	15.7	-1.3
FOREIGN SERVICE RESERVE UN-LIMITED (FSRU)							
FSRU-1.....	49			56			
FSRU-2.....	107	6	5.6	109	5	4.6	-1.0
FSRU-3.....							
Subtotal senior level.....	156	6	3.8	165	5	3.0	-1.8
FSRU-4.....	108	21	19.4	146	16	11.0	-8.4
FSRU-5.....	124	16	12.9	191	33	17.3	+4.4
FSRU-6.....	109	38	34.9	173	48	27.7	-7.2
FSRU-7.....							
Subtotal middle level.....	341	75	22.0	510	97	19.0	-3.0

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NUMERICAL SUMMARY OF THE FOREIGN SERVICE—Continued
 [By category, grade level, male/female, and minority group representation]

	Dec. 31, 1977			Dec. 31, 1978			Percent difference
	Total	Women	Percent	Total	Women	Percent	
FOREIGN SERVICE RESERVE UNLIMITED (FSRU)—Continued							
FSRU-6.....	166	31	18.7	183	39	21.3	+2.6
FSRU-7.....	97	11	11.6	98	16	16.3	+4.7
FSRU-8.....	9	1	11.1	8			+11.1
Subtotal junior level.....	270	43	15.9	289	55	19.0	+3.1
Total FSRU.....	767	124	16.2	964	157	16.3	+1.1
FOREIGN SERVICE STAFF (FSSO/FSS)							
FSSO-1.....	57	10	17.5	52	10	19.2	+1.7
FSSO-2.....	98	26	26.5	102	30	29.4	+2.9
FSSO-3.....	171	49	28.7	181	51	28.2	-5.5
Subtotal middle level.....	326	85	26.1	335	91	27.2	+1.1
FSSO-4.....	262	131	50.0	245	137	55.9	+5.9
FSSO-5.....	308	206	66.9	334	211	63.2	-3.7
FSSO-6.....	522	309	59.2	600	343	57.2	-2.0
FSSO-7.....	464	238	51.3	570	349	61.2	+9.9
Subtotal junior level.....	1,556	884	56.8	1,749	1,040	59.5	+2.7
FSSO-8.....	506	353	69.8	310	204	65.8	-4.0
FSSO-9.....	100	57	57.0	108	69	63.9	+6.9
FSSO-10.....	41	37	90.2	37	34	91.9	+1.7
Subtotal support level.....	647	447	69.1	455	307	67.5	-1.6
Total FSSO/FSS.....	2,529	1,416	56.0	2,539	1,438	56.6	+0.6
ALL FOREIGN SERVICE (FSO/R/RU AND FSS/FSSO)							
CA.....	39			38			
CM.....	450	11	2.4	440	14	3.2	+0.8
FSO/R/RU-1.....	543	20	3.7	543	25	4.6	+0.9
Subtotal senior level.....	1,032	31	3.0	1,021	39	3.8	+0.8
FSO/R/RU-3/FSSO-1.....	1,018	89	8.7	1,059	81	7.6	-1.1
FSO/R/RU-4/FSSO-2.....	1,310	144	11.0	1,336	155	11.6	+0.6
FSO/R/RU-5/FSSO-3.....	1,248	236	18.9	1,397	265	19.0	+1.1
Subtotal middle level.....	3,576	469	13.1	3,792	501	13.2	+1.1
FSO/R/RU-6/FSSO-4.....	1,287	342	26.6	1,390	367	26.4	-0.2
FSO/R/RU-7/FSSO-5.....	1,255	385	30.6	1,184	359	30.3	-0.3
FSO/R/RU-8/FSSO-6.....	775	344	44.4	749	370	49.4	+5.0
FSO/R/RU/FSSO-7.....	464	238	51.3	570	349	61.2	+9.9
Subtotal junior level.....	3,781	1,308	34.6	3,893	1,445	37.1	+2.5
FSS-8.....	506	353	69.8	310	204	65.8	-4.0
FSS-9.....	100	57	57.0	108	69	63.9	+6.9
FSS-10.....	41	37	90.2	37	34	91.9	+1.7
Subtotal support level.....	647	447	69.1	455	307	67.5	-1.6
Total FS.....	9,036	2,255	25.0	9,161	2,292	25.0	

NUMERICAL SUMMARY OF THE FOREIGN SERVICE—Continued
SUMMARY BY PAY PLAN

	Dec. 31, 1977			Dec. 31, 1978			Percent difference
	Total population	Total minorities	Percent	Total population	Total minorities	Percent	
FOREIGN SERVICE							
CA.....	39	1	2.6	38	1	2.6	
CM.....	3,475	158	4.5	3,376	160	4.7	+0.2
FSO.....	2,226	210	9.4	2,244	221	9.8	+ .4
FSR.....	767	53	6.9	964	85	8.8	+ .9
FSRU.....	2,529	174	6.9	2,539	183	7.2	+ .3
Total Foreign Service.....	9,036	596	6.6	9,161	650	7.1	+ .5
FOREIGN SERVICE RESERVE UNLIMITED (FSRU)							
FSRU-1.....	49	1	2.0	56	1	1.8	-.2
FSRU-2.....	107	1	.9	109	2	1.8	+ .9
Subtotal senior level.....	156	2	1.3	165	3	1.8	+ .5
FSRU-3.....	108	5	4.6	146	8	5.5	+ .9
FSRU-4.....	124	13	10.5	191	20	10.5	
FSRU-5.....	109	6	5.5	173	11	6.4	+ .9
Subtotal middle level.....	341	24	7.0	510	39	7.6	+ .6
FSRU-6.....	166	14	8.4	183	26	14.2	+5.8
FSRU-7.....	95	12	12.6	98	16	16.3	+3.7
FSRU-8.....	9	1	11.1	8	1	12.5	+1.4
Subtotal junior level.....	270	27	10.0	289	43	14.9	+4.9
Total FSRU.....	767	53	6.9	964	85	8.8	+1.9
FOREIGN SERVICE STAFF (FSSO/FSS)							
FSSO-1.....	57	2	3.5	52	2	3.8	+ .3
FSSO-2.....	98	4	4.1	101	5	4.9	+ .8
FSSO-3.....	171	13	7.6	181	16	8.8	+1.2
Subtotal middle level.....	326	19	5.8	335	23	6.9	1.1
FSSO-4.....	262	25	9.5	245	25	10.2	+ .7
FSSO-5.....	308	22	7.1	334	21	6.3	-.8
FSSO-6.....	522	34	6.5	600	44	7.3	+ .8
FSSO-7.....	464	33	7.1	570	34	6.0	-1.1
Subtotal junior level.....	1,556	114	7.3	1,749	124	7.1	-.2
FSSO-8.....	506	33	6.5	310	26	8.4	+1.9
FSSO-9.....	100	7	7.0	108	8	7.4	+ .4
FSSO-10.....	41	1	2.4	37	2	5.4	+3.0
Subtotal support level.....	647	41	6.3	455	36	7.9	+1.6
Total FSSO/FSS.....	2,529	174	6.9	2,539	183	7.2	+ .3
FOREIGN SERVICE OFFICER (FSO)							
CA.....	39	1	2.6	38	1	2.6	
CM.....	341	8	2.3	335	9	2.7	+ .4
FSO-1.....	310	9	2.9	315	8	2.5	-.4
FSO-2.....							
Subtotal senior level.....	690	18	2.6	688	18	2.6	

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NUMERICAL SUMMARY OF THE FOREIGN SERVICE—Continued
SUMMARY BY PAY PLAN

	Dec. 31, 1977			Dec. 31, 1978			Percent difference
	Total population	Total minorities	Percent	Total population	Total minorities	Percent	
FOREIGN SERVICE OFFICER (FSO)—Continued							
FSO-3.....	655	16	2.4	683	18	2.6	+0.2
FSO-4.....	803	31	3.9	773	36	4.7	+ .8
FSO-5.....	590	68	11.5	613	71	11.6	+ .1
Subtotal middle level.....	2,048	115	5.6	2,069	125	6.0	+ .4
FSO-6.....	397	24	6.0	486	18	3.7	-2.3
FSO-7.....	318	2	.6	160			- .6
FSO-8.....	61			11			
Subtotal junior level.....	776	26	3.4	657	18	2.7	- .7
Total FSO.....	3,514	159	4.5	3,414	161	4.7	+ .2
FOREIGN SERVICE RESERVE (FSR)							
FSR-1.....	60	1	1.7	49	2	4.1	+2.4
FSR-2.....	126	5	4.0	119	6	5.0	+1.0
Subtotal senior level.....	186	6	3.2	168	8	4.8	+1.6
FSR-3.....	198	15	7.6	178	12	6.7	- .9
FSR-4.....	285	16	5.6	270	13	4.8	- .8
FSR-5.....	378	28	7.4	430	41	9.5	+2.1
Subtotal middle level.....	861	59	6.9	878	66	7.5	+ .6
FSR-6.....	462	55	11.9	476	52	10.9	-1.0
FSR-7.....	534	71	13.3	592	81	13.7	+ .4
FSR-8.....	183	19	10.4	130	14	10.8	+ .4
Subtotal junior level.....	1,179	145	12.3	1,198	147	12.3	
Total FSR.....	2,226	210	9.4	2,244	221	9.8	+ .4
ALL FOREIGN SERVICE (FSO/R/RU AND FSSO/FSS)							
CA.....							
CM.....	39	1	2.6	38	1	2.6	
FSO/R/RU-1.....	450	10	2.2	440	12	2.7	+ .5
FSO/R/RU-2.....	543	15	2.8	543	16	2.9	+ .1
Subtotal senior level.....	1,032	26	2.5	1,021	29	2.8	+ .3
FSO/R/RU-3/FSSO-1.....	1,018	38	3.7	1,059	40	3.8	+ .1
FSO/R/RU-4/FSSO-2.....	1,310	64	4.9	1,336	74	5.5	+ .6
FSO/R/RU-5/FSSO-3.....	1,248	115	9.2	1,397	139	9.9	+ .7
Subtotal middle level.....	3,576	217	6.1	3,792	253	6.7	+ .6
FSO/R/RU-6/FSSO-4.....	1,287	118	9.2	1,390	121	8.7	- .5
FSO/R/RU-7/FSSO-5.....	1,255	107	8.5	1,184	118	10.0	+1.5
FSO/R/RU-8/FSSO-6.....	775	54	7.0	749	59	7.9	+ .9
FSSO-7.....	464	33	7.1	570	34	6.0	-1.1
Subtotal junior level.....	3,781	312	8.3	3,893	332	8.5	+ .2
FSS-8.....	506	33	6.5	310	26	8.4	+1.9
FSS-9.....	100	7	7.0	108	8	7.4	+ .4
FSS-10.....	41	1	2.4	37	2	5.4	+3.0
Subtotal support level.....	647	41	6.3	455	36	7.9	+1.6
Total FS.....	9,036	596	6.6	9,161	650	7.1	+ .5

SUMMARY OF PROMOTION RATES FOR MALE/FEMALE AND MINORITIES COMPARED TO THE OVERALL RATE
DEPARTMENT OF STATE, FSO PROMOTIONS 1976-78—COMPARISON BY SEX

Class and cone	Total		Men		Women	
	Number	Percent of eligible	Number	Percent of eligible	Number	Percent of eligible
BY CLASS						
2 to 1:						
1976	61	24.8	59	24.4	2	50.0
1977	50	21.2	49	21.1	1	25.0
1978 (A)	10	4.1	9	3.8	1	14.3
1978 (B)	20	9.3	19	9.0	1	20.0
3 to 2:						
1976	70	14.3	66	14.2	4	16.7
1977	70	14.1	69	14.6	1	4.2
1978 (A)	21	4.0	21	4.3		
1978 (B)	35	7.4	32	7.2	3	10.7
4 to 3:						
1976	121	16.9	111	16.3	10	28.6
1977	143	19.5	131	18.9	12	29.7
1978 (A)	25	3.5	25	3.8		
1978 (B)	90	11.5	85	11.6	5	9.4
5 to 4:						
1976	138	23.5	115	22.6	23	29.1
1977	105	19.0	98	20.5	7	9.3
1978 (A)	13	2.5	11	2.5	2	2.5
1978 (B)	92	14.7	82	15.4	10	10.5
6 to 5:						
1976	81	29.1	70	29.5	11	26.8
1977	77	22.2	70	24.4	7	11.7
1978 (A)	42	12.0	34	12.1	8	11.3
1978 (B)	92	25.1	78	27.0	14	17.9
Totals:						
1976	471	20.3	421	19.7	50	27.3
1977	445	18.9	417	19.3	28	13.5
1978 (A)	111	4.7	100	4.7	11	4.7
1978 (B)	329	13.4	296	13.4	33	12.8
BY CONE						
PD:						
1976	37	48.7	36	48.0	1	100.0
1977	20	37.0	20	100.0		
1978 (A)	2	5.1	1	2.6	1	100.0
1978 (B)	3	7.0	3	7.0		
POL:						
1976	117	13.6	112	13.5	5	15.6
1977	178	18.2	171	18.2	7	18.9
1978 (A)	44	4.8	41	4.7	3	8.1
1978 (B)	102	13.1	116	13.0	6	15.4
E/C:						
1976	146	23.0	138	22.8	8	27.6
1977	125	21.3	119	21.5	6	17.6
1978 (A)	25	4.2	25	4.5		
1978 (B)	77	12.1	65	11.0	12	26.1
ADM:						
1976	100	24.6	76	21.9	24	40.7
1977	64	16.2	60	17.4	4	8.0
1978 (A)	17	4.1	17	4.9		
1978 (B)	76	17.8	69	19.2	7	10.3
CONS:						
1976	69	21.2	57	21.6	12	19.4
1977	56	16.5	45	17.3	11	12.8
1978 (A)	22	6.1	15	5.5	7	8.0
1978 (B)	51	12.1	43	13.6	8	7.7
SPT:						
1976	2	22.2	2	22.2		
1977	2	20.0	2	100.0		
1978 (A)	1	11.1	1	11.1		
1978 (B)						
UNCONED:						
1978 (A)						
1978 (B)						
Totals:						
1976	471	20.3	421	19.7	50	27.3
1977	445	18.9	417	19.3	28	13.5
1978 (A)	111	4.7	100	4.7	11	4.7
1978 (B)	329	13.4	296	13.4	33	12.8

SUMMARY OF PROMOTION RATES FOR MALE/FEMALE AND MINORITIES COMPARED TO THE OVERALL RATE
DEPARTMENT OF STATE, FSO PROMOTIONS 1976-78—COMPARISON BY SEX—Continued

	Average age			Average TIC ¹		
	Total	Men	Women	Total	Men	Women
BY CLASS						
2 to 1:						
1976	48.5	48.4	52.8	4.4	4.4	5.3
1977	49.4	49.2	56.0	4.2	4.2	2.0
1978 (A)	46.9	47.3	43.0	3.1	4.1	2.0
1978 (B)	47.9	48.0	45.8	3.8	3.3	3.0
3 to 2:						
1976	46.0	46.0	46.2	6.0	6.0	6.3
1977	47.5	47.5	53.0	6.3	6.1	10.8
1978 (A)	49.2	49.2	-----	7.2	7.2	-----
1978 (B)	44.6	44.3	46.7	4.8	4.7	4.7
4 to 3:						
1976	43.0	42.6	47.5	5.4	5.6	3.2
1977	44.0	43.4	49.3	6.7	6.6	5.5
1978 (A)	43.1	43.1	-----	6.3	6.8	-----
1978 (B)	42.0	41.6	41.4	5.6	5.2	3.8
5 to 4:						
1976	37.0	36.4	39.9	3.2	3.2	3.0
1977	37.0	36.4	41.7	4.9	4.9	4.7
1978 (A)	40.0	42.1	37.0	6.3	6.3	5.5
1978 (B)	37.5	37.0	36.0	4.8	4.4	3.6
6 to 5:						
1976	32.5	32.4	32.2	2.0	2.0	1.8
1977	32.5	33.3	32.0	2.9	2.9	1.9
1978 (A)	32.5	31.3	33.8	2.6	2.6	2.5
1978 (B)	32.9	32.7	34.1	3.0	2.8	3.1
Totals:						
1976	40.7	40.7	41.0	3.8	4.2	3.1
1977	41.7	41.7	42.3	5.3	5.3	4.8
1978 (A)	39.0	39.9	31.3	4.7	4.9	2.8
1978 (B)	38.4	38.7	35.9	4.1	4.1	3.4
BY CONE						
PD:						
1976	48.5	48.4	50.1	5.3	5.3	4.8
1977	49.8	49.8	-----	6.2	6.2	-----
1978 (A)	41.0	39.0	43.0	2.0	2.0	2.0
1978 (B)	44.8	44.8	-----	2.6	2.6	-----
POL:						
1976	41.2	41.4	35.5	5.2	5.3	4.1
1977	41.9	41.9	41.9	6.0	6.0	6.7
1978 (A)	41.1	41.1	40.7	5.2	5.3	4.0
1978 (B)	38.4	38.4	35.7	4.4	4.5	3.2
E/C:						
1976	38.7	38.8	36.3	4.2	4.2	3.5
1977	40.7	40.5	44.0	5.2	5.2	4.7
1978 (A)	40.5	40.5	-----	5.4	5.4	-----
1978 (B)	37.8	38.1	36.1	4.1	4.3	3.1
ADM:						
1976	41.6	40.7	44.5	3.0	3.0	2.8
1977	41.9	41.9	41.8	4.0	4.0	4.0
1978 (A)	41.7	41.7	-----	4.8	4.8	-----
1978 (B)	40.3	40.1	42.1	3.7	3.7	3.7
CONS:						
1976	38.5	38.4	38.6	3.1	3.1	3.1
1977	40.4	40.1	41.9	4.4	4.5	3.8
1978 (A)	37.0	39.3	31.7	3.4	3.7	2.7
1978 (B)	47.1	37.3	35.9	4.0	3.9	3.9
SPT:						
1976	49.2	49.2	-----	7.3	7.3	-----
1977	39.0	39.0	-----	2.5	2.5	-----
1978 (A)	58.0	58.0	-----	9.0	9.0	-----
1978 (B)	-----	-----	-----	-----	-----	-----
UNCONED:						
1976	-----	-----	-----	-----	-----	-----
1977	-----	-----	-----	-----	-----	-----
1978 (A)	-----	-----	-----	-----	-----	-----
1978 (B)	-----	-----	-----	-----	-----	-----
Totals:						
1976	40.7	40.7	41.0	3.8	4.2	3.1
1977	41.7	41.7	42.3	5.3	5.3	4.8
1978 (A)	39.0	39.9	31.3	4.7	4.9	2.8
1978 (B)	38.4	38.7	35.9	4.1	4.1	3.4

¹ Does not include service at equivalent grade of previous pay plan for FSO's by lateral entry.

Source: Per/mgt. and per/PE.

DEPARTMENT OF STATE, FSO PROMOTIONS 1977/8—COMPARISON BY MINORITY STATUS

Class and cone	Total		Non-minorities		Minorities	
	Number	Percent of eligible	Number	Percent of eligible	Number	Percent of eligible
BY CLASS						
2 to 1:						
1977	50	21.2	48	21.1	2	22.2
1978 (A)	10	4.1	9	3.8	1	14.3
1978 (B)	20	9.3	20	9.6		
3 to 2:						
1977	70	14.1	68	14.0	2	15.4
1978 (A)	21	4.0	21	4.1		
1978 (B)	35	7.4	35	7.6		
4 to 3:						
1977	143	19.5	141	19.8	2	8.7
1978 (A)	25	3.5	24	3.5	1	3.8
1978 (B)	90	11.5	89	11.8	1	3.2
5 to 4:						
1977	105	19.0	99	20.1	6	10.2
1978 (A)	13	2.5	12	2.6	1	1.6
1978 (B)	92	14.7	86	15.4	6	8.8
6 to 5:						
1977	77	22.2	73	22.3	4	21.1
1978 (A)	42	12.0	41	12.5	1	4.2
1978 (B)	92	25.1	85	24.9	7	28.0
Totals:						
1977	445	18.8	429	19.1	16	13.0
1978 (A)	111	4.7	107	4.8	4	3.0
1978 (B)	329	13.4	315	13.6	14	9.7
BY CONE						
PD:						
1977	20	37.0	19	36.5	1	50.0
1978 (A)	2	5.1	2	5.4		
1978 (B)	3	7.0	3	7.3		
POL:						
1977	178	18.2	173	18.4	5	14.3
1978 (A)	44	4.8	43	4.9	1	2.9
1978 (B)	122	13.1	116	13.0	6	17.6
F/C:						
1977	125	21.3	121	21.4	4	18.2
1978 (A)	25	4.0	25	4.3		
1978 (B)	77	12.1	75	12.3	2	7.7
ADM:						
1977	64	16.2	62	16.9	2	7.1
1978 (A)	17	4.1	16	4.2	1	3.1
1978 (B)	76	17.8	72	18.4	4	10.8
CONS:						
1977	56	16.3	52	16.9	4	11.1
1978 (A)	22	6.1	20	6.3	2	4.9
1978 (B)	51	12.1	49	13.1	2	4.4
SPT:						
1977	2	20.0	2	20.0		
1978 (A)	1	11.1	1	11.1		
1978 (B)						
Totals:						
1977	445	18.8	429	19.1	16	13.0
1978 (A)	111	4.7	107	4.8	4	3.0
1978 (B)	329	13.4	315	13.6	14	9.7

DEPARTMENT OF STATE, FSO PROMOTIONS 1977/8—COMPARISON BY MINORITY STATUS—Continued

	Average age			Average TIC ¹		
	Total	Non-minorities	Minorities	Total	Non-minorities	Minorities
BY CLASS						
2 to 1:						
1977	49.4	49.5	49.5	4.2	4.3	2.5
1978 (A)	46.9	47.0	46.0	3.1	3.9	4.0
1978 (B)	47.9	47.9		3.8	3.8	
3 to 2:						
1977	47.5	47.9	46.5	6.3	6.3	5.0
1978 (A)	49.2	49.2		7.2	7.2	
1978 (B)	44.6	44.6		4.8	4.8	
4 to 3:						
1977	44.0	44.0	42.5	6.7	6.6	8.0
1978 (A)	43.1	42.6	56.0	6.3	6.3	6.0
1978 (B)	42.0	41.9	36.0	5.6	5.1	2.0
5 to 4:						
1977	37.0	37.0	37.2	4.9	5.0	4.3
1978 (A)	40.0	41.1	44.0	6.3	6.2	6.0
1978 (B)	37.5	37.1	36.0	4.8	4.4	4.0
6 to 5:						
1977	32.5	33.1	35.3	2.9	2.7	4.6
1978 (A)	32.5	32.6	29.0	2.6	2.6	2.0
1978 (B)	32.9	32.9	33.6	3.0	2.9	1.9
Totals:						
1977	41.7	41.7	39.9	5.3	5.3	4.6
1978 (A)	39.0	38.9	43.6	4.7	4.7	4.5
1978 (B)	38.7	38.4	34.8	4.1	4.1	2.8
BY CONE						
PD:						
1977	49.8	50.0	46.0	6.2	6.3	3.0
1978 (A)	41.0	41.0		2.0	2.0	
1978 (B)	44.8	44.8		2.6	2.6	
POL:						
1977	41.9	41.8	45.4	6.0	6.0	6.0
1978 (A)	41.1	41.0	46.0	5.2	5.2	4.0
1978 (B)	38.6	38.6	32.3	4.4	4.5	2.7
E/C:						
1977	40.7	40.8	36.2	5.2	5.1	4.5
1978 (A)	40.5	40.5		5.4	5.4	
1978 (B)	38.1	38.2	34.5	4.1	4.2	3.5
ADM:						
1977	41.9	41.9	40.5	4.0	4.0	4.5
1978 (A)	41.7	42.5	29.0	4.8	4.9	2.0
1978 (B)	40.1	40.7	37.2	3.7	3.8	2.4
CONS:						
1977	40.4	40.9	35.0	4.4	4.5	3.0
1978 (A)	37.0	35.6	50.0	3.4	3.2	6.0
1978 (B)	37.3	37.5	37.5	4.0	4.0	3.5
SPT:						
1977	39.0	39.0		2.5	2.5	
1978 (A)	58.0	58.0		9.0	9.0	
1978 (B)						
Totals:						
1977	41.7	41.7	39.9	5.3	5.3	4.6
1978 (A)	39.0	38.9	43.6	4.7	4.7	4.5
1978 (B)	38.7	38.4	34.8	4.1	4.1	2.8

¹ Does not include service at equivalent grade of previous pay plan for FSO's by lateral entry.

Source: Per/mgt. and per/pe.

Mrs. SCHROEDER. What is the justification for preserving early retirement rights for Foreign Service personnel who are being converted to civil service only when they are not going to have the hardships of this worldwide service? Why did you draw the distinction in this bill?

Mr. READ. They have the option, Mrs. Schroeder, to retain their Foreign Service retirement benefits in all of its features or to convert to the civil service retirement system which does not contain that feature. They have the option.

Mrs. SCHROEDER. That could cause us a little problem with the Civil Service as you well know.

Mr. READ. Yes; but OPM has approved the bill and this provision.

Mrs. SCHROEDER. What do you think about allowing the grievance system to be a negotiable item rather than mandated through the legislation?

Mr. READ. It has been legislated for how many years now, Jim? Five years. We have found it highly satisfactory and we are making some improvements in that chapter 11.

Mrs. SCHROEDER. But "we" are management. What about the employees?

Mr. READ. You will, of course, be hearing from the representatives of AFSA but we have been in very close consultation with them on the provisions of change which are incorporated in chapter 11.

Mrs. SCHROEDER. I have since found out that the Foreign Service retirement fund has an unfunded liability and part of this process requires that we clarify how much of it is unfunded and how much it would take to fund it fully. Is that in the bill? Am I correct in understanding that?

Mr. READ. Let me ask Jim Michel to help us on that if you would.

**STATEMENT OF JAMES H. MICHEL, DEPUTY LEGAL ADVISER,
DEPARTMENT OF STATE**

Mr. MICHEL. The Foreign Service retirement and disability fund was established in 1924. It is financed by employee contributions and by employer contributions. In addition, legislation enacted some years ago provides for periodic incremental appropriations to maintain the normal cost of the fund and to provide for situations where new benefits are added or other changes result in cost increases.

Mrs. SCHROEDER. Has that happened?

Mr. MICHEL. There have been changes such as the addition of new employees. Some AID employees were brought into the system a few years ago and there was a supplemental appropriation to cover increased costs to the fund because there were these additional employees for whom there had not been employer contributions over the years prior to their entering into the retirement system.

Mrs. SCHROEDER. But are you short right now?

Mr. MICHEL. I don't know the present status of the fund. We would have to provide that.

[The document referred to follows:]

The unfunded liability of the Foreign Service Retirement and Disability Fund is currently \$2 billion. This compares with the \$124 billion unfunded liability of the Civil Service Retirement and Disability Fund.

To further elaborate on retirement system costs and financing, the following is supplied:

Question. How much does the Foreign Service Retirement System cost?

Answer. Costs of retirement systems are usually expressed in two parts: normal cost and unfunded liability. In general terms, normal cost is the cost of benefits currently being earned and unfunded liability is the sum of obligations previously incurred for prior service and for new laws that have not been financed.

The normal cost of the Foreign Service Retirement System is currently 21.8 percent of the participant payroll or \$72.6 million. If this amount were deposited in the Fund annually, at interest, it would be sufficient to pay for benefits to be earned from this point forward at current benefit and payroll levels.

The current unfunded liability of the System is \$2 billion. This debt has arisen from several factors. One is that in the middle 1950's the Government made no contributions to the Retirement Fund, and not until 1977 did current employee and Government contributions cover the full Foreign Service normal cost. Another reason for the growth of the unfunded liability was that its very existence meant that the System was losing interest each year on funds that were supposed to be on deposit in the Fund. This loss, compounded over time, has been significant. This situation has now been corrected as indicated in the next answer.

The above cost figures are based on estimates made by the Actuary in the Treasury Department. The Treasury makes a formal actuarial evaluation of the Foreign Service Retirement System every five years. The next one is scheduled to be printed in July 1979. The Actuary updates estimates of the normal cost and the unfunded liability of the System every year or oftener as required.

Question. How is the System financed?

Answer. Money to pay benefits as they fall due is obtained from the following sources:

(1) Money in the Fund not needed to pay current benefits is invested in Government securities which earn interest which is credited to the Fund. Currently, new investments of monies in the Fund are earning better than 9 percent annually.

(2) An amount equivalent to interest on the unfunded liability is paid into the Fund annually by the Treasury Department—\$104 million for fiscal year 1980.¹

(3) The cost of benefits attributable to military service is paid into the Fund annually by the Treasury Department—\$8.8 million for fiscal year 1980.¹

(4) Unfunded liability created by pay raises, benefit changes and expansion of coverage to new groups of employees is amortized in full over 30 years. Appropriations for this purpose are made annually to the Fund—\$45.2 million for fiscal year 1980.¹

(5) The normal cost of the Foreign Service Retirement System is met by the contribution of 7 percent from the salary of every participant plus a matching amount from the employing agency (State, USICA and AID), with the balance, 7.8 percent of payroll, being met by direct appropriations to the Fund. This appropriation is made pursuant to section 865(b) of the Foreign Service Act added in 1976 by Public Law 94-350.

Question. How does the Foreign Service normal cost and unfunded liability compare with the comparable Civil Service costs?

Answer. The Civil Service normal cost is approximately 14 percent and the Foreign Service normal cost is 21.8 percent of covered payroll. The Civil Service unfunded liability is \$124 billion which compares with a figure of \$2 billion for the Foreign Service. (Civil Service costs are based upon static economic assumptions while Foreign Service costs are based upon projections which assume continued inflation.)

Question. Why is the Foreign Service normal cost higher than the Civil Service normal cost?

Answer. Apart from the different economic assumptions used in making the computations, the higher Foreign Service normal cost is attributable to the following differences between the Systems:

¹ These financing arrangements (items 2, 3, and 4) are identical to those in force under the Civil Service Retirement System and were initiated in 1971 pursuant to Public Law 91-201. Payments under items 2 and 3 above are being phased in: 10 percent of the amounts due were paid in 1971 with increasing amounts paid in each year thereafter with the full amount becoming payable in 1980 and in each fiscal year thereafter.

1. ATTRITION RATE

The Foreign Service is a career service and many of those entering intend to remain in the Service throughout their careers. This is not true of many persons who enter the Civil Service. The result is that approximately six times as many persons who enter the Foreign Service at age 25 earn a retirement benefit as do persons entering the Civil Service Retirement System at age 25. When individuals withdraw from the retirement system without earning a retirement benefit, they receive a refund of their own contributions with a minimum amount of interest. The Government contributions made on their behalf remain on deposit in the retirement fund for the benefit of those who remain in the System. Government contributions to the Civil Service System benefit a much smaller proportion of the work force, and therefore, the average amount per employee that must be deposited is less.

2. SALARY PROGRESSION

The Foreign Service salary progression ratio (entrance to highest salary for a typical career) is over twice that for the Civil Service. Therefore, the employee contributions made at the same rate in the two Systems represent a smaller proportion of benefits received in the Foreign Service System. However, many in the Civil Service, such as management interns and similar appointees have a career advancement pattern similar to that in the Foreign Service. Such personnel in the Civil Service have their retirement costs averaged with many others with low career advancement rates, and thus the average cost, or normal cost, of the large heterogeneous Civil Service Retirement System is lower than the comparable Foreign Service cost.

3. EARLY RETIREMENT AND 2 PERCENT MULTIPLIER

The average retirement age for participants in the Foreign Service Retirement System is about two years younger than in the Civil Service System. This is attributable to the Foreign Service selection out system, to the early voluntary retirement age and to the mandatory retirement age of 60. In addition, Foreign Service retirees live, on the average, one year longer than Civil Service retirees. The result is that the average Foreign Service retiree receives an annuity three years longer than the average Civil Service retiree and this contributes to a higher average retirement system cost. Also the Foreign Service annuity equals a straight 2 percent times average salary which is slightly higher than provided by the general Civil Service annuity computation formula, although it is identical to the formula used under the CIA retirement system and is less generous than the formula used for the FBI and other law enforcement personnel, fire fighters, and Secret Service personnel.

Mrs. SCHROEDER. What would happen to the people who will transfer to the civil service?

Mr. MICHEL. The employee contributions would be transferred. Employer contributions under present law remain in the retirement fund.

Mrs. SCHROEDER. So we could end up with a shortfall in the employer contribution for the transfer?

Mr. MICHEL. I don't think we are talking about substantial sums either way.

Mrs. SCHROEDER. We might if we were talking about the early retirement provision going with them.

Mr. MICHEL. Persons who remain in the Foreign Service retirement and disability system continue to contribute to the Foreign Service fund and their annuity is paid from that fund. In other words, they are in that system now while they are in the Foreign Service, they simply would not transfer.

Mrs. SCHROEDER. If they are converted into the civil service, you will keep them in the Foreign Service retirement system?

Mr. MICHEL. In the Foreign Service retirement and disability system.

Mrs. SCHROEDER. So there won't be a transfer?

Mr. MICHEL. No.

Mrs. SCHROEDER. I have a lot more questions, but why not let somebody else have a crack at it.

Mr. FASCELL. At this point in the record let me inquire how the actuarial determination of the fund is made.

Mr. READ. It is governed by the annual appropriation process, Mr. Chairman.

Mr. FASCELL. I understand that but how is the actuarial determination made if it is made?

Mr. READ. We have Bob Hull here who has that information.

Mr. FASCELL. I mean do you have outside actuaries or do you do it internally or at all?

Mr. HULL.¹ The actuary from the Treasury Department evaluates our system.

Mr. FASCELL. How often?

Mr. HULL. Under the law, it is required to be done every 5 years.

Mr. FASCELL. When was the last one?

Mr. HULL. Five years ago. The new one is due, I understand, any day now.

Mr. FASCELL. The new one is due any day. Would you furnish the committee with a copy of that, please, when it comes in.

Mr. HULL. I hope he was correct when he told me that the other day.

Mr. FASCELL. Well, whenever it comes in.

Mr. Secretary?

Mr. READ. Indeed we will.²

Mr. FASCELL. All right.

Mr. Buchanan.

Mr. BUCHANAN. No questions.

Mr. FASCELL. I want to say we are delighted that we have experts here for various facets of this bill—Mr. Leach, of course, and then Mrs. Schroeder who is an expert on management and labor relations and I am one of those generals who knows less and less about more and more.

Mr. Pritchard.

Mr. PRITCHARD. I want to ask this question. The selection out process certainly seems to be an effective way of maintaining the high caliber of the Foreign Service by releasing those employees whose performance has been substandard. Has this provision in your perception been followed in a healthy competitive spirit?

Mr. READ. It has, Mr. Pritchard, but it has gone through rather drastic change when you look back over the history of the last 10 years. When I left the Department in early 1969, there were probably 150 persons who were selected out under this provision of the law for substandard performance yearly. It fell to zero in 1974-75 in part because of successful legal challenges.

¹ Robert Hull, Jr., Bureau of Personnel, Department of State.

² The material referred to was subsequently submitted and is retained in committee files.

Mr. PRITCHARD. I understand that. Is there any question in your mind that you can point to the record and say this has had a very healthy effect on the State Department?

Mr. READ. There is no doubt whatsoever.

Mr. PRITCHARD. Maybe we should extend that to congressional areas.

Mr. Chairman, those are all the questions I have.

Mrs. SCHROEDER. I will be happy to follow my minority leader over there.

Mr. LEACH. In reading some of the summary material, Mr. Secretary, one thing really struck me as odd—if not bizarre—in connection with this concept of an SFS officer in the Senior Foreign Service. The people who were attempting to design a new program were probably saying to themselves, let's have something that looks comparable to what the Civil Service has done with the SES.

And yet there is this oddity that if a Foreign Service officer wants to be considered for the SFS, he has to indicate he wants to be considered. Then he has only 5 years to be promoted, in which case that FS-1 officer will say to himself, "I have been an FS-1 for only 1 or 2 years, therefore I won't ask to be considered." He has to make such a judgment when, in actuality, he would like to be considered. Now there might be an argument because of the vulnerability of going into the SFS, that an FS-1 might not want to be considered at all times, but I think most people like to be promoted.

You are putting a burden on that FS-1 that is strange and I don't know of an analogy in the private sector or in the Government sector. Why, in heaven's name, once a guy has been named an FS-1, won't he be immediately eligible to be promoted? You are putting an odd burden on him. Will you explain your reasoning behind doing that?

Mr. READ. I would like to do so. You will be able to judge for yourselves that this senior threshold provision in its present posture is one of the provisions which commands the widest and deepest support in the bill. We have had for some years, Mr. Leach, a senior threshold on paper. It was meant to be rigorous. It was meant to be different from other selection boards. It was meant to separate, to use the military analogy, the colonels from the star rank, the senior members of the Service. It did not do so. It has worked as every other selection board in the Service.

The tombstone promotion, so called, of people who have come to the end of time in class and yet no one wants to say their aspirations are beyond their reach have been, unhappily, a phenomenon that we have had to live with. What we are doing by this so-called window, which is borrowed directly from the passover techniques in the military service, is to say when you become an FS-1 you will have a time in class that will be set by the Secretary, which will be, say, 10 years. When you think that you are ready for promotion you so indicate and then you have 5 years of eligibility. This will be of considerable significance to the selection boards, it will tell the selection boards something about that person as to when he or she thinks that the member is ready for promotion.

Mind you, these are members of the Service who have been in for years and have a very full record. They can set the 5-year eligibility clock running in the first year when they get to FS-1 or in the last year in class or in a middle year, but they can't extend their time in class by doing so.

Mr. LEACH. Mr. Secretary, I can accept the concept of the threshold and the analogy to the military. But I am wondering as to the need to burden the individual with saying "I am not ready yet," "now I am ready," and then giving him only five opportunities after that. Why would not all FS-1's be eligible to be promoted to the SFS at any time?

Mr. READ. They can be if they think they are waterwalkers, to use the jargon of the Service. They can opt to be.

Mr. LEACH. Isn't it presumptuous of someone to ask for immediate consideration?

Mr. READ. It might or might not be depending on his or her competency and performance level. We don't want to compete them before they are ready to compete.

Most members of the Service wouldn't declare their eligibility in year one or until they established a track record at the new grade, but they would be able to do so if they wished.

Mr. LEACH. Could I ask one other question?

Mr. READ. I have been in and out of this system. I have been in many other occupations. I find that there is really something rather cruel about the inability of the Service at present to tell a member that he or she should start looking for a second career in a timely fashion. That sounds harsh in a way and yet other systems do it. If you tell someone that when they are 53, 54, it is not as humane as if it were done at an earlier point.

Harry.

Mr. BARNES. If I can add just one comment. What seems to me most important here is in our stress giving more responsibility. What to me is the most attractive feature is that it does place a significant amount of responsibility on the individual to make some decisions where the individual is well qualified to make them.

Mr. LEACH. Let me just ask one other question on a somewhat different subject. Most of this bill deals with the Foreign Service, briefly touching on ambassadorial level. There have been many of us from time to time who are concerned with the manner in which ambassadorial appointments are made and there is something in here that addresses that. Can you tell me right now what percentage of ambassadors are noncareer?

Mr. READ. Yes. 25 percent.

Mr. LEACH. That is pretty much historical?

Mr. READ. No; it is not historically. This is a figure agreed on by President Carter and Secretary Vance and they have kept to it very religiously. At the end of the last administration the figure was, I believe, 33 or 34 percent.

Mr. LEACH. Do you think an arbitrary percentage ought to be legislated rather than—

Mr. READ. No. I think it becomes too inflexible if it were in law, and I think it would be an intrusion on the President's constitutional prerogatives to try to legislate that.

Mr. LEACH. Thank you.

Mr. FASCELL. Mr. Gray.

Mr. GRAY. Thank you, Mr. Chairman.

I would like to pick up on some of the questions that my colleague, Mrs. Schroeder, was emphasizing. I would think that the Foreign Service personnel reform legislation would provide an excellent op-

portunity to incorporate some strong commitment of EEO but after I view the legislation I don't see any real strong specific language which illustrates that concern. Is there something that maybe I missed?

Mr. READ. Yes; Mr. Gray. We have put it as the second objective of the bill in section 101(b)(2). The Service and the Department are covered, I might add, by the equal opportunity provisions in the Civil Service Reform Act of 1978 so we do not need new machinery, but we have given recognition in a prominent fashion to a goal which has been a goal of this administration but is now stated in the statute.

Mr. GRAY. What would be the specific steps that the Department will take to improve the number of women and minorities within the services.

Mr. READ. Secretary Vance alluded to those earlier.

Mr. GRAY. I am sorry I was late.

Mr. READ. We have essentially two affirmative action programs, one at the junior level for minorities, and one at mid levels for minorities and women and their goals are the result of an executive level task force which Secretary Vance set up in 1977. As he said earlier, we have met those goals in the junior ranks in the first two years of operation here. We have not done well in the mid level areas but we are making strenuous efforts to do so.

Mr. GRAY. What do you call that program? Does it have a name?

Mr. READ. They are called the mid level and junior level affirmative action programs, and I would be glad to send literature and statistics.

Mr. GRAY. Is there a junior level?

Mr. READ. Yes. We have been very mindful of these programs, and I think statistics will bear that out. While no one is ever satisfied with statistics per se as the sole valid indicator, I think there have been rather substantial gains in the last 2 or 3 years.

Mr. GRAY. Can you tell me how many Foreign Service officers there are in the Foreign Service?

Mr. READ. Yes. 3,600. Minorities constitute only 5 percent. It is very low. Ten years ago it was 1 percent so we are starting from a very, very low rate of performance. In terms of women, for instance, 10 or 15 years ago it was 5 percent. It is now 10 percent but again those statistics are misleading because in the upper levels the representative nature of the Service is not nearly what it is at the more junior levels.

Mr. GRAY. How many minorities do you have at the Deputy or Assistant Secretary level at the Department?

Mr. READ. I would have to supply that for the record.

Mr. GRAY. I would appreciate it if you would.¹

I think you mentioned a written exam when talking to Mrs. Schroeder or a test that is taken. Can you give me an indication of how women and minorities make out on that test?

Mr. READ. I will ask Director General Barnes to comment on that in a moment but I am pleased to say that our recruitment efforts have been heavily oriented toward women and minorities in the last couple of years in terms of the visits to college campuses, university campuses, and the percentage of applications in both women and minority ranks has improved satisfactorily. Harry can probably provide more details.

¹ See page 24.

Mr. BARNES. As far as minorities are concerned, our data are limited simply because it was only starting last year that we were allowed by the Civil Service Commission to collect data on minorities as such.

But to try to give you some sense in that field, the number of black individuals taking the Foreign Service exam, which is given annually in December, a year ago last December ran around 550. This last December the number taking the exam ran around 600. This was at a period when the overall level of people taking the exam, all categories, declined by about 10 percent and this reflects the recruitment efforts which Mr. Reed was referring to just now.

We have had an increase in the number of people passing the exam as well. I mentioned earlier the oral exam. We have adopted new procedures this year to extend the oral exam from a type of exam which lasts 1½ hours or so to a full-day exam. That has been in effect only for a couple of months, we don't know yet what the results are going to be there. We want to see, of course, particularly how that has an effect, if it does have an effect, in terms of women and minorities.

What I can provide for you over a longer period of time would be data as far as women in the Foreign Service Officer Corps is concerned; that is, the recruitment. Figures on minorities would have to be limited to just these last 2 years because that is all we have the data for.

Mr. GRAY. I would be interested in knowing what the purpose of the oral exam is as well as the rest of the written exams because often exams can be weighted in such a way as to exclude people and how the judgment is made in evaluation is made of the oral exam and also that becomes very subjective.

I have some documents on the exam review and it shows that the oral exam was weighted 23 in 1976 but in 1977 it was weighted 36. General background in English is weighted 7 in 1976 but suddenly in 1977 it is weighted 24. It seems to me that those kinds of questions are extremely relevant to terms of minority and recruitment.

I also have looked at some of the sample questions on functional background and thank God I don't want to go into the Foreign Service because I don't know if I could pass this exam despite the fact that I have a bachelor degree, two masters degrees, and two-thirds of a Ph. D. One question concerned two films, "Z" and "State of Siege," where one needs to know that Costa Gauras has emerged as a contemporary director who has best mastered the technique of political situations in the tension-filled feature films and that he has moved the political film to one with appeal to a mass audience. What is the relevance of that to serving in the Foreign Service? It seems to me if you are a great movie buff you would perhaps know the answer to that if you spent a lot of time going to movies.

Mr. BARNES. Let me start with your more general question.

As I indicated earlier, what we attempted to do with the written examination is to get at a sense of a person's familiarity with a number of factors which we think apply to all fields in the Foreign Service, and I mentioned just as an example American culture, American history. I suspect the questions you quoted are ones related to ICA's work in the cultural and informational field. We are trying to see what the level of person's knowledge and familiarity is in that particular area which would help us in the assignment process once someone comes into the Foreign Service in terms of directing them toward one field or another.

On the oral examination, if you like, I would be glad to provide more information and detail.

Mr. GRAY. I really would like to see a very clear detail because I don't see the real advantages of a question like that. I don't see any questions down here about chitlings and Mother's Day which would be extremely relevant, I think, to a functional background, and that is what comes under functional background.

Now because somebody does not know the director who has made this tremendous movie in the art field in terms of "Z" and "State of Siege," does that mean that they are somehow functionally deficient or does it just perhaps mean that they have not had a great opportunity in their life to spend a lot of time seeing films?

I don't think that there is a correlation there and I have seen too much of this kind of stuff utilized to exclude people from getting into positions. I think that as I look at some of the other questions, if each of the foreign groups of artists could collaborate on a work—which group would probably create an American folk opera based on themselves from the early history of the Nation and then there is a collection of one, two, three, four, five categories with about four people per category. You know, what relevance does that have to being functional?

When you look at the fact that in 1976 that kind of background was given a 7 weight and in 1977 it was given a 24 weight, I wonder what it is given in 1979. It seems to me that I would very much like to see the specifics and understand the criteria of these kinds of tests because it looks to me very much like they can be utilized to exclude some of the various kinds of categories of people who are not represented in our Foreign Service who just don't have that opportunity.

Mrs. SCHROEDER. Will the gentleman yield?

Mr. GRAY. Yes; I will yield to my colleague.

Mrs. SCHROEDER. From my experience looking at selection devices in the private sector, we used to throw them out right and left, this thing is a disaster. I used to have great joy in making up a test that was given to United Airlines executives. Do you know what a gusset is? I bet you don't. I bet the women do, but so what. I do find this offensive and join the gentlemen in saying that may be part of your problem. It is nice to have language in the bill but I think we have got to go to the guts of the problem.

Mr. GRAY. Thank you. I certainly agree with my colleague particularly when I look at the fact that some statistics here show that only 3 percent of blacks passed the examination, 8 percent Asian, 10 percent American Indian. When we look at those kinds of questions, you know, I really want to know what the real advantages of those questions are in terms of whether a person can function in the Foreign Service, whether they can represent this Nation abroad in various areas.

So I would like very much to know very specifically what this Foreign Service personnel reform legislation is going to do in terms of a commitment to EEO and also to know exactly how these tests are conducted, what the judgments are and the evaluations because otherwise I see it right now as being exclusionary.

Mr. READ. Mr. Gray, let me say I would very much welcome that close scrutiny that both of you have just offered. We want to improve these tests, get out irrelevant questions and get out the factors that

have absolutely no basis of validity. We have very much in mind that the Foreign Service should be, as this act says, representative of the American people. But examination questions relate to implementation.

On a statutory matter, the references to merit principles appear throughout the bill; the principles that were passed by the Congress last year, including the EEO provisions, which apply in full to the Foreign Service.

Mr. GRAY. I am not questioning whether there is an EEO umbrella. I am sure there is. What I am questioning is how are we carrying it out specifically, and are we enforcing it and general language that simply says that we are committed to equal opportunity, we are committed to affirmative action, we are committed to having a broad base representation but not having the specifics there. That troubles me.

Three or four years ago as a member of an organization we met with the then Director of the FBI who talked about the fact that minorities in the FBI were relegated to clerical status for the most part and the Assistant Director at the meetings said, "Well, you know we have a test, we have these forms." We said could we look at the tests. On that application form as well as the test, let me give you one example.

The application form which was about five pages long had one question which said, "Has anyone in your family, going back to grandparents, ever been arrested?" All right. Now I don't know if you know anything about black folk, but just about every black person, if you go back to the grandparent, particularly as to the days of discrimination and segregation in the South, at one time or another probably got arrested. So you automatically knocked out 50 percent of those qualifying even though the grandson may have a law degree from Yale, can pass all the cultural and functional, but because the grandparent was arrested during a period of our history, he could not qualify as an agent for the FBI and no one thought of that.

So I am simply saying to you I know there is an overarching umbrella of commitment. Mr. Chairman, I want to see the specifics if we are talking about reform legislation.

Mr. READ. We would welcome that.

Mr. PRITCHARD. Mr. Chairman.

Mr. FASCELL. Mr. Pritchard.

Mr. PRITCHARD. My understanding is you people did not structure the test yourself. Do you have some outside people that do the work on this?

Mr. READ. We have used as a contractor the Educational Testing Service. The results are looked at and scrutinized by many sectors of the Department, employees and management, and the improvement process has been an earnest one and a steady one. But I have no doubt that procedures can be improved and we want to do so.

Mr. PRITCHARD. It was my understanding with the weighting you have been doing in the last 2 years it has been one in which you hoped to increase the numbers of minorities and women because if you had no people take the tests, they say the tests are being changed so that it is tougher if you are a white male.

Mr. READ. Those allegations have been made. Every effort is being made to create equal opportunity in the truest sense. It is a difficult

search and one that we need to pursue, and we need help and advice, and we would welcome it. That is all I can say at this point.

Mr. BARNES. I have one other point. One of the reasons we have gone to an expanded oral examination is to minimize the possibilities of the sort of problems you are talking about going from 1½ hours to a whole day involving the candidates much more actively in the procedure.

Mrs. SCHROEDER. Are you covered by the uniform guidelines of employment selection practices?

Mr. BARNES. Yes.

Mrs. SCHROEDER. Do you think these exams meet those uniform guidelines?

Mr. BARNES. I think they do, but we will have EEOC's comments.

Mrs. SCHROEDER. Have you got any comments from EEOC?

Mr. BARNES. EEOC is now in the process of taking a look at some of the things we are doing.

Mrs. SCHROEDER. They have not validated them at this point?

Mr. BARNES. They have evaluated our affirmative action program.

Mrs. SCHROEDER. Most of it has been in-house as I understand.

When do you think that validation is going to be ready?

Mr. BARNES. I had a discussion about 3 weeks ago with Commissioner Rodriguez. I am waiting to hear from him again.

Mrs. SCHROEDER. We will be watching that, too, I am sure.

Mr. GRAY. Mr. Secretary, you are saying you will provide for us the evaluation, exactly how your examinations are structured?

Mr. READ. With pleasure.

Mr. GRAY. Were the questions asked in the oral examination, why they are asked, what background they are trying to portray because I certainly don't want to injure or prevent any American, no matter what their color or sex, from having an opportunity to pass into the Foreign Service. We need all the qualified people. I am concerned about white males, too, have quite a few of them that live in my district, and I know they would want their Congressman to be concerned about them but at the same time we are talking about positive action to help minorities.

Certainly my colleague Mrs. Schroeder has pointed to one term that I certainly would not know but I think that we can look at these examinations very, very carefully and make sure that they are in balance, that they are used properly, not done in such a way to exclude people. Particularly we are talking about minorities and other groups in our society who have not historically had the opportunity to participate in the broader culture of much of America.

You know, it was not until about 20 or 30 years ago that some of us could go to the opera, you know, and so if you begin to start asking those kinds of questions to make a judgment about whether one is suited or has the ability to do a job, I think it is very questionable. Like I said, if we are going to make these exams equitable, let's put hopping johns down there, chitlings and Mother's Day. What does that mean? I am sure there are white males who know what hopping johns are.

Mr. FASCELL. Well, I think that obviously it is a very important point for both committees. Therefore, what we must do in the course

of the consideration of this bill is to get commitments from the various elements of the administration to deal with this problem and then make certain that the Congress exercises oversight to make sure that the legislated policies are carried out. Therefore, I think that we need to be as specific as possible with respect to the present thoughts and motivations of this administration on the implementation of the various personnel policies that are being sought.

Let me ask you a question, Mr. Secretary. There has been considerable concern over a long period of time and a great many studies, one of them the Linehan study, dealing with the various cones in the Department, morale problems, and whether or not this legislation should deal with the process of upward and lateral mobility in the cones of the Department.

Mr. READ. Those cones, for better or worse, were put into effect by administrative action and can be altered by administrative action. They have worked, as you know, Mr. Chairman, to advance certain of the key elements of the Department that had been rated somewhat less than generously before. But their worth is a matter of considerable controversy as well as some related facets, particularly the zone arrangements within the cones.

These are matters which can be dealt with administratively. I would hope that one of the things that structural reform would clear the path for would be a career development program worthy of its name which would, with more clarity, facilitate lateral movement within these internal divisions and I would hope that in due course by the time one got to the senior threshold you would have served in either the political or economic cones as well as the administrative or consular cones, because each needs greater appreciation of the other's problems and they are all essential parts of the Service's efforts. That will be our highest priority following structural reform.

Mr. FASCELL I recognize, of course, we cannot deal with that problem legislatively but that this is clearly an internal administrative function. I think it is important for us to understand that this is the next major step within the Department, assuming this legislation becomes law.

Mr. READ. Many of the members who have said that they will support this bill have said so with the caveat that we must turn greater attention to career development to make it a reality and that would certainly be our intent.

Mr. FASCELL. I think we are all aware of and sensitive to the dynamics of any bureaucracy. It is strictly human nature that if the political cone is the way to become an ambassador, then everybody is going to fight within the agency to get into that cone. Anybody who is relegated to a less desirable cone is not going to be too happy with it.

The same thing happens in the military. If you are in the Navy you fight to get command of a ship because you know if you don't, you are never going to be an admiral. I can't think of a more important problem that would have to be addressed in order to improve morale, if we enact a structure which gives you the basis to operate.

Mr. READ. I would agree fully with that. I believe it is simply wrong to have someone coming up through a single career line sud-

denly expected to be a good general manager without having appreciated through experience the essential work that is done in other components of the service.

Mr. FASCELL. Let me explore for just one additional moment the incoming personnel. How are they assigned to various cones now?

Mr. READ. I will ask Harry to answer that.

Mr. BARNES. One footnote on the previous question first. We have some preliminary work underway because we recognize that even if nothing were to change we have to do a better job of providing this variety of experience. We are thinking along the lines of what we are calling a tentative major-minor type arrangement. One statistic, about a third of our consular officers are now serving out of that, so we are already moving in that direction.

Mr. FASCELL. You say about a third?

Mr. BARNES. About a third. We are trying to find some opportunities for the political officers to serve in the consular field so they can get that kind of experience.

In terms of how we handle the individuals, one of the purposes as I was implying earlier of the functional tests on the written examination is to get some idea of where we think people might best serve. We give a tentative designation when they first come into the service. We give the individuals a chance to comment on that tentative designation if they think it does not make sense.

Mr. FASCELL. Who is we?

Mr. BARNES. We, in the case of the junior officer branch of the bureau personnel.

In addition, we think it important to give each of our new officers a chance to work in the consular field because that underlies so much of what we do all the way through. As you know well, better than anybody else, we have had increasing needs for consular services so we have that opportunity provided for junior officers.

In the first 4 years, and that is the period now set by statute before a decision is granted to grant tenure to a new Foreign Service officer candidate, there is at least one assignment in the tentative functional field. At the time the individual is passed for tenure, we then go on to the midcareer level confirming that field or if experience has shown that that field does not make sense designating a new field.

Mr. FASCELL. When the prospective applicant or a new employee is being considered for assignment, does he get a face-to-face discussion with somebody in the Department?

Mr. BARNES. Yes. We do this with each new junior officer class. There was a class, as a matter of fact, sworn in just last week and in the course of the next couple days, to take that specific example, these individuals will be told what are the assignments available for them, given a chance to indicate what their preferences are, and have a chance to talk with their counselors. We may give them our views and then get from them in effect a bid list. There will be the first, second, third, and fourth preferences.

Mrs. SCHROEDER. Thank you, Mr. Chairman. I just was wondering if we could put together a formula here. Maybe cones plus zones equal clones.

Have any of you at the table worked in the consular field?

Mr. BARNES. Yes. My first assignment I was a consular officer for most of the time. My second assignment I was a consular officer all of the time.

Mrs. SCHROEDER. That may be the combat zone.

What percentage of each class do you think is apt to be selected out for substandard performance each year and will that number be preset? I heard what you said, a lot of people dribble along and suddenly they are 55 and you tell them they are not going to make it. Are you going to preset a number for selection out each year? How do you change that phenomenon?

Mr. READ. I think it would be completely inequitable to have a preset number. It has to be a function of the individual selection boards and their recommendations. If I could just spend a moment on the selection boards system because the committee addressed that with the Secretary and we didn't really have a chance to expand on it. It has been called "the worst system except any other that we have been able to think of." These boards operate completely independent of management. I think they are unique in the U.S. Government in that respect.

Their operations are confined to performance records. No one is authorized to say a word to the boards or to get things before them that are not in the record in an individual's file. Career members of the boards are designated based on their records of excellent performance and both management and labor must agree on their membership.

Public members are chosen from persons of great distinction and breadth and they add a vital factor in my judgment in the operations of the board. The precepts are worked over by management and labor and are the result of painstaking efforts to point up the criteria and the qualities that we hope and expect the boards to distinguish. It is a process that has evolved over the years. It is one which is never static because there are changes every year in the precepts in efforts to improve their validity.

Mrs. SCHROEDER. I understand that. I think it is still very difficult to crank out the old boy network and I think we have to continue to work on it. Would people who are denied grade step increases going to be allowed any appeal?

Mr. READ. Yes, but only if there is an aggrievable issue, such as something improper in their files to which they have full access.

Mrs. SCHROEDER. So the files would be open.

Mr. READ. There is full access to one's own file.

Mrs. SCHROEDER. What about placement assistance for officers who were selected out?

Mr. READ. Thanks to the committee, last year we were authorized to contract with a service which assists such persons in finding second careers.

Mrs. SCHROEDER. Have they been successful?

Mr. READ. It is perhaps too early to make any final judgment, but I think it has been something that we have desperately needed. We have been in a horse and buggy age relying on two or three people inside to do this sort of thing and they have just not known the opportunities that were available outside.

Mrs. SCHROEDER. I have such a series of questions and I am afraid because of the time I should submit them for the record. I have been

very concerned about the Hay study which we could discuss for 2 hours whether you need an agencywide bargaining unit. I find that a little hard to swallow. I hear about how labor and management are all together but I am not sure that it really works to put supervisors in the same unit.

I have some questions as to why you need a Foreign Service labor relations board rather than just subjecting your employees to the Federal Labor Relations Authority. Why do you have to create two, why cannot we use the same? Mr. Chairman, do you want me to submit them for the record?

Mr. FASCELL. Whatever.

Mrs. SCHROEDER. Why not submit them for the record because I have an idea they are going to be very difficult to deal with in a superficial manner.

Mr. READ. Could I discuss two points? One you mentioned earlier, whistle blowing. Every single feature in regard to protection of whistle blowers that you wrote into the Civil Service Reform Act last year applies to the Foreign Service stem to stern. Those merit principles are incorporated in this bill. In addition to that we have a dissent channel and an open forum process, and we feel that we are the vanguard, not the rearguard, in this respect.

Second, on the reason why the Civil Service Reform Act's title VII on labor-management relations is not applicable or germane to the Foreign Service without major adaptations, if you took the definitions of supervisor and manager which are stated in that act, you would probably have a Foreign Service bargaining unit that would not number more than a fraction of its present size. I don't know what the exact percentage would be, but it would be an emaciated bargaining unit because we have very junior personnel who in a technical sense are doing supervisory duty abroad with Foreign Service nationals, et cetera. There are, I think we can convince you, very good reasons for separation on the fundamental issue.

Mr. FASCELL. Mr. Secretary, we will submit a lot of questions to you and give you reasonable time to respond and then we would like to evaluate those and perhaps follow up on the responses.

Mr. Buchanan.

Mr. BUCHANAN. I think it would be safe to say that in the matter of promotion and retention that the whole system does pretty well hinge on the selection board. That is already true and it will be true. Is that a fair thing to say?

Mr. READ. Yes. The boards will remain a cornerstone of the process. Under the bill the boards will be asked to make recommendations on some additional matters such as career extensions, limited renewable career extensions where the needs of the service will be considered as well and which will create a new extremely useful procedure. Some of our senior officers have advocated making limited career extensions the exclusive procedure for service at the top of the Foreign Service. We did not want to go that far with untested procedure but we think that it provides a creative new procedure.

Mr. FASCELL. Mr. Michel.

Mr. MICHEL. I just wanted to emphasize that this limited career extension feature again rests upon action by the selection boards in

evaluating the performance of the senior personnel to whom that feature would be applicable. It is not something outside the selection board process.

Mr. BUCHANAN. I would like—and you can do it privately, personally, in whatever way—but I would like to be walked through the whole scene of the selection of selection boards, of whom they are composed, how you arrive at them. They really hold the fate of the Foreign Service in their hands. Let me indicate some of my own areas expressed by my colleagues.

For example, I am inclined to believe that there was a time not in the not too distant past in the Foreign Service when women were thought to be primarily cultural fixtures and so like when you are testing a woman you know she used to know about the opera or if she does not she does not stand a very good chance. You have had a traditional service that has been comprised primarily of white male graduates of certain particular institutions—

Mrs. SCHROEDER. None of which are in the South.

Mr. BUCHANAN. None of which are in the South.

I am sure that many of them are excellent because those are excellent institutions and there are many excellent people in the Foreign Service. Then to the extent that those people may have influenced or even dominated the selection board process, like the gentleman from Colorado I cannot help but think that has had some impact upon the fate of such women and minorities and graduates of the University of Alabama who may have been trying to get somewhere in the Foreign Service.

This is negatively stated because it is a concern for the future, not a criticism of the past, you understand. I really would like rather substantial reassurance that there is a present effort and there may be an ongoing effort to correct any deficiencies that may have arisen even out of that situation to the extent that I have fairly described them.

Mr. READ. Good. Let me add a historical footnote. When the 1946 act was passed there were 856 Foreign Service officers. I don't know what the Ivy League percentage was at that point but it must have been gargantuan. Most of them had served exclusively abroad and didn't know the United States. One of the changes in the 1946 act was that Foreign Service officers in the future should be drawn from all walks of life. The goal was set some years ago. We think that we have a more precise and contemporary set of goals here. In terms of the operations of the selection boards I would like very much to get your advice, Mr. Buchanan, and would welcome it.

Mr. BARNES. We would be glad to provide that walk through. We do make a conscious effort to see that women and minorities are represented as members of the board.

Mr. BUCHANAN. Very good. I really would appreciate the walk through. I don't know whether it would be useful for the record.

Mr. FASCELL. Yes; it will be useful for the record. Why don't we wait until we get to that section of the bill and we can analyze both the proposed new law and the old law.

Mr. BUCHANAN. Yes.

Mr. READ. Side by side copies will be available.

Mr. FASCELL. What I would like to do now is start at section 104 of the bill, so let's turn to the book. We will skip the general pro-

visions in 101, 102 and 103. Is there any major substantive change in 104?

Mr. READ. Yes. If I might, I will ask Mr. Michel to pick up at this point.

Mr. FASCELL. Mr. Michel.

Mr. MICHEL. Mr. Chairman, there are two features of this section which are departures from existing law which I would like to call to your attention. First of all, the United States has become a party to two major international agreements on the subject of consular relations and diplomatic relations since enactment of the 1946 acts. These of course are the Vienna Diplomatic Convention and the Vienna Consular Convention which are in force for most of the nations of the world today. Those are sources of identification of consular and diplomatic functions. That is a new feature.

Mr. FASCELL. Excuse me. Would that not be covered by just saying "international agreements"?

Mr. MICHEL. As a matter of emphasis and specificity—

Mr. FASCELL. That is the reason you mentioned the two.

Mr. MICHEL. Yes.

Mr. FASCELL. What is the other one?

Mr. MICHEL. That is to recognize the role of the Foreign Service in providing guidance which is in paragraph 2 of section 104, appearing on page 8 of the draft bill. This has been a traditional function of the Foreign Service but it was not explicitly recognized as such in the existing law.

Mr. FASCELL. So you have given it a statutory base?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. All right. Let's go to the next section. Any substantive change in section 201?

Mr. MICHEL. This is a consolidation of a couple of existing laws and I don't think makes any substantive change. It just pulls together the role of the Secretary of State and puts it in one place.

Mr. FASCELL. Section 202.

Mr. MICHEL. Section 202(a) is also a consolidation. This bill, in title II, repeals provisions that relate to the exercise of Foreign Service personnel authorities by the Agency for International Development and by the International Communication Agency. It puts those agencies directly into the Foreign Service Act. This somewhat broadens the authority available to those agencies.

Mr. FASCELL. That is in subparagraph (a)?

Mr. MICHEL. Well, yes. And (b) simply then is a technical amendment to carry out subsection (a). Rather than refer to each of these agencies throughout the bill where it says the Department or Secretary of State, it simply says that the terms "Department" and "Secretary" will be read as if they also referred to IDCA and USICA. I would note that there is a cross-reference to chapter 12 of the bill which emphasizes the goal of maximum compatibility in the Foreign Service personnel system.

Mr. FASCELL. Well, (c) is self-explanatory and (d) is self-explanatory.

How about section 203?

Mr. MICHEL. Section 203 is taken directly from existing law, there is no substantive change.

Mr. FASCELL. Section 204.

Mr. MICHEL. Section 204 restores the Director General as a statutory officer with a generally stated function. The Director General was provided for in the 1946 act. However, in 1949 legislation was enacted which took the functions of the Director General in the law and transferred them to the Secretary, who then re delegated them. We provide in this bill that the Director General will assist the Secretary of State.

The Office of Director General is also elevated to a Presidential appointment with the advice and consent of the Senate. The bill contemplates that the Director General will be a principal assistant to the Secretary in the management of the Foreign Service.

Mr. FASCELL. So you give them a statutory base?

Mr. MICHEL. Yes.

Mr. FASCELL. You raise his level within the Department?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. And that is all that 204 does?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. How about 205?

Mr. MICHEL. Section 205 similarly establishes the Inspector General as a Presidential appointee by and with the advice and consent of the Senate. There is an anomaly in the 1946 act in that it provides for Foreign Service inspectors but not a Foreign Service Inspector General to head this group of inspectors. The functions of the Inspector General, which are spelled out in this section, are drawn from existing law.

Subsection (b) which speaks about the interagency role of the Inspector General, generally reflects current practice and places an emphasis on the programs that are under the supervision of the chief of mission in a foreign country. This subsection contemplates an interagency review role for the Inspector General in order to assess the consistency of the operations of our overseas missions with U.S. foreign policy and with the responsibilities of the Secretary of State and the chief of mission.

Mrs. SCHROEDER. Mr. Chairman, why does he report to the Secretary of State? Why does he not have the independence to report to the Congress? As I read this, he is not as independent as Inspectors General in other agencies are.

Mr. MICHEL. I am not sure I follow the question.

Mrs. SCHROEDER. The Inspectors General in domestic agencies can report directly to the Congress. As I read this, the IG of Foreign Service is under the Secretary of State; is that correct?

Mr. MICHEL. This is intended to provide an officer who, like the Director General, is an assistant to the Secretary of State in the management of the Foreign Service.

Mrs. SCHROEDER. What if we would like for him to be more independent? We would have to change the legislation?

Mr. MICHEL. You would have to change the legislation and then you would have a question of the relationship between the Inspector General and the Secretary. A judgment would have to be made as to whether the office was more or less effective as a result.

Mr. FASCELL. Who presently performs the duties of the Inspector General who would be provided for in the act?

Mr. MICHEL. There is an Inspector General; the office is created administratively. The incumbent, I think, is always a senior career officer.

Mr. READ. Yes; Bob Brewster, the incumbent, is a career officer, as were his predecessors, Ted Elliott and Bob Sayre.

Mr. FASCELL. So you have Bob Brewster and that is an administrative appointment?

Mr. MICHEL. He is appointed by the Secretary of State.

Mr. FASCELL. This contemplates the same general relationship?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. And you make him a Presidential appointee subject to confirmation by the Senate?

Mr. MICHEL. Yes, sir.

Mrs. SCHROEDER. But you are not going to go the way you did last year, looking for waste and abuses and so forth?

Mr. MICHEL. We think this is a different kind of a mission. He is looking at the management of the Foreign Service in a policy sense as well as in the traditional auditing kind of a sense and is a management assistant to the Secretary of State.

Mr. FASCELL. Are there inspectors general now in ICA and AID?

Mr. MICHEL. There is an Auditor General of AID and there is an ICA equivalent of the inspector general. I am not sure of the title.

Mr. FASCELL. The Auditor General in AID is statutorily based?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. How about the inspector general in USICA?

Mr. MICHEL. I am not sure of the status of that officer in ICA.

Mr. FASCELL. All right. Let somebody find out and let's get that in the record.

Mr. MICHEL. This officer is not intended to duplicate or substitute for those agency auditing officials.

Mr. FASCELL. Well, who performs internal auditing functions now for State?

Mr. MICHEL. Within State there is an audit branch that is within the office of the Inspector General, but that office does not inspect the books of other agencies.

Mr. FASCELL. What is the statutory relationship of this Inspector General with the other agencies?

Mr. MICHEL. He or she, in cooperation with the other agencies, would review the conduct of the programs of the overseas mission from the standpoint of policy consistency and the relationship of the running of those programs to the responsibilities of the chief of mission and the Secretary of State. It is not the same as auditing and there is a cooperative relationship that exists, and we hope will continue to exist, with the other agencies.

Mr. FASCELL. But this statutory position for State would have no authority over USICA or AID; is that correct?

Mr. MICHEL. That is correct.

Mr. FASCELL. OK. Let's go to the next section. What does (c) mean?

Mr. MICHEL. That is drawn from the existing provisions of the Foreign Service Act of 1946. There is no substantive change.

Mr. FASCELL. Section 206.

Mr. MICHEL. Section 206 reestablishes by statute a board of the Foreign Service; a board with that designation was provided for in

the 1946 act. Its functions were transferred to the President by reorganization plan in 1965 and then redelegated back to the Secretary of State by Executive order. The bill would provide that there would be such a board established by the President. It blends the notions of a legislative and a Presidential basis for the board and the legislation describes the role of the board as advisory to the Secretary of State.

Mr. FASCELL. Now I notice that this board is essentially the same as provided in the 1946 act.

Mr. MICHEL. Yes, sir.

Mr. FASCELL. This board is composed of members of other agencies and yet it is advisory to the Secretary only. I don't follow that.

Mr. MICHEL. Well, it is advisory to the Secretary of State, though it has some across-the-board responsibilities which are discussed back in chapter 12 of the bill and it facilitates the objective of maximum compatibility among the agencies that use the Foreign Service system. We want to have one Foreign Service operated by several agencies who have the need for these personnel authorities. We do not want to have three or four Foreign Services. The board is a helpful tool in being sure that we have one Foreign Service.

Mr. FASCELL. All right. By the way, I expect my colleagues to interrupt at any point here.

Mr. PRITCHARD. Mr. Chairman.

Mr. FASCELL. Mr. Pritchard.

Mr. PRITCHARD. Do you have anything comparable at this point?

Mr. READ. Yes, it exists at the present time by Executive order, Mr. Pritchard.

Mr. PRITCHARD. Is the makeup quite similar to this?

Mr. READ. Yes.

Mr. PRITCHARD. How often does it meet?

Mr. READ. About every month, I would guess, on the average.

Mrs. SCHROEDER. Does it file cases?

Mr. READ. Yes.

Mrs. SCHROEDER. Does it disclose the advice it is handing out?

Mr. READ. Is there a record of their deliberations on reaching positions of advice?

Mrs. SCHROEDER. Are they open?

Mr. READ. Yes and no.

Mrs. SCHROEDER. They are not?

Mr. READ. No, when the board is advising the Secretary in most cases.

Mr. PRITCHARD. I think that is very good. It depends on the thrust of what they are doing. It is not a matter of deciding cases?

Mr. MICHEL. There is an adjudicatory role of the board in the labor management area under the present Executive order which would not be continued by this bill.

Mr. FASCELL. Because it is moved over into some other part?

Mr. MICHEL. It is moved into the Foreign Service labor relations board. That new body will conduct proceedings on the record, such as adjudicatory boards do.

Mr. PRITCHARD. It is different from the role of this board as you envision.

Mr. MICHEL. Yes.

Mr. FASCELL. This board would be purely advisory?

Mr. MICHEL. Yes.

Mr. FASCELL. And the adjudicatory function is removed?

Mr. MICHEL. Yes. Adjudications would be on the record. However, just as when the members of the grievance board, having heard a case, deliberate over the outcome, I don't think they will do so in public. This is like an appellate court, whose members would not sit around in public and discuss the merits of a case before them.

Mr. FASCELL. But there is an appeals procedure?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. All right. We will review that in more detail when we get to that part of the bill.

Let's go to section 301.

Mr. MICHEL. Section 301(a) restates the general rule that is now set out in several places in the 1946 act. The 1946 act says Foreign Service officers shall be citizens of the United States, Foreign Service Reserve officers shall be citizens, and so forth. This generalizes the citizenship requirement and simply notes that consular agents need not be citizens of the United States and foreign national employees, by definition, are not citizens of the United States.

Mr. FASCELL. How about (b)?

Mr. MICHEL. Section 301(b) is also consolidation of provisions of existing law. This is one of the places where merit principles are specifically noted. "Merit principles" is a term of art in this bill. It is defined by citation to the merit system principles in the Civil Service Reform Act. Those principles are made explicitly applicable here as they are in other places throughout the bill.

Mrs. SCHROEDER. What kind of physical examinations does the Secretary provide?

Mr. MICHEL. I can't speak to the details of the examinations that are provided for entry into the Foreign Service.

Mr. FASCELL. Well, you are going to give us the specifics as requested by Mr. Gray on both the oral and the written examinations so you might as well submit to us a copy of the medical requirements, too.

Mrs. SCHROEDER. And other.

Mr. BUCHANAN. And other.

Mr. FASCELL. You might as well tell us what other is. Is that mental?

Mr. READ. I am not sure.

Mr. MICHEL. I think that is taken from the existing provision of law.

Mr. READ. We do have a program for the handicapped.

Mr. FASCELL. How about subparagraph (c)?

Mr. MICHEL. That is drawn from a law enacted in 1970 which established the Foreign Service Information Officer Corps and (d)——

Mr. PRITCHARD. Mr. Chairman.

Isn't that quite a bar to women?

Mr. MICHEL. There are fewer women who are veterans. This is not a specific provision that says you will give preference to someone who is a veteran over a woman.

Mr. PRITCHARD. I didn't say that. The end result is that this is one of the reasons why it is more difficult for women and I would ask the gentlelady from Colorado, though I am sure, isn't this one of the major parts for women getting into the veterans preference?

Mrs. SCHROEDER. Many of us had hoped that they would give veterans preference for those who fought the war on poverty. For awhile, there was a 3-percent limitation on the number of women that could be in the Service for a long period of time.

Mr. PRITCHARD. A vast majority are men.

Mr. MICHEL. Foreign Service officers are not covered by the entire veterans preference laws and this subsection says, nevertheless, that service as a member of the Armed Forces will be taken into consideration.

Mr. PRITCHARD. It is so many points on a score or anything?

Mr. MICHEL. No.

Mr. PRITCHARD. It is a subjective score. When you are all done you are supposed to take it into consideration.

Mr. MICHEL. Yes.

Mrs. SCHROEDER. Is there any veterans retention preference or appeal, anything like that?

Mr. MICHEL. A member of the Foreign Service who is a veteran may have access to the Merit Systems Protection Board in some circumstances of dismissal. We have provided in the bill for an election of remedies because of an overlap with the Grievance Board's jurisdiction. The individual will make an election of remedies and can go to the Merit Systems Protection Board or to the Foreign Service Grievance Board, but not both.

Mr. FASCELL. Other than the option provided on the election of remedies which is someplace else in the bill, section (c) simply restates present administrative practices?

Mr. MICHEL. Present law. Public Law 90-494, section 14.

Mr. FASCELL. Mr. Buchanan.

Mr. BUCHANAN. Mr. Chairman, you have on page 2, section 101(a) (3) that the Foreign Service should be representative of the American people, aware of the principles and history of the United States and informed of current concerns and trends in American life, knowledgeable of other nations' affairs, cultures and languages, available to serve in assignments throughout the world, and operated on the basis of merit principles.

Mr. MICHEL. I certainly would hesitate to say there should be no veterans language.

Mr. PRITCHARD. It may be. I think you are handling it all right. I have a very strong bias against specific points in a situation like this at this point and I think that—

Mr. BUCHANAN. The point may be but I want to reiterate this term about affirmative action and making sure that the law itself is adequately specific.

Mr. FASCELL. We can get into that later, if that is satisfactory.

All right. How about section 302?

Mr. MICHEL. Section 302(a) identifies those members of the Service who may be appointed only by the President by and with the advice and consent of the Senate. A difference from present law is that the Ambassador at Large is identified separately. At present, the Ambassador at Large is an appointment under the President's constitutional powers to appoint ambassadors and the salary is the salary of a chief of mission. We have had some distinguished Ambassadors at Large serving through most of the recent past and this bill would expressly acknowledge that there is such a category.

Mr. FASCELL. In other words, that gives a statutory base to what we have been doing?

Mr. MICHEL. Yes.

Mrs. SCHROEDER. Why not do away with a lot of paperwork?

Mr. MICHEL. We do.

The Foreign Service officer is initially appointed by the President by and with the advice and consent of the Senate, given a commission as a Foreign Service officer, diplomatic officer and a consular officer. I think this is an important feature that singles out the Foreign Service Officer Corps.

The promotions of the Foreign Service officers traditionally, and under the legislation that has existed in the past, have been by appointment to a new class. Every promotion requires a new appointment. Now the draft bill would allow the Secretary of State to implement the selection board recommendations on promotion through the middle and upper ranks of the Foreign Service salary schedule so that once initially appointed an officer could then be promoted without having to be reconfirmed, without all that paperwork and the delay that attends that process.

Mrs. SCHROEDER. But you are still going to keep it there for the initial appointment?

Mr. MICHEL. Yes and also for the Senior Foreign Service.

Mrs. SCHROEDER. I have some questions about how realistic that is, too.

Mr. MICHEL. Well, it is a distinguishing feature of the Foreign Service Officer Corps which I think is of considerable importance to a lot of Foreign Service officers.

Mrs. SCHROEDER. It may be, but that may be what makes it more as a fraternity.

Mr. MICHEL. It is something like the commissioned corps in the military who attach importance to their Presidential appointments.

The other new reference in this subsection is to the career Senior Foreign Service which is something that was not a single group under prior law but rather we had senior members of the Foreign Service, some of whom were officers and some of whom were reserve officers. Now we propose a single Senior Foreign Service, all of whom would be Presidential appointees if they are in career appointments.

Mr. FASCELL. So that clause in subparagraph (a) (1) is a substantive change for a career member of the Foreign Service?

Mr. MICHEL. Yes.

I might skip here, if I may, to the Secretarial appointments. This bill contemplates two appointing authorities, the President for those mentioned in this subsection and all others would be appointed by the Secretary of State, including any limited appointments in the Senior Foreign Service and appointment of candidates to be Foreign Service officers.

Mr. FASCELL. What about subsection (b)? That is new statutory language to comply with the thrust of this bill, is it?

Mr. MICHEL. The personal rank provisions in paragraph 2 are current law. Subsection (b) of this section is taken from section 571 of the Foreign Service Act of 1946. It is different only with respect to the authority provided for a career member of the Senior Foreign Service to retain salary and eligibility for performance pay even if appointed to a Presidential office.

Mr. FASCELL. In other words, that language starting on line 18 down through line 25 is new language.

Mr. MICHEL. Yes. If appointed heretofore as an ambassador, he would receive a statutory salary of an ambassador although he retains his career status as a Foreign Service officer. We now say you retain your career status and you may elect to retain your salary as a member of the Senior Foreign Service and continue to compete for performance pay. This will avoid some of the most able officers risking a reduction in salary. It is parallel to the provision that applies to the Senior Executive Service in the Civil Service Reform Act.

Mr. FASCELL. Section 303.

Mr. MICHEL. Section 303, as I mentioned earlier, simply says everyone who is not appointed by the President is appointed by the Secretary.

Mr. FASCELL. All right. Is that current law?

Mr. MICHEL. Yes, it is a consolidation.

Mr. FASCELL. Section 311.

Mr. MICHEL. Section 311 is drawn entirely, I believe, from existing law. I can give you the citations. The side-by-side—

Mr. FASCELL. The side-by-side will show the citations?

Mr. MICHEL. Yes. This comes entirely from provisions of existing law.

Mr. FASCELL. That whole section does, section 311?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. All right; section 321.

Mr. MICHEL. Well, section 321 affirms with respect to the new category of Senior Foreign Service that the members, like other members of the Foreign Service, are assigned to a salary class, not to a position. It is a rank-in-person service like the rest of the Foreign Service.

It also establishes a limitation intended to protect the career character of the Service, providing not more than 5 percent may be non-career. This reflects the current composition of the senior ranks of the Foreign Service and would preserve that predominantly career character.

Mrs. SCHROEDER. Why don't you have the 10-percent figure that we have in the senior executive service?

Mr. MICHEL. Well, the 10-percent limit as we understand it was arrived at on the basis of experience within the civil service. Experience within the Foreign Service indicates that a 5-percent limit reflects the realities and that a 10-percent limit would be an invitation to alter those realities.

Mrs. SCHROEDER. It would also be a limitation for affirmative action?

Mr. MICHEL. No; I don't know that that is true.

Mrs. SCHROEDER. It could. Noncareer slots could be used to hire minorities and women.

Mr. MICHEL. We are talking about the generals of the Foreign Service, if you will.

Mrs. SCHROEDER. And the civil service.

Mr. MICHEL. And this, of course, does not include the noncareer Ambassadors who can certainly be appointed by the President from anywhere.

Mrs. SCHROEDER. That is right; but these are still the managers, really. These are your super executive management team. You know we opted for a 10-percent figure which, I think, gives you a little more

flexibility. That is certainly not political control by any means but I think it allows for a little more flexibility and change sometime.

Mr. READ. If I could just add a point. The 5 percent is defined in the section-by-section analysis that we have submitted as not including career Senior Foreign Service persons who may be needed abroad for limited appointments.

Mrs. SCHROEDER. I don't see it being anything—

Mr. FASCELL. Except for size, maybe.

Mr. MICHEL. We generally do not bring people in as generals and expect them to operate in this milieu which is predominantly a career service.

Mrs. SCHROEDER. As is civil service.

Mr. MICHEL. The bill would provide for opportunities for entry into the Service at any level; the statutory limitation is only on the most senior levels. There is nothing that prevents somebody coming in at midlevel and being promoted.

Mr. FASCELL. I take issue with that but it is all right.

I think what we better do at this point is stop; since we are going to have a vote here shortly on an important bill. I want to thank you gentlemen for being with us today and carrying us this far along in the bill.

This process is simply to get us better acquainted with the matter. We are far from making any judgments on anything at this point and we will just pick it up from here as fast and as soon as we can.

Mr. READ. We will take no holidays and be at your disposal.

Mr. FASCELL. Thank you very much.

The subcommittees will stand adjourned subject to the call of the Chair.

[Whereupon, at 12:53 p.m., the subcommittees adjourned.]

THE FOREIGN SERVICE ACT

THURSDAY, JUNE 28, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The joint subcommittees met at 9:35 a.m. in room 2172, Rayburn House Office Building, Hon. Patricia Schroeder (chairwoman of the Subcommittee on Civil Service) presiding.

Mrs. SCHROEDER. Chairman Fascell, committee members, witnesses, we welcome you all to the second day of numerous hearings on the Foreign Service Act of 1979.

Members of the committee will notice that the bill in their notebooks today varies somewhat from the bill which was before us last week. Sadly, I must report that the gnomes at OMB have been busy making little changes. It is kind of like coming home to find there have been mice in your cupboard. It takes weeks before you figure out all the boxes that they have gotten into.

Today's witnesses are John Reinhardt of the International Communication Agency and Bob Nooter of the Agency for International Development. The theme of today's hearing might be called Conversion.

My subcommittee had some dealings with AID a few months ago about the conversion of policy and program positions in Washington from civil service to Foreign Service. Today, ICA is telling us about the problems of mandatory conversion of domestic-only Foreign Service employees to Civil Service. It is beginning to sound like a convention of missionaries trading stories about how and why and whether people can and will be converted. But, with that, let us begin. My cochair, Dante Fascell may have some comments.

Mr. FASCELL. No comments.

Mrs. SCHROEDER. He has no comments. It is up to you, you are on. Welcome.

STATEMENT OF HON. JOHN E. REINHARDT, DIRECTOR, INTERNATIONAL COMMUNICATION AGENCY

Mr. REINHARDT. Madam Chairperson, members of the subcommittees, I am very pleased to appear before you today to discuss an issue of great importance and interest to those of us in the Interna-

tional Communication Agency, that is the proposed Foreign Service Act of 1979.

While I have had the pleasure of meeting with the International Operations Subcommittee on many previous occasions, I have not met previously with the Civil Service Subcommittee. Therefore, with your permission, before I begin my discussion of the Personnel Act itself, I would like to take a few minutes to describe the International Communication Agency.

Our mandate and objectives as an agency decidedly influenced our view of the personnel system. USICA came into being on April 1, 1978, as a result of Reorganization Plan No. 2 of 1977. It is comprised of the former U.S. Information Agency, and the former Bureau of Educational and Cultural Affairs of the Department of State.

We are an independent foreign affairs agency, charged by the President with: Encouraging the broadest possible exchange of people and ideas between our country and other nations; increasing understanding of our society and policies among other peoples; expanding the knowledge of Americans about societies abroad; and advising our Government in the formulation of foreign policy.

Our budget for the current fiscal year is \$418 million. Our staff includes 8,300 employees, of which 4,022 are American personnel and 4,125 are non-Americans hired locally overseas. Our American personnel include 1,570 GS and 155 GG employees; 870 Foreign Service information officers; and 1,105 Foreign Service reserve officers, 900 of whom are the so-called domestic specialists. We also have 230 wage grade and 245 Foreign Service staff employees. By the end of 1979, we will be operating 205 posts in 125 countries.

To fulfill our mission we: Facilitate the international exchange of nearly 5,000 scholars and professionals every year; annually arrange for approximately 400 visiting American experts to talk to foreign audiences on topics of mutual concern; broadcast 820 hours per week in 38 languages on the Voice of America; maintain and support reading rooms, libraries and centers in over 100 countries; produce or acquire videotape programs and films for use in our posts overseas; produce approximately 10 large exhibits and 75 small exhibits per year; and through our offices overseas, maintain regular contact with a broad segment of opinion leaders, including the media and the academic and cultural communities in each country.

The Agency has six Presidential appointees: the Director at Executive Level II; the Deputy Director at Executive Level III, and four Associate Directors at Executive Level IV, one each for educational and cultural affairs, broadcasting, programs, and management. Our five geographic area offices, usually headed by career Foreign Service information officers, parallel the structure of the geographic bureaus in the Department of State.

With this general background, Madam Chairperson, I would now like to talk about the Foreign Service Act itself, and the particular impact which it can have on the Agency and its employees.

Proposals for changing personnel policies deserve the closest scrutiny and the most careful consideration because they go to the very heart of the morale, efficiency, and effectiveness of any career service. Experience has made us fully aware of this fact in the Foreign Service, and it has weighed on our minds at every step of our deliberations

about the proposed bill. We have consulted with representatives of our union, local 1812 of the American Federation of Government Employees, who have had considerable influence on the development of the Agency's position. We have consulted members of the Service, both at home and abroad, who have studied the various proposals and have shared their concerns.

We have worked closely with the Department of State in drafting the proposed legislation and have been encouraged by the cooperation we have received. We have met with Secretary Vance, Under Secretary Read, Director General Barnes and other officials of the Department. Our lawyers and personnel staffs have been in regular contact with their counterparts at the Department of State as the bill was drafted.

The proposed act reaffirms the need for a professional Foreign Service with its own personnel system. Secretary Vance has already described the purposes of the bill. I associate myself fully with those purposes and urge the committee to report favorably on the bill as rapidly as may be possible.

There are a few major provisions which I would like to address:

The bill creates a Senior Foreign Service comparable to the senior executive service in the civil service. I support the proposed Senior Foreign Service. I see it as a positive personnel management proposal, well adapted to promote the best opportunities and incentives for our ablest senior officers. I believe the Senior Foreign Service system will contribute to enhanced productivity in the public service. At the present time Foreign Service officers do not enjoy many of the incentives which will be available to their counterparts in the senior executive service. The Senior Foreign Service proposal would put the two career services on a par and make available to Senior Foreign Service officers the incentives and rewards which are now available only to senior civil service employees. In return, it is reasonable to set the highest, most stringent standards of performance, as this bill does.

The bill provides a single Foreign Service salary schedule for American personnel. The new schedule will supersede the two overlapping schedules that now exist for officers and staff employees. This will enable us to achieve the long sought objective of having a uniform pay scale for all Foreign Service personnel, including Foreign Service information officers, Foreign Service staff employees, and Foreign Service Reserve officers who are available for worldwide assignment.

The bill will provide a useful statutory basis for labor-management relations, which has been lacking heretofore.

Consistent with Reorganization Plan No. 2 of 1977, which established USICA, the bill provides the Director with all authority necessary to manage USICA's personnel systems. While seeking the maximum compatibility in personnel policies and practices among the foreign affairs agencies, it allows for differences necessary for the accomplishment of separate Agency missions.

Finally, under the proposed bill, the Foreign Service "domestic specialist" personnel category is eliminated by the provision that all such personnel shall be converted mandatorily to the civil service not later than 3 years after the effective date of the act.

We concur with the need to consolidate the personnel systems which have evolved over the years, clearly sorting them out into two sys-

tems—foreign and domestic. Only in that way will all employees know clearly where they stand in terms of work requirements, pay scales, and assignment obligations.

USICA has taken a number of steps toward this end in recent years. We have stopped the practice of appointing officers to positions in USICA under any Foreign Service personnel system unless they are available for assignment overseas. Further, we have implemented a regulation which severely limits the length of domestic tours for our Foreign Service information officers.

Nevertheless, we have over 900 Agency employees classified as Foreign Service "domestic specialists," known as FAS employees. They work as Voice of America technicians and broadcasters, magazine editors, exhibit designers, and in many of the positions are essential to the support of our missions overseas. Experience has shown that the features of the civil service personnel system are more suitable for this class of employees than are the procedures of the Foreign Service system. For example, promotions for a domestic complement can be made more equitably under the rank-in-job system than under the rank-in-person system. For these reasons, we have moved in recent years toward the use of civil service procedures for domestic personnel, regardless of whether they are categorized as Foreign Service or civil service.

In 1977 we entered into an agreement with Local 1812 of the American Federation of Government Employees, the exclusive bargaining representative of our Foreign Service personnel. That agreement provides that USICA's Foreign Service "domestic specialists" would not be subject to mandatory conversion to civil service, though they have the option, through June 30, 1981, of converting voluntarily. Under the agreement, those who do not exercise this option would remain in the Foreign Service. A corollary provision states that no new domestic specialists would be brought into USICA's Foreign Service.

The ultimate objective of a clear distinction between Foreign Service and civil service within USICA would be achieved in time, through attrition and the application of new hiring policies. However, while the present arrangements go far toward meeting management needs and safeguarding employee benefits, they fall short of the clear-cut distinction between Foreign Service and civil service systems that is made in the proposed new Foreign Service Act of 1979. Under the proposed act, domestic employees will be converted to the civil service so that all operational features of that system can be employed in day-to-day management. This will facilitate the administration of domestic personnel and will treat in the same fashion all employees who serve only in the United States.

At the same time we were and are convinced that employees who were granted Foreign Service retirement benefits when they were appointed in the Foreign Service system should retain those benefits. These benefits, which were conferred upon employees who earlier were encouraged by management to join the Foreign Service, will be preserved.

Because of USICA's agreement with AFGE, special provision is made in the proposed act for the temporary exemption of USICA "domestic specialist" employees from mandatory conversion until July 1, 1981, the period allowed for voluntary conversion under the con-

tract. Thus, the proposed legislation endeavors to preserve the essential thrust of the agreement with AFGE, while providing better personnel management and following the policy and procedures proposed for other foreign affairs agencies.

However, I must be candid in stating that in the discussions regarding the preparation of this bill, and in view of the agreement with AFGE, I have opposed the application of this provision to our employees. Many of the affected employees have expressed strong objection to mandatory conversion. I am sure you will hear the testimony of their representatives.

In summary, I reiterate our full support for a revised, updated, and consolidated Foreign Service personnel system. The revised act can serve to clarify many aspects of our present patchwork personnel system, to correct the inequities which have evolved over the years; to consolidate the many branches of the Foreign Service into a single career service; to obtain greater comparability of pay between the Foreign Service and the civil service, and to convey to all members of the Service our appreciation for the changing requirements and challenges they face.

Madam Chairperson, I am accompanied by several colleagues of our staff of USICA who have worked diligently on this bill and we, together, would be happy to try to answer your questions.

Mrs. SCHROEDER. Thank you very much, Mr. Reinhardt. We are very pleased to have you again with us this morning.

Let me yield first to my colleagues for questions, and we will proceed on, then. Congressman Fascell, do you have any questions?

Mr. FASCELL. Thank you very much, Madam Chairman.

I am just trying to catch up with a contract for which a special exemption has been made in the proposal. Did I understand you correctly?

Mr. REINHARDT. You did, sir.

Mr. FASCELL. And this contract runs out on July 1, 1981?

Mr. REINHARDT. Only as it applies to the voluntary conversion portions of the agreement. That is, the approximately 900 employees in USICA have until June 30, 1981, to make a decision as to whether they want to convert to the civil service or remain in the Foreign Service.

Mr. FASCELL. You mean that is in the contract?

Mr. REINHARDT. That is in our agreement with the union.

Mr. FASCELL. In other words, you are going to do that regardless of the law?

Mr. REINHARDT. Unless the law is changed. The agreement was made under the law that prevailed at the time.

Mr. FASCELL. I am talking about this proposed law.

Mr. REINHARDT. That is correct.

Mr. FASCELL. In other words, that agreement really has nothing to do with the proposed law.

Mr. REINHARDT. It does not, sir.

Mr. FASCELL. Go ahead.

Mr. REINHARDT. The proposed law provides for mandatory conversion after that date for our employees, and mandatory conversion shortly after the passage of the act for other employees, that is, those in the Department of State.

Mr. FASCELL. So, they are going to have under the present contract—I just want to see where the employees are coming from, I just want to understand it. Of course, they are going to tell me when they get here, so it will not make any difference; but I would like to know anyway.

Under the contract that has been negotiated, which expires on June 30, 1981, people will have a choice who are FAS—is that the right designation?

Mr. REINHARDT. That is correct.

Mr. FASCELL. 900 of them, approximately?

Mr. REINHARDT. That is correct, sir.

Mr. FASCELL. Out of how many people?

Mr. REINHARDT. Out of approximately 4,000 American employees.

Mr. FASCELL. So, they can make up their minds as to what is best for them, under that contract.

Mr. REINHARDT. That is correct.

Mr. FASCELL. And that choice is basically to do what, go to civil service, or not? Or go to civil service and get out?

Mr. REINHARDT. Bear in mind, sir, that the so-called FAS category was a kind of never-never land; they were not in the Foreign Service and they were not out of the Foreign Service.

Mr. FASCELL. It was a special designation.

Mr. REINHARDT. It was a special designation for USICA and the Department of State; it applied to both.

Mr. FASCELL. Now, what is their choice under that contract? You say they have a voluntary choice. What is it?

Mr. REINHARDT. The USICA officers, in accordance with our agreement with AFGE, now have the choice voluntarily to remain in the Foreign Service or to convert to the civil service, provided that they do it no later than June 30, 1981. This agreement was made in 1977, and it remains in effect as of now. The proposed legislation—

Mr. FASCELL. Excuse me, I have to pursue that for just a minute, if you do not mind.

Mr. REINHARDT. Sure.

Mr. FASCELL. The deadline arrives and I am an employee, and I have made no choice. Where am I?

Mr. REINHARDT. If they have not made a choice to convert to the civil service, they remain in the Foreign Service.

Mr. FASCELL. So, by not doing anything, I have made a choice.

Mr. REINHARDT. That is correct.

Mr. FASCELL. I do not really have to do anything, then.

Mr. REINHARDT. Unless you want to go the civil service, you do not have to do anything.

Mr. FASCELL. All right. Now, let us assume that nobody does anything, all 900 convert, or stay where they are, or whatever it is. Then the bill becomes effective. Are they in the Foreign Service, or where are they?

Mr. REINHARDT. They presumably would be in the Foreign Service. They would have a hard choice.

Mr. FASCELL. Why?

Mr. REINHARDT. They would have a hard choice if they were not available for worldwide duty. Anyone who is in the Foreign Service must be available for assignment worldwide.

Mr. FASCELL. All right.

Mr. REINHARDT. There are people who do not wish to be available.

Mr. FASCELL. So, that would be an important factor in their voluntary choice prior to June 30 because the contract expires then. See, I am looking to the next negotiation, and I want to know what is going to be on the line if this bill becomes law on July 1. I am willing to be perfectly reasonable, but I want to understand what we are playing with in terms of decisions; you see?

Mr. REINHARDT. If this bill becomes law it provides that after July 30, 1981, the mandatory feature will be in effect for all employees—USICA employees, AID employees, and the Department of State.

Mr. FASCELL. So, there is nothing to negotiate about.

Mr. REINHARDT. There would be nothing to negotiate at that point.

Mrs. SCHROEDER. Congressman Buchanan.

Mr. BUCHANAN. Thank you.

Chapter 3, section 333 authorizes an employment of Foreign Service spouses. Does your Agency now, or are you contemplating functional training for spouses in preparation for jobs overseas?

Mr. REINHARDT. Yes; we have entered into an agreement with what is called the Family Liaison Office of the Department of State to provide the maximum training that we can for accompanying spouses, and to make good-faith efforts to secure positions for accompanying spouses.

It is now in effect. We have been able to secure some positions. We have not been able to solve this problem completely.

Mr. BUCHANAN. Well, I must compliment you, you are ahead of the State Department. We might put you in charge of the Department of State so we get a little more action.

Mr. REINHARDT. Thank you for your compliment, Mr. Buchanan. I am not sure we are ahead of the State Department, we are working closely with them on this.

Mr. BUCHANAN. Your modesty and your diplomacy are also admirable, I must say, Mr. Ambassador.

Let me ask you if there are any concerns which you expressed to either the Department of State or OMB which are not addressed.

Mr. REINHARDT. No major concerns whatsoever, sir. The Department of State, the Secretary of State himself, knows our position on mandatory conversion, respects our position, and at the same time thought that he must support the legislation as presented to you.

Mr. BUCHANAN. The bill as written reflects the intention to provide for a unified system for all foreign affairs agencies, but the promulgation of regulations would appear to pave the way for some major differences. For example, it would appear that State could establish the 5-year time-in-class limit on an FSO-3, for example, while ICA could establish a 3-year limit and AID might establish an 8-year limit. I wonder if that prospect, which I believe could happen under the terms of the legislation, would not make possible a sort of bidding-up process between the various agencies involved, State, AID, ICA. You want to comment on that?

Mr. REINHARDT. I think only minimally, sir. Each of the agencies affected by the proposed legislation would have to subscribe to the

principles of the Senior Foreign Service, and we would. Each of the agencies, on the other hand, would operate its own separate personnel system in accordance with those principles. Thus, whether the State Department had a 5-year and we had a 3-year, and AID had a 4-year limit in effect for time in class, it seems to me would not make a great deal of difference. These limitations would be made in light of the needs of the three particular services. Each would be bound by the principle, however; neither would be permitted to abrogate the Senior Foreign Service, each would have to have one.

Mr. BUCHANAN. Thank you. Thank you, Madam Chairman.

Mrs. SCHROEDER. Congressman Ireland.

Mr. IRELAND. Thank you, Madam Chairman.

If you could enlighten me on one subject about the length of service in the United States at the present time, the tour, and whether this would be changed in this legislation, in your opinion.

Mr. REINHARDT. We do it by regulation, and so does the Department of State. The law provides that a Foreign Service officer who has served 8 years in the Department in a domestic assignment must accept an overseas assignment unless he secures the written permission of the Secretary of State to serve a ninth year. Within that law we in USICA have also formed a regulation that the length of the domestic assignment is 4 years. The officer who has served domestically for 3 years is promptly notified at the end of the 3 years that he should look forward to a foreign assignment no later than the end of the fourth year. A few exceptions are made to this regulation for what we think are good reasons, but that is the regulation. During the last 2 years we have successfully implemented it.

Mr. IRELAND. If a great number of these employees remained in the Foreign Service instead of opting out in a sense, would you anticipate any change in that regulation?

Mr. REINHARDT. I assume that you are referring to the so-called FAS employees.

Mr. IRELAND. Right.

Mr. REINHARDT. You have to bear in mind that the FAS employees are domestic specialists. Despite the name these are people who serve in Washington. Now, a few of them have served a temporary tour of duty overseas, but by and large these are the people who are working in the Voice of America; or these are the people who are working to prepare magazines or exhibits in the United States.

For reasons that I never clearly understood, they were put into this category called FAS. It was a good-faith effort on the part of management and the employees. They had certain benefits from going into this category, the principal one being, in my judgment, the applicability of Foreign Service retirement to these employees. So, they went in for whatever reasons. This bill will not necessarily swell the Foreign Service rolls because many of these people may convert to the civil service. They could retain their Foreign Service annuity if they convert to the civil service.

So, if I understand your question correctly, there will not necessarily be 900 people going into the Foreign Service.

Mr. IRELAND. But let us take the ones that do convert, they would be subject to the regulation you described.

Mr. REINHARDT. No question.

Mr. IRELAND. Now, if a sizable number of those converted and suddenly you are faced with the regulation of putting them overseas, do you anticipate any attempt to change that regulation?

Mr. REINHARDT. I would not, sir. I think that we would adjust by recruitment; we would adjust by attrition; we would adjust by the promotion system.

Mr. IRELAND. In theory, perhaps they got the best of both worlds. They have the better retirement, for instance, that you just mentioned, but they do not have either the hazard or the inconvenience of traveling overseas; and if they stay in, in theory they give up the hazard or inconvenience of traveling overseas unless the regulations change or they are exempted in some fashion. So, all of a sudden they would have to go overseas.

Mr. REINHARDT. You mean our regulation governing the tour of duty?

Mr. IRELAND. Right.

Mr. REINHARDT. If they opt for the Foreign Service, that regulation would apply to them; but they would know this to begin with.

Mr. IRELAND. I understand.

Mr. REINHARDT. They would have to make themselves available for worldwide assignment.

Mr. IRELAND. Right.

Mr. REINHARDT. If they did not opt for that, they would simply be in the civil service. They would have the benefit of the Foreign Service annuity system, that is correct; but we think that is only fair in light of the manner in which the FAS system was established.

Mr. IRELAND. I understand. Thank you.

Thank you, Madam Chairman.

Mr. FASCELL. Could I pursue this for just a minute? The thought occurs to me, you see, that we would not want to be faced with a negotiation after mandatory conversion that provides an exemption in the contract, exemption of the tour of duty requirement, for those people for their lifetime in the service, or for 5 years, or for the length of the contract. Do you follow me?

Mr. REINHARDT. I follow you.

Mr. FASCELL. We do not think that would be fair.

Mr. REINHARDT. That is correct, neither do I.

Mr. FASCELL. Now, frankly, I do not understand—I will a little later, I am still struggling with this and of course it is difficult because the individuals are not here and we have not heard from them yet, but they will be able to speak for themselves. But with voluntary time to convert until June 30, at which point it becomes mandatory, and considering that employees have 2 or 3 years to make a decision to convert to the Foreign Service or the civil service, and they have the ability to take the best of the retirement systems. I cannot understand what the hangup is. Could you enlighten me just a little bit so I will be ready when they testify?

Mr. REINHARDT. I am not sure I want to represent the union's views.

Mr. FASCELL. I am sure you understand what it is, and I do not know, frankly, just exactly what it is.

Mr. REINHARDT. Well, let me try again, sir.

Mr. FASCELL. All right.

Mr. REINHARDT. At the present time these so-called FAS employees, Foreign Service "domestic specialists" enjoy the following rights in common to all Foreign Service officers: They have rank-in-person; they participate in the Foreign Service retirement system; they have access to the Foreign Service grievance system, and on a kind of "grandfathered" basis all officers who were in the Foreign Service on September 24, 1975, have tax-free annuities if retired for medically determined inability to perform their official duties.

Mr. FASCELL. Now, what you are telling me now is, they want all of the Foreign Service benefits without having to serve overseas.

Mr. REINHARDT. Well, the fact is, sir, they have them.

Mr. FASCELL. I understand that, and they do not want to give them up. The election on conversion is retirement, is that correct? And then also the rank-in-person as against the rank-in-job.

Mr. REINHARDT. What they would lose would be the rank-in-person. They would lose access to the grievance system, and they would lose the tax-free annuity that they now have.

Mr. FASCELL. Yes; that is substantial. Now, that makes a little more sense. Let us examine this because unless there is some other way out—and I do not know right off the top of my head what that is—you are talking about 900 people at the rate of attrition, then, as I see it. How long a period are we talking about?

Mr. REINHARDT. We differ on this.

Mr. FASCELL. Who is "we"?

Mr. REINHARDT. Those of us sitting at this table.

Mr. FASCELL. OK. [Laughter.]

Mr. REINHARDT. Ms. Garcia thinks that this could last as long as 25 years. I think that she stretched it a little bit, but it would be a considerable period, 15, 20, 25 years. It would depend on the ages of the people.

Mr. FASCELL. Yes.

Mr. REINHARDT. Whether they retired, quit, what happened to them. But it would be a considerable period of time. In fairness to my State Department colleagues, this is what they do not like about the provision, and I can understand their position. Nevertheless, we have a binding agreement with the union and that makes it difficult.

Mr. FASCELL. Right, I understand that. Thank you very much.

Mrs. SCHROEDER. Congressman Leach.

Mr. LEACH. Sir, have you reviewed the results of the Hay Associates study and if so, do you have any opinion of it?

Mr. REINHARDT. I have not read the study. I know in general what it provides. I certainly do not have an opinion now. We favor the performance of the study. We do not know exactly how its provisions would apply to our agency, therefore I would like to submit an opinion later.

Mr. LEACH. I would appreciate that very much because that will be important. In light of a statement the President made recently, would you hazard an opinion on whether you have too many or too few employees overseas?

Mr. REINHARDT. We think it is about right, give or take a few. We have looked at this question very, very carefully on our own before the President made his recent statement and with minor excep-

tions we do not think that we are an "offending" agency in this respect.

Mr. LEACH. Thank you. I would like to share that opinion. I have certain biases about overseas posts, and one of those biases is that the Foreign Service information officers and your people have two things in common with the Foreign Service; one is that, in general, they get much more deeply into foreign cultures than Foreign Service officers do; second, they are a bit more of a creative mold, and maybe third, it always struck me that the power and strength of the United States today is very much in the cultural arena, and of all the things that we as Americans have to sell positively it is your job to do.

I would hope that you would be able to sustain any attempt to cut back on your overseas assignments.

Mr. REINHARDT. You are obviously a very keen observer.

Mr. LEACH. Let me ask you, do you feel there is any unique problem in your agency that is not addressed in this legislation that perhaps should be?

Mr. REINHARDT. Well, I think there are some problems in the Foreign Service—we mentioned a couple of them—affecting our agency and all other Foreign Service agencies, that legislation can address. The spouse problem that we have discussed, for example, is quite a problem and it has grown in the last 10 years.

The Foreign Service is no longer as attractive as it was—the fall of the dollar, for example; the unavailability of many of the amenities that were available over the last 20 or 25 years ago, that simply are not there any longer. You cannot address this by legislation.

It is obviously a more hazardous career than it was 20 or 25 years ago, terrorism and all the rest. And then, the general attractiveness of our own society has done something to the Foreign Service mentality. When I first came into the Foreign Service, the last thing that we generally wanted was for the personnel system to assign us to a Washington job; we wanted to stay overseas. In my own case, I was overseas about 11 years, I avoided a Washington assignment for 11 years. Some of my colleagues were even more successful.

This has changed. An officer and his family is now assigned to Washington and for some reason—many reasons, no doubt—they are not beating on the door of the personnel office seeking a foreign assignment. I submit there is not much you can do from your position about these and related problems. We are aware of them, and we work with diligence trying to overcome them. We are not always successful. But, legislation is not the answer.

Mr. LEACH. Thank you, that is a very, very powerful assessment of trends. Let me ask you on a slightly different subject. Do you support mandatory retirement at 60 and, if so, why?

Mr. REINHARDT. I do, sir. The Foreign Service is different, there is no question about it. That is the reason we have the Rogers Act of 1946 to begin with: he had recognized the difference between Foreign Service employment and Civil Service employment.

It provides for rank-in-person. That is a major feature of it, and I do not think that any time in the foreseeable future would we want to eliminate that. Once that provision is legislated as it is now, and

as it is proposed under this legislation, we have tremendous problems at the top, with the people who finally rise to the top. In our own agency, for example, in the last 2 years we have promoted no more than half a dozen people to grade 1. This is very tough on the officers who are at grade 4, and 3, and 2—they do not rise. Thus, the retirement provision enables them to rise more rapidly.

More importantly, it seems to me, one cannot demonstrate this with any mathematical certainty, but the older we get in the Foreign Service, the more we like to stay in Washington. Frankly, we have difficulty in assigning the 61-, 62-year-old officer to an overseas post. It is understandable from a human and personal point of view—he has a house; he has children that just finished college; he has grandchildren, and he is not eager to go 6,000 miles away and leave them. This is a demonstrable factor in the assignment process today.

Thus, I think if we did not have this provision in the law, we would have great difficulty administering the Foreign Service personnel system.

Mr. LEACH. Thank you, sir.

Mrs. SCHROEDER. Congressman Pritchard.

Mr. PRITCHARD. I have no questions.

Mrs. SCHROEDER. I have some questions, too; I will submit most of them for the record because you have been very patient, have been sitting here for quite some time.¹

I basically just wanted to get one thing clear for the record, there was a March 26 letter that you wrote to Mr. Read in which you said, "In short, I will not support any legislation which has a mandatory conversion feature in it." This morning you are now saying that you do support this legislation.

I am wondering what happened between March 26 and today. Was it the Office of Management and Budget? Was it other features of the bill that you did not look at, at the time. Why the change from the news letter that came out to this?

Mr. REINHARDT. There is not as much inconsistency there, Madam Chairperson, as you may think. This proposed legislation has evolved from about the 1st of January until the present time, and the proposed legislation that we saw in early January, as I recall, is entirely different from what is now before this House.

We modestly say that we were responsible for many of the changes. We had hours of discussions and negotiations with our colleagues in the Department of State. Thus, in very good faith we are able to support this bill, with the one exception that I have tried to explain. It is still in there, and indeed, our colleagues in the Department of State have made a special provision for our 900 employees. We do not think it goes quite far enough, as I have explained, but there has been no pressure from OMB; there has been no pressure from Secretary Vance; he knows that I am testifying as I am now, and he knows the great difficulty that we have with this conversion feature, for reasons that I have explained.

But you should look, I submit, at the proposal in January and compare it, or really contrast it with the proposal now before you—it is a different bill.

¹ The questions referred to appear in appendix 1.

Mrs. SCHROEDER. Do I also understand that you do not worry about the fact that in this bill it appears that the independence of ICA is going to be diminished? It appears that the Secretary of State will have a much greater—

Mr. REINHARDT. I am not sure how you are using the word "appear." There is a specific provision—if my colleagues can find it—early in the bill, that does not diminish the independence of the Agency. My colleagues tell me that it is section 202(d). "Nothing in this act"—the proposal says—"shall be construed as diminishing the authority of the Director of the International Communication Agency or the Director of the International Development Cooperation Agency."

Mrs. SCHROEDER. Then you interpret this as not strengthening the Secretary of State in relation to your agency.

Mr. REINHARDT. I think that it strengthens the hands of the heads of all agencies, including the Secretary of State.

Mrs. SCHROEDER. But you do not feel that it diminishes the independence of your agency at all in relation to the Secretary of State.

Mr. REINHARDT. As we read the bill, it does not. We would not favor the bill if it did.

Mrs. SCHROEDER. In your March 26 letter to Under Secretary Read again you said that, "The window for entry into Senior Foreign Service is unnecessary," and today you endorsed the bill's proposed Senior Foreign Service which has such a window. Have you changed your mind?

Mr. REINHARDT. No; the debate with our colleagues, with Mr. Read and others, was over whether there should be a narrow or wide window. We recognized that there should be a window. We argued that as it was first conceived—3 years, I believe—that was entirely too narrow. So, we recognize there certainly has to be some kind of window.

Mrs. SCHROEDER. Yes; and it is just how wide it was. Do you think it is now wide enough?

Mr. REINHARDT. Yes; it is wide enough for us to support it, I think.

Mrs. SCHROEDER. And again, you think there was a basic change from the bill that came out in January?

Mr. REINHARDT. Certainly from the basic bill that came out in January. That had it awfully narrow and gave the agencies little or no discretion in widening it.

Mrs. SCHROEDER. Do you have "whistle-blowing" provisions in the ICA?

Mr. REINHARDT. Yes, we do.

Mrs. SCHROEDER. I heard you mention something about spouses. Do you have a policy, also, of hiring spouses abroad?

Mr. REINHARDT. To the maximum extent possible. The maximum extent possible to date, I must confess, is not enough. We have a limited number of positions overseas—maybe Miss Garcia has the figure—we hired a certain number. That window is too narrow.

Mrs. SCHROEDER. Do you use your own foreign national slots, or are you allowed to ask the State Department for foreign national slots for spouses, and what pay scales do you use, do you use the foreign national pay scales, or do you use the U.S. pay scale?

Mr. REINHARDT. We use certain foreign national slots, and it is the foreign national pay scale that is used.

Mrs. SCHROEDER. But you only use your own foreign national slots; is that correct?

Mr. REINHARDT. That is correct.

Mrs. SCHROEDER. Have you thought of asking the State Department for some of theirs for this problem?

Mr. REINHARDT. It is not the number of slots that is the problem, it is the types of jobs that these jobs cover. These jobs go from chauffeur, typist-type work to senior foreign national advisers, and there are roughly 4,000 of them. So, it is not so much the number that bothers us as the type of employment that we must have. A spouse may not serve very well as a senior adviser to our staff, we obviously need a local person to do that, someone who knows the environment in which we work.

On the other hand, a spouse may or may not want a typing job, or any of the ones in between that we have to offer. So, the limitation is not the number but the type of work.

Mrs. SCHROEDER. Well, since it is also limited by the type of work, have you also looked to the State Department to find out if they have more of the kind and quality of job that you need.

Mr. REINHARDT. The State Department foreign national slots may very well provide some jobs of interest to our spouses—and vice versa. Our posts in embassies around the world are perfectly free to engage in this kind of interchange.

Mrs. SCHROEDER. What is ICA's record in hiring and promoting blacks, Hispanics, women, and other minorities?

Mr. REINHARDT. Progressive and encouraging as compared with 10 to 15, to 20 years ago. Approximately 11 percent of our officer corps is minorities; these positions are held by minorities.

Mrs. SCHROEDER. And by "minorities," you define that as Hispanics and blacks, or do you include women in there, too?

Mr. REINHARDT. I do not, mainly blacks and Hispanics, Asians, native Americans, the usual definition of "minority"—but mainly blacks and Hispanics.

Approximately 15 percent of our officer corps is composed of women. At the entering level, approximately 19 percent of the officers now entering the Agency are minorities, approximately 38 percent are women. We have made some progress. We certainly do not think that the "millennium" has arrived, 11 percent is a trifle short, we think. We shall continue.

Mrs. SCHROEDER. Again, I thank you very much for appearing, and I do have some more questions but I think I will submit them for the record in the interest of time. Does anyone else have anything he would like to add or subtract?

Thank you very, very much for appearing this morning.

Mr. FASCELL. Before you leave, Mr. Ambassador, could I ask you a question? What happens to lawyers, how many lawyers do you have and what happens to them?

Mr. REINHARDT. Here is one of them. How many lawyers do we have?

Mr. FASCELL. One?

Mr. REINHARDT. We have nine lawyers, sir.

Mr. FASCELL. Where are they in this new setup?

Mr. REINHARDT. They are domestic employees, civil service employees.

Mr. FASCELL. Under the bill?

Mr. REINHARDT. Maybe I had better let a lawyer answer your question.

**STATEMENT OF C. NORMAND POIRIER, DEPUTY GENERAL
COUNSEL, INTERNATIONAL COMMUNICATION AGENCY**

Mr. POIRIER. There are five in the Foreign Service as "domestic specialists."

Mr. FASCELL. You mean right now?

Mr. POIRIER. Yes, sir.

Mr. FASCELL. What happens to them in this proposed legislation?

Mr. POIRIER. They would be mandatorily converted under the proposed legislation.

Mr. FASCELL. "They," which ones?

Mr. POIRIER. The five who are in the Foreign Service would be mandatorily converted under the proposed legislation.

Mr. FASCELL. I see. Is this a special provision or general provision in this bill? I just have not caught up with it yet.

Mr. POIRIER. Well, those who are in the Foreign Service are there as "domestic specialists."

Mr. FASCELL. I see; so they would mandatorily be converted. Now, are you concerned about the quality of the lawyer who is either Civil Service or Foreign Service? I cannot tell the difference, myself.

Mr. POIRIER. No, I do not think that the system itself alters the quality of lawyer that we have.

Mr. FASCELL. And do you think that if they mandatorily all become Civil Service, that in some way is going to lower the quality, or the attractiveness of the job for lawyers?

Mr. POIRIER. No.

Mr. FASCELL. My experience in Washington is, you have to beat them off with a stick. [Laughter.]

Mr. POIRIER. At the present time the market for lawyers in Washington, as elsewhere, is very competitive. [Laughter.]

For those looking for jobs. [Laughter.]

Mr. FASCELL. You mean there are more lawyers than slots?

Mr. POIRIER. That is right.

Mr. FASCELL. Thank you.

Mrs. SCHROEDER. Again, thank you very much.

The next witness we have this morning is Robert H. Nooter who is the Acting Administrator for the Agency for International Development.

We welcome you, Mr. Nooter.

**STATEMENT OF ROBERT H. NOOTER, ACTING ADMINISTRATOR,
AGENCY FOR INTERNATIONAL DEVELOPMENT**

Mr. NOOTER. Thank you, Mrs. Schroeder.

With your permission and in the interest of time, I have a prepared statement which I suggest be submitted in full for the record. I will

only summarize some of the highlights and read a short portion at the end.

Mrs. SCHROEDER. That will be fine.

Mr. NOOTER. A lot of this material, of course, you have already been through. From the viewpoint of AID, the portions of the proposed legislation that are of special interest are these: First, the creation of a Senior Foreign Service to create a system comparable to the senior civil service; second the elimination of the Foreign Service staff category personnel and its separate pay scale, which creates an artificial distinction between that category of personnel and our other Foreign Service people; and third, revision of the Foreign Service pay scale to make it more compatible with the civil service scale and then permit convertibility between the civil service and the Foreign Service.

We do not have the problem which ICA has on the 900 FAS-type personnel nor that which State has with its FSRU and other special categories of people. We have not used those special categories in the past, and therefore those changes will not impact on our system.

I would now like to read the portion of my statement that has to do with the Obey amendment, about which we testified before you earlier this year. "The proposed new Foreign Service Act would not conflict with the Obey amendment or the regulations that AID submitted to the Congress on May 1 of this year in response to section 401."

This was the Obey provision. "Nor does this bill alter AID's commitment to the policy underlying section 401. Accordingly, AID, in filling Foreign Service-designated positions, will follow the regulations promulgated under that section 401. This means we will move toward a larger portion of our people in Washington being Foreign Service-related.

In conclusion, AID supports the bill and believes it to be an excellent set of authorities to enable us to employ our Foreign Service personnel in ways which can best achieve the objectives of our administration of the Foreign Assistance Act.

With that, I will be glad to answer any questions.

[Mr. Nooter's prepared statement follows:]

PREPARED STATEMENT OF ROBERT H. NOOTER, ACTING ADMINISTRATOR, AGENCY FOR INTERNATIONAL DEVELOPMENT

Madam Chairwoman, Mr. Chairman, and Members of the Committees: I am pleased to appear before these two subcommittees to testify in favor of the legislation proposed by the President, the Foreign Service Act of 1979.

We at AID regard this proposed bill as a long overdue effort to update the Foreign Service Act of 1946. The Secretary of State is to be commended for his leadership in guiding this bill, in all its complexities, through the Executive Branch and to the Congress for your consideration because it is a well-written, well-organized document that updates and revises the old law, and adds several new provisions that are consistent with the Administration's reform of the personnel laws governing domestic U.S. Government employees.

The proposed new Foreign Service Act is designed to provide the basic personnel authority for the employees who serve abroad for each of the foreign affairs agencies. These agencies include the Department of State, the United States International Communication Agency (USICA), the proposed new International Development Cooperation Agency (IDCA), and, to a more limited extent, the Peace Corps and the Arms Control and Disarmament Agency.

We support the concept of a single, comprehensive statute as the basic set of authorities for the personnel systems of all foreign affairs agencies. At present, AID utilizes the Foreign Service Act as the basic legislation governing its Foreign Service personnel. As one of the component agencies of IDCA, AID would be included within the coverage of the new law.

We believe that the basic concepts of the Foreign Service as enunciated in the proposed new statute are entirely appropriate for AID. These include the basic rank-in-person concept that is essential to a mobile Foreign Service; the commitment of Foreign Service employees to worldwide availability; the use of panels and boards for selection, evaluation, and assignment and the strongly held principle that merit and performance, fairly evaluated, are the basis for selection, advancement and tenure in the Service.

A shared set of legal authorities will help AID, the State Department, and ICA to collaborate—and to achieve the efficiencies that result from uniformity—in a number of areas in which, despite the diversity in the work of our several agencies, our needs and interests are similar. We now have joint regulations in a number of areas. We would expect that, operating under a new umbrella statute, this collaboration will continue.

We would expect, for example, to continue to have joint regulations covering travel, overseas allowances and benefits, and the transportation of people and their effects to posts abroad. We expect that language training and area specialty training will continue to be offered by the Foreign Service Institute for personnel of all foreign affairs agencies, and that State will continue to manage the Foreign Service retirement system for participants from all foreign agencies. There will continue to be a single Foreign Service Grievance Board to act on the grievances from employees of all foreign service agencies.

We are also pleased with the provisions in the bill for a single, simplified pay schedule for all Foreign Service personnel. This change will, in the first place, simplify and rationalize the pay system by bringing Foreign Service staff employees within the same pay schedule as other Foreign Service employees and eliminating the artificial distinction that now exists between Foreign Service staff employees and other Foreign Service employees.

It is particularly important for AID that there be maximum compatibility in the rules governing its Foreign Service and Civil Service employees. In testimony presented to the Civil Service Subcommittee on May 2, 1979, when I testified on this Agency's regulations implementing the "Obey Amendment" (Section 401 of last year's AID authorization act), I said that these two groups of employees are, in fact, interrelated and function—or should function—as a single unit. It was and is the Agency's intention, I testified, to encourage unified management of the Agency's personnel and to facilitate the conversion of employees from the Civil Service to the Foreign Service.

The proposed new Foreign Service Act would not conflict with the "Obey Amendment" or the regulations that AID submitted to the Congress on May 1 of this year in response to Section 401. Nor does this bill alter AID's commitment to the policy underlying Section 401. Accordingly, AID, in filling Foreign Service-designated positions, will follow the regulations promulgated under Section 401.

In conclusion, AID supports the bill and believes it to be an excellent set of authorities to enable us to employ our Foreign Service personnel in ways which can best achieve the objectives of our administration of the Foreign Assistance Act.

I will be happy to answer any questions you may have.

Mrs. SCHROEDER. Thank you very much, Mr. Nooter, we welcome you, and let me again refer to my distinguished colleagues, who were here first, for questions. Congressman Fascell?

Mr. FASCELL. I will pass right now.

Mrs. SCHROEDER. Congressman Buchanan.

Mr. BUCHANAN. Thank you, Madam Chairman.

I believe you heard a few moments ago my question to Ambassador Reinhardt pertaining to the time-in-class variations that could occur under this legislation, applying different regulations to the different agencies. I wonder if you would comment on that. Do you foresee a possibility for a bidding-up process?

Mr. NOOTER. We endorse the principal of a uniform statute covering the Foreign Service, but we think it is very important that there be the latitude for differences in time-in-class among agencies, just as within our own organization there would be different time-in-class

rules for different categories of people. We think there are variations in what is desirable in terms of the objectives of the different agencies because we possess different professional requirements, and hence, different employment categories. We have not tried to define in detail what those links would be, but we do very much endorse the idea that there should be separate agency leeway in terms of making these determinations.

Mr. BUCHANAN. Second, what have you done lately for spouses?

Mr. NOOTER. We have done some things, but this is a relatively new problem and we do not have all the answers on it. First, we have tried to be extremely liberal in adjusting our normal rules about employer-employee, or supervisory, relationships between employees and wives who may be working in the same organization. Our General Counsel's office has been very good in trying to devise ways in which personnel evaluation reports can be made, for example, without conflict of interest.

Second, we have encouraged our missions abroad to use whatever authorities they have, such as the personal services contracts, or personnel slots that might otherwise be filled by assignment action from Washington, to be filled by spouses at post. We have worked with the other agencies, State and ICA, in trying to work out arrangements with them. Just the other day we agreed to provide our missions additional leeway on the use of part-time slots so that these can be shifted between the foreign national and the U.S. categories for situations where spouses might be employed.

We have taken these steps. I do not know that they are going to be adequate for the problem we are going to have over the next 10 years, but we are trying to move in that direction.

Mr. BUCHANAN. I just have to say—I think that is true of you and the Department of State, and all agencies involved—that it is going to take some rather persistent encouragement, particularly in the missions and various places.

Mr. NOOTER. I will say, certainly, the policy of the Agency in these past 2 years has been to encourage that. We know it is important to have the broadest possible opportunities of employing spouses in the future because if we do not, it is going to be a major inhibition to overseas assignments.

Mr. BUCHANAN. Do you favor the mandatory retirement?

Mr. NOOTER. Yes, I do. For the Foreign Service I think it has a useful function.

Mr. BUCHANAN. Thank you.

Thank you, Madam Chairman.

Mrs. SCHROEDER. Thank you.

Congressman Leach, any questions?

Mr. LEACH. Let me ask—and with little bit of a preface—do you think that the AID workforce is appropriately balanced between overseas and home assignments? In asking this I am looking at the Appropriations Committee report of June 11 of this year which states:

AID has had an excessive number of full time American employees based in Washington instead of overseas, where the agency's prime mission lies. The majority of AID employees in the top policymaking positions has not had the overseas experience necessary to understand the complex problems of development in the world's poorest countries, nor are these employees available for overseas duty, which would give them that experience.

First, do you think you have about the right ratio today; and second, would you concur or dissent from the committee report?

Mr. NOOTER. Well, first, if I could quote John Reinhardt, I think we are just about right. Quite seriously, in the last several years we have been working on these issues very intensely and have been examining them while trying to reduce overall levels, in Washington particularly.

We are under pressure from many different directions on personnel level issues. We are under pressure from parts of the Congress to put more people overseas and have less in Washington. We are under pressure to reduce our overseas positions in line with the general feeling that there are too many official Americans abroad. That is a feeling that both the President and the Secretary have.

Mr. LEACH. Excuse me, let me ask you, is that true of AID? There is some concern on what the President meant. Do you think his statement was applying to AID?

Mr. NOOTER. I think his statement was applying to all U.S. Government agencies, including AID.

Mr. LEACH. All agencies?

Mr. NOOTER. That is my opinion.

Mr. LEACH. There is some divergence of opinion on whether he meant all.

Mr. NOOTER. I cannot speak for the President.

Mr. LEACH. Neither can we in Congress.

Mr. NOOTER. The application of the mode ceilings has applied to all agencies, and this is the instrument through which the President's policy direction has been carried out. It certainly has applied to us as well as others, as indeed it should.

On the other hand, we have been under pressure to increase overseas, for example, to have more auditors abroad in the interest of maintaining the integrity of our fiscal system, program responsibilities, and so on. We are constantly beleaguered from a number of sides on these matters.

I would say that we have reduced our Washington staff down about to the minimum size to permit us to carry on our responsibilities. We are trying to keep our field staffs down, but decreases will be at the sacrifice of programs—not necessarily in dollar terms, but in terms of the kinds of programs we will do. Decisions in that area really have to be made in regard to what it is we want to accomplish abroad. In other words, they are not only numerical decisions, they are also programmatic decisions.

On the other hand, there is a limit as to how far we would want to go, even if we had carte blanche, in putting direct-hire Americans abroad. A lot of our work can be done through cooperation with the Peace Corps, with contractors, or with private voluntary agencies. The major outreach that we get in countries abroad is through those devices, rather than through our direct-hire staff which tends to be more managerial and programmatic.

Mr. LEACH. I want to follow up quickly on the contracting-out issue. Are you finding you are increasingly relying on contractors, and is it more so abroad than here or is it more so here than abroad?

Mr. NOOTER. We do rely on contractors, but it is not such a new tendency. It is really a trend that started in 1968.

Mr. LEACH. Do you feel it is increasing, decreasing, or holding stable?

Mr. NOOTER. It is increasing and will continue to increase at least somewhat in the years ahead.

Mr. LEACH. Is this in part as a response to personnel ceilings?

Mr. NOOTER. Yes. I also think it is a functional solution. It has other virtues aside from that one. But that certainly is one of them.

Mr. LEACH. So, you are increasing contracting out because of the personnel ceiling.

Mr. NOOTER. Yes.

Mr. LEACH. Do you realize that is a violation of the law?

Mr. NOOTER. It depends on the function that is involved. I do not think that it is in violation of the law in the cases where we have done it.

Mr. LEACH. Section 311 of the Civil Service Reform Act of 1978 specifically stipulates that contracting out to get around the provisions of personnel ceilings is illegal.

Mr. NOOTER. Again, I would be happy to examine case-by-case instances where we contracted, and I think we can defend those cases.

Mr. LEACH. Let me just ask one other question. Are there any specific provisions relating to AID which were ultimately left out of this package? Are there any recommendations that you made that were left out which you could discuss with us this morning?

Mr. NOOTER. No; I think the package is comprehensive. We were involved in the discussions and took part in the deliberations and helped to shape the final package. It does represent compromises between different viewpoints, but that is the way any such arrangement would be expected to go.

Mr. LEACH. Thank you very much.

Mrs. SCHROEDER. Congressman Pritchard.

Mr. PRITCHARD. I noticed in your hiring of spouses, it seems to change or seems to vary quite a bit from one country to another, one post from another. Does that mean that you allow a lot of flexibility, or is it just that you are not able to have everybody follow the same guidelines?

Mr. NOOTER. When you run a worldwide system in which there is a great deal of delegation of authority to field posts around the world, there will be differences as to where available and qualified spouses may be used.

Mr. PRITCHARD. Sure.

Mr. NOOTER. I have not heard feedback or complaints that certain posts were failing to carry out the guidelines. That may be the case, but it has not come to my attention.

Mr. PRITCHARD. Well, of course, there is interpretation here, that has to go along.

Mr. NOOTER. Right.

Mr. PRITCHARD. This does seem to be a terribly important thing to officers overseas, the happiness of their family and the well-being of the economic structure of their family as to jobs.

Mr. NOOTER. At the same time, we do have an obligation to see that when those hiring choices are made, they are functional.

Mr. PRITCHARD. Absolutely.

Mr. NOOTER. We are not simply running a welfare operation, it does have to be for a functional purpose.

Mr. PRITCHARD. That is right. But as a group, I find you have a lot of very talented wives overseas.

Mrs. SCHROEDER. Will the gentleman yield?

Mr. PRITCHARD. Yes.

Mrs. SCHROEDER. How about husbands?

Mr. PRITCHARD. Well, I have not had the complaints from the husbands on that score.

Mr. NOOTER. Our new mission director in India happens to be a woman, and she will be accompanied by her husband who is at the moment, as I understand it, not employed.

Mr. PRITCHARD. In so many cases they are lawyers, and they do not seem to have much problem getting a job. [Laughter.]

You are fairly satisfied, then, with this package?

Mr. NOOTER. Yes.

Mr. PRITCHARD. I have no further questions.

Mrs. SCHROEDER. Congressman Fascell, have you thought of some questions?

Mr. FASCELL. Oh, yes. Thank you.

Mrs. SCHROEDER. I knew you would not disappoint us.

Mr. FASCELL. I just caught up with the statement. With respect to the response by the Agency to the Obey amendment and the fact that this proposed law before us would not in any way alter the Obey amendment, the publication of the recent regulations complying with the Obey amendment is in no way contradictory to the pending legislation. I think that is what you said in your statement, is that correct?

Mr. NOOTER. That is correct.

Mr. FASCELL. I gather, therefore, that somebody—one of your “legal eagles”—has made a point-by-point comparison of the published regulations as against this proposed legislation. Is that correct? In other words, you have to have some basis for the statement you just made. Right?

Mr. NOOTER. That is correct.

Mr. FASCELL. OK, to save us a lot of time, we would like to have a copy of that point-by-point comparison so we can see if your “legal eagle” is right.

Mr. NOOTER. Let me have that submitted for the record. If it is not in the form that does exactly what you said, we will prepare it.

Mr. FASCELL. OK because I read part of these regulations and if anybody can understand them, it is amazing.

After positions are designated, as vacancies occur only Foreign Service employees will be allowed to fill Foreign Service-designated positions except if the number of non-Foreign Service incumbents is less than 10 percent, other than Foreign Service employees may fill up to 10 percent of the FS-designated positions.

I guess it has a meaning, and that meaning is not contradictory to what is in this law.

Mr. NOOTER. That is correct.

Mr. FASCELL. Good, I will be glad to see that.

[The information referred to follows:]

COMPARISON OF THE OBEY REGULATIONS WITH THE PROPOSED FOREIGN SERVICE ACT OF 1979

This memorandum compares the regulations submitted to Congress on May 1, 1979 under section 401 of the International Development and Food Assistance

Act of 1978 (Public Law 95-424) (hereinafter the "Obey regulations") with the draft of the proposed Foreign Service Act of 1979 dated June 20, 1979 (hereinafter the "bill"). We conclude that there are no conflicts between the provisions of the two.

1. Section 220.01 of the Obey regulations is a citation of the authorities pursuant to which the regulations are promulgated. Those authorities are section 401 of Public Law 95-424 and section 625 of the Foreign Assistance Act of 1961, as amended. Subsection (d) (2) of section 625 authorizes the Agency for International Development (AID) to employ Foreign Service personnel pursuant to the provisions of the Foreign Service Act of 1946.

The bill would repeal both section 625(d) (2) and the Foreign Service Act of 1946. The bill would not repeal section 401 of the International Development and Food Assistance Act of 1978, however. That section is full and sufficient authority for the promulgation of the Obey regulations. Furthermore, section 202 of the bill would replace the authority of section 625(d) (2) of the Foreign Assistance Act of 1961 by authorizing the Director of the International Development Cooperation Agency (IDCA) to utilize the authorities of the Foreign Service Act. This new legislation would also be sufficient authority for the promulgation of regulations in terms identical with the Obey regulations.

2. Section 220.02 of the Obey regulations is a statement of purpose, i.e., to extend the Foreign Service personnel system to all employees of AID, both in the U.S. and abroad, who are responsible for planning and implementing AID's overseas programs. The Obey regulations would not affect the provisions of existing law, or of section 531 of the bill, that requires Foreign Service personnel to be available for world-wide assignment. The regulations are therefore consistent with the bill in this respect. Furthermore, the statement of policy in the Obey regulations is supportive of the general objective of the bill (see section 101(b)) to strengthen and improve the Foreign Service.

3. Section 220.03 of the Obey regulations defines "AID" and the "Administrator" of AID. These terms are not used in the bill.

4. Section 220.04 of the Obey regulations: Subsection (a) restates the authority to designate and classify positions as Foreign Service positions. This authority currently exists in section 441 of the Foreign Service Act of 1946, and would continue to be available to the AID Administrator (through the Director of IDCA) by means of section 501 of the bill.

Subsection (b) requires designation of each position in AID and provides the criteria for the choice of designation between General Schedule (GS) and Foreign Service (FS) positions. The bill is silent on the criteria for position designation, and there is, therefore, no inconsistency between the Obey criteria and any provision of the bill. In fact, even if there were no Obey regulations, the authority of section 501 of the bill is sufficiently broad to permit the Director of IDCA or the Administrator of AID in the exercise of administrative discretion to designate positions according to the criteria specified in the Obey regulations.

Subsection (c) provides that positions designated as Foreign Service positions in accordance with subsection (b) may be occupied (after the current incumbent leaves the job) only by Foreign Service employees, except that 10 percent of the Foreign Service designated positions may be filled by other than Foreign Service employees. The comparable section of the bill, section 511(b), does not include this requirement. Instead, it provides only that Foreign Service positions will "normally" be filled by members of the Foreign Service. Again, though, the provision of the bill is broad enough to allow a more specific and stringent requirement to be followed in the exercise of administrative discretion. Under 511(b) AID could do by implementing regulations what the Obey regulations require.

Subsection (d) provides that Foreign Service employees on rotation assignment to Washington may serve in GS-designated positions as well as FS-designated positions. The bill also allows this by means of section 521.

Subsection (e) provides that GS employees of AID will be encouraged to convert to the Foreign Service, so long as they are willing and qualified to meet all criteria for service in the Foreign Service, including world-wide availability. This subsection is entirely consistent with the requirements of the bill (sections 2101 and 2102) with regard to conversions into the Foreign Service.

5. Section 221.01 of the Obey regulations extends the limitations on initial assignments in the U.S. from two to three years. The two year limitation exists in

section 625(d) (2) of the Foreign Assistance Act, which would be repealed by the bill. Since the bill normally allows up to eight years for tours in the U.S. (section 531), a three-year rule is well within the limits established by the bill.

6. Section 221.02 of the Obey regulations restates the authority of the Administrator to provide tours of duty in the United States and to provide for rotation of assignments subject to section 933 of the Foreign Service Act of 1946. The citation to section 933 will be made out of date by the bill, but the bill has a savings clause (section 2402) which automatically updates such references.

Section 531 of the bill also allows tours of duty in the U.S., with a maximum of eight years for the length of the tour in normal circumstances. The Obey regulations specify no maximum length of rotational tour in the U.S., but the bill's eight-year rule of thumb is consistent with the administrative practices AID could be expected to follow regardless of legislative requirements.

Section 511 also provides for the transfer of employees between assignments in a way completely consistent with section 221.02 of the Obey regulations.

7. Section 221.01 of the Obey regulations provides a savings clause for existing regulations and authority to promulgate implementing regulations. Sections 2402 and 201, respectively, of the bill provide for the same things.

8. Section 222.02 of the Obey regulations provides a severability clause with respect to the construction and interpretation of the regulations. Section 2401 of the bill has the same kind of provision.

9. Section 222.03 of the Obey regulations provides for an effective date of October 1, 1979. Since there is no inconsistency in substance between the Obey regulations and the bill, the bill's later effective date (January 1, 1980 according to section 2404) will not affect the implementation of the Obey regulations.

Mr. FASCELL. Now, how many people do you have now in the agency?

Mr. NOOTER. We have about 3,600 full-time, direct-hire American employees and about 2,000 local, foreign national employees.

Mr. FASCELL. 3,600 and 2,000, is that the number?

Mr. NOOTER. Correct.

Mr. FASCELL. The total is 5,600.

Mr. NOOTER. Yes, sir.

Mr. FASCELL. Now, how many in the United States and how many overseas?

Mr. NOOTER. About 2,100 in the United States and about 1,500 overseas.

Mr. FASCELL. 2,100 in Washington, 1,500 overseas, that is American personnel. The other 2,000 are all overseas.

Mr. NOOTER. Yes, sir.

Mr. FASCELL. Now, the Agency's high point in terms of employment of people was in what year?

Mr. NOOTER. I believe it would have been 1968.

Mr. FASCELL. What was the employment at that time?

Mr. NOOTER. About 17,000.

Mr. FASCELL. In 1968. So, in 10 years, in other words, by RIF's and attrition, you are down to 3,600 people.

Mr. NOOTER. 5,600, including foreign nationals.

Mr. FASCELL. You count them all, I see. So in 10 years you have had a one-third reduction.

Mr. NOOTER. A two-thirds reduction, and we are down to about one-third.

Mr. FASCELL. I mean a two-thirds reduction.

Mr. NOOTER. Right.

Mr. FASCELL. And that was managed what, in three basic RIF's over a period of years?

Mr. NOOTER. It was mainly managed through attrition. The RIF's accomplished some portion of it. There were three RIF's of U.S. personnel; there were individual terminations in missions of foreign national employees; the balance was through attrition.

Mr. FASCELL. I see. What is the present planning with respect to the Agency, personnelwise? Is it simply attrition for reduction; holding the line; increases?

Mr. NOOTER. Our present understanding with OMB is that we are essentially on a plateau. In other words, our personnel ceiling of 5,760 has been roughly the same for the last 2 years, and we expect it to be the same out into the next couple of years.

Mr. FASCELL. Now, the proposed reorganization of IDCA, does that change matters? I guess all of you have looked at that in terms of both complying with the Obey amendment and this new law.

Mr. NOOTER. Yes.

Mr. FASCELL. There is no change, or there is a change?

Mr. NOOTER. It would have some impact on the way the authorities are delegated. Where now AID's authorities come through the Secretary of State, under the new arrangement the authorities would go through the Director of IDCA to the AID Administrator.

Mr. FASCELL. Do you have an analysis of that?

Mr. NOOTER. We could submit something for the record that would clarify it.

Mr. FASCELL. Would you be kind enough to do that, so we have a clear understanding of the relationship of AID and IDCA as it applies to personnel and so forth?

Mr. NOOTER. We will.

[The information referred to follows:]

PERSONNEL AUTHORITIES FOR IDCA AND AID

At the present time, the Agency for International Development (AID) is an agency within the Department of State. Its authority to employ Foreign Service personnel and use the authorities of the Foreign Service Act of 1946 comes from section 625(d)(2) of the Foreign Assistance Act of 1961, as amended. In E.O. 10973, the President delegated the authority of section 625(d)(2) to the Secretary of State and in State Department Delegation No. 104, the Secretary of State redelegated such authority (with certain exceptions) to the Administrator of AID.

Under Reorganization Plan No. 2 of 1979, the International Development Cooperation Agency (IDCA) will be created as an independent agency with several component agencies, including AID. Concurrent with the establishment of IDCA, E.O. 10973 will be superseded by a new Executive Order delegating most of the Foreign Assistance Act functions to the Director of IDCA.

If the proposed Foreign Service Act of 1979 is not enacted, section 625(d)(2) of the Foreign Assistance Act will remain the basic authority of the foreign assistance agencies to employ Foreign Service personnel. It is expected that this authority will be delegated by the new Executive Order to the Director of IDCA to be exercised in consultation with the Secretary of State. The Director of IDCA, in turn, will redelegate the authority to the Administrator of AID.

If the proposed Foreign Service Act of 1979 is enacted, section 625(d)(2) of the Foreign Assistance Act will be repealed and section 202 of the new law will give the Director of IDCA direct authority to use the authorities of the Foreign Service Act without the need of a delegation by Executive Order. Under section 201 of the proposed law, the Director of IDCA will be able to delegate his personnel authorities to the Administrator of AID.

The regulations submitted to Congress in response to section 401 of Public Law 95-424 (the Obey regulations) will be applicable to AID whether it is under

IDCA or under the State Department and whether or not the proposed Foreign Service legislation is enacted. The Obey regulations are not applicable to any other agency of the U.S. Government.

Mrs. SCHROEDER. I have several questions about the implementation of the Obey regulations and how they are going. Have you designated many of the positions yet?

Mr. NOOTER. We are working on it. The designation is supposed to be carried out October 1, and staff work is going on leading to those decisions.

Mrs. SCHROEDER. Are you consulting with the unions as you go through this?

Mr. NOOTER. Let me ask Mr. Parsons because he is working with them.

STATEMENT OF RICHARD W. PARSONS, DEPUTY DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, AID

Mr. PARSONS. We have just finished a pilot study establishing criteria for designating positions. This is completed and we are just now setting up meetings, our first meeting, with the bargaining units to discuss this and to continue our discussion with the bargaining units as we go along designating the positions; all of which will be completed by October 1.

Mrs. SCHROEDER. I have some questions following up Congressman Leach's question about how many people were in the United States versus how many people were abroad, I think, you said you had the Washington staff down to about as tight a group as you could have, and you did not think you had too many abroad.

Yet, I look at that 2,100 versus 1,500. It is an interesting phenomenon. What do you figure it takes in Washington for every person in the field?

Mr. NOOTER. First, there are a number of functions in Washington that can only be carried out in Washington. Therefore, the ratio that you are talking about would only refer to what you would call "support people" in regard to "field people." I do not know exactly what part of our staff would be, but it would be a fairly small part of the Washington staff. It would be the administrative backup, managerial backup, and so on.

But a large part of the Washington operation is simply carrying out functions which are required to be done here more or less irrespective of the number in the field. This operation might have some relationship to the overall size of the program, but it is not composed simply of support positions for field operations.

Mrs. SCHROEDER. You mean they are just almost departmental positions, such as running your personnel department?

Mr. NOOTER. Yes. Some portion of the personnel office would of course relate to the number of people in the field. I was thinking more along the lines of our research activities. For example, if the Congress indicated it would like us to work on energy programs, to start those programs we need to do a certain amount of work in Washington to analyze the problems, find out what technologies are available and appropriate, and begin to create the information base before ac-

tivities could start on in the field. There are other activities having to do with the Congress that have to be done here. There are certain worldwide programing activities. There is a certain amount of financial management backup, such as running our payrolls, accounting, financial systems which would not make any sense to have individual missions perform these functions because they are much more efficient to do here.

All of these things tend to dictate the solution. We have already pressed on this. We have lowered the Washington number from about 2,300 to 2,100 in the last 2 years. We were under great pressure to do so. We would have liked to go lower, and indeed we set our planning target much lower originally. We simply found, however, that on a functional position-by-position review it either did not make sense to move the position overseas or abolish it, or that such action could not be accomplished without serious inhibitions to Agency functions.

Mrs. SCHROEDER. So, you find that a bare minimum?

Mr. NOOTER. I do.

Mrs. SCHROEDER. This bill that we have in front of us, that we are talking about today, mandates mandatory conversion of "domestic only" Foreign Service personnel to civil service. As I recall, you had rejected such an involuntary conversion of your personnel before. Why have you changed your position?

Mr. NOOTER. There is no mandatory conversion involved for AID in this proposal. We do not have people in that category as ICA does. I am really not familiar with the nature of those problems or the difficulties they have. I heard, of course, Mr. Reinhardt's testimony today.

Mrs. SCHROEDER. You escaped.

Mr. NOOTER. We escaped.

Mrs. SCHROEDER. Well, that is a good reason not to take a position. I assume AID does have a "whistle blower" provision.

Mr. NOOTER. Yes; as provided in the general Civil Service Act.

Mrs. SCHROEDER. What has been your experience with the selection out for substandard performance in AID?

Mr. NOOTER. We used selection out until about 8 years ago. We dropped it at that time, as the Department of State did. They recently reinstated it in the last year or two, although we have not. There are certain legal inhibitions to selection out as it used to be practiced, which State believes they have resolved. We are looking at the current selection-out guidelines we have in our regulations, but we have not reinstated it.

Mrs. SCHROEDER. Will you reinstate it when this bill is passed?

Mr. NOOTER. I expect that we will, but it is a provision that each agency will have the option to review and consider implementing, depending on its appropriateness for its particular service.

Mrs. SCHROEDER. Do you feel this bill at all strengthens the Secretary of State and thereby reduces the autonomy of AID?

Mr. NOOTER. No; our understanding is that each agency would be able to adapt the statute to its own requirements similar to what is done now. The statute is drawn somewhat more narrowly, but the restrictions would come from the statute, not from the role of the Secretary.

Mrs. SCHROEDER. I have a lot more questions, but I think I am going to submit them for the record in the interest of time, and the fact that we are in session.

Mr. Pritchard, do you have further questions?

Mr. PRITCHARD. No questions.

Mrs. SCHROEDER. I thank you very much for appearing this morning. We appreciate your insights into this, and it certainly will be an exciting summer to work through this bill. Thank you.

Mr. NOOTER. Thank you.

[Whereupon, at 11 a.m. the subcommittees adjourned, to reconvene at the call of the Chair.]

THE FOREIGN SERVICE ACT

MONDAY, JULY 9, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees met at 2 p.m. in room 2127, Rayburn House Office Building, Hon. Patricia Schroeder (chairwoman of the Subcommittee on Civil Service) presiding.

Mrs. SCHROEDER. Today we hear from employee organizations representing Federal employees in the Department of State, the Agency for International Development, and the International Communication Agency. The drafters of this legislation have consulted with the American Federation of Government Employees and the American Foreign Service Association.

Consequently, some of the more abrasive proposals have been smoothed down. Still, profound and serious disagreements remain on certain elements of the bill.

I am committed to strong labor-management relations in the Federal Government. I believe that Government is more productive, more efficient, and more humane if workers believe that they have a significant role in shaping their own working environment. Hence, I do not think that Congress should override lightly the wishes of employees in its consideration of this legislation.

Our first witness is Mr. Stephen Koczak of the American Federation of Government Employees, AFL-CIO.

We welcome you and we will be delighted to hear what you say. Would you introduce the people accompanying you and maybe you would like to summarize your statement and we will put it in the record in toto.

STATEMENT OF STEPHEN KOCZAK, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. KOCZAK. Madam Chairwoman, Mr. Chairman, Mr. Blaylock, whose testimony this is, asked me to convey his apologies for his absence today. He had to change his agenda unexpectedly and he has asked me to obtain your permission to make a statement on his behalf, if that is agreeable to you. Before proceeding, I should like to introduce the persons who would have been accompanying him, who are here today with me. They are Mr. Henry Cope from local 1534

at the State Department, the Agency for International Development, and the Overseas Private Investment Corporation; Mr. Sig Moody, Vice President of the same local, also to my immediate left. To my immediate right Mr. Abe Harris, president of local 1812 at the International Communication Agency and at the extreme left, Ms. Mary Jacksteit, staff counsel for that local.

I do appreciate your invitation to have our statement put completely into the record. I think it runs to something like 110 pages and we will try to summarize the salient portions of it. Perhaps the easiest would be to recite the table of contents, because we will try to skip some elements, to place emphasis on those portions which the Government witnesses, the administration witnesses have overlooked. That might be one way we can focus on those matters at dispute.

The table of contents basically goes to the subject of decline of the foreign affairs agencies in foreign policy formulation; the very important subject of labor management relations; the issue of the Senior Foreign Service, pay comparability, specific proposals on retirement and selection-out; and a series of special problems primarily at International Communication Agency. Most important of these ICA problems is the foreign affairs specialist program about which there is a great deal of misunderstanding on the part of those administration witnesses who do not represent ICA management.

Then we would like to discuss the autonomy of the U.S. International Communication Agency and what we say about its role applies equally to the Agency for International Development.

The Voice of America, we believe, needs some attention as well in this legislation—its broadcasting missions and personnel policies, fringe benefits for its employees (especially those serving with Radio Free Europe/Radio Liberty), and retirement equity for a few people who had served as binational center employees for what was then the U.S. Information Agency. Then we discuss the subject of spouses overseas, ICA and AID, and how they do not receive the same consideration in posts abroad as spouses of the Department of State employees overseas.

We have introduced the special problems of the Agency for International Development, particularly problems which have arisen under the so-called Obey amendment which gives us a great deal of concern because the Obey amendment's purpose ostensibly was to see to it that more people went abroad. It is not achieving that purpose because of the ceiling placed by the Secretary of State on AID personnel who can be assigned abroad and not a single additional position will be established abroad. All this amendment in effect unintentionally does is create the equivalent of domestic-Foreign Service at home because the only positions that are going to be identified and sequestered will be those at home.

At the present time at the Agency for International Development all positions are available for being encumbered by anybody. The most qualified person, Foreign Service or civil service, can get that position. Under the new regulations they will be segregated and if you are in a Foreign Service you are able to get it automatically without merit competition. In effect it exempts these positions for affirmative action statutes and from upward mobility programs.

We think it sets up unnecessarily a caste system which does not exist at the Agency for International Development today while failing to achieve its primary purpose, which is to get people abroad. That is the peculiar irony of this whole situation.

We hope you could address that ironic anomaly because it does touch on the whole subject of the limited role of the Department of State in its relation to the other Federal departments (such as Agriculture and Commerce) that want to send people abroad and are able to do so while and in fact ICA and AID are unable to send their own professionals abroad under ceilings set by the Secretary of State.

With that, I would like to proceed to a more systematic summary of our statement emphasizing those issues which are in dispute and about which we think there has been considerable misunderstanding.

Mr. FASCELL. That list you just read, is that a summary of the points you intend to cover now?

Mr. KOCZAK. No, of the basic document.

Mr. FASCELL. So that summary of agenda that you read covers what is in this statement.

Mr. KOCZAK. Yes.

Mr. FASCELL. I wanted to be sure.

Mr. KOCZAK. We are in fundamental disagreement with the proposed legislation to amend the Foreign Service Act, which we believe is inadequate and regressive.

Legislation to reform the foreign service system should be addressing fundamental problems which concern those interested in the foreign policy of the United States. These problems are due in part to institutional fragmentation of our foreign policy and of our presence abroad.

The traditional foreign affairs agencies, Department of State, AID, and ICA collectively represent less than one in three persons serving overseas. They are threatened with even greater encroachments from the Departments of Agriculture, Commerce, Energy, and the Treasury, in addition to the burden of their continuing task to accommodate personnel of the Central Intelligence Agency.

We petition your two committees to assess and to increase the strengths of the traditional foreign affairs agencies to meet the challenges to U.S. prestige abroad and the international crises which will arise in the future. Unless the present trend to fragmentation is reversed, our moral and political national leadership, we fear, will falter worldwide.

It is from this most universal and fundamental point of view that we offer our comments today.

Any reforms undertaken should serve as a model for the operation of all programs involving American Government employees abroad. Most of all, any reform should preserve the essential safeguards which have been accorded to the Foreign Service after years of struggle and tragedy and serve to increase, rather than diminish, the ability of employees and management to work harmoniously with collegiality and without confrontation.

In addition, legislation can and should address the issue raised by the Director of USICA of the growing reluctance of Foreign Service employees to serve abroad, due to the financial burden, the increased

dangers from terrorism, and the growing dilemma posed by the employment needs of spouses.

It is in an attempt to respond to these problems that we propose, in our testimony, basic changes in Foreign Service retirement and compensation—first, to insure true comparability of pay not only by a realistic linkage of civil service and Foreign Service scales, but also by provision for a 15-percent nontaxable allowance for availability for worldwide duty with a \$2,000 minimum and \$5,000 maximum; and, second, to make Foreign Service retirement equivalent to that of other Government employees in hazardous and stressful occupations such as air traffic controllers, by increasing the computation to 2.5 percent for the first 20 years of service.

It is also in this spirit that we oppose chapter 10 of the legislation and request inclusion of Foreign Service employees under the labor-management provisions of title V while retaining existing bargaining units and the present Foreign Service grievance procedures.

And, finally, it is out of this concern for increasing the effectiveness of the Foreign Service and not out of a fear of change or innovation that we criticize the proposed Senior Foreign Service as sacrificing minimal employee protections for alleged management flexibility without regard to the obvious and serious implications of arbitrariness and partisan politicization as it is perceived very clearly by the members of the Foreign Service.

We should like to call to your attention that the administration proposed precisely this very same formula for the civil service senior executive service, but the Congress, in its wisdom rejected it for a better formula which is now law. We invoke the same congressional wisdom for the Foreign Service as well.

With specific regard to the Agency for International Development, we reiterate our view that the personnel "Regulations" submitted in ostensible compliance with the so-called Obey amendment, are illegal and mischievous. We object to the "caste" system which they are designed to achieve. We are attaching to our testimony on this subject our complete statement before the House Subcommittee on Civil Service of May 2, 1979.

There are many more specific and important issues raised by the proposed legislation which we have dealt with in some length in our testimony. In the interest of time, we will not review them now but invite any questions you may have.

However, there is one issue which requires some discussion because it is apparent that there is a substantial degree of misunderstanding relative to it. I refer to the issue of the domestic Foreign Service employees of the International Communication Agency who are covered by a negotiated agreement between that Agency and our local 1812

Initially, we would like to reiterate that AFGE energetically opposed the so-called foreign affairs specialist program which was designed by the Department of State to bring domestic based employees, in fact all Agency employees above the GS-7 level, into the Foreign Service, irrespective of availability for worldwide service.

We sued, unsuccessfully, to block its institution gaining only a delay in implementation. When the preliminary injunction was lifted by the court and the Agency, then USIA, proceeded again to implement

the program, many, if not most, of the civil service employees joined FAS.

This is because it was made clear that in no other way would further advancement or promotion be possible. According to the rules established by the Agency, these employees after 3 years became participants in the Foreign Service retirement and disability system.

Within a brief time, the weaknesses of the program became apparent, even to management. A new administration in USIA finally proposed that the program be brought to an end. Local 1812 heartily agreed and together union and management negotiated a way to phase out the program in a manner preserving the rights of all parties: First, the Agency stopped hiring FAS employees and agreed to bring all new domestic employees into the civil service. Second, selection boards ceased to decide promotions and FAS employees were brought under a new merit promotion plan incorporating civil service principles and applying to all domestic employees. Third, FAS employees were offered the opportunity to convert back to civil service by a transfer to the civil service retirement system. With regard to voluntary conversion, the Agency wanted a cutoff date for employees to make their decision and the union agreed to make that date June 30, 1981.

With regard to other elements of the agreement—the voluntary nature of conversion, the merit promotion procedures, et cetera—these the parties intended to continue beyond June 1981 unless other terms were agreed to.

Since the date of this agreement, many employees have converted to the civil service and, by this means, and through attrition, the number of FAS employees has begun to decrease. It was in the midst of this process that we received the State Department proposal to force conversion to the civil service of not only its employees but those at USICA as well.

We objected and still object to this effort to cancel a negotiated agreement by legislation—an agreement based on the good faith judgments of both the union and management that a voluntary conversion system is likely to do the least amount of violence to both the rights and sensibilities of a group of employees who are wearied by a succession of personnel experiments undertaken at their expense and never in their interests.

I would be pleased at this stage, in the interest of time, if you would like to address your questions to us—alternatively, we could proceed to the section on the labor-management relations which we believe could best be served, in the interest of all parties, by having all members of the Foreign Service come under title VII of the Civil Service Reform Act of 1978.

[Mr. Blaylock's prepared statement, presented by Stephen Koczak, follows:]

STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, PRESENTED BY STEPHEN KOZAK

Madam Chairwoman, Mr. Chairman, distinguished members of the House Foreign Affairs and House Post Office and Civil Service Committees, I am most gratified to have this opportunity to testify on matters affecting the personnel of the foreign service and the civil service of the United States. I believe it is an auspicious occasion that both committees of the House of Representatives are joined in this enterprise. Under these conditions, the dreadful segregation of these services may begin to be eliminated and the needs of the United States and of its personnel seen from a larger perspective.

Our union represents approximately 25,000 Federal employees whose missions are involved with U.S. foreign policy or U.S. physical presence overseas. We are the exclusive representative of all employees, civil service and foreign service, in the International Communication Agency. We represent all the civil service employees in the Agency for International Development and some civil service employees in the Department of State. We have a separate Council of Foreign Affairs Employees to coordinate our representation at these so-called Foreign Affairs agencies. In addition, we have an entire District, the Fifteenth, within whose jurisdiction are those employees overseas of all the U.S. Federal Departments, including employees in the Panama Canal area, Germany, Italy, and other foreign countries for whom we have won exclusive representation. Thus, our membership is fully cognizant of the importance and wide ramification of foreign affairs in our national life.

I have reviewed our involvement in foreign affairs so extensively primarily because I shall be commenting on the proposed draft for the Foreign Service Act of 1979 from that very broad perspective.

Seen from this perspective, the Administration's proposals are disappointing and reactionary. They incorporate time-worn procedures for promoting, selecting and managing employees with new concepts so ill-advised and destructive that we do not wonder that the legislation has been pursued with such haste. Certainly we do not oppose reform and change. But we believe that this bill should, as the Civil Service Reform Act did, seek a balance between management flexibility and protection of merit principles and employee rights. The bill in its present form does not present such a balance.

I earnestly beseech you, with the expertise you have available to this joint undertaking of two Committees, to consider the rare opportunity you have to draft Foreign Service legislation. The Foreign Service Act has not been re-written since 1946 and whatever is put in law at this time is likely to be with us another 30 years. We do not believe that the bill submitted by the Department is something we or the members of the Foreign Service want to live with.

THE DECLINE OF THE "FOREIGN AFFAIRS AGENCIES"

One fact which reveals the disintegration of our foreign policy structures is the ratio of career foreign service personnel at our missions abroad. Generally speaking, the Department of State asserts that only 1 in 4 persons are subject to the jurisdiction of its own foreign service; adding ICA and AID, the ratio is no more than 1 in 3. This issue is not in any way addressed by the bill.

Without quibbling over the number, the consensus is that the State Department has become a glamorous travel agency, providing support services for all the other Federal departments abroad.

Some of this problem, but increasingly of less importance at this juncture is the role of the Central Intelligence Agency both in Washington, D.C. and in the diplomatic and consular missions abroad. Of far greater threat are the present ambitions of such other Federal agencies as the Department of Commerce and the Department of Agriculture, which wish to operate abroad without direct personnel involvement of members of the traditional foreign service of the United States.

With this extraordinary fragmentation of authority in Washington and in the missions abroad, the energies of our Ambassadors have been dissipated so deeply that it is hardly surprising that they have not been able to respond in a timely manner to anticipate such crises as the Iranian debacle, the disasters we have suffered in Angola, Ethiopia, Somalia, the current Nicaraguan civil war. Unless this dreadful dissipation of energy is stopped, they will not be able to respond in a timely fashion to the brewing crises in, among others, Morocco, Yugoslavia, Albania, South Africa, the Middle East, Central America, Cambodia and Thailand, and the overwhelming challenges to world order arising from the extraordinary dislocations of trade and commerce resulting from the civil and international wars all over the world which now are a daily occurrence.

I submit to you that this is the prospect which you should bear in mind when drafting new legislation for the foreign service. The Department bill is lengthy and many of its provisions deserve specific comment. In the interest of time, we will focus our testimony on major areas that concern us. As attachments to our testimony we will attach our sectional commentary as Annex I and material dealing with other major areas of concern which we would like to bring to your attention.

LABOR-MANAGEMENT RELATIONS

It is evident that the foreign service should be placed under the provisions of Title VII of the Civil Service Reform Act of 1978. The labor-management title in the proposed bill does not grant full collective bargaining to members of the Foreign Service.

We believe in universality of protection for all employees. As we hope you will perceive from our report on the origin of the Foreign Affairs Specialist program, the only assurance that such bizarre undertakings are prevented is to have labor-management relations governed by the same principles as those which apply everywhere else where there are American employees of the Federal government.

The Foreign Service was originally excluded from the provisions of Title VII of the Civil Service Reform Bill, in part because of the alleged jurisdiction problems between the Post Office and Civil Service and Foreign Affairs Committees. Such problems do not confront us today because these committees have agreed to hold joint hearings.

Further as seen with the implementing legislation for the Panama Canal Treaties, where coverage of Title VII was extended to employees of the Panama Canal Commission employees who are not American citizens, it is feasible to extend coverage to those categories previously not incorporated.

We favor the incorporation of foreign service personnel under the very fine provisions of Title VII by an amendment to that act deleting the following language under exclusions:

"(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development or the International Communication Agency."

We believe this would be the most judicious and appropriate manner to proceed. We oppose the provisions of the Administration proposal for labor-management relations because it is redundant and would deprive foreign service personnel of the protections and the procedures established by the Federal Labor Relations Authority, and the Federal Service Impasses Panel.

You will hear, with justification, of two problems which concern members of our union and of the American Foreign Service Association with such a simple action. One concerns the issue of "world-wide" representation; the other concerns so-called "supervisors" being in the unit.

Both problems arise from the ambiguities in the "rank-in-person" and "world-wide availability" requirements of foreign service personnel. Consequently, these need to be perceived in their fundamental relationship to the subject of appropriate unit and supervisor.

Under the "rank-in-person" system an individual is not tied to any position in the foreign service, but is reassigned with regularity. Even at the highest rank, a position does not involve per se any supervisory function, since even the highest ranking officer cannot rank anybody in relation to any other officer. Only the selection panels can do that. Nor is there an exercise of any other of the managerial functions in hiring, assigning, and dismissing foreign service personnel. These are all handled by centralized or collegial bodies.

The problems of management, and the abuses of management, consequently reside in the anonymities of centralized administration and collegial bodies. These are the real managers of the foreign service. It is against their anonymous action that even the most senior foreign service officers and personnel need the protections of the world wide unit in which all foreign service personnel are members.

The Congress no doubt has in mind the protection of the clerical and technical and professional personnel from the abuse of power by senior career personnel. The question can be asked: How can a secretary or typist speak up in a meeting of the union representing foreign service personnel if the supervisor or manager can sit by right in the same meeting. Does this not reduce labor-management relations to management manipulation? We have not found this to be the case. Common interests, particularly in working conditions overseas, create a collegiality among Foreign Service employees. Conflicts can be resolved by resort to the Grievance Board.

We recognize and concede there are problems. It is precisely for this reason that we wish to have the entire foreign service placed under the jurisdiction of Subpart F—Labor-Management and Employee Relations of Title V of the U.S. Code, to assure that the fullest measure of supervision over the activities of both management and labor in the foreign service takes place by the Federal

Labor Relations Authority. We can think of no better way to assure that abuses are avoided and that collective bargaining rights are at least equivalent, and preferably identical, with those of other employees of the Federal government, who are not in the Foreign Service.

Having said this, we believe that it is necessary to permit the retention of the present world-wide units and the present membership in the units and leave all other matters to the jurisdiction of the Federal Labor Relations Authority. For the reasons we have given and the weaknesses which we perceive, we oppose totally the enactment of legislation such as that proposed by the Administration as Chapter 10 of its draft bill, entitled Labor-Management Relations. Such a separate Foreign Service Labor Relations system would be both administratively redundant and, we fear, not serve the best interests of either management or labor.

THE FOREIGN SERVICE GRIEVANCE BOARD

The push for a grievance procedure for Foreign Service employees began in the early 1970's when the absence of due process in the system was fast becoming a public scandal. Senator Bayh first introduced a bill in 1971 establishing an independent grievance board. The State Department resisted and opposed this measure, successfully arguing to Congress that a procedure should be negotiated under the new Executive Order 11636, providing for labor-management relations in the Foreign Service. However, the Department failed to engage in meaningful negotiations with the employee representative—instead it proceeded to establish its own "interim" procedure which was seriously flawed. Agitation for an effective grievance procedure grew, spurred by the tragic suicide of Charles William Thomas, a Foreign Service officer selected-out without due process, and the formation of the Thomas Legal Defense Fund which began litigation that resulted in the court decision in 1973 holding the selection-out procedures unconstitutional. AFGE and AFSA continued to press for a bill in Congress and Senator Bayh persistently introduced his bill in each session of Congress. Finally, the pressure became irresistible when all public members of the interim board resigned in 1974 after AID refused to abide by a Board decision. In 1975 Congress enacted the grievance legislation that now exists. The text is the product of the collective efforts of the employee representatives, Congressional staffs and foreign affairs agencies. The procedure has wide acceptability among members of the Service. The Foreign Service Grievance Board consists of prestigious arbitrators from the labor field and retired Foreign Service officers—all of whom are subject to selection and renewal by unanimous agreement of the parties using the Board—AFGE, AFSA, AID, USICA, and the State Department. Its operating regulations were negotiated with the unions, and conferral on issues relating to the operation of the Board occurs on a regular basis.

We have been generally satisfied with our experience—grievants have a full and fair opportunity to be heard, the union has been able to establish a good working relationship with Board members and staff, transcripts are available on a timely basis without cost, and decisions are published regularly. We welcome the addition made in section 1024 to the Board's jurisdiction of union grievances concerning violations of negotiated agreements—such a mechanism has been lacking in our labor-management system. On the other hand, we do not favor the State-originated proposal to make the union the exclusive representative for grievants within the bargaining unit. The Foreign Service Grievance Board is a statutory appeal body set up by Congress for all members of the Service. Its jurisdiction covers many matters which a Civil Service employee would have the right to appeal through statutory procedures. This proposal would result in bargaining unit members having fewer rights than non-unit members who would have access to the Board with any representative of their choosing. The State Department proposal is evidently aimed at over-taxing the resources of the unions and at limiting the number of grievances. We ask that Congress reject this effort. After serious consideration of this issue, we firmly believe that freedom of choice with regard to representation is most compatible with the nature of the Foreign Service Grievance Board. It is therefore our request that the present language of subsection (b) of section 1103 be deleted and replaced with the following:

"The grievant has the right to a representative of his or her own choosing at every stage of the proceedings. The grievant and his/her representative(s) who are under the control, supervision or responsibility of the foreign affairs agencies shall be granted reasonable periods of administrative leave to prepare, be present

and to present the grievance. Where the grievant is not represented by the exclusive bargaining representative for Foreign Service employees of the agency, the exclusive representative shall have the right to be present during the grievance proceedings."

Having expressed our endorsement of the existing procedure we would like to point to one area where the procedure could be significantly strengthened and made comparable to the binding arbitration that is generally used by unions and management. The procedure currently provides that with respect to certain matters, particularly assignment, promotion and discipline, the Board may only recommend a remedy to the agency head who may consider whether to follow the recommendation based upon "the needs of the Service". We have found this provision troubling and not infrequently resorted to. The refusal of the agency to follow a recommendation leaves the grievant with only the choice of going to court, a choice that may not be realistic in terms of cost and the issues at stake. We therefore would propose the following amendment to chapter 11, section 1113: delete subsection (d) and add to subsection (b) a new paragraph (5) stating, "to promote an employee who is found to have previously failed to receive proper consideration. Promotion may be retroactive where the Board finds that, but for the failure to be considered, the grievant would have been promoted."

THE SENIOR FOREIGN SERVICE

This feature of the proposed legislation is clearly patterned after Title IV of the Civil Service Reform Act establishing the Senior Executive Service. The opportunity to create this executive corps was obviously a major incentive for developing the bill. But there are significant areas where the SFS proposal departs from the SES model, and in our view these departures are to the detriment of the Foreign Service. Passage of the SFS provisions as now written would, in our view, have unfortunate consequences for not only the Service, but also for the conduct of the nation's foreign policy. Among USICA Foreign Service officers there is overwhelming concern with the possibility that the SFS as now designed will permit wholesale politicization of the Foreign Service and discourage discussion, dissent and professional development. This concern should not be difficult to understand. The combination of variable time-in-class and the so-called limited extension could be used to eliminate an entire class of officers not satisfying a Director's political bent, within a period as short as two or three years, by establishing time-in-class at one or two years and permitting no, or few, limited extensions.

While no one accuses the drafters of the bill with such intentions, there have been in the past, and there will be again, administrators who are capable of such action. Even absent the most extreme situation, the lack of certainty about one's status is going to foster caution, not courage. We are not opposed to making advancement and retention more directly dependent on performance. But the proposed SFS goes far beyond what is either necessary or advisable.

Let me make specific reference to those aspects of the SFS which are without parallel in the SES and which we find objectionable.

(1) The absence of a "parachute clause" for those removed from the Senior Foreign Service after expiration of time-in-class or non-renewal of a limited extension. The SES system provides that a member who is removed for reasons of performance (not misconduct or malfeasance) is entitled to placement in a non-SES position at the GS-15 level or above. This safeguard is a neutral companion to the stringent provisions regarding retention and removal. In our view no less should be provided in the SFS. As in the Civil Service, an employee in the Foreign Service may be fully capable of work at the FS-1 yet be deemed unsuitable for the SFS, possibly for reasons not in the least reflecting on the employee's abilities. As the bill is now written, an officer who is particularly able could reach, enter and be dropped from the SFS before the age of fifty while still retaining skills and knowledge important to the agency.

The disincentive for achievement for the employee is as obvious as the disadvantage to the agency. We therefore propose that section 641 be amended to allow officers dropped from the SFS by expiration of time-in-class or non-renewal of limited extension to retreat to the FS-1 level for the time remaining, if any, in the time-in-class period for class 1 (counting time previously served in class 1 and in the SFS). This could be achieved by adding a new subsection (c) to section 641 as follows:

"(c) Members of the Senior Foreign Service who are not granted a limited extension or whose limited extension is not renewed shall be entitled to return to the FS-1 level and assigned to a non-SFS position for the period, if any, remaining to be served in class 1 under applicable time-in-class rules for class 1. In determining the time remaining, periods previously served in class 1 and periods served in the Senior Foreign Service shall be subtracted from the time in class period."

(2) The "limited extension": This concept has no equivalent in the SES. It is a mechanism which will give enormous power to the agency head in retention decisions for those in the SFS and discretion to exercise that power without regard to performance factors. It is true that decisions granting and renewing extensions will be made upon selection board recommendations, but the agency head will determine the number of extensions to be given and could allow none or very few. In combination with the authority to set and change time-in-class limits it will therefore be possible for the agency head to keep SFS members in a constant state of uncertainty about their future. At that point, dissent and creativity will be a luxury few will be able to afford. For a profession in which performance is not easily quantified * * * and where personal integrity and courage are vital to the national interest, we think such measures are particularly ill-advised. It is our view that the provision in section 641 for "limited extensions" be deleted, that a minimum time-in-class period be established for the SFS.

(3) Section 602(b); The Department indicates in its sectional analysis that the objective of the SFS is to create a corps with rigorous entry, promotion and retention standards based on performance, but provides in this section that consideration should be given to the need for attrition.

The necessity and purpose of this provision are not immediately clear, but the provision appears to conflict with the merit principles incorporated into the bill. Under merit principles, employees are to be retained on the basis of the adequacy of their performance. When agency managements determine the number of promotion opportunities and selections into the SFS, they will surely consider this factor without a legislative mandate to do so. In our view, this section should be deleted.

With the modifications we suggest the Senior Foreign Service would still give the agencies the flexibility desired but without the sacrifice of legitimate interests of both employees and the public. The stringent measures sought in the bill have not been justified to our satisfaction. For USICA, the Director himself made the case, in a March 26 letter to Mr. Read in which he reported:

"Attrition and shorter promotion lists at USICA in the last two years have brought us a long way toward removing the surplus of senior officers. * * * Today, the number of officers at the class 1-3 levels and the number of jobs classified at those ranks are at parity and the historic imbalance has been resolved. I'm convinced, therefore, that current legislative authority and internal administrative practices are sufficient to deal with any potential future problems of senior officer impactment."

Without modification, the SFS proposal will result in damage to the integrity of the Foreign Service and worsen rather than improve the personnel system.

One of the most critical problems, associated with proper classification, in the area of personnel practices is appropriate pay. The Administration draft is silent on its specific character and we consider this one of the many serious weaknesses in the bill.

Our union endorses fully the principle that Foreign Service personnel be assured of proper classification, equivalent to those provided civil service employees. We feel that, just as civil service employees now enjoy overtime pay, foreign service employees should be entitled to the same provisions. Consequently, we request that you include in your legislation the provision that both base and premium pay for foreign service personnel shall be determined in the same manner as pay for civil service employees by proper "linkage" established by the Federal Pay Agent and Federal Employees Pay Council. The simplest way to achieve this would be to restate that the provisions of Title V, U.S. Code, which incorporates the authority of the Pay Agent and Pay Council, apply to the foreign service.

However, even if this were done, foreign service employees would not have pay comparability because civil service employees are not subject to world wide service, to the attendant disruptions in their assignments, to the stresses in their personal and family lives. For this reason, we propose that foreign service

personnel be paid, at all times, a tax exempt allowance to compensate them for this aspect of their governmental service. I should like to suggest the following language as a model or outline for your consideration.

"The compensation of all foreign service personnel shall be the same as the comparable grade in the General Schedule excepting that foreign service personnel shall be paid a further tax-exempt allowance of 15 percent additional because of their availability to serve world-wide; provided that, in no case shall this allowance be less than \$2,000 and not more than \$5,000. This allowance shall be in addition to any other allowance which may be authorized."

The minimum and maximum allowances I have suggested are to assure that clerical and other personnel in the lower grades are adequately compensated and that personnel in the higher grades, particularly in the Foreign Senior Executive Service, if it is established, do not benefit disproportionately from other members of the Foreign Service.

SPECIFIC PROPOSALS ON RETIREMENT AND SELECTION OUT

There is a myth that "selection out" and early mandatory retirement at age 60 is a feature of the foreign service alone. It exists in the civil service as well for special categories, particularly the officers of the Federal Bureau of Investigation, other law enforcement groups, firefighters and air traffic controllers and employees of the Alaska Railroad. In fact, for most of them, mandatory retirement is at a lower age than 60. I request permission to include as Attachment II hereto extracts from Title V, sections 8335 and 8336 on Mandatory Separation and Immediate Retirement. But there are two major differences. First, these persons can continue to stay in the civil service in other functions besides their original specialties. Second, their annuities are computed, for the first twenty years of service at 2.5 percent, and not the 2.0 percent offered foreign service personnel. To qualify for this larger annuity, they contribute 7.5 percent to their retirement annuity instead of 7.0 percent.

I should like to suggest that all foreign service personnel required to serve world wide be brought under provisions similar to those afforded these categories I mentioned.

Under my proposal these computation formulas would be portable, so that any separated foreign service officer would be eligible for the higher 2.5 percent rate for all their actual foreign service.

In summary, the following retirement provisions would apply to all persons in the foreign service: First twenty years computed at 2½ percent; remainder at 2 percent, with voluntary retirement at any age after five years service abroad.

SPECIAL PROBLEMS AT THE INTERNATIONAL COMMUNICATION AGENCY

There are several problems at the International Communication Agency which are the result of past errors made by the Department of State in seeking to establish a domestic foreign service. The one most frequently mentioned in testimony by Administration spokesmen concerns the so-called Foreign Affairs Specialist category, a term of art for "domestic foreign service" personnel. Among the other problems are such matters as employment rights at the Voice of America, retirement credit for former Radio Free Europe/Radio Liberty personnel and for retired Bi National Grantees, and the employment of spouses of ICA personnel abroad.

FAS: ITS ORIGINS AND ITS AFTERMATH

None of the Administration spokesmen have informed you that our union was adamantly opposed to the introduction of the Foreign Affairs Specialist program. In fact, we were so much opposed that we spent \$50,000 in legal fees bringing a suit against James Keogh, Director USIA, and Henry A. Kissinger, Secretary of State, to declare its installation to be illegal.

We had a partial superficial victory, in as much as Judge Howard J. Corcoran required that the only persons who could be appointed to the Foreign Affairs Specialist category had first to serve three years as Foreign Service Reserve Officers or Foreign Service Reserve Unlimited Officers. However, since Judge Corcoran did not specify that these three years had to be served overseas, we lost the essence of our suit and the Foreign Affairs Specialist program was installed both at the State Department and at the United States Information

Agency, over our strongest objections. With your permission, I should like to append hereto, at the very end of all the other attachments, a copy of the court decision on the FAS program.

Let us be frank about this program. Its main purpose was to entice civil service personnel out of the civil service category in order to free management from the civil service safeguards provided to all civil service employees.

Why then did our members join the Foreign Affairs Specialist program? Because concurrently with its introduction, positions in the higher grades were withdrawn from civil service competition and restricted only to personnel who were in the FAS or other foreign service category. Civil service category personnel had available only "dead-end" jobs. If one did not join FAS, one would not get a promotion. If one did join, one was assured an immediate increase in pay and greater opportunity for promotion as a reward for voluntary entry.

Why did the State Department want to use this peculiar Foreign Affairs Specialist program—why did it insist that the Attorney General oppose our suit? For one simple reason. It was opposed to the existence of personnel rights based on some outside authority or statute to which its employees could appeal.

You may recall that this is the period when the State Department waged war on its personnel. This is the period when Charles William Thomas committed suicide because the management of the Foreign Service did not wish to admit it had committed a grievous error in selecting him out. This is the period when the Charles William Thomas Legal Defense Fund brought a successful suit, also costing \$50,000, to assure that the personnel records of foreign service personnel did not contain false or ex parte information. This was the period when the Congress finally passed the grievance procedures which became self-evidently necessary following our suits.

After our union achieved victory over a rival organization to represent foreign service personnel, we proceeded to attack the inequities of the system from the inside. Ultimately we reached an agreement with a new administration in USICA to bring the program to an end. This is the "contract" about which there has been so much discussion. Management agreed to stop hiring FAS employees. We agreed to eliminate selection boards for FAS employees and to permit these personnel to exercise the right all other civil service personnel have—to bid on jobs in the civil service category. On the other hand we obtained reaffirmation of the commitment, an enticement by management, that retirement would be under the foreign service, including mandatory retirement at 60, if a person chose to remain under such an appointment. For those preferring otherwise, we obtained a guarantee that they could convert to Civil Service status essentially as a matter of right until June 30, 1981.

I want to emphasize these were concessions made to us for the manipulation and coercion of our personnel under the FAS program.

To our Local 1812, this agreement represents the considered judgment of both the union and management as to the fairest way to phase out the FAS program. Obviously the agency concluded that the existence of a residential force of domestic foreign service employees was something that could be lived with. In the case of both the union and the agency, the desire was to find the most equitable ending to the unhappy history of FAS. Should there be reasons why the Congress would feel it could not continue this arrangement, we would petition that the principal elements of the contract be preserved for the individual FAS members after their mandatory conversion as personal prerequisites. These are:

(1) right to retire voluntarily on present foreign service computation formula (2 percent for all years of service). They would not have the right to invoke the 2½ percent retirement formula which I have proposed for persons who serve overseas.

(2) right to retain permanently their classification and pay under the FAS rank-in-person formula in the event of downgrading of any position they may occupy.

(3) exemption from "selection out" except for reasons identical with dismissal for cause in the civil service.

(4) full access to the protections afforded all civil service employees under the Civil Service Reform Act of 1978.

(5) right to voluntarily convert to the civil service at any time up to June 30, 1981.

THE AUTONOMY OF USICA

From the beginning of public discussion on a proposal to reform the Foreign Service personnel system we have been concerned with the role of USICA. The proposal was solely a State Department initiative—discussion with USICA management and employee representatives was, from our perspective, minimal at the early stages. By the time our comments were seriously solicited and by the time the Director submitted his comprehensive response to the Department, the issue was not whether there would be a reform bill, but only what form specific measures would take within the general format already adopted by the Department. We found very persuasive the arguments made by Director Reinhardt in his March 26 letter to Under-Secretary Read, that certain problems at which the proposal was aimed do not exist in USICA or are well on their way to solution. But obviously the Department was beyond the point of willingness to either reconsider its decision to move ahead with omnibus legislation, or seriously depart from its proposals. Thus, the record should be clear that this legislation was not designed with USICA in mind.

Our task, and that of the agency, in the last few months has been to try to modify the bill to a form that a least can be lived with. That effort has only been minimally successful. We agree that improvements have been made, particularly in the area of returning to each agency head the authority to make specific provisions with regard to such things as length of the SFS threshold. And we appreciate the addition of section 202(d) which provides that the statute shall not be constructed as to diminish the authority of the Director of USICA. Nevertheless we are still concerned with provisions in the bill that suggest a different intention, specifically the requirement that the foreign affairs agencies achieve "maximum compatibility". We agree that a degree of compatibility must exist to facilitate personnel exchanges and to allow for reasonable personnel administration abroad, but the adjective "maximum" transforms "compatibility" into "uniformity".

Our concern on this issue can only be appreciated in the context of the historical relationship between the Department and USICA. The employees of USICA have over the years been subject to various disruptions and manipulations, the FAS program being a timely example, most of which originated with the Department of State and were transmitted to, or imposed on, that agency. The failure of the Department to try to bring order to the resulting chaos in recent years is in sharp contrast to the efforts made in USICA by both management and the union. While we have agreed and still agree that personnel reform is necessary in USICA we believe that reforms are most likely to occur and to be constructive when the independence of USICA in personnel matters is assured and the agency is freed from the necessity of accommodating the special personnel and political problems current in the Department of State.

The issue of the integrity of the news, educational and cultural programs of USICA was a major concern of Congressman Fascell's Subcommittee in discussions on the reorganization plan which established USICA. We hope that this concern will manifest itself again in careful scrutiny of this legislation to insure that neither the agency, the Director, nor the FSIO corps is compromised. To this end we propose amending section 1203 to delete the word "maximum" modifying the word "compatibility". The same deletion would be made in section 2403. We would also ask for assurances that section 204 is intended to give no authority to the Director General over the personnel system of USICA. In addition we request amendment of section 441(d) to provide that the determination of nominations for performance pay for meritorious or distinguished service be made separately within each agency, not by an interagency board whose recommendations will ultimately be reviewed by the Secretary. The Director of USICA should be able to submit nominations to the President, or if considered appropriate, to a third party, such as OPM, without going through the Secretary of State. The present formulation represents, in our view, a first step toward a single, interagency SFS, a creation we would strongly oppose since it would undermine not only the autonomy of the agency, but also of the separate FSIO corps.

VOICE OF AMERICA—ITS FAILURES

A. Broadcasting mission

The Voice of America continues to be beset with certain failure, some resulting from its basic philosophy of international communication, others from its treatment of personnel. In a sense, these are interrelated.

One of its principal failures in the last year is in the area of foreign language broadcasting. During the entire period of the Iranian crisis, while the Soviet Union was intensifying its broadcasts, the Voice of America was silent. Not one word, not one minute was broadcast in Farsi, the majority language in Iran, during this entire period. An analogous situation appears to exist in the broadcasts to Yugoslavia—these are in “Serbo-Croat”, angering the indigenous Croatian population of more than six million who wish to have broadcasts in “Croatian” while retaining broadcasts in Serbian to the Serb population in Yugoslavia.

These unhappy situations result from a policy which many past Administrations, apparently with the acquiescence of Congress, have pursued in the foreign language broadcast area, in the apparent belief that one can ignore those people who are friends. Apparently, so far as the Voice of America goes, the assumption is that the people we regard as friends today should listen to our broadcasts in English, not their own language.

For this reason, it appears, there were no broadcasts to Iran, just as there are today no broadcasts to Japan. Our union urges the Congress to review this policy, particularly since the many crises which we confront show that even our friends do not always understand our foreign policies. There is just as much concern, we have learned, in Japan about our positions in Ethiopia, Somalia, Eritrea, South Africa, Cambodia as there is in these countries which are directly affected. We have even heard that part of the anti-American attitude of many Iranians was that our policies toward Iran itself were never understood, simply because there was no way most Iranians could hear our own version of events, either in the newscasts or in the “VOA Commentaries” to which I referred under the heading of VOA Achievements.

I submit to your consideration the advisability of Congress raising with the Administration, as an oversight function, the introduction of a policy of broadcasting to our “friends”, while they are still “friends” and not merely broadcasting to areas where we believe we do not have “friends”. In fact, such a tacit policy as we now have suggests to many people that our primary goal is propaganda and not communication, propaganda in competition with that of the Soviet Union rather than a means of positive communication from our nation to all peoples of the world.

B. Broadcasting personnel policies

A second failure of the Voice of America relates to its personnel practices in foreign language broadcasting.

Last February we raised this issue with the Senate Foreign Relations Committee while commenting on a section of the 1980-1981 USICA authorization bill which amended the statutory authority of the Voice of America to hire non-citizens to work in the United States.

The problem which this is supposed to solve is the underclassification of alien VOA broadcasters who are performing at the same level as other broadcasters but who cannot receive a grade higher than GS-11. This is the highest grade for an alien “translator” into a “colloquial” language under current practices.

Whereas the Agency can claim that it has been inhibited in giving higher grades to alien employees because of the insistence of the Civil Service Commission that—as aliens—they cannot be graded higher than GS-11, even though the broadcasters are writing, not merely translating the script, the Agency has been derelict in the classification of American national foreign language broadcasters.

The English language broadcasters are normally classified on the basis of the general civil service standards. Many are at GS-12 and can aspire to reach even GS-14 level. Yet, the foreign language broadcasters who are often just as important to the purposes of the VOA mission as the English language broadcasters do not receive the same classifications.

This situation has led to morale problems among foreign language broadcasters—citizen and alien—who, for example, believe they are being denied the basic constitutional right of equal pay for equal work. AFGE has discussed this continuing inequity with a succession of VOA administrations since 1968, who have shown a surprising lack of concern, considering VOA’s reliance on these broadcasters to reach the vast majority of its overseas audience.

C. Fringe benefits for its employees

The Agency has not made an effort to obtain proper retirement benefits for a certain group of its employees.

This year we raised the issue again in connection with 1980-1981 USICA authorization bill, but the Senate Foreign Relations Committee concluded that it preferred to consider it in connection with the personnel bill which is now here as the proposed Foreign Service Act of 1979. This subject has a direct impact on the morale of certain USICA employees. Admittedly, it is a matter of past mistakes in seeking to make covert what has, since then, had to be made overt.

A second reason for bringing this issue of equity is that it will cost less than the Administration and Congress are willing to pay in retirement credits for future employees of the "fictive" but overt Institute. Certainly, in principle, there is not much to differentiate these "fictions" in law designed to achieve certain diplomatic goals, made necessary by diplomatic fictions.

The number of these RFE/RL employees who are still alive are employed in the Federal Service cannot exceed fifty. Of these the greatest number, perhaps thirty, are now with the Voice of America, which has benefitted greatly by having had them available as trained RFE/RL broadcasters and not having had to give them any training. Thus, VOA and the American taxpayer have benefitted far more already than the costs of the additional annuities.

We estimate that the additional cost, at the very most, of these additional annuities would reach approximately \$100,000, annually, provided that the purported beneficiaries first paid into the retirement fund an amount of approximately \$125,000 to purchase these benefits. Considering the interest rates now being earned, considering that the beneficiaries would be receiving back in the first three years of retirement only their own contributions, considering the age of these prospective beneficiaries, our estimate is that the actual retirement cost over the life of these employees may be not more than \$500,000 at the most and might be as little as \$250,000.

All these Federal employees for whom we petition equity have in common prior service with those radio operations established and funded by the Federal Government in the late 1940s and early 1950s—and still funded today by the Federal Government under Congressional authorizations and appropriations. All formerly served with either the American Forces Network, Europe; Radio Free Europe; or Radio Liberty (one former employee of RL also served at Radio Free Asia).

As you know, the American Forces Network is operated worldwide by the Department of Defense. Employees of the Network in Asia were paid by the Department from Appropriated funds. They were thus Federal employees, and were entitled to Civil Service retirement credit. Employees of the American Forces Network, Europe, however, were paid by the Department from Non-Appropriated Funds. In these circumstances they were not considered to be Federal employees, and were deprived of Civil Service retirement credit. We believe that simple justice and equity call for eliminating this discrimination for former employees of AFN(E) who are now in the Federal Government, so that they may obtain Civil Service retirement credit for the time served with AFN(E).

The Free Europe organization and Radio Liberty were, of course, funded by the Central Intelligence Agency for the first two decades of their existence. The CIA's funding was clandestine. This arrangement sought to achieve two things: to allow listeners to believe that the Radios were not United States Government agencies, and to allow the United States Government to say things which could not then be attributed to it. In the circumstances of the day, these were no doubt legitimate aims. It seems to us not to be legitimate, however, to perpetuate those aims today by penalizing those who served them loyally in other circumstances in the past.

Denial of Civil Service retirement benefits to employees of RFE and RL was part and parcel of the clandestine funding arrangements (although, curiously enough, those benefits were not denied to CIA officers, or to U.S. Foreign Service Officers, assigned to the Radios). Because the Radios were originally viewed as short-term operations, undertaken in what appeared to be imminent danger of war (broadcasts were in fact inaugurated during the Korean War), a pension plan and retirement benefits for the Radios' employees were not even contemplated by the Radios' managements and clandestine funders until a whole decade of operations had passed. Even then they were only accepted by those who directed the Radios on the initiative of the unions involved.

Notwithstanding the absence of retirement benefits, no effort was made by the Radios' managements to compensate employees for their disadvantaged position in comparison to others serving the Federal Government. In fact, the union

initiative which eventually led to establishment of a retirement system began in 1957 with a concerted—and unsuccessful—effort to raise the level of staff pay to that prevailing at the Voice of America (with no hope of achieving levels equal to comparable private industry).

In 1957 the first union contract at Radio Free Europe, for example, set salary scales and provided for a 15 percent general increase in salaries, either through those salary scales or a general increase, whichever was greater. The new RFE salary scales gave a Deputy Desk Chief \$115 a week, and a Senior Editor \$100 a week. The comparable Voice of America figures at that time (GS-12 and GS-11 or GS-10) were \$145 and \$122 or \$113 a week. The 1958 RFE contract brought increases of \$5 per week in Radio salaries—still below the comparable VOA pay.

The union negotiators of that time tell us that the Radio managements, in the discussions which eventually produced a retirement plan, never once suggested that introduction of such a system should involve some reduction in pay or benefits originally given to the Radios' staffs to compensate for the lack of retirement benefits. Indeed, in view of the facts of staff compensation, any such claim would have been untenable.

When the Radios finally agreed in 1959 to the introduction of pension plans, they imposed a requirement of 10 years' service as a full-scale employee for the vesting of an employee's rights in the plans. This meant that those who left the Radios with less than 10 years' service and entered other Federal employment lost those years so far as credit for their retirement is concerned. As for former employees of the Radios whose service equalled or exceeded 10 years (there are about 10 such persons in Federal employ) their Radio pensions—available to them at age 65, or in reduced amounts at ages down to 60—would be based on their lower earnings when much younger, and on salary scales a fraction of today's. They would thus represent a considerable loss compared to giving them full credit for all of their Federal service.

Depending on their category of employment, some persons now Federal employees made contributions to the United States Social Security System while at the Radios. Others did not. (In the case of a number of former Radio employees now in Federal employ, they achieved American citizenship, and with it the possibility of Federal employment, including VOA, while serving the Radios abroad only thanks to an Act of Congress which specifically permitted them to count time serving the Radios abroad towards the residence requirement for naturalization.) Even among those who made Social Security contributions, there are those whose contributions were below the minimum required for vesting in the Social Security System. That time and their contributions are now lost to them.

There are approximately 50 current employees of the Federal Government who are affected by the inequities we are addressing. Some 44 are now working at the Voice of America. The other half-dozen are employed by such other Federal agencies as the ICA, the Trust Territories of the Pacific, the Board for International Broadcasting, the Department of Energy, the National Endowment for the Humanities, and the General Accounting Office.

On behalf of these 50 current employees of the Federal Government we would therefore like to solicit your support for an amendment to Title 5, United States Code. It concerns Chapter 83—Retirement, particularly Section 8332, Creditable service.

We are offering some suggested rewording of that Section which would specifically forbid use of prior service with the Government-funded Radios for benefits under any other retirement system if used for credit under the Federal retirement system. This means that Federal employees who credit their service with the Radios for Federal retirement benefits cannot also credit that same time for benefits from the Radios' retirement plans or from the Social Security System.

But there are other concerns, besides the possibility of "double dipping," which need to be addressed. One is to the effect that however equitable or just this remedy might be, it risks creating a "precedent" that would open the floodgates to a deluge of demands on the Federal retirement system by great numbers of persons formerly associated in one way or another with CIA clandestine operations, and therefore these particular inequities should be continued.

We believe that the Congress of the United States, which sets no precedents if it does not wish to do so, is not as powerless to remedy inequities as this viewpoint suggests.

Beyond that, the suggestion of "precedent" merits closer examination: there are specific features of the Government-funded Radios that make them entirely unique—and inapplicable as "precedents".

For one, although RFE and RL were "clandestinely funded" by the CIA, they were not "clandestine organizations." Their functions, indeed, the organizations themselves, were openly and publicly espoused by Presidents of the United States, and by leading members of the Legislative and Executive Branches, of both parties. This cannot be said of any CIA "clandestine operations."

This unique status of the Government-funded Radios made it possible for their clandestine funders to avoid—indeed, it precluded—the special incentives, awards, or bonuses characteristic of CIA "clandestine operations." The employees of the Radios were thus not only disadvantaged in comparison to those in other regular Federal service—in terms of their employment—but, precisely because of the unique status of the Radios, they (except for the CIA agents in their midst) were deprived as well of any possible special benefits that might accompany CIA employment.

For another, and even more importantly, the existence of RFE and RL, after more than 20 years of clandestine funding, was openly and fully debated by the United States Congress in 1971–72. The Congress decided, by a very large majority, that the two Radios should be continued in the national interest, and that they should be funded by the regular and open Congressional procedures. There is no other case of the Congress mandating the continued existence and assuming the funding of activities previously funded by the CIA.

These unique features of the Radios, of course, refer to the past. To a past of ambiguities and improvisations. Our appeal to you concerns—indeed, is specifically limited to—leftovers of that past. For this reason our suggested rewording of Section 8332, Title 5, United States Code, confines the remedy we seek to those presently affected, i.e., to persons employed by the Federal Government only as of the date of enactment of the amendment.

We therefore, hope that this Committee, as a matter of justice and equity, will see fit to grant the remedy sought, which it appears can be achieved most simply by amending Section 8332 of Title 5, United States Code, as follows:

Retirement Credit for Service with Government-Funded Radios

Sec. —. (a) Section 8332 (b) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and "and";

(3) by inserting immediately after paragraph (9) the following:

"(10) subject to section 8334(c) and 8339(i) of this title, service (other than service performed before July 1, 1946) in any full-time capacity for at least 130 working days a year, beginning after December 1, 1945, to the National Committee for a Free Europe, Free Europe Committee, Incorporated, Free Europe, Incorporated, Radio Liberation Committee, Radio Liberty Committee, Radio Free Europe/Radio Liberty, Incorporated, RFE/RL, Incorporated, Radio Free Asia, the Asia Foundation, the American Forces Network, Europe, or any part thereof, if such service is not credited for benefits under any other retirement system."; and

(4) by inserting between the second and third sentences immediately following paragraph (1), as added by paragraph (3) of this subsection, the following: "The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning service for the purpose of this subchapter of the type described in paragraph (10)."

(b) The provisions of subsection (a) shall apply only with respect to an employee, as defined in section 8311 (1) of title 5, United States Code, who is so employed on the date of enactment of this Act.

RETIREMENT EQUITY FOR BINATIONAL CENTER EMPLOYEES

The Binational Center Guarantee problem arose in the United States Information Agency many years ago, but it has had its solution frustrated repeatedly and obsessively by the Secretary of State who administers the Foreign Service Retirement Fund and has been unsympathetic to the needs of USIA (now ICA) employees. Even though USIA management agreed that these employees were en-

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titled to retirement credit, the State Department, supported by the Civil Service Commission, objected and suit was brought by our union. On May 2, 1974, Federal Judge Albert Bryant ruled in *Taylor v. Hampton* (Civil Action #1178-72) that Binational Center grantees met all the criteria of Federal government employment and were entitled to credit under the Federal retirement system. The court order read as follows:

U.S. District Court for the District of Columbia

CIVIL ACTION 1178-72

WAYNE W. TAYLOR, PLAINTIFF

ROBERT HAMPTON, ET AL., DEFENDANT

ORDER

Upon consideration of Defendant's motion for summary judgment and Plaintiff's cross motion for summary judgment, and of the entire record herein, and it appearing to the Court that there is no genuine issue as to any material fact involved in this cause, and that Plaintiff is entitled to judgment herein as a matter of law, it is by the Court this second day of May, 1974.

Ordered: That the Defendant's motion for summary judgment be denied and Plaintiff's cross motion for summary judgment be granted.

(Signed) WILLIAM B. BRYANT,
Judge.

All those persons who were still in Federal employment were automatically able to benefit from this ruling. The Secretary of State interpreted the court order as applying only to personnel still on the rolls of the Foreign Service at the State Department and the United States Information Agency. For this reason the case was again taken to the court, on September 11, 1975, at which point the Secretary yielded to our view that the retirement credit also applied to all those who had been already retired either under Civil Service or Foreign Service and their annuities were adjusted retroactively.

This brought equity to almost all the persons except those who had been hired directly as BiNational Center grantees and were not ever shown, for that reason, as employees of the Foreign Service. Of these there are only a few still alive and equity would suggest that they also be entitled to credit under the foreign service retirement system. The Secretary of State, however, still interprets the court ruling to their prejudice despite the obvious fact, now conceded by ICA, that they were foreign service employees.

An example of the problem is the case of Paul Johnson of Newport, Rhode Island. Because of an administrative USIA ruling against "career" employment after age 60, he was given further "limited indefinite FSS" status which excluded him from the retirement system even though he had previously served nearly six years as a BiNational Center grantee. Had that BiNational grantee been recognized, he would have been considered to be in the career foreign service and his subsequent FSS appointment computed as part of the foreign service retirement system. Thus he was doubly denied retirement credit.

For the reasons given, I request equity for those very few persons, such as Paul Johnson, and petition you to incorporate the following text in the legislation you are drafting.

"Any person who was appointed as a BiNational Center Grantee and who has completed at least five years satisfactory service in that capacity or any other appointment under the Foreign Service Act of 1946, as amended, shall become a participant in the Foreign Service Retirement and Disability System and shall make an appropriate contribution to the Foreign Service Retirement and Disability Fund in accordance with the provisions of Section 652 of the Foreign Service Act of 1946, as amended."

ICA SPOUSES ABROAD

We favor the employment of spouses abroad in all non-career positions. However, complaints have been received that the spouses of senior Foreign Service Officers, who write the efficiency reports of more junior Foreign Service personnel officers at posts abroad, manage to get much better positions much faster than the spouses of Foreign Service Information Officers. Our complaint here appears

to parallel the general complaint of many women that the spouses of influential senior government officials somehow manage to get higher level grades in Washington than an equally competent wife of a private citizen or a lower ranking civil servant. We would wish to have equal affirmative outreach action among wives, especially since those married to lower ranking males probably need the money more than the spouses of senior officers. This complaint, by the way, is even more true of the spouses of personnel employed by the Agency for International Development.

SPECIAL PROBLEMS AT THE AGENCY FOR INTERNATIONAL DEVELOPMENT

The most immediate problem at the Agency for International Development relates to the developments initiated by the so-called Obey Amendment. Specifically, they relate to the "Regulations" submitted to the Congress on May 1, 1979.

As we indicated in our testimony of May 2, 1979, before the House Subcommittee on the Civil Service we consider the Regulations both illegal and mischievous. Rather than repeating the arguments which we employed there, we should like your permission to attach them as Annex III to this statement and to summarize some but expatiate on those issues which treat with equity, particularly for women, minorities and all other persons now in the clerical or technical positions who are qualified to assume professional and administrative roles when opportunities arise.

THE MISCHIEF OF THE PROPOSED REGULATIONS

Mr. Nooter, the Acting Administrator of the Agency for International Development, concedes that the Regulations will not result in a single additional position becoming available abroad. These positions are set by ceilings imposed by the Secretary of State and unless the Congress mandates by legislation more positions abroad, the Regulations will not achieve the alleged legislative purpose of the so-called Obey Amendment. Consequently, the Regulations fail to achieve the very purpose for which they were intended by Representative Obey. That in itself is mischievous behaviour—pretending to be able to achieve something which will not be possible.

The second mischief is worse. Up till now, the Agency for International Development had been spared one of the acute problems that have plagued the Department of State and the International Communication Agency—this is the pretense to a higher personnel status arising from an established exclusive right to certain so-called "prestige" jobs in Washington. Unlike the Department of State and the International Communication Agency, AID had formerly assigned foreign service personnel and civil service personnel to any and every position as it became available and claimed that it sought the best qualified person to fill that position. Because foreign service experience is an important, sometimes the most important, factor in filling certain positions, many of these have been regularly assigned to members of the foreign service. However, in the event some civil service person was more qualified than the available foreign service personnel, the position could be filled immediately by that person in the civil service.

The advantage of retaining such a system for the future is even more important than it was in the past. As more and more younger women, particularly persons of black (African) and Hispanic background, have become educated in foreign policy matters, they discovered that they still had to enter at the clerical and technical level but at least they could aspire to professional and administrative functions. The past system could have facilitated such an upward mobility if applied consistently because the best qualified person, irrespective of foreign or domestic service, could apply for assignment. The new regulations frustrate this because these "prestige" professional jobs would be designated as foreign service and thereby be segregated, and only persons who served abroad would be entitled to fill them. This places a premium on, and gives an inordinate advantage to, past foreign service. Some person, let us say a white male, who entered the AID foreign service ten years ago and served mostly in Afghanistan or Pakistan, would know that certain prestige positions were automatically restricted to him and other white males in the AID foreign service, even in areas not related to his own experience. The most educated married black woman, in the General Schedule, who had a graduate degree in West African affairs and who is much more qualified than anyone else in AID, would have difficulty in

obtaining an assignment, for example, on the Ghana desk, because that position had been "reserved" to the foreign service. She might have to remain a typist or secretary or computer operator all her career at the Agency.

We believe this will lead to a caste system, institutionalized supposedly to send more people abroad, but actually serving only as an additional barrier to equal opportunity and affirmative action at home.

We oppose these regulations as being mischievous; we oppose them because we think they are illegal and are not in compliance with several Constitutional and statutory requirements. I shall not repeat those arguments since they appear in our statement of May 2, 1979 which we requested to introduce into the Record as an annex.

CONCLUDING REMARKS

I should like to reiterate our most sincere appreciation for your invitation to testify before this joint hearing of your Committees and to assure you of the fullest cooperation of our two locals and our national headquarters in your enterprise.

I would like to take the opportunity to stress that good foreign policy decisions depend not only on good personnel but on proper institutional structures. I share the view of many persons, including the members of the so-called Murphy Commission, that these are now in disarray and that it is important to relate the operations of the Departments of Agriculture, Commerce, Energy, Labor and Treasury more closely to those of the recognized foreign affairs agencies, AID, ICA and the State Department.

Equally important is the need to assure that the new foreign service legislation you are considering at this time not only improves the operations of AID, ICA and the State Department but makes possible your other attempts to coordinate these operations with those of the government as a whole in Washington, D.C. Largely for this reason, I have urged that all those aspects of personnel policy not directly related to service abroad be identical with the provisions in the U.S. Code for the civil service at home. In my opinion, the most important such new statutory provisions as those incorporated in the Civil Service Reform Act of 1978, particularly the Federal Labor Relations Authority, The Federal Impasses Panel and the Merit Systems Protection Board with its Special Counsel.

In conclusion, I thank you once again.

Mrs. SCHROEDER. Thank you, very much. We appreciate your testimony and since I am chairing, I will wait with my questions and start off with Congressman Fascell.

Mr. FASCELL. I have so many questions I am not sure where I want to start. I have to digest them all. Perhaps I will know more about what I want to ask when you get through.

Mr. KOCZAK. Would you prefer we go on?

Mrs. SCHROEDER. You have a statement you want to make on title VII, is that correct?

Mr. KOCZAK. Yes. Perhaps that would be helpful. It concerns labor-management relations.

It is evident to us that Foreign Service should be placed under the provisions of title VII of the Civil Service Reform Act of 1978. The labor-management title in the proposed bill does not grant full collective bargaining to members of the Foreign Service.

We believe in universality of protection for all employees. As we hope you will conclude from our report on the origin of the foreign affairs specialist program, the only assurance that such bizarre undertakings are prevented is to have labor-management relations governed by the same principles as those which apply everywhere else where there are American employees of the Federal Government.

The Foreign Service was originally excluded from the provisions of title VII of the civil service reform bill, in part because of the alleged jurisdiction problems between the Post Office and Civil Service and Foreign Affairs Committees. Such problems do not confront us today because these committees have agreed to hold joint hearings.

Further, as seen with the implementing legislation for the Panama Canal Treaties, where coverage of title VII was extended to employees of the Panama Canal Commission employees who are not American citizens, it is feasible to extend coverage to those categories previously not incorporated.

We favor the incorporation of Foreign Service personnel under the very fine provisions of title VII by an amendment to that act deleting the following language under exclusions:

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development or the International Communication Agency.

We believe this would be the most judicious and appropriate manner to proceed. We oppose the provisions of the administration proposal for labor-management relations because it is redundant and would deprive Foreign Service personnel of the protections and the procedures established by the Federal Labor Relations Authority, and the Federal Service Impasses Panel.

You will hear, with justification, of two possible problems which concern members of our union and of the American Foreign Service Association. One concerns the issue of worldwide representation; the other concerns so-called supervisors being in the unit.

Both problems arise from the ambiguities in the rank-in-person and worldwide availability requirements of Foreign Service personnel. Consequently, these need to be perceived in their fundamental relationship to the subject of appropriate unit and supervisor.

Under the rank-in-person system an individual is not tied to any position in the Foreign Service but is reassigned with regularity. Even at the highest rank, a position does not involve per se any supervisory function, since even the highest ranking officer cannot rank anybody in relation to any other officer. Only the selection panels can do that.

Nor is there an exercise of any other of the managerial functions in hiring, assigning, and dismissing Foreign Service personnel. These are all handled by centralized or collegial bodies.

The problems of management, and the abuses of management, consequently reside in the anonymities of centralized administration and collegial bodies. These are the real managers of the Foreign Service. It is against their anonymous action that even the most senior Foreign Service officers and personnel need the protection of the worldwide unit in which all Foreign Service personnel are members.

The Congress no doubt has in mind the protection of the clerical and technical and professional personnel from the abuse of power by senior career personnel. The question can be asked: How can a secretary or typist speak up in a meeting of the union representing foreign service personnel if the supervisor or manager can sit by right in the same meeting? Does this not reduce labor-management relations to management manipulation?

We have not found this to be the case. Common interests, particularly in working conditions overseas, create a collegiality among Foreign Service employees. Conflicts can be resolved by resort to the Grievance Board.

Nevertheless, we want to face up to the fact there is a peculiarity, an anomaly, here and there are potential dangers of a supervisor sitting in judgment at the same union meetings as persons being managed or supervised.

It is precisely for that very reason of potential danger and conflict of interests that we wish to have the entire Foreign Service placed under the jurisdiction of subpart F, Labor-Management and Employee Relations of title V of the United States Code, to assure the fullest measure of supervision over the activities of both management and labor in the Foreign Service takes place by the Federal Labor Relations Authority.

We can think of no better way to assure that abuses are avoided and that collective bargaining rights are at least equivalent, and preferably identical, with those of other employees of the Federal Government who are not in the Foreign Service.

Having said this, we believe that it is necessary to permit the retention of the present worldwide units and the present membership in the units and leave all other matters to the jurisdiction of the Federal Labor Relations Authority.

For the reasons we have given and the weaknesses which we perceive, we oppose totally the enactment of legislation such as that proposed by the administration as chapter 10 of its draft bill, entitled "Labor-Management Relations." We oppose that because it would freeze present inequities and not extend the protections we think are necessary to all persons which are afforded by the Federal Labor Relations Authority, whose decisions, precedents and procedures should be applicable to all members of the Foreign Service and, if conflicts of interest arise in the units, the Authority can note them with care and remedy them.

Such a separate Foreign Service labor relations system would be both administratively redundant and, we fear, not serve the best interests of either management or labor.

That is our formal statement on labor-management relations. We do comment in our annex No. 1 on some of the aspects of it as well.¹

Mrs. SCHROEDER. Did you want to present that? Did you want to make a further presentation?

Mr. KOCZAK. Perhaps we will jump to Senior Foreign Service which is the other matter that gives us concern.

This feature of the proposed legislation is clearly patterned after title IV of the Civil Service Reform Act establishing the Senior Executive Service. The opportunity to create this executive corps was obviously a major incentive for developing that reform bill. But there are significant areas where the SFS proposal departs from the SES model, and in our view these departures are to the detriment of the Foreign Service.

Passage of the SFS provisions as now written would, in our view, have unfortunate consequences for not only the Service, but also for the conduct of the Nation's foreign policy. Among USICA Foreign Service officers there is overwhelming concern with the possibility that the SFS as now designed will permit wholesale politicization of the Foreign Service and discourage discussion, dissent, and professional development.

This concern should not be difficult to understand. The combination of variable time-in-class and the so-called limited extension could be used to eliminate an entire class of officers not satisfying a director's political bent, within a period as short as 2 or 3 years, by establishing

¹ The information referred is contained in appendix 2.

time-in-class at 1 or 2 years and permitting no, or few, limited extensions.

While no one accuses the drafters of the bill with such intentions, there have been in the past, and there will be again, administrators who are capable of such action. Even absent the most extreme situation, the lack of certainty about one's status is going to foster caution, not courage.

We are not opposed to making advancement and retention more directly dependent on performance. But the proposed SFS goes far beyond what is either necessary or advisable.

Let me make specific reference to those aspects of the SFS which are without parallel in the SES and which we find objectionable.

First, the absence of a "parachute clause" for those removed from the Senior Foreign Service after expiration of time-in-class or non-renewal of a limited extension. The SES system provides that a member who is removed for reasons of performance, not misconduct or malfeasance, is entitled to placement in a non-SES position at the GS-15 level or above.

This safeguard is a natural companion to the stringent provisions regarding retention and removal. In our view no less should be provided in the SFS. As in the civil service, an employee in the Foreign Service may be fully capable of work at the FS-1 yet be deemed unsuitable for the SFS, possibly for reasons not in the least reflecting on the employee's abilities.

As the bill is now written, an officer who is particularly able could reach, enter and be dropped from the SFS before the age of 50 while still retaining skills and knowledge important to the agency.

The disincentive for achievement for the employee is as obvious as the disadvantage to the agency. We, therefore, propose that section 641 be amended to allow officers dropped from the SFS by expiration of time-in-class or nonrenewal of limited extension to retreat to the FS-1 level for the time remaining, if any, in the time-in-class period for class 1, counting time previously served in class 1 and in the SFS. This could be achieved by adding a new section (c) to section 641 as follows:

(c) Members of the Senior Foreign Service who are not granted a limited extension or whose limited extension is not renewed shall be entitled to return to the FS-1 level and assigned to a non-SFS position for the period, if any, remaining to be served in class 1 under applicable time-in-class rules for class 1. In determining the time remaining, periods previously served in class 1 and periods served in the Senior Foreign Service shall be subtracted from the time-in-class period.

Second, the "limited extension": This concept has no equivalent in the SES. It is a mechanism which will give enormous power to the agency head in retention decisions for those in the SFS and discretion to exercise that power without regard to performance factors.

It is true that decisions granting and renewing extensions will be made upon selection board recommendations, but the agency head will determine the number of extensions to be given and could allow none or very few. In combination with the authority to set and change time-in-class limits, it will, therefore, be possible for the agency head to keep SFS members in a constant state of uncertainty about their future.

At that point, dissent and creativity will be a luxury few will be able to afford. For a profession in which performance is not easily quanti-

fied, where service abroad has hazards, where one is removed from centers of power and is not able to have access to explain the positions and the arguments pro and con, face to face with the people who are involved, and where personal integrity and courage are vital to the national interest, we think such measures are particularly ill-advised.

It is our view that the provision in section 641 for "limited extensions" be deleted, that a minimum time-in-class period be established for the SFS.

Third, section 602(b) : The Department indicates in its sectional analysis that the objective of the SFS is to create a corps with rigorous entry, promotion and retention standards based on performance, but provides in this section that consideration should be given to the need for attrition.

The necessity and purpose of this provision are not immediately clear but the provision appears to conflict with the merit principles incorporated into the bill. Under merit principles, employees are to be retained on the basis of the adequacy of their performance.

When agency managements determine the number of promotion opportunities and selections into the SFS, they will surely consider this factor without a legislative mandate to do so. In our view, this section should be deleted.

With the modifications, we suggest the Senior Foreign Service would still give the agencies the flexibility desired but without the sacrifice of legitimate interests of both employees and the public. The stringent measures sought in the bill have not been justified to our satisfaction. For USICA, the Director himself made the case, in a March 26 letter to Mr. Read in which he reported :

Attrition and shorter promotion lists at USICA in the last two years have brought us a long way toward removing the surplus of senior officers. * * * Today, the number of officers at the class 1-3 levels and the number of jobs classified at those ranks are at parity and the historic imbalance has been resolved. I'm convinced, therefore, that current legislative authority and internal administrative practices are sufficient to deal with any potential future problems of senior officer impactment.

Without modification, the SFS proposal will result in damage to the integrity of the Foreign Service and worsen rather than improve the personnel system.

We have one last section or two sections on pay comparability and on retirement, if I may read those now to you.

One of the most critical problems, associated with proper classification, in the area of personnel practices, is appropriate pay. The administration draft is silent on its specific character and we consider this one of the many serious weaknesses in the bill.

Our union endorses fully the principle that Foreign Service personnel be assured of proper classification, equivalent to those provided civil service employees. We feel that, just as civil service employees now enjoy overtime pay, Foreign Service employees should be entitled to the same provisions.

Consequently, we request that you include in your legislation the provision that both base and premium pay for Foreign Service personnel shall be determined in the same manner as pay for civil service employees by proper "linkage" established by the Federal Pay Agent and Federal Employees Pay Council.

The simplest way to achieve this would be to restate that the provisions of title V, United States Code, which incorporate the authority of the Pay Agent and Pay Council, apply to the Foreign Service.

However, even if this were done, Foreign Service employees would not have pay comparability because civil service employees are not subject to worldwide service, to the attendant disruptions in their assignments, to the stresses in their personal and family lives.

For that reason, we propose that Foreign Service personnel be paid, at all times, a tax-exempt allowance to compensate them for this aspect of their governmental service. I should like to suggest the following language as a model or outline for your consideration.

The compensation of all Foreign Service personnel shall be the same as the comparable grade in the General Schedule excepting that Foreign Service personnel shall be paid a further tax-exempt allowance of 15 percent additional because of their availability to serve world-wide; provided that, in no case shall this allowance be less than \$2,000 and not more than \$5,000. This allowance shall be in addition to any other allowance which may be authorized.

The minimum and maximum allowances I have suggested are to assure that clerical and other personnel in the lower grades are adequately compensated and that personnel in the higher grades, particularly in the Foreign Senior Executive Service, if it is established, do not benefit disproportionately from other members of the Foreign Service.

Our last major proposal concerns retirement. We say as follows: There is a myth that "selection out" and early mandatory retirement at age 60 is a feature of the Foreign Service alone. It exists in the civil service, as well, for special categories, particularly the officers of the Federal Bureau of Investigation, other law enforcement groups, firefighters, and air traffic controllers, and employees of the Alaska Railroad.

In fact, for most of them, mandatory retirement is at a lower age than 60. I request permission to include as attachment II hereto extracts from title V, sections 8335 and 8336 on mandatory separation and immediate retirement. But there are two major differences.

First, these persons can continue to stay in the civil service in other functions besides their original specialties. Second, their annuities are computed, for the first 20 years of service at 2.5 percent and not the 2 percent offered Foreign Service personnel. To qualify for this larger annuity, they contribute 7.5 percent to their retirement annuity instead of 7 percent.

I should like to suggest that all Foreign Service personnel required to serve worldwide be brought under provisions similar to those afforded these categories I mentioned.

Under my proposal these computation formulas would be portable, so that any separated Foreign Service officer would be eligible for the higher 2.5-percent rate for all actual Foreign Service.

In summary, the following retirement provision would apply to all persons in the Foreign Service: First 20 years computed at 2.25 percent, remainder at 2 percent, with voluntary retirement at any age after 5 years of service abroad.

Those are the issues attendant on Foreign Service generally. The other issues are those located in the Agency for International Development and I do not know whether you wish to discuss general provisions first before we go to the special problems of the agencies.

Mrs. SCHROEDER. I thank you.

I think you have done the overview and now our problem is to figure out where we begin to ask questions. Let me throw one out to begin. Is there any reason for a separate Foreign Service? A lot of your testimony is that you would like things similar to the civil service. Why not just have a worldwide civil service?

Mr. KOCZAK. I think that proposal certainly has not been examined and has a great deal of merit. I am not sure how the individual members of the Foreign Service would respond because they are rather concerned about status and one of the nonmonetary rewards to human beings is to have a status which distinguishes and identifies them from other human beings.

If I may comment, I was a Foreign Service officer when the so-called Wristonization program came in and those Foreign Service officers who entered by the regular process were outraged. All kinds of people who did not pass the same examination which they had passed could come aboard and I would say that there was a great deal of friction and tension as to whether they did in fact match the same standards.

There is one plausible if not conclusive argument for a Foreign Service which is not totally separate. I do want to present, while not endorsing, that argument to you. We ourselves raised it in an oblique manner when we said that other Federal agencies are sending people abroad who we believe are eroding the Foreign Service generally of those functions which the ambassador must carry out.

Even if one were to assume hypothetically that all members of the Foreign Service should be concurrently in the civil service, I think you still would want to have the same kind of formal relationship preserved for those who go abroad, if they are already in the civil service, that one has in the military, that is, the active duty versus the reserve officers.

One of the problems of people at the Department of the Treasury, Department of Agriculture, Department of Commerce who go abroad is that they have no introduction or apprenticeship at the junior level to cover Foreign Service disciplines. They do not pass the minimum standards which they should be aware. They do not have the same kinds of introduction in their preparation for going abroad that the people in AID and ICA and State who go abroad have.

So, when you ask, is there any need for a separate Foreign Service, I have interpreted that question to mean totally separate, totally segregated as the military service is separate from civil service. I do think there is a need and there will be a continuing need to see to it that Foreign Service civilian people who go abroad at least have a characteristic that may be called "amphibian," that they are able to live a disciplined collegial life abroad and to concert their operations abroad with other people abroad, whether in the information agency, the diplomatic and consular services, even with people in CIA who are abroad under covert programs.

So, if one asks, should there be no distinction whatsoever, should there be no qualifying preconditions for Foreign Service, I would think that is impossible and impracticable. Perhaps that is the way, if I were trying to respond, I would try to reformulate your question.

On the other hand, we are of the opinion that because they are asked

to accept greater disciplines, Foreign Service officers should have not only all the rights and all facilities available to civil service people, but more.

Thus, for AFGE the question is: Does that require a totally separate Foreign Service or does it require instead some sort of organizational distinctiveness whereby people who go abroad clearly accept the fact that employment abroad will be different; they will be asked to perform things not required in the domestic service; they will be available for worldwide duty; and they will comprehend there would be direct reciprocity between disciplined duty and personal prerequisites.

The "total separation" which has been sought at times in the past has led to all kinds of manipulations unrelated to the needs of the Foreign Service, even unrelated to needs of the government itself, which is the issue I think you are trying to address, if I may be allowed to interpret your question even more.

Mrs. SCHROEDER. Mr. Fascell.

Mr. FASCELL. I want to pursue that. I am not sure, so you will have to take my interrogation here in a rather broad and general sense as to where you are going. I gather you are not for this bill at all.

Mr. KOCZAK. We are not for the bill at all for the reasons we have given.

Mr. FASCELL. Therefore, the suggestion that you made for amendments are just merely what, gratuitous comment on the bill since you are not for the bill?

Mr. KOCZAK. No, sir. We have been told the bill is going to emerge as law so to the extent the bill in some form will be law, we know it will govern Foreign Service life. We are not the Congress of the United States and consequently if the bill is enacted we would hope that our amendments would be incorporated into them.

Mr. FASCELL. I think that is important to have on the record. You are not just throwing the amendments into the air.

Mr. MICA. Will the gentleman yield?

Would you be supportive if all your amendments were adopted?

Mr. KOCZAK. We would.

Mr. MICA. You would support it?

Mr. KOCZAK. I think we would support the bill.

Mr. FASCELL. The other thing I would see developing which I do not particularly want to get into—I can understand why nobody has fooled with this since 1946—is that nobody wants to take you guys on and then you have a jurisdictional fight. You talk about jurisdictional fights in Congress, it is peanuts to what I see happening out there.

What you suggest is a larger, more effective role for AFGE.

Mr. KOCZAK. No, sir, we did not suggest that. We suggested—

Mr. FASCELL. I know you have not suggested a smaller, less effective role for AFGE.

Mr. KOCZAK. What we have suggested—and after all, we can lose the representation at the International Communication Agency—we have suggested a larger role for all Foreign Service employees, a role which would be equivalent to the role all civil service employees have whether they are operating through the instrumentalities that are set out for the special council, for the Merit Protection Board or for the union.

It is not necessarily AFGE. We may lose the representation.

Mr. FASCELL. That was not meant to be critical. I have to translate what you are telling me all the time, because you are speaking from years of background and experience that I do not have. I am not sure exactly what it is you are telling me, but I hope to be able to catch up with it shortly.

Let me see again. I gather you are for some kind of distinction for the Foreign Service—in terms of pay, for example—because of the necessity for worldwide service. Am I correct so far?

Mr. KOCZAK. Yes.

Mr. FASCELL. The other is a distinction for the Foreign Service in terms of retirement. Am I correct on that?

Mr. KOCZAK. Yes.

Mr. FASCELL. So those would be distinguishing features from other employees who would not be Foreign Service employees.

Mr. KOCZAK. Yes.

Mr. FASCELL. And therefore, you are not saying that it should be a unified civil service system?

Mr. KOCZAK. No, sir. We are not saying that. We are saying that just as the air traffic controllers, who are within the civil service, have special considerations for them so Foreign Service personnel in their distinctive service should have special considerations.

Mr. FASCELL. Hazardous duty recognition in terms of pay allowances, retirement?

Mr. KOCZAK. Yes; and examination. We have no objection to examination.

Mr. FASCELL. In terms of meeting a different criteria for employment, those would be distinguishing benchmarks. Do you have any problems with giving them a title instead of a number?

Mr. KOCZAK. No, sir.

Mr. FASCELL. Now, we are on the same railroad track. Let's start at the top. Should the Ambassador be classified by a title or number?

Mr. KOCZAK. No, sir; he is appointed by the President.

Mr. FASCELL. So, all constitutional officers would be exempt. Now regarding nonconstitutional officers—where does that start?

Mr. KOCZAK. I believe at the present time they are called career ambassadors and then career ministers and eight grades, and then you have what has now become, in practice but not in law, defunct, what is called the Foreign Service Staff and Staff Officer Corps. It has been rendered defunct by administrative fiat.

Mr. FASCELL. Start at the top.

Mr. KOCZAK. Foreign Service 1 through 8 and Reserve Unlimited groups and Reserves which are parallel.

Mr. FASCELL. Are they to the side or below?

Mr. KOCZAK. To the side. Career ambassadors, career minister 1 to 8, and then on the side there are the Foreign Service Reserve unlimited, on the side. The main difference is their names are not submitted for confirmation to the Senate.

Mr. FASCELL. In terms of the labor-management relationships you were talking about, in that scale of people that you just advised me, would everybody be in or everybody out or somebody be in and somebody out?

Mr. KOCZAK. In terms of what we described the people would be in the units as they are now. Overseas the main distinction is that all

so-called supervisors and managers except for the very top person in the post, is in a unit. All these employees are, of course, career personnel.

Mr. FASCELL. I am having a hard time following this because I do not have the knowledge of the operation; but this supervisor, as I understand it, does not have a designated job description.

Mr. KOCZAK. There is a position abroad which clearly states the person supervises, usually, foreign personnel.

Mr. FASCELL. Are you talking about administrative people?

Mr. KOCZAK. Yes.

Mr. FASCELL. We are not referring to the hierarchy of the State Department as such.

Mr. KOCZAK. No, sir. A Foreign Service officer does not have a supervisory function, for example, by that designation of class 1 officer—he is not a supervisor per se.

Mr. FASCELL. I thought I understood you to say that. I just wanted to be sure what people you were talking about, to be sure I had that clear in my mind. So, would you repeat again for me the labor-management relationships in the ideal situation, as you have recommended them, applied to career ambassador, career minister, and those eight levels, the two groups on the side, and all the foreign nationals.

Mr. KOCZAK. I should say that these are administrative titles, career ambassador, career minister, and have nothing to do with their function at any post.

Now, obviously there would be the problem of who is the very top person at any single post, consulate or Embassy abroad.

Mr. FASCELL. Wouldn't that be determined by his actual designation, not by—

Mr. KOCZAK. It would be determined by his assignment. The chief of the mission, for example, would be excluded automatically, no matter what his rank. It could be FSO-8.

Mr. FASCELL. By virtue of his assignment to that particular supervisory responsibility.

Mr. KOCZAK. Yes. But when he came back home he would cease to be a supervisor and might be just a professional or technical person and would be again in the unit. That would be the functional distinction that distinguishes between class rank and the function one is performing.

Mrs. SCHROEDER. Congressman Leach.

Mr. LEACH. Are you familiar with the Hay Associates study?

Mr. KOCZAK. Only in the sense that we have heard of it.

Mr. LEACH. Do you support it?

Mr. KOCZAK. I have not read it sufficiently. We received a copy last Friday so we could not interpret it as we were busy writing testimony.

Mr. LEACH. Do you go on the premise Foreign Service people are overpaid or underpaid?

Mr. KOCZAK. We think they are underpaid.

Mr. LEACH. Do you think a way of searching for comparability would be to equate Foreign Service salaries to civil service rather than going outside civil service?

Mr. KOCZAK. There are many ways of determining comparability. We have tried to build into a structure a fair base. Now, compensation

abroad has all kinds of other allowances. The problem, if I understand the Hay Associate study, is they tried to study what people get in Saudi Arabia and elsewhere, which is absurd because the conditions in Saudi Arabia and Brazil are so exceptional that the only way you can solve that is by tax exempt allowances, not by pay.

We said for that kind of situation if it is \$100,000 one has to give to secretaries to go to Saudi Arabia because of the value of the dollar, give them \$100,000 in allowances. That should not be considered base pay and it should be tax exempt.

The Treasury Department wants to tax these allowances, which we think is an appalling situation because it would mean the Foreign Service personnel would have to pay taxes on allowances from base pay, turn their whole base salary over just to pay the income tax on the allowances. We distinguish between allowances and base pay.

Mr. LEACH. Are you familiar with the AFSA recommendation, for equating Foreign Service pay to GS scales?

Mr. KOCZAK. We have seen several proposals. I prepared at one time a relationship between the two and we believe that should have been brought before the pay council on which I was serving. But, just as with the pay for the doctors in the Department of Medicine and Surgery, the pay agent never addressed the issue. I was an alternate on the pay council and repeatedly we asked the pay agent, when are you going to raise the subject properly so we can make some accommodation, and they never did.

So, the fact is that the Secretary of State and, at that time, the Chairman of the Civil Service Commission were derelict in not doing their duty in presenting proposals to the members of the President's pay agent. Thus, there was no way for us to make a determination on a more proper linkage. We represent Foreign Service personnel at ICA so that subject is just as close to us as it is to AFSA.

Mr. LEACH. I am referring to AFSA testimony today.

Mr. KOCZAK. I have not seen their testimony today.

Mr. LEACH. It is my understanding you oppose mandatory retirement; is that correct?

Mr. KOCZAK. We also oppose mandatory retirement, even in a case of the air traffic controllers. As I indicated, our wishes and our views have not been accepted by Congress. We are saying if there is mandatory retirement, we want 2.5 percent for Foreign Service people just as for air traffic controllers for the first 20 years of service.

Mr. LEACH. So, you would not favor it at a higher level, 62 or 65 or 67.

Mr. KOCZAK. Our view is just as there are Congressmen and Ambassadors who are 70 years old, if they are qualified they should be permitted to stay. There is no reason why civil servants should not be able to stay longer. If they are not qualified, there is a way to retire them. You can simply say, "We do not have a position you can fill adequately."

Mandatory selection-out for everybody over age 60, we think that is discrimination. There are a lot of people 60 years old, Foreign Service officers, who are as good as people 59 years old and who are Foreign Service officers and there are people 59 years old just as good as 18 18-year-olds. That is our argument.

If they cannot perform and cannot go abroad or there are too many of them, as there have been—the Department of State has said you can be 21 years in grade FSO-1—we say that is an administrative issue. If they do not have the courage to select-out officers largely because they themselves are also at FSO-1, there is a real problem that confronts all of us—administrative courage.

That is what is lacking at the Department of State and Foreign Service, at the top, and you do not have to go through this farce of getting rid of all people at age 60 when many are still highly qualified. I think the whole country begins to oppose that. That is the reason we oppose it, because we think it is illogical.

Mr. LEACH. Do you support either the maintenance of the current Foreign Service officer system or the proposed Foreign Service development officer system?

Mr. KOCZAK. We favor the information officer system because although we believe there are really very fundamental minimal standards that everybody should pass in some form or other and they should be qualified, we think the heads of these different agencies should be able to administer their own people.

There is no way to consolidate these agencies rationally today, especially with the experience the Department of State has had with the cumbersome "cone system"—we dread what will happen to the efficiency of the information service, for example, if they got tangled up in the system developed at the State Department.

Mr. LEACH. I happen to agree entirely with that.

Mr. IRELAND. Thank you. During your conversation about the Senior Executive Service you alluded to the difficulty in judging performance and I got the impression that perhaps it was impossible to judge some of this performance.

I am not sure I would agree with that, but a moment ago in response to what Congressman Leach was saying you referred to administrative courage and that you would not have to worry so much about the age 60 or 62 or 63 if there were administrative courage.

Can you tell me in what way you think, if a man did have administrative courage, that under our existing system he could pull this off? It seems to me that is the very heart of the question, that administrative courage or not, we are so tangled up in vague references to performance and unwillingness to go by judgment of performance that even the guy with administrative courage either is going to end up in the soup himself because his judgment is challenged or whatnot.

How is all that compatible in your mind?

Mr. KOCZAK. Secretary Vance was kind enough to invite us to meet with him and we discussed this problem of what should be the specific role of the Senior Foreign Service. It was our view that basically the concept of the senior executive service was to try to establish another level of managerial function, political in the broad sense, not in the partisan sense, of people available to any administration with a technical expertise. They could bring them in and take them out at will, taking into account that very often the most expert person cannot get along with his immediate political boss.

Personality and ideology may be more important in this wider managerial role than expertise. If that is the purpose of the senior executive service and if that is the purpose of the Senior foreign

Service, it is a kind of specialized person-to-person relationship where the Secretary of State and his closest associates would have technical experts at hand who are compatible in ideology and personality and "style" with them.

If that is what is intended—and it has a certain amount of rationale—the person who was brought on top should be able to parachute back to the regular career because this senior executive service is a sort of extra career function. You take on a function that is personal to the Secretary of State or the Secretary of the Treasury and there is much more of your personality as a part of it, than there is of your expertise.

Mr. FASCELL. Will the gentleman yield? If I understand what you are saying, it is as if under one administration somebody comes out of the ranks and gets up into that Senior Service and then in the next administration he is kicked out. You are suggesting he goes back to the level where he started from?

Mr. KOCZAK. That is correct. So that would mean his expertise would be preserved and the person would be more prepared to run the risk. If you know you are not going to have your career throat slit entirely by disagreeing on an energy proposal but that you might be able to survive at a lower previous level until maybe some other person comes in who is going to be your new political boss and you go up to SES again—if I may give one example.

Mr. IRELAND. Let's get more into administrative courage, whether the guy goes up and parachutes back or never goes up. Let's talk about below Senior Executive level and your comment that administrative courage would solve the thing of opting out at 60 or 65.

It does not seem to me in our current setup that anybody with administrative courage that wants to move somebody to the happy hunting grounds because he is not getting the job done—the guy with administrative courage does not have a chance in the world of getting the job done.

Mr. KOCZAK. Then what kind of executive do we have? I have to say we should not have to look to the people who are the typists and the clerks to be the salvation of the foreign policy of the United States if the people at the top cannot do the job.

Mr. IRELAND. If they get up there and they have been "Peter principled" by moving up to a grade they cannot keep up with, I do not care who has the administrative courage, it does not seem they will get the job done when a guy is promoted beyond his capabilities.

Mr. KOCZAK. You may be correct. I cannot comment on that. I am saying that the Secretary of State is derelict in that situation if he cannot see to it—he has the responsibility—it is not the union's responsibility. All our responsibility is to see to it whoever is removed is not removed for partisan reasons.

The second problem you are raising is an issue of personality and structure and management.

Mr. IRELAND. I thought that is what you were referring to when you used the phrase "administrative courage." Administrative courage could eliminate—and I am sure this was what you were saying—much of the need for this legislative administrative early retirement.

Now, what I am anxious to hear you say is why you believe that

administrative courage is absent, is it because all our administrators have no courage?

Mr. KOCZAK. I would not say that. We are coming now, I think, to the point that Representative Schroeder raised. I think that may be the real reason she raised it.

Let us take the situation of the Foreign Service officers class 1. They have put in all kinds of service at hazardous positions and let's say there are 15 percent more of them than the service can use at the moment. No one can really know who of these is in the bottom 15 percent. There is no way of distinguishing between them, at least on paper. They are all at the top.

It is the same as if you were to say all Nobel prize winners are to suffer selection-out, you are going to see that one takes away 15 percent of the Nobel prize awards from them as if these were a limited quantity. That is the problem the administrators face. They now say one of the ways to solve this problem is that, because we cannot decide rationally, we will let the throw of the dice decide and the game of the throw of the dice is "age 60, out you go."

The problem now really is that there is no way for them to say you go out as FSO-1 and be a civil servant, GS-18, because of the total present severance between Foreign Service and civil service. I found rather plausible what Mrs. Schroeder was saying, perhaps we should not sever the two services altogether, but merely remove him from Foreign Service, you might find courage appear there, because it is not "courage" but "compassion" that gets in the way of these cases.

If you serve abroad and talk to the people, it is hard to know which is the lamb or the goat, who are going to be mostly lambs, who is going to be sacrificed as goats. So, if there were this fallback, there might be more rational "courage." I think there is a great deal of merit to what Representative Schroeder suggests that we do a disservice to the Government of the United States and the Foreign Service by this great separation, the segregation of Foreign Service from civil service.

Mr. IRELAND. Madam Chairman, could I ask one more question along that same line? I want to make sure I understand what your opinion is of the separation of two different entities, Foreign Service and civil service.

I think you referred to the status that went along with us and I think perception is reality there. I am sure there is some status but in my district I do not think anybody would want that status. So, it is in the peoples' minds and I agree with you.

Do I understand that in your opinion the ideal would be one over-all civil service arrangement and then, be they in the State Department or the Communication Department or the CIA or Commerce, if they did go overseas regardless of from which department they originated, they would be subject to one examination.

They would be subject, on the other hand, to hazard pay, retirement, and everything based on going overseas.

Mr. KOCZAK. And discipline.

Mr. IRELAND. Thank you.

Mrs. SCHROEDER. Congressman Buchanan.

Mr. BUCHANAN. Thank you, Madam Chairman.

In the civil service 10 percent of the senior executives can be non-career. In this proposal 5 percent of the senior Foreign Service can be. Do you see any reason for the distinction?

Mr. KOCZAK. No, sir. As a matter of fact we have real concerns about the Foreign Service Senior Executive Service.

Mr. BUCHANAN. Do you support legislation to provide that former spouses of Foreign Service officers receive part of the annuity after the officer dies if the marriage lasted for 10 years?

Mr. KOCZAK. Yes.

Mr. BUCHANAN. Do you have any comment on the proper relationship between the State Department and ICA and whether this legislation provides for an appropriate relationship between the two?

Mr. KOCZAK. We fear this legislation would disturb what is today an appropriate relationship. We have been very much concerned that ultimately this legislation is intended to put within the jurisdiction of the State Department Foreign Service the same rule as the Office of Personnel Management has, and even more the right to assign people there on the Foreign Affairs agencies.

We think that would be very harmful, similar to the cone system that developed within the Foreign Service of the Department of State. So, we do wish to have the heads of these agencies able to operate in terms of missions assigned to them by Congress and not in terms of their being diffused by somehow being intermingled with something else.

Mr. BUCHANAN. Thank you, Madam Chairman.

Mrs. SCHROEDER. Congressman Harris.

Mr. HARRIS. Thank you. I am sorry for coming in late. I am familiar with your testimony and your position. I guess I want to ask you a simplistic question here, if I may. Is there any reason to have a separate Foreign Service?

Mr. KOCZAK. We earlier went through this question and I said I believe and it is the consensus of our locals that the term "separate" has to be analyzed because it can be ambiguous. If one means separate the way it is now, there is no reason why it has to be as it is now. If it is meant, should we realize there are in fact, in real life, fundamental distinctions between service abroad, disciplines abroad, the fact that small groups of Americans live in a community that perhaps a Foreign Service officer who is a class 1 officer, may have to do the work of a Foreign Service officer class 8 so the classification systems do not work or class 8 officer on occasion has to do the work of a Foreign Service class 1.

We think unless the Congress and unless we ourselves take into account that there is this very important distinction we will not understand the meaning of separate. When I responded earlier I said I think there is perhaps too much of a segregation and that all Foreign Service personnel should have the fundamental rights of the civil service, perhaps they should have a dual classification. They should have some relationship to the civil service; perhaps job rights at home in other agencies, potential rights when they come back.

If they are selected out, they have some access to civil service classification and that is not very different than what happens now for persons who have not been Federal employees. If you are in private enterprise, if you work outside, you can now go to the Office of Personnel Management, formerly the Civil Service Commission, and ask to be classified on the basis of your past private enterprise record; then you are entitled to get a job in the government at some general schedule grade, say for example GS-11.

If you are in the Foreign Service and the equivalent of your job is GS-11, we think those people should be able to have jobs in the Government at GS-11. Simply because they are no longer in Lithuania, for example, where we had an embassy at one time and there is no longer a need for a Lithuanian officer, there is no reason why they should not have a job in some other branch of Government while retaining the retirement rights they acquired in the Foreign Service.

Mr. HARRIS. How would this affect the Agriculture attaché, Commerce attaché and so forth?

Mr. KOCZAK. What we are facing is a total fragmentation because the Foreign Service is increasingly segregated from civil service and these different departments find they have needs abroad which are not being accommodated. Since the boundary between Foreign Service and civil service is kept impermeable, there is no way these civil service agencies can move in and out and preserve jurisdiction of any sort over their own people. They lose them or they move back and it is only through retreat rights.

We think there is a very real need for the Congress to find a relationship, a fundamental relationship between the traditional Foreign Service and everybody going abroad from Agriculture, Commerce, Energy, Treasury, CIA. So, we fundamentally agree that persons in service abroad should be recognized as having positions more dangerous, more hazardous, more tense, more onerous and there should be supplements paid on top, a reward paid on top of what civil service employees get.

Mr. HARRIS. It seems to me what you are saying is all professional employees of our Government should be civil service and that those Government employees that at times do service abroad should be subject to a layer of recompense, of requirements, what have you, that would apply to them.

Mr. KOCZAK. And discipline. They have to understand when they are abroad they are under the governance of the Ambassador. They are in the Foreign Service. I think it is not solely from our point of view to get more pay.

You enter a new official family relationship and you must realize you must get along with everybody abroad in the special environment that is abroad. This is what we meant about the amphibious role of a person who moves from civil service to Foreign Service abroad because life there is different and it is getting harder.

When they come back, when they are in the United States, they should have all the rights of the civil service available to them, even though their formal distinct status remains Foreign Service.

Mr. HARRIS. Let me ask you two general questions to help my thinking. I had a little experience with regard to this. There is a thing out there now where a fellow may have or a person may have served overseas for 20 years but he or she really is not a Foreign Service officer. And it always seemed vague to me, does this proposal help correct that situation in any way?

Mr. KOCZAK. No, sir. You are speaking of the issue of personal prestige and status.

Mr. HARRIS. Sure.

Mr. KOCZAK. It is supposed to be one of the rewards and has become one of the curses of service abroad because there is so much preoccupa-

tion with whether you have a diplomatic passport or another passport. It has contributed to the decline of our policies abroad.

Mr. HARRIS. You say this proposal does not help it.

Mr. KOCZAK. I do not see how it solves that problem.

Mr. HARRIS. The other element, so often, for example around the turn of the century, I had knowledge with regard to agricultural attachés. So often it occurred to me that we got a special advantage in having people in our Embassy that had very specialized, what I call, substantive knowledge as distinguished from being professional representatives and that there was an advantage that could be had by having people move from, for example, very substantive type of occupations in the Department of Agriculture and other agencies into a foreign post and back again.

And that attaché just did not have to be an attaché all the time. He could spend 3 or 4 years as an attaché, 3 or 4 years doing domestic work and 3 or 4 years as an attaché with a great deal of advantage.

Does this proposal help to facilitate that type of movement?

Mr. KOCZAK. Do you mean the administration's proposal?

Mr. HARRIS. Yes.

Mr. KOCZAK. We do not perceive that. As a matter of fact that is what worries us. At the outset of the statement Mr. Blaylock and the two locals both agree there is a real threat to the integrity and the efficiency of the foreign policy of the United States by the failure to provide some way in which those various Departments, Agriculture, Commerce, Energy, et cetera, are able to integrate their people into the whole life of the missions abroad, and they should be able, and very often they are the only ones available to carry out the foreign policy of the United States.

Maybe the most senior and most valuable person is an agricultural attaché and is the most qualified person politically at the moment there, under circumstances such as we have now in Cambodia and Vietnam or even Iran. That is one of the points we make in our testimony, that the time has come to see the relationship to the Foreign Service of the civil service personnel in all the departments of Washington who go abroad and their collective relationship both to each other and to the Foreign Service abroad and to the Ambassadors abroad.

Mr. HARRIS. I tend to agree with that observation. I have seen, for example, in some countries, the agricultural attaché becoming an extremely valuable person or right hand of the Ambassador because his or her knowledge of current science, of current technology, of current real life activities in the agricultural field gave the people in those foreign countries a reason to talk to him, to curry his friendship, to really utilize his or her knowledge.

Mr. KOCZAK. I think there is no question that very often, not infrequently, but very often the people who have substantive relationships and who are open and are in a sense at least initially removed from the specific programs, are able to develop and be accepted and then able to feed it at least the intelligence that they are able to acquire.

Not necessarily the decisionmaking but the intelligence they gather because they are not identified with one or the other current policies so formally. They should not make a decision contrary to the decision made by the Government of the United States but they should be available for information and intelligence and they should be utilized.

And I gather the point you are making is that there are occasions which this attaché should not be withdrawn from the mission if it turns out there is a possibility the ambassador has special reliance on that attaché. You are saying there should be some relationship between the civil service and the Foreign Service, between the Secretary of Agriculture and the Secretary of State, so that that person is allowed to stay there in the best interests of the United States and be rewarded for staying there.

Mr. HARRIS. Thank you, Madam Chairman.

Mrs. SCHROEDER. I have many further questions. I think what we might do is offer to keep the record open and have people submit questions for the record. I just wanted to ask one brief one. Do you have a collective bargaining agreement between the ICA and AFGE that will expire on June 30 of 1981?

Mr. KOCZAK. May I have the President of ICA respond?

Mr. ABE HARRIS. No.

Mrs. SCHROEDER. What is going to happen?

Mr. ABE HARRIS. The agreement was open ended. Just as Mr. Kozak explained, 1981 was purely the date where you could convert the GS voluntarily and basically at that time USIA, when this agreement was made, could live with the fact it would take 15 years to 20 years to phase out this FAS program whereas now apparently State Department has continued this program up to about 6 months ago, I believe, when they stopped hiring people. AMSA wants to terminate very quickly.

Mrs. SCHROEDER. So you have a real contract problem.

Mr. ABE HARRIS. We think the fundamental issue, if the State Department does not like a labor management agreement that USIA and local 1812 concluded, should they come to Congress and ask them to rewrite that agreement?

Mrs. SCHROEDER. Let me briefly ask all of you, if we were to adopt title VII of Civil Service, would you permit Foreign Service employees and other employees of the American Government overseas to picket U.S. Embassies if there is some problem?

Mr. ABE HARRIS. Informational picketing is allowed in this country and I think the Teachers Union has picketed some bases overseas.

Mrs. SCHROEDER. I do not believe they picketed an embassy.

Mr. ABE HARRIS. They picketed the bases where they were working.

Mr. KOCZAK. May I inquire, what is the picketing about which you were asking?

Mrs. SCHROEDER. As I say, we have to deal with this as a portion of the issue when we look at title VII negotiating rights. The question is what do we do about pickets at embassies abroad?

Mr. KOCZAK. I think a question like that would not depend on our wishes. This is the reason why we did want to have it under the Federal Labor Relations Authority so that an issue like that could be resolved in universal terms and not ad hoc. It probably would need to be determined by Congress in the first instance. What we are asking you is how you plan to permit it, if you do, and what body, if not the Federal Labor Relations Authority, acting on universal principles would administer it. There are more civilians working for military installations abroad. Do you wish to permit them to picket? If so, on what issues?

Mrs. SCHROEDER. That is right but you also told us before that of your expertise in dealing with employees. In other words, you also support separation of the Foreign Service and higher pay for Foreign Service and for the little better retirement. My question is then: How do the people in the civil service that you represent feel about that? Those are your areas of expertise that I feel we need to get from you. What do you feel about picketing abroad? What do you feel about those issues?

Mr. KOCZAK. I think we should have local 1534 people respond also. I wonder whether we might not respond to you in writing to separate the different kinds of picketing that are involved. Where does the picketing take place? Obviously you are going to have staff type issue picketing and other picketing the basic purpose of which is political—they do not like the foreign policy that is made by the Government of the United States.

Then you go into a very serious issue. Let me, if I may, narrate for you problems which our union confronted in the past—perhaps it will be helpful. During the Vietnam war some of our locals wanted to picket under the AFGE symbol against the further participation by the Government, by the United States in the Vietnam war.

Our president at that time, Mr. Griner, objected to that, noting they were free to picket under any other organization. There is nothing to stop them from being against the Vietnam war but there was no decision, there was no resolution by our convention on that issue and they were not free, therefore, to put out AFGE signs and say, "We are picketing as AFGE members." It had nothing to do with labor relations, management relations and he did not permit the picketing but expelled the locals involved.

To the extent it has to do with labor management relations and to the extent there was a breakdown in all communication with the United States—I cannot imagine it—but I cannot foresee how people would go out on the street automatically and begin picketing because they happen to disagree with some personnel policy.

And the second problem, if I may continue, is that the Ambassador is not the person who is the one they are picketing against. Their contract is with the agency, not with the Ambassador.

Mrs. SCHROEDER. He is a Presidential appointee. He is a symbol.

Mr. KOCZAK. My point is, if you are picketing you are picketing. For example, if they picket against HEW, HEW may have a contract with our local but it is not the Ambassador who has a contract with us. Unless they are picketing on some personal action, in the light of the situation it is the agency with which we have the contract. We do not have the contract with the Ambassador. You have the contract with the agency.

It may be we want to picket ICA back here for what is happening, let's say, in England. We may want to do that, but I do not see how the Ambassador out there is the person who is the contractor, and I do not see how the members out there have written a contract.

It would be Mr. Harris or Mr. Cope who would have to authorize the picketing; otherwise I think we would have a question as to the relationship of the local itself to its own officers and to the rest of the body. That is why we want to clarify and respond to you in writing. But I do want to say our contract is not with the Ambassador.

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Mrs. SCHROEDER. I have about two pages of simple questions like this, but I think I will submit them for the record because we have a whole group of people waiting to testify and they have a lot to say too. So, unless there are further questions, let me thank you and we will proceed and I will look forward to being your pen pal.

We welcome you.

Would you introduce the people with you and we will put your full testimony into the record and you can summarize or whatever.

STATEMENT OF LARS HYDLE, PRESIDENT, AMERICAN FOREIGN SERVICE ASSOCIATION

Mr. HYDLE. Thank you very much, Madam Chairwoman. My name is Lars Hydle. I am the president of the American Foreign Service Association. I am accompanied by, at my right and your left, legal counsel Catherine Waelder; Joseph McBride, a member of the outgoing and incoming governing boards. We just had an election, and he has chaired a task force on one of the aspects of this bill.

To my immediate left, Ken Rogers, outgoing vice president and chairman of the standing committee on Department of State affairs which worked so hard to prepare our testimony, and Bob Stern who coordinated our task forces and is a member of the outgoing governing board and of the State standing committee.

Mrs. SCHROEDER. May I ask a question at this point? Does that mean the position presented today is that of the new governing board or the old governing board position or of both?

Mr. HYDLE. I cover that briefly in our statement. The new governing board has not yet taken office. It will take office July 15 and therefore it cannot at this moment take a formal position. The actions that we have taken do represent in our judgment the consensus of the Foreign Service and I have with me—though we could not get him at the front table—the president-elect, new president-elect who will comment before we finish our formal testimony.

Madam Chairwoman and members of the subcommittees, for more than half a century the American Foreign Service Association has been the professional representative of the career Foreign Service, active duty as well as retired. Since 1973, AFSA has been the exclusive representative of the Foreign Service in the Department of State and the Agency for International Development that represents 9,000 employees in State and about 2,000 in AID so we do represent the great bulk of the active duty career Foreign Service people in our Government.

We seek to represent the interests of the Foreign Service, but also to encourage use of the Foreign Service as a high-performance, flexible instrument of the national interest and of foreign policy.

The Foreign Service Act of 1979 is in part an attempt by management to respond to the concerns AFSA has raised in the past with management and the Congress about various problems of the Foreign Service. We have been discussing since December with management various proposals and successive drafts of this bill. And we have met people at the highest level of the Department of State and AID.

We also have kept our membership, worldwide and in Washington, informed of the turn of events so far as we could, given the farflung nature of our Foreign Service on whom the Sun never sets.

We received hundreds of telegrams, we have organized task forces and the election that I referred to which has just been completed provided fuller occasion for debate of all the elements of this legislation.

Service-wide consensus has developed in favor of a number of key elements reflected in the bill, either initially or as a result of our efforts: Reestablishment of the up-and-out principle; reaffirmation of the distinction between the Foreign Service and civil service; legislatively based labor-management relations; reduction or elimination of excessive numbers of Foreign Service personnel categories; reestablishment in law of the Board of the Foreign Service.

At the same time, a consensus developed in opposition to a number of elements in the earlier drafts of the bill, many of which have subsequently been removed or modified. Overriding the concern of the Foreign Service about specific elements of the management proposals has been our question as to the need to seek comprehensive legislation. We believed that many of the problems of the Foreign Service could be addressed through existing authority and selected amendments to the Foreign Service Act of 1946, as amended.

We were not alone in our concern. But despite our urgings and those of others more senior than we, the Secretary decided to submit the comprehensive Foreign Service Act of 1979 which is before you.

Our position on the bill is, because of the strongly expressed concern of the career Foreign Service regarding such comprehensive legislation, AFSA does not today endorse this act. On the other hand, it does contain some provisions which would help the Foreign Service deal with its problems. We believe that the most useful service we can perform today for the Service and the Congress is to provide a detailed commentary on the bill, identifying provisions we approve as well as those we seek to change or wish to clarify in the legislative history.

I would like to discuss some of the principal areas of interest to us: The uniqueness of the Foreign Service; up-or-out and performance; pay comparability; international development; the Foreign Service Staff Corps; protection of the career Service against political abuse; and legislated labor-management relations.

We have submitted what we called our own section-by-section analysis. It is a comment on everything we thought was worth commenting on in the draft bill and the bill's section-by-section analysis. I estimate it contains about 90 separate points of various character, some important and some less important, some supporting aspects of the bill, some critical and some asking for further clarification.

Mr. FASCELL. Without objection, I gather this document is entitled "American Foreign Service Association Section-by-Section Analysis of the Bill To Promote the Foreign Policy of the United States by Strengthening and Improving," et cetera? It is not dated. I guess we are talking about the same document?

Mr. HYDLE. That is correct.

Mr. FASCELL. It has 31 pages to it?

Mr. HYDLE. Yes, sir.

Mr. FASCELL. Without objection we will make that analysis a part of the record.

[The material referred to follows:]

AMERICAN FOREIGN SERVICE ASSOCIATION

Section-by-Section Analysis of the Bill To Promote the Foreign Policy of the United States by Strengthening and Improving the Foreign Service of the United States and for Other Purposes

TITLE I—THE FOREIGN SERVICE ACT OF 1979

CHAPTER 1—GENERAL PROVISIONS

Sec. 101(a)(1) (p. 1, line 12)—After “to” insert “*advise and * * **”

Comment: This change would reflect the actual role of the career Foreign Service in giving advice on policy formulation and implementation. See also *Sec. 104(4)* below.

Sec. 101(a)(3) (p. 2, line 4)—Change to read:

“(3) that the *members of the Foreign Service* should be * * *”

Comment: This would conform more closely with the 1946 Act, which, as we read it, obligated each individual officer and employee to be representative of the American people, and to remain truly American rather than becoming too foreign or cosmopolitan. The legislative history should show that the requirement that the Service be “representative” incorporates a requirement to seek to recruit, hire, and retain the best people from all sections of American society, specifically including those not currently proportionally represented in the Service, but not at the expense of merit principles, such as equal employment opportunity. See also *Sec. 101(b)(2)* below.

Sec. 101(b)(2) (p. 2, line 25, to p. 3, line 8)

Comment: The merit system principles in 5 U.S.C. 2301(b)(1) and (2) already apply to the Foreign Service. This is reaffirmed in *Sec. 102(7)* and a number of other places in the bill. The legislative history should make it clear that equal opportunity is meant *regardless* of political affiliation, sex, etc. Similarly, the reference to handicapping conditions should not be interpreted to require hiring of an employee who cannot meet the medical standards for career availability for worldwide assignment. See also *Sec. 101(a)(2)* above, and *Sec. 301(b)* and (c) below.

Sec. 101(b)(5) (p. 3, line 21)—After “minimize” insert “*and compensate for * * **”

Comment: The law should make it clear that where possible, tangible compensation should be provided to members of the Service for the extraordinary hardship and dangers they suffer.

Sec. 104(4) (p. 8, line 10)—Add new paragraph (4):

“(4) *advise the Secretary with respect to foreign policies which will best serve the interests of the United States.*”

Comment: See also *Sec. 101(a)(1)* above.

CHAPTER 2—MANAGEMENT OF THE SERVICE

Sec. 202(b) (p. 9, line 20)—Insert at end:

“*information officers, and, with respect to the International Development Cooperation Agency, be deemed to include references to Foreign Service development officers.*”

Comment: In order to enhance compatibility among the foreign affairs agencies and the status of the international development function, the law should provide for the establishment of a Foreign Service Development Officer corps in IDCA, parallel with the FSO corps in State and the FSIO corps in USICA. The specific categories of Foreign Service personnel who would be so appointed could be worked out by subsequent regulation. AFSA has frequently testified in favor of the FSDO concept, most recently on May 2 before the House Post Office and Civil Service Subcommittee on Employee Ethics and Utilization in connection with AID’s “unified personnel system” proposal. See also Section 2105 below.

Sec. 206 (pp. 12 to 13)

Comment: We strongly support the re-establishment in law of the Board of the Foreign Service. We agree with the composition and functions of the Board described in *Sec. 206* and its analysis. We welcome the proviso that a career member of the Senior Foreign Service chair the Board, and we believe that a majority of Board Members should likewise be career Members of the Senior Foreign Service. Only those domestic agencies with government-wide responsibilities (OPM

and OMB) or which use the Foreign Service overseas but have none of their own (Commerce and Labor) should be represented.

To insure that the Board can function as an independent and useful source of advice to the Secretary and other foreign affairs agency heads, it should have a staff, like that of the FSLRB in Chapter 10 or the FSGB in Chapter 11, independent of agency management and responsible only to it. Its career Foreign Service members should be neither officials of the exclusive employee representative nor management officials as defined in Sec. 1002(10) (F). It should not only respond to requests from agency heads for advice on issues arising under the Foreign Service Act or the Secretary's government-wide authority, but also initiate such advice. In forming its judgments, it should feel free to hear representatives of both agency management and the exclusive representative. See also Secs. 1201, 1203, and 1204 below.

CHAPTER 3—APPOINTMENTS

Sec. 301(b) (p. 13, line 22 to p. 14, line 1)

Comment: The analysis should make clear that the physical examination for a career Service available for worldwide assignment must be more rigorous than a physical examination for the Civil Service, and that Foreign Service medical standards should supersede the requirements of the Rehabilitation Act in cases of conflict. See also Sec. 101(b) (2) above, and Sec. 301(c) below.

Sec. 301(c) (p. 14, line 2)

Comment: This subsection, which is substantially identical to existing law, should not be taken to permit or require waivers of high Foreign Service medical standards. The Board of Examiners should be continued. See also Sec. 101(b) (2) and Sec. 301(b) above.

Sec. 302(b), (p. 15, lines 21–23)—Delete “and * * * Chapter 4”

Comment: We approve of giving the SFS Member the option of receiving either the salary of his/her position or his/her SFS class, as well as post differential, if any. The deletion reflects our opposition to performance pay. See Sec. 441 and Sec. 2201.

Sec. 311(a) (1) (p. 16, line 17)—Add:

“The President shall provide to the Committee on Foreign Relations of the Senate, with each nomination for a chief of mission position, a report on that nominee's demonstrated competence to perform the duties of chief of mission in the country in which he or she is to serve.”

Comment: This provision will improve the Senate's ability to judge the qualifications of a nominee, and deter the nominations of inadequately qualified persons.

Sec. 311(a) (3) (p. 16, line 21)—Change to read:

*“(3) to the maximum practicable extent, career personnel * * *”*

Comment: This change parallels the language of Sec. 311(a) (1) with respect to the qualifications of a chief of mission and reflects the previously expressed sense of Congress (Sec. 120 (P.L. 94–350 (90 Stat. 829))) that “a greater number of positions of ambassador should be occupied by career personnel of the Foreign Service.” The analysis for this paragraph and Sec. 311(b) (1) should emphasize the importance of considering senior Foreign Service personnel from USICA and IDCA, as well as State.

Sec. 311(a) (2) (p. 16) and (b) (2) (pp. 17–18)

Comment: The analysis should emphasize that the term “contribution” should encompass all forms of assistance to a political campaign, including working in, providing services (e.g., advertising) to, or raising funds for, as well as a straight financial contribution to a campaign.

Sec. 321 (p. 18, line 10)—Add:

“excluding those currently serving as Presidential appointees to specific positions.”

Comment: Career SFS Members serving as Chiefs of Missions or Assistant and Under Secretaries do not thereby lose their career status as career SFS Members, but non-career appointees to those positions are not counted as SFS Members. Either the latter group should be counted within the 5 percent, or, most likely, these Presidential appointee positions and their incumbents should be excluded from the calculation. The 5 percent is a ceiling, not a minimum, quota, goal, target, or average.

Sec. 323(1) (p. 19, line 14)—Change to read:

*“the functional needs of the Service which cannot efficiently be filled from within the Service or, by a limited or temporary appointment; or * * *”*

Comment: This change would protect promotion and assignment opportunities for the career Service from lateral appointments not justified by the long-term needs of the Service for functional skills.

Sec. 333 (b) (p. 22, line 2)—Delete “be consistent with * * *” and replace with “not be used to avoid fulfilling * * *” and on line 3, insert “full time” before “positions”.

Comment: This change is consistent with existing law (Sec. 413, P.L. 95-426, 92 Stat. 963) which makes it clear that full-time American career positions should not be abolished in order to create those positions, sometimes part-time, temporary, or intermittent (PIT), for family members. Such action of creating PIT positions reduces promotion and assignment opportunities for current career members of the Foreign Service. Our proposed change is not intended to impede increases in job opportunities for family members, or innovations concerning job-sharing overseas.

CHAPTER 4—COMPENSATION

Sec. 401 (p. 23)

Comment: We approve of this section, which essentially continues existing law. Since chiefs of mission, pursuant to Sec. 203, have full responsibility for the direction, coordination, and supervision of all government officials and activities in the country, their positions should be classified according to the scale of such activities.

The continued use of different pay levels for chiefs of mission recognizes the level of performance inherent in the requirements of a specific position.

Sec. 421 (p. 24, line 8)—Delete “nine”

Comment: We are reserving our position on the number of classes in the Foreign Service schedule, pending further review of the recently completed Congressionally-mandated study of Foreign Service compensation. Apart from that, we approve of the abolition of currently existing FS/GS pay links, establishment of the FS-1/GS-15 link, and establishment of a single Foreign Service pay plan replacing the two overlapping pay plans.

Sec. 441 (pp. 25-28)—Delete.

Comment: While we support pay comparability between the Senior Foreign Service and the Civil Service, we believe that performance pay as envisaged in Sec. 441 would not enhance SFS performance, and would be subject to abuses likely to undermine the integrity of the Service. The principal product of our senior Service is likely to be advice, and good advice may not be rewarded if it seems contrary to the current conventional wisdom of an Administration. We have supported continuation of Chief of Mission classification (Sec. 401) and full payment of post differential to Chiefs of Mission and other senior personnel at “hardship” posts (new Sec. 2206), as a tangible recognition of the level of performance inherent in a position or the circumstances in which it is carried out. In addition, we believe that Deputy Assistant Secretaries, or their equivalents in AID, should be compensated at Executive Level V, equal to Chief of Mission at a Class IV post, but at this time we do not have a specific legislative proposal. We are examining additional ways to encourage and reward performance in the senior ranks.

Sec. 442 (p. 28)

Comment: We support this approach to rewarding performance, especially meritorious service, below the senior ranks. The analysis should refer to *sub-standard* rather than “mediocre” performance.

Sec. 461 (p. 33, lines 13-15)—Delete “that portion * * * appropriate of * * *”

Comment: In the name of equal pay for equal work, an officer temporarily serving as principal officer should receive the same pay as the officer permanently or formerly assigned to that position.

Sec. 462 (p. 33, line 19)—Change “Allowances” to “*Differential*”.

Comment: The special allowance, unlike other allowances available to government employees overseas, but like the post differential, is taxable, and established as a percentage of basic salary. Also unlike overseas allowances, it can be paid for positions in Washington. Calling it a differential would be more logical.

Sec. 462 (p. 33, lines 19-25)

Comment: This authority was created last year to mitigate the adverse impact on FSO's and FSIO's of the loss of premium pay pursuant to Section 412 of the Foreign Relations Authorization Act of 1978. We are seeking the repeal of Sec. 412, but we also have problems with the implementation of the special allowance. We ask that the legislative history indicate that:

50 hours per week is "in substantial excess of normal requirements" (the current regulation refers to 55) ;

there should be no upper limit imposed on the number of FSO's receiving special allowances (the current regulation refers to "approximately 100" in State) ;

FSO's of all ranks should be eligible for the special allowance (FSO-3's, who will be FS-1's, are not) ;

25 percent of basic salary is a reasonable figure for the special allowance (which now ranges from 12 to 18 percent) ;

there should be no positions exempted (special assistants to Presidential appointees at Executive Level 3 and above are now ineligible to receive the special allowance) ;

The Department should not take advantage of the inability of FSO's to receive premium pay by requiring them to work for periods in which work is not really essential (i.e. to hang around on weekends in case an Assistant Secretary may want them) or to avoid the need to adjust its workload or ask for more personnel when necessary to perform the Department's mission. See also (Sec. 2301(3) below.

Sec. 462 (p. 33, line 21)—After "authorized" insert "(a)" and line 25, add: "or (b) to Foreign Service personnel who are required by the nature of their assignments to remain on call on a regular basis for substantial periods of time outside normal duty hours."

Comment: Many Foreign Service personnel, especially secretaries and communicators at small posts overseas, are required to remain on "stand-by duty" or on call for extremely long periods of time, but are not compensated except and to the extent that they are required during such periods to come in to work. The concept of the special allowance, of a certain percentage of basic salary, is an appropriate way to compensate personnel for such a substantial loss of free time.

CHAPTER 5—CLASSIFICATION OF POSITIONS AND CLASSIFICATIONS

Sec. 511(b) (1) (p. 34, line 25)—After "filled" insert "for a specified tour of duty * * *"

Comment: All Foreign Service personnel assignments are for specific tours of duty, normally for two or three years. Similarly, an assignment of a non-Foreign Service employee to a Foreign Service position should be for a specific period of time after which the assignment could be renewed or a new person assigned to the position.

Sec. 511(b) (1) (p. 35, line 3)—Insert:

"provided, that the number of such personnel shall not exceed the number of career personnel of the Service assigned pursuant to Sec. 521, and"

Comment: The purpose of this change is to protect assignment and promotion opportunities of the Foreign Service, which are adversely affected when more non-Foreign Service people are occupying Foreign Service positions than vice versa.

Sec. 521(a) (4) (p. 36, line 10)—Add:

"A substantial number of Foreign Service officers shall be assigned for duty under this paragraph."

Comment: This restores the original concept of the "Pearson Amendment"—Sec. 572 of the Act of 1946, as amended. The legislative history should indicate the sense of Congress that most FSO's should have such an assignment once after commissioning and before promotion to the SFS.

Sec. 521(b) (1) (p. 36, line 12)—Insert "the higher of" before "the salary"; and in line 13, delete "irrespective of" and insert "or".

Comment: This is consistent with existing law, and with the concept of equal pay for equal work which is part of merit system principles.

Sec. 531 (p. 37)

Comment: We applaud Sec. 531(a) as a reaffirmation of the principle of availability for worldwide assignment in the Service. We would expect to negotiate an agreement on any regulation limiting assignments within the U.S., and procedures for extensions of the eight-year limit.

We also approve of paragraph (b). However, there are some specialties, e.g., secretaries and communicators, in which there are not enough positions in Washington for this objective to be met because so many of these positions are classified as "Civil Service". We urge that the legislative history provide that there should be enough positions classified Foreign Service in Washington in all

categories so that at least those career personnel in all categories who want to serve in Washington for one tour every 15 years will be able to do so.

Sec. 532 (p. 38, line 7)—Insert new Section:

"Section 532 Leave Without Pay.

Consistent with the needs of the Service, the Secretary shall establish regulations which enable career members of the Service to be granted leave without pay."

Comment: Our purpose is to establish that leave without pay is a good thing, so as to broaden the experience of a career member of the Foreign Service and therefore his or her usefulness to the Service.

CHAPTER 6—PROMOTION AND RETENTION

Sec. 602 (pp. 39–40)

Comment: We approve of the concept in paragraph (a) that a member of the Service must request consideration for promotion to the Senior Foreign Service.

We do not object to the "threshold window" concept in the last sentence of paragraph (a), provided that:

the exclusive representative will be able to negotiate the time-in-class (TIC) for new FS-1, as well as the number of years in the threshold window during which one may be considered for promotion;

in AII/IDCA, where retirement for excessive TIC has not been used, the establishment of a threshold window would have to await the establishment of a TIC at that level—both on the basis of negotiation with the exclusive representative;

We strongly support subsection (b). This concept was implicit in the 1946 Act, and explicit in its legislative history. Its reaffirmation in this Act will strengthen the ability to use discretionary authority in the Act to make sure that promotion opportunities are reasonably adequate and stable from year to year, thus reducing the risks of deciding when to request consideration for promotion to the SFS. The exclusive representative must be able to co-determine the application of this authority from year to year.

We support subsection (c) for the reasons indicated in the section-by-section analysis.

Sec. 603 (p. 40)

Comment: The legislative history should show that the composition of selection boards, and the precepts under which they function, should continue to be subject to negotiation and agreement with the exclusive representative.

Sec. 603 (2) (p. 40, line 17)—Delete "performance pay under Section 441(c)" and insert "*within-class salary increases under section 442.*"

Comment: Sec. 442 does refer to the role of selection boards; this appears to be an oversight in Sec. 603 (2). See also Sec. 441 above.

Sec. 612 (a) (p. 41, line 1)—After "Dependability" insert "*usefulness*", and lines 2–7 delete everything after "Service" in subsection (b).

Comment: "Usefulness" is from the 1946 Act; to us it carries an implication of assignability. However, we would eliminate all the examples of reports in the performance file in order to leave these for negotiation between management and the exclusive representative. Many of our Members are concerned that records of prospective assignments for SFS members might be subject to abuse.

We support subsection (b), in its reference to the qualities required of the Senior Foreign Service. Area expertise and various functional skills continue to be extremely important at senior levels of the Foreign Service, along with managerial and policy formulation capabilities.

Sec. 641 (pp. 43–45)

Comment: We support this concept, including the explicit reference to the possibility of limits on time-in-class or a combination of classes, the extension of TIC to what is now the career minister level and to other Foreign Service personnel categories, the possibility of either increasing or decreasing TIC, and the limited extensions of career appointments, to be determined in individual cases pursuant to recommendations of a selection board; *provided that*, all of these regulations must be negotiated with the exclusive employee representative, to maintain the confidence of the Service that this authority will not be abused, either because of external political or budgetary considerations or internal cronyism. In AID, circumstances are different, and TIC must be established very carefully and gradually, only by agreement with the exclusive representative.

Sec. 642 (p 45, line 8)—Delete “Relative” and insert “*Failure to Meet Standards of*”.

Comment: We support the concept of selection out for substandard performance, including its extension to what is now the Foreign Service Staff Corps, and to AID, where the authority has not been used recently. We oppose, however, a section title which suggests that selection out could occur to a career member of the Service who is performing adequately, albeit not as well as his/her peers, and if retired, would not receive an immediate annuity. Either immediate annuities should be extended below age 50 or new FS class one, or the legislation should not be written so as to prejudice the negotiations on performance standards precepts. On the other hand, we would have no problem with retirement for relative performance for personnel who are eligible for immediate annuities and whose retirement would increase promotion opportunities for outstanding mid-level and junior members.

CHAPTER 7—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

General comment: This chapter reaffirms in substance advances in training for family members in recent amendments to the 1946 Act. AFSA has supported these amendments, but now finds that the new authority is being applied, in an era of limited resources, to give priority to family members over employees, notably staff corps employees. We strongly urge that the legislative history provide that training for family members is to be provided, pursuant to sec. 701(b) “in addition” to training for members of the Service, not instead.

Sec. 704(a) (p. 54, lines 6 and 10)—Delete “orientation and language”; lines 7 and 9, after “to” insert “*members of the Service and * * **”

Comment: The Secretary should have the authority to compensate for costs related to all forms of training authorized and approved under this Chapter.

Sec. 704(b) (line 18)—Amend to read: “If a member of *the Service or a member of the family of a member of * * **”

Comment: Sec. 703(4) provides for grants to personnel assigned or detailed for language training. It does not, however, provide for unusual situations, direct transfers, which may necessitate training on the employee's own time. This is precisely the authority being established for family members, and we feel it should be extended to career personnel.

Sec. 705(b)(2) and (3) (p. 55, lines 14 and 17)—Delete “overseas”.

Comment: The peripatetic life of Foreign Service spouses creates difficulties for spouses not only in finding overseas jobs, but also in maintaining in the United States adequate contacts and knowledge of the job market to pursue a career which they may have to do if their spouse is assigned or retires in the U.S., or they are separated by death or divorce.

Removing the “overseas” constraint on employment assistance for spouses would also enable management to integrate more fully the career counseling provided to members of the Service under subsection (a) and to their spouses under subsection (b).

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Sec. 803(a) (p. 56, line 7)

Comment: We believe this definition of participants is an improvement over present legislation by covering all employees who have entered the Foreign Service for a career including such limited appointment employees as the career candidate junior officer (sec. 322(a)) and employees who have exhausted their time-in-class and are subject to mandatory retirement but continue to serve on the basis of a selection board recommendation (Sec. 641(b)).

Sec. 821(c)(2) (p. 68, line 14)—Revise to read:

“If an annuitant dies and is survived not by a spouse but by a child or children, an annuity equal to the maximum survivor annuity for a surviving spouse shall be paid to the child or in equal parts to the children.”

Comment: Considering the very unique problems of orphaned minor children, we believe the current schedule of annuities to be unrealistic. Making arrangements for the further support of such child or children can be very difficult because foreign service life weakens ties to the extended family and the only surviving relative may reside in a foreign country. We recommend that the annuity schedule for surviving orphan children be increased under the above formula.

Sec. 831 (p. 75, line 18)

Comment: We have no specific recommendations concerning this section but are concerned by its applicability in the case of an employee who was handicapped at the time of first employment and who later applies for disability retirement on the basis of the same handicapping condition.

Sec. 835 (p. 84, lines 9 and 10)—Delete the words “and with the consent of the Secretary”.

Comment: When an employee becomes eligible for voluntary retirement, the employee should have full freedom to decide when to retire. There is no justification that the employee be placed in a condition of “involuntary servitude” and be required to continue to work in the Foreign Service at the pleasure of the Secretary.

Sec. 836(b) (p. 84, lines 24 and 25)—Amend to read: “* * * shall determine that the needs of the Service require any participant * * *”

Comment: The justification for extending the period of employment of a career employee beyond age 60 should be tied to Service needs, which can be measured and determined.

Sec. 837 (p. 85)

Comment: This section is an improvement over Sec. 519 in the 1946 Act in that it extends coverage to all career employees with Presidential appointments not just chief of mission appointments.

Sec. 872(a) (p. 100, lines 16, 17, and 18)—Amend to read:

“not to exceed during any calendar year the basic salary the member would be entitled to receive under this Act if currently employed in the Foreign Service class which the Secretary determines most compatible to the class the member held on the date of his or her retirement from the Service.”

Comment: Considering inflation and the significant basic federal salary increases which have occurred, it is unrealistic and unfair to use the employee's salary at time of retirement as a ceiling for what he can receive as annuity and salary when re-employed. Rather, the ceiling should be no less than that salary which the employee would be receiving if he or she had continued his or her career employment.

CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

Sec. 901(2) (p. 106, line 13)—Amend to read “required leave in the United States.”

Comment: The revised wording reflects the choice of words in Sec. 911, p. 112.

Sec. 901(3) (p. 106, lines 16, 17, and 18)—Place a semicolon after the word “duty” in line 16 and delete all the remaining words in the subsection.

Comment: There are a variety of situations when an employee may be given temporary duty away from home. The Secretary should have flexibility in determining by regulation when and under what conditions family members may, at government expense, accompany, precede, or follow any employee placed on temporary duty. The deleted words impose an unnecessary restriction on the Secretary's authority.

Sec. 901 (p. 106, line 19)—After subsection 901(3), add a new subsection “(4)” and renumber all succeeding subsections. The new subsection (4) to read:

“(4) transporting the personal effects and privately owned automobile, whenever the travel of the employee is occasioned by changes in the seat of the government whose capital is his or her post.”

Comment: This new section incorporates the purpose served by Sec. 911(6) of the old Act. In at least one country today, the seat of government shifts locations every six months and some employees in the mission have to follow along in order to continue their responsibilities.

Sec. 901(11) (p. 109, line 20)—Amend to read “transporting and clearing through foreign customs the furniture * * *”

Comment: Many foreign countries impose customs duties and local taxes on employees' authorized shipment of furniture and household and personal effects. This is especially onerous in the case of employees who are not commissioned diplomatic or consular officers. Under some circumstances, the Vienna Diplomatic or Consular Convention may give protection. However, all too often host governments impose custom duties and other taxes on shipments of staff personnel's belongings even though the shipment is authorized and paid for by the United States Government. This amendment relieves the employee from the burden of such foreign government custom duties and taxes (See Sec. 901(13)).

Sec. 901(13) (p. 111, line 4)—Amend to read “transporting and clearing through foreign customs, notwithstanding * * *”

Comment: This amendment is similar to that proposed for Sec. 901(11). Many host governments impose custom duties and taxes on automotive vehicles owned by non-commissioned employees which effectively prohibit the employee from importing and using his or her privately owned car. Pending the time when relief can be obtained by means of a negotiated agreement, the employee should not have to bear the burden of such expenses. All employees should have similar privileges for owning and using their own cars.

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

General comment: We believe that labor relations in the Foreign Service should generally parallel those in the Civil Service under Title VII of the Civil Service Reform Act, except that the bargaining unit should continue to parallel our current system under Executive Order 11636.

Sec. 1001(3) (p. 116, lines 16-19)—Delete “The provisions of the chapter shall be interpreted in a manner consistent with the requirement of an effective and efficient government.”

Comment: This phrase has been added at the last moment, apparently at the insistence of OMB. If it is not simply meaningless and redundant, it appears intended to cast doubt on the flat statement in the previous sentence that “labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient government.” The OMB amendment has no parallel in Title VII.

Sec. 1002(5) (p. 118, lines 10-12)—Change to read:

“official (except an individual who assists in a purely clerical capacity or management official who is not engaged in the administration.”

Line 15—Delete “)”

Comment: This would make the definition of confidential employee the same as in Executive Order 11636, under which it has worked well. See also Sec. 1041 (e) below.

Sec. 1002(9)(D) (p. 120, lines 6-7)—Delete “work stoppage or slowdown”

Comment: Amended to conform with Title VII, Sec. 7103(a)(4)(D) of the Civil Service Reform Act.

Sec. 1002(10)(E) (p. 120, lines 24-25)—Delete and reletter subsequent subparagraph.

Comment: Inspectors have not been so defined under Executive Order 11636, and there is no reason why they should be under this Chapter. See also Sec. 1041(e) below.

Sec. 1003—Delete “(a)” p. 121, lines 10-20; reletter succeeding paragraph.

Comment: This paragraph is unnecessary in the light of the subsequent paragraph. The section-by-section analysis should reflect the fact that no agency head has felt the need to suspend any provision of Executive Order 11636 with respect to any element of his agency since the Order took effect in 1971, a period which has included several wars, evacuations, and other emergency situations.

Sec. 1005(a)(1) (p. 122, line 25)—Delete “of types and classes”.

Comment: Amended to conform to Title VII, Sec. 7106 of Civil Service Reform Act. Types and classes are negotiable at management's option under paragraph (b) of this section. We believe the inclusion of these words may have been an editing oversight.

Sec. 1005(a)(2) (p. 123, line 3)—Delete “promote”.

Comment: This parallels Title VII, Sec. 7106 of Civil Service Reform Act. There should be no implication that promotion procedures are not negotiable; we have been doing so under Executive Order 11636 for several years.

Sec. 1011 (p. 124, line 21-22)—Amend to read:

“* * * each agency and the exclusive representative for each bargaining unit.”

Comment: The revised wording clarifies and reinforces the concept of equality between the agency and the exclusive representative for the bargaining unit in that agency.

Sec. 1014(a) (p. 129, lines 14-17)—Delete all after “include”; line 19, change to read “and [one] two members who [is] are not [an] employees of the * * *”

Sec. 1014(e) (p. 130, lines 22-23)—Delete “or the Secretary finds that the Panel's action is contrary to the best interests of the Service.”

Comment: Title VII makes arbitral awards final. The section-by-section analysis for Sec. 1014(e) does not even attempt to explain why the Secretary and other foreign affairs agency heads would need authority which is not granted to other Department and agency heads. Even when such authority is never invoked, as it has not been under Executive Order 11636, it can skew collective bargaining by making management negotiators more intransigent and unrea-

sonable. It has been argued that the Disputes Panel, which includes two members of the bargaining unit, should not be allowed to make final decisions. We would accept a Disputes Panel composed of one FSIP member and two private members, in exchange for finality.

Sec. 1022 (p. 134, line 14)—Delete “(1)”; delete lines 16–22.

Comment: Experience with Executive Order 11636 has not indicated the need to exclude categories (2) and (3) from the bargaining unit. We support a single, agency-wide, worldwide bargaining unit. Our ran-in-person, highly mobile system and the fact that most of our conditions of employment are of broad applicability argues against any attempt to balkanize the bargaining unit according to post or bureau, rank, or personnel category. One can deal with those conditions of employment with narrower scope through the internal delegation of authority within the exclusive employee representative.

Sec. 1023(b)(1)(A) (p. 135, line 13)—After “concerning” insert “any grievance or”; lines 15–18, delete all after “practices.”

Comment: The amended language parallels Title VII, Sec. 7114(a)(2) of the Civil Service Reform Act. Otherwise it would be inconsistent with the role of the exclusive representative in grievances in Chapter 11.

Sec. 1023(d)(2) (p. 136, line 22)—Delete “appropriate.”

Comment: We seek to parallel Title VII, Sec. 7114(b)(2) of the Civil Service Reform Act. Sec. 1002(4) already defines conditions of employment; no further modifier is appropriate.

Sec. 1031(b)(7)(A) (p. 152, line 21)—Delete “in the United States”

Comment: Title VII, Sec. 7116(b) of the Civil Service Reform Act does not flatly prohibit informational picketing overseas. We would prefer to be guided by case law being developed by the FLRA.

Sec. 1041(e) (pp. 147–148)

Comment: This subsection, which parallels Section 1(b) of Executive Order 11636, provides adequate protection to both management and employees against any real or apparent conflict of interest on the part of any employee other than a management official or confidential employee in specific circumstances. Hence, further exclusions from the bargaining unit are unnecessary. See also Sec. 1002(5) and (10)(E), 1003(a), 1022(2) and (3) above.

Sec. 1041(f) (p. 148, lines 9–10)—Delete “prohibited picketing”; lines 17–18, delete all after “action”.

Comment: Amended to parallel Title VII, Sec. 7120(f) of the Civil Service Reform Act. We believe that revocation of exclusive recognition would be too harsh a penalty for prohibited picketing, and that there be no penalty in addition to revocation.

Sec. 1051(c) (p. 149)—After line 17, insert:

“* * * alleging that 10 percent of the employees in the Department have membership in the organization.”

Comment: Amended to parallel Title VII, Sec. 7115(c) of the Civil Service Reform Act.

CHAPTER 11—GRIEVANCES

Sec. 1101(a)(1) (p. 151, line 24)—Delete “involuntary”.

Comment: A challenge to separation from the Service for the reasons stated should be clearly grievable without leaving room for argument concerning whether the individual's separation was “involuntary” if, for example, the employee were to resign or retire pending disciplinary action.

Sec. 1101(a)(1) (p. 152, line 2)—After “prejudicial” insert “character of * * *”

Comment: The revised wording is clearer and more closely adheres to that in the present legislation. It is the character of the information which can be so onerous if “falsely prejudicial,” rather than the information itself.

Sec. 1101(a)(7) (p. 152, line 23)—After “alleged” add “arbitrary or capricious * * *”

Comment: Consistent with current law, the provision should be clear in its coverage of cases where an allowance or financial benefit has been denied arbitrarily or capriciously even if permissible under the letter of the applicable statute.

Sec. 1102 (p. 154, line 7)—Insert “(1) or (7)”.

Comment: Employees separated from the Service should have the same opportunity to raise a grievance with respect to separation, in terms of the timeframe within which a complaint may be raised, as an employee within the Service has with respect to all other grievable matters by the terms of Sec. 1104.

Sec. 1103(b) (p. 154, lines 18–21)

Comment: This section departs from the current legislation and practice by allowing a grievant who is in the bargaining unit to be represented only by the exclusive representative organization, which may approve the participation in the proceedings by an additional person on the grievant's behalf. Heretofore, a grievant has had full freedom in choosing who and under what circumstances he or she will be represented.

AFSA is aware that this will impose a new workload on its limited resources. We are also aware that a grievant may want to advance an argument or seek a relief which is contrary to AFSA policy. AFSA did not seek a monopoly of grievance representation; only to be present at all grievance proceedings, the result of which may affect general conditions of employment. Sec. 1104(c) and 1112(2) below.

Sec. 1103(b) (p. 155, line 3)—Add after "choosing":

"However, the exclusive representative of members of the Service in the agency in which the employee serves or served shall have the right to be present during the grievance proceedings."

Comment: The Foreign Service Grievance Board on occasion must interpret the meaning or intent of agency regulations which derive from agreements between the agency and the exclusive representative. The exclusive representative is a necessary party in any such grievance and it is important that the bill enable it to protect its interests.

Sec. 1103(d) (p. 155, lines 13 and 14)—Amend to read: " * * * Grievance Board shall assure that * * * "

Comment: This provision should be mandatory rather than permissive.

Sec. 1104(a) (p. 156, line 11)—Amend to read "or such *other* period as * * * "

Comment: The agency and exclusive representative should have flexibility to negotiate not only a shorter period but also a longer period if necessary to meet some special or unique circumstances.

Sec. 1104(c) (p. 157, line 25 to page 158, line 1)—Delete "who is not a member of such bargaining unit."

Comment: Consistent with present legislation, a grievant should have the right to appeal on his or her own behalf. However, the exclusive representative should have the right to be present at all proceedings (see Sec. 1103(b) above and Sec. 1112(2) below).

Sec. 1111(b) (p. 158, lines 1 and 2)—Amend to read:

" * * * each agency and the exclusive representative for each bargaining unit shall select two nominees * * * "

Comment: The revised wording clarifies and reinforces the concept of equality between the agency and the exclusive representative for the bargaining unit in that agency.

Sec. 1112(2) (p. 160, line 4)—After "senatives," insert "*the exclusive representative,*"

Comment: The exclusive representative should be present at all hearings involving members of the Foreign Service, even if not in the bargaining unit, in the agency in which it is the representative of the Foreign Service. See also Sec. 1103(b) and 1104(c) above.

Sec. 1113(c) (p. 164, lines 20 and 21)—Place a period after the number "1141" and delete the remaining words in the subsection.

Comment: The reference to subsection (d) of the same section is redundant and unnecessary.

CHAPTER 12—COMPATIBILITY OF PERSONNEL SYSTEMS

Sec. 1201 (p. 168, line 12)—After "through" insert "*The Board of the Foreign Service and* * * * "

Sec. 1203 (p. 170, line 12)—Add "*and the Board of the Foreign Service.*"

Sec. 1204 (p. 170, line 23)—Add "*and the Board of the Foreign Service.*"

Comment: This would appear to be consistent with the role envisaged for the Board of the Foreign Service in Sec. 206, above.

TITLE II—TRANSITION, AMENDMENTS TO OTHER LAWS, REPEALS AND MISCELLANEOUS PROVISIONS

CHAPTER 1—TRANSITION

Sec. 2101(b) (p. 173, line 16)—Delete ["availability"] and amend to read " * * * for worldwide assignment shall also * * * "

Comment: This corrects what is apparently a typographical error.

Sec. 2101(c) (p. 173, line 24)—Insert new subsection "(c)":

"(c) Any Foreign Service officer candidate currently serving who at the time of original appointment met the new criteria for appointment at class 4, shall be immediately promoted to that rank if it has not already been attained."

Comment: This is a necessary transitional authority to avoid disadvantaging an employee who is already in the Service in contrast to a new recruit.

Sec. 2102(f) (p. 176, line 21-23)—Delete ["shall not be eligible to compete for performance pay under Sec. 41 of such Act, and"]

Comment: See Sec. 441 above.

Sec. 2103 (pp. 177-178)

Comment: We support Sec. 2103 as the best available way to make the transition to the Civil Service. While the ICA-AFGE agreement for voluntary conversion was a good arrangement under the terms available in 1978 when it took effect, the cleanest way to make the distinction between the Foreign Service and the Civil Service is through mandatory conversion. The three-year transition period and the provisions of Sec. 2104 for preservation at the employee's option of Foreign Service status and benefits is an appropriate way to ease the transition for domestic-oriented Foreign Service employees to the Civil Service.

Sec. 2104(e) line 14)—Change "five" to "ten"; line 18, delete ["and ;"] line 21, add "; and (3) who are not eligible for retirement benefits in accordance with Section 821."

Comment: We support the extension of retirement for substandard throughout the Foreign Service. However, we have many members of the present Foreign Service Staff Corps who have served for many years under the assumption that they would be able to continue to serve until eligible for retirement with an immediate annuity, but who are not yet in FSSO Class 1 or age 50 with 20 years' service. It would be harsh to apply selection out to them, particularly to secretaries who find it very difficult to start a second career after age 40, and particularly in the context of relative performance which may be adequate although relatively less good than that of their peers. Our amendment would start the selection out process immediately after enactment, but would avoid for ten years thereafter actual retirements from the Service of those not eligible for an immediate annuity. This would apply to AID Foreign Service Staff Corps Members as well.

Sec. 2105 (new 2106) (p. 181, lines 22-23)—delete ["under the direction of the President"]

Comment: There should be no doubt that the Secretary (and other foreign affairs agency heads) have the discretionary authority to prescribe implementing transitional regulations—and therefore, the obligation to negotiate these regulations with the exclusive employee representative. We would be particularly interested in negotiations on procedures for the determination of worldwide availability, pursuant to Sec. 2101(a)(2), p. 173, lines 11-13, and Sec. 2102(d), p. 175, lines 3-4; and the determination of needs of the Service, pursuant to Sec. 2101(b)(1), p. 173, lines 19-21, and Sec. 2102(d)(1), p. 175, lines 8-10.

CHAPTER 2—AMENDMENTS TO OTHER LAWS

Sec. 2201(a) (p. 186)—Insert a new subsection "(4)" and renumber succeeding subsections:

"(4) *Sec. 27 Exemption from Foreign Customs Duties and Local Taxes.*

The Secretary of State shall take all appropriate steps, including the negotiation of bilateral and multilateral agreements, necessary to carry out fully the provisions of the Vienna Diplomatic and Consular Conventions which extend to non-commissioned diplomatic and consular personnel assigned abroad protection from host government customs duties and local taxes. Pending completion of such agreements, the Secretary is authorized to reimburse members of the Service for those customs duties and local taxes which the member has paid despite the protection accorded by the appropriate Vienna convention.

Comment: The Vienna Conventions extend to non-commissioned diplomatic and consular personnel assigned abroad certain protections from host government customs duties and local taxes. Despite these assurances, many host governments deny such exemptions at considerable extra expense to members of the Service. Departmental efforts to persuade host government compliance with the Conventions have always been time-consuming and all too often unsuccessful. The purpose of this new section is to reinforce the Department's determination to force other governmental compliance and to authorize reimbursement of disadvantaged employees, and to place the Department's obligation in this regard on an equal basis with its obligation to bargain for employment for family members. If other

countries are not willing to accord the internationally recognized privileges, immunities, and employment opportunities, the Secretary should withdraw any such benefits from the country in question.

Sec. 2206 (p. 20, after line 8)—Insert new Section:

Sec. 2206 Post Differential.

5 U.S.C. 5925 is amended as follows: All members of the Service shall receive the full amount of post differential to which they are entitled, provided that the amount of basic salary, post differential, and, if applicable, senior differential, shall not exceed in any fiscal year the salary provided by law for Level I of the Federal Executive Salary Schedule (5 U.S.C. 5312).

Comment: U.S.C. 5925 establishes a taxable post differential, often called a "hardship allowance", of 10, 15, 20, or 25 percent of the basic salary as a recruitment and retention incentive to staff assigned to certain designated posts. A post differential is established for when, and only when, the location of the post involves extraordinarily difficult living conditions, excessive physical hardship, including physical danger, or notably unhealthful conditions. Living costs are not taken into account. Heretofore, pursuant to regulations, post differential has not been paid to chiefs of missions and has been paid to subordinate personnel only in amounts so that the employee's salary plus post differential will not exceed \$100 less than the salary of the chief of mission. These restrictions were apparently adopted in the belief that chiefs of mission receive sufficient other forms of compensation and that their authority would be threatened if their salary were less than the salary plus post differential paid to subordinate employees.

AFSA believes these regulatory restrictions are unfair and anachronistic. The full amount of allowed post differential should be paid to all governmental employees assigned to the post. This is in line with the recommendations of the 1977 report of the Inter-Agency Committee on Overseas Allowances and Benefits for U.S. Employee. Using the base salary of the chief of mission as a ceiling on the amount of post differential that can be paid to a subordinate employee creates undesirable anomalies. A senior official, including a present-day FSO-3, could receive more in the form of salary plus allowances if assigned to a relatively subordinate position at a "differential post" Class I mission than when assigned to a more challenging position, such as deputy chief of mission, at a Class III "differential post" mission. The outstanding officer thus has an incentive to accept the less challenging assignment.

Chiefs of mission are subject to the same physical hardships and unhealthful conditions as all other members of the mission. In many cases they are the most likely person at the post to be selected as the target for a terrorist attack or other acts of violence.

We believe that senior management officials of the Department are sympathetic to this proposal. See also Sec. 441 above.

CHAPTER 3—REPEALS

Sec. 2301(3) (p. 201, line 24)—After "section" insert "412 and".

Comment: This section is the amendment which abolished premium pay for Foreign Service officers. Since it took effect in October 1978, it has caused great bitterness among FSO's, including those who never personally apply for overtime. The provision for special allowances (repeated as Sec. 462 of the draft bill), has so far only benefited some 77 FSO's who regularly work more than 55 hours a week, and they are making much less than they would have. This provision enables the Department, by overworking its FSO's, to cut its costs and avoid requesting adequate staffing.

While we understand that the author of this amendment was aiming at what he regarded as the unprofessional practice of FSO's seeking overtime pay, the provision bans all forms of premium pay for FSO's, including extra pay for night, Sunday, and holiday work which may be imposed on the office or activity in which the FSO serves with other Foreign Service or non-Foreign Service personnel who are eligible for premium pay. In principle, FSO's are not even allowed to take compensatory time off or to participate in flexitime which the Office of Personnel Management is now urging.

We strongly urge the repeal of the provision. See also Sec. 462 above.

CHAPTER 4—SEVERABILITY, SAVING PROVISION, REPORTS AND EFFECTIVE DATE

Sec. 2402 (p. 203)—After line 9 insert:

“(including recognition of any organization of Foreign Service officers and employees in the Agency for International Development as the exclusive representative of employees in the International Development Cooperation Agency).”

Comment: IDCA is being touted as not just a “successor agency” to AID, within the meaning of Executive Order 11636, but a superagency of which AID is only one element. We want to make sure that the status of the current exclusive representative of AID Foreign Service people, and thus its ability to protect the interests of the AID Foreign Service in the coming transition, is not adversely affected either by the IDCA reorganization plan or this bill.

Sec. 2402 (line 16)—Delete **“on January 1, 1980”** and insert

“three months following the date of its enactment.”

Comment: A three-month delay in the effective date, which was used both in the Foreign Service Act of 1946 and the Civil Service Reform Act of 1978, is more realistic than the January 1980 date, and would allow sufficient time to begin planning the transition.

Mr. HYDLE. Thank you, Mr. Chairman.

With respect to the uniqueness of the Foreign Service, we believe that the Foreign Service is necessarily unique and different from the civil service because it responds to the Nation's need for a qualified career service available worldwide, including the United States. Therefore we welcome the act's reaffirmation of this concept in section 531. We support the provision under sections 2103 and 2104 for conversion to the civil service with the option of preserved Foreign Service status and benefits, as the most rapid way to eliminate the anomalous “FS domestic-only” category while protecting the rights of persons in that category.

With respect to the subject of up-or-out and performance, promotions in the service have stagnated in the Foreign Service in recent years because of the lack of attrition at the top. The principal proposal in the bill to restore attrition from and promotion to the senior ranks, and thereby enhance performance, is the Senior Foreign Service.

Many of us oppose the label Senior Foreign Service, finding it too much like the senior executive service, and likely to promote unnecessary distinction or division within a service that has always prided itself on a large measure of collegiality among its members of all ranks.

But when one looks beyond the label, there is much that is familiar to those who know the senior ranks of our Foreign Service. Mandatory retirement at 60 and retirement with immediate annuity at 50 with 20 years' service are retained. In addition, retirement for excessive time-in-class and for substandard performance are extended to the top rank, presently Career Minister, as well as to additional personnel categories now subject to them.

Retirement for failure to be reassigned is extended from chiefs of mission to all Presidential appointees to specific positions and there is a new limited career extension which management intends to couple with shorter time-in-class at the senior level. If used properly, these mechanisms will stabilize and improve promotion opportunities throughout the Service, pursuant to section 602(b). We approve of all of these provisions so long as they are implemented rationally and

fairly, by agreement with the exclusive representative, so as to give the Service confidence that no administration can manipulate them to create excessive insecurity, punish candid internal "whistle-blowers" or critics, or reward sycophancy or cronyism in the senior ranks.

Pay comparability—equal pay for equal work—is a hallowed principle for AFSA, as it is for the Congress. In recent years our FSO corps has fallen behind comparable GS personnel. Perhaps the first FSO to draw attention to this problem was a junior officer named Jim Leach, through a landmark study of the problem in 1971.

Although Mr. Leach resolved his own personal problem of pay comparability with the civil service, we know he retains a sympathetic interest in the problem. We have continued to work at it. An AFSA-initiated, congressionally mandated study, just completed by Hay Associates, confirms that FSO's have long been underpaid, and tends to support current Foreign Service staff corps pay levels against criticism that they have been too high.

The bill does not in itself implement the Hay study findings, but makes it possible to do so. We support section 421, which establishes a single Foreign Service pay schedule with the link between new FS-1 and GS-15 in place of the old two pay plans with obsolete links to the general schedule.

In discussions with the executive branch, we are supporting a 12-grade, 10-step schedule identical to the general schedule between grades 15 and 4.

We have here our expert, Bill Veale, who did not make the front table, who is available to discuss this in further detail, and we also prepared a statement which was prepared just today, and we have several copies. If you will tell us what to do with them, we will give them to the appropriate staff members of the committee.

At the senior level we strongly support pay comparability between the Senior Foreign Service and the senior executive service. Section 411 does this with respect to basic rates of pay.

We favor the continuation of post classification of chiefs of mission provided in section 401 because it reflects and rewards the level of performance required by a particular ambassadorship. We believe chiefs of mission and other senior personnel should also receive the taxable post differential (often called "hardship pay") authorized under 5 U.S.C. 5925, but withheld from them by regulation. We suspect the Department would like to do this but the Office of Management and Budget has ordered them not to do it because of the budgetary implications. All we can say is if the Department is unwilling or unable to provide hardship pay for senior officers, thus recognizing the difficulty under which one performs one's duties at a hardship post, then it is difficult to imagine any money actually would be available for a newer concept such as performance pay.

In any case we oppose the concept of performance pay patterned after the SES and contained in section 441. We believe that a recommendation by a supervisor to a selection board could be abused to insure conformity with a current policy line.

In addition to post differential, we would recommend that the position of Deputy Assistant Secretary, or its equivalent in State or

IDCA/AID, be compensated at executive level 5. Beyond that, we regret we are unable at this point to make any specific proposals, other than the lifting of the executive level pay cap, which would insure pay comparability, and reward and encourage good performance, without being subject to abuse. If we can think of anything, we will be in touch with you.

We believe our successors on the governing board will think about this further and come back to you should new ideas arise.

With respect to International Development, we say together with the unified personnel system submitted by the administration in May, and the reorganization plan establishing the International Development Cooperation Administration (IDCA), this bill establishes as a matter of law and national policy the Nation's long-term commitment to international development carried out in Washington and overseas primarily by a qualified, disciplined career Foreign Service.

We advocated the establishment of a Foreign Service Development officers corps parallel to the FSO Corps in the Department of State and the FSIO Corps in the ICA.

On the other hand too much compatibility too soon would make bad policy with respect to AID people. Somebody told me the average grade of AID people is FSR-3 and the time in class is 7 years. This is because of the enormous reduction in the numbers of AID people that we have needed over the last decade and the application of reductions in force to achieve these reductions, so it would make no sense to suddenly apply time-in-class in AID where it has not been applied before. You would simply be getting rid of the people who may be still the best people at their rank in the Foreign Service.

Any application of these concepts of time-in-class and substandard performance to AID would have to be done through full consent of the Foreign Service expressed through its exclusive representative.

The Foreign Service Staff Corps is vital to the functioning of the Foreign Service. For example, secretaries and communicators are staying on top of the exponential increase in the Government's production of words through their mastery of the latest word-processing technology. Yet the Staff Corps suffers from a lack of status.

We have identified some reasons why this is so. Their career prospects have been blighted in recent years by difficulties in changing to more promising career fields, and other reasons. We are addressing some of these problems under existing legislative authority but the bill itself does not do much to correct or address these problems and therefore the Staff Corps has little enthusiasm for it.

However, the creation of a single Foreign Service Schedule abolishing FSS is welcome. It will prevent future unearned promotions through pay-plan switching, and facilitate career specialty changes.

The whole Foreign Service, including the Staff Corps, welcomes the extension to the Staff Corps of such performance-related concepts as the career candidate appointment and tenuring process (sec. 322) and retirement for excessive time-in-class (sec. 641) or substandard performance. There needs however to be a longer transition period than is envisioned by the bill. We urged a 10-year transition before actually retiring people who are selected out for substandard performance but who are not eligible for immediate annuity under the concept of 50 years with 20 years service.

We have mentioned a number of other proposals which we would like to see added to the bill or legislative history which would benefit the Staff Corps.

With respect to protection of the career Service, we have frequently complained about the appointment of excessive numbers of noncareer chiefs of mission, many of them unqualified; substantial numbers of schedule C or otherwise noncareer appointments in Washington, and easy lateral entry into the career Service itself of those enjoying political patronage or whose skills are already in ample supply within the Service.

These actions are bad for the career Service and contrary to the national interest because they reduce career promotions and assignment opportunities, and make the career track the slow track to success in the foreign affairs agencies. This harms morale and performance within and recruitment into the Service.

We have identified some areas in which this bill does improve the existing situation and areas in which we think still further improvements are desirable.

The association regards chapter 10, which deals with labor-management relations, as the most important chapter in the bill. With or without a full new Foreign Service Act, this chapter should be enacted as quickly as possible, with the amendments indicated in our detailed comments.

We mentioned a few perfecting amendments that are needed to assure full parity between bargaining rights enjoyed by Service people under the Civil Service Reform Act and Foreign Service people under this legislation.

In addition we want to emphasize very strongly we favor the single worldwide, agencywide bargaining unit in our current Executive Order 11636, which continues in section 1022. As indicated by the rest of the bill, our conditions of employment include worldwide assignment, and most of our personnel policies are applicable worldwide. Only local working conditions and the local applicability of worldwide policies might be logical subjects for local collective bargaining, and those can be handled, as now, through discussions at post or bureaus with reference to Washington in case of disagreement.

Some have suggested that the different personnel categories could have separate bargaining units, but this would only weaken the employees' bargaining power; the whole would be less than the sum of its parts, and management would no doubt claim that agencywide personnel policies were not negotiable. Such balkanization would be contrary to the American and worldwide trend toward industrial unions, capable of aggregating and representing the various interests among the workers they represent. AFSA does this through systems of subcommittees dealing with special interests and with ad hoc problems.

We also favor a bargaining unit as large as possible, with narrow exclusions of "confidential" employees and of "management officials." We believe that the Executive Order 11636 has worked well in this respect. We have seen no evidence presented by the Department in its testimony or in its section-by-section analysis in support of reducing the bargaining unit, taking bites out of the bargaining unit as is pro-

posed. It could be worse, but we don't see the necessity for any expansion of the exclusions of the bargaining unit.

According to my information in the Department of State under the present Executive order, 850 people out of about 9,000 are excluded. Proposed legislation would exclude 1,200. Those who advocate using the title VII bargaining unit have to face up to the fact that some estimates indicate that 5,800 people would be excluded. That is more than half of the Foreign Service. It goes way down to the junior ranks because we have a lot of foreign national employees that we supervise overseas in consular and administrative units and in AID programs, for example, and this definition of supervisors, if it were applied as it exists in the Civil Service Reform Act, it would gut the bargaining unit. So we believe the burden of proof is on those who want to reduce the bargaining unit compared with what has worked well under Executive Order 11636.

Mr. FASCELL. Will you stop here before I get any more confused. The 850 reduction you are talking about is represented by what is in the bill in terms of additional exclusions?

Mr. HYDLE. No, Mr. Chairman. My information is that under the present—

Mr. FASCELL. It would go to 1,200-some?

Mr. HYDLE. That is right.

Mr. FASCELL. Those are additional exclusions in this bill?

Mr. HYDLE. That is correct.

Mr. FASCELL. Where does the 5,800 come from?

Mr. HYDLE. That is a projection of what would happen if we were forced to go back to parallel title VII, Civil Service Reform Act and exclude what are defined as supervisors.

Mr. FASCELL. That goes to the testimony Mr. Koczak just gave us.

Mr. HYDE. Yes, sir.

Apart from its inherent merits, chapter 10 is important to us because it enables us to bargain with agency management on the application of the authority over conditions of employment provided elsewhere in the bill, including, but not limited to, the following:

The composition of selection boards and the precepts under which they prepare their recommendations;

How to fill available promotion numbers; that is, how many promotions and how many career extensions;

Procedures for granting tenure;

Procedures for determining availability for worldwide assignment; that is, in connection with chapter 1 of title II, and other assignment procedures;

The application of section 641 and 642 authority to AID and to other personnel categories which have not had it in the past.

We believe that chapter 10 provides the exclusive representative with the ability to bargain on these issues, and more, to protect the career Service from arbitrary abuse of the other authorities in the act. We have made crystal clear to the Secretary and other management officials that we must have that ability to bargain.

Some management officials may believe, or hope, that matters such as changes in time-in-class are within their sole discretion. As I said, we believe they are wrong, but if that is indeed their hope, they are

simply living in an earlier, less enlightened, harsher age of labor relations. The career Foreign Service will not tolerate any abuse of the authority in the act. We ask the Congress to help avoid such an abuse. If abuse were attempted either we would be able to stop it through the mechanisms of chapter 10 or else we would have to come running back to Congress and complain about the abuse of authority.

I suggest that it is in the interest of the Congress which has an enormous workload to make it clear in the legislative history that the kinds of things that I have mentioned are subject to collective bargaining.

I think I would like to conclude the prepared remarks and before we go to questions, in answer to the one question that the chairwoman asked I would like to invite my successor President-elect Bleakley to make a brief statement.

**STATEMENT OF KENNETH BLEAKLEY, PRESIDENT-ELECT,
AMERICAN FOREIGN SERVICE ASSOCIATION**

Mr. BLEAKLEY. Thank you, Madam Chairwoman.

My name is Kenneth Bleakley. I will assume the presidency of AFSA next month. Mr. Hyde, president of the American Foreign Service Association, has spoken for the women and men of the Foreign Service.

Speaking as the president-elect, I ran on a platform which sought reform through administrative change, rather than through a new Foreign Service Act, but which stated, that should the Department submit its legislative proposals, we would support what we can, encourage amendment where needed and seek to block counterproductive amendments.

The position taken by the current AFSA president today is consistent with that approach. We therefore are quite comfortable in having Mr. Hyde testify on behalf of all the women and men of the Foreign Service today.

If I might add just one personal comment—if there is a single thing which unites the Foreign Service it is our belief in the need for a separate and distinct Foreign Service to serve our country. There has never been a time in our Nation's history when it has been more important for the United States to live by its wits abroad. Certainly we will continue to need dedicated civil servants willing to go abroad for short periods of time to serve our Nation in various specialities; but, if ever there was a time we needed integrated skills and the crosscultural relationships that a Foreign Service officer manages to establish in a disciplined career, this is the time for it.

So I hope, as you look at this very important piece of legislation, you will keep in mind, as demonstrated by your presence here today, that what we are talking about does matter, and that there is a real and genuine need for a unified Foreign Service.

That was the message which our membership delivered to Mr. Hyde just a couple of hours ago when it voted over 10 to 1 to support the general outlines of the statement he has just made.

Thank you very much.

Mrs. SCHROEDER. Mr. Hyde, do you have more testimony then?

Mr. HYDLE. That covers my formal remarks, but I am glad Mr. Bleakley reminded me—as it happens, we had our annual meeting of the Washington membership today, and if I may just read a one-page resolution which the membership passed, which is directly relevant:

Having heard and discussed the outgoing Governing Board's report on the draft Foreign Service Act of 1979,

Having reviewed the testimony prepared for the hearing of July 9, 1979,

The annual meeting of the Washington membership on July 9, 1979,

Approves the outgoing Governing Board's efforts to keep AFSA membership in Foreign Service informed and to seek its advice regarding the draft act,

Approves the outgoing governing board's efforts to obtain from the Department's management specific improvements in the draft act,

Approves the general outlines of testimony prepared for the July 9, 1979. hearing,

Recommends the incoming governing board vigorously seeks further improvement in the act while keeping the membership informed and seeking its advice on the AFSA position.

The vote was 50 in favor and 4 opposed.

That is all for the moment.

Mrs. SCHROEDER. Thank you very much. I am going to do what I did before, and that is, defer my questions until the end.

But I want to comment, Mr. Bleakley, on a personal note, on his choice of a running mate. But that is for my own bias.

Congressman Fascell.

Mr. FASCELL. The statement on pay comparability—do you want that in the record?

Mr. HYDLE. Yes, sir.

Mr. FASCELL. The statement on comparability prepared by AFSA I would like to have put in the record at this point.

Mrs. SCHROEDER. Without objection.

[The information referred to follows:]

STATEMENT BY AMERICAN FOREIGN SERVICE ASSOCIATION ON PAY COMPARABILITY FOR THE U.S. FOREIGN SERVICE

The American Foreign Service Association seeks pay parity for the Foreign Service with the Civil Service. We do so for two reasons. We believe it is the best way to protect the Foreign Service from suffering again, as it has for at least the past ten years, a serious pay disadvantage. At the same time, we believe that the independence of the Foreign Service can and must stand firmly on grounds other than the similarity of its pay system to that of the Civil Service. The need for a separate Foreign Service rests instead on the flexibility of a rank-in-person system, global availability, and a unique career development system that recruits the best applicants from all walks of life and then moves them into this country's first line of defense.

We understand that the management of the Department is currently discussing with OMB and OPM a new pay system for the Foreign Service. This management proposal, however, is seriously deficient in a number of respects:

It establishes a more complex pay system with fewer linkage points to the Civil Service scale;

It fails by a wide margin to provide for pay increases to middle-grade officers at levels which the Hay Associates pay study substantiates;

It puts a greater premium on longevity in grade rather than on upward mobility;

It fails to establish new grades, missing a chance to increase promotion opportunities over a career;

It reduces in effect the current rough equivalencies between GS and FSS grades at the lower staff levels.

In contrast, our proposal is quite fair and simple. We seek direct grade and step linkage to the Civil Service GS scale, creating a 12-class FS system from GS-15/FS-1 to GS-4/FS-12. We would use the 10-step system of the GS scale, in which pay step increases are awarded less frequently the longer a person stays in the same grade—an incentive to move up or get out, we think.

We believe the Hay study fully justifies such linkages, particularly when Hay Associates recommended that Foreign Service pay levels should be increased by 15 percent over Civil Service levels to allow for proper compensation of the overseas dimension of Foreign Service work.

Our proposal would use the full GS scale from GS-4 to GS-15, providing a new class for officers between current FSO-6 and FSO-5, and for staff between current FSS-5 and FSS-4. The new officer class would be equated to GS-12, and, we believe, could be filled through a modest but updated classification effort aimed at current FSO-6's who have been given tenure. The new staff class would equate to GS-10 and would be a first step toward development of administrative assistants long needed in the Foreign Service. In any case, both the new officer and staff classes would serve to improve promotion opportunities over a career.

Management has calculated that its proposal will cost about \$13 million more a year. Our proposal, because it goes further to rectify past problems and bring about pay parity, will, of course, cost more—perhaps twice as much. But we see this as a relatively cheap investment in America's future—less than the price of three F-14 Tomcat Fighters of the type now sitting in Iran.

A Foreign Service having full pay parity with the rest of the federal service will be a much more efficient and productive institution. Not only will pay parity be a significant boost to morale—currently at an all time low—but it will go a long way toward helping the Service attract and retain the best qualified of all backgrounds. In short, it will insure that the Foreign Service of the United States is democratic and truly representative of the American people. The last thing America needs in these times is a Service made up of only those who have independent means.

CURRENT LINKAGES (3 POINT)

FSO	FSS	GS	Step 1 salary
3.....	1.....	15.....	\$38,160.
			\$34,642.
		14.....	\$32,442.
4 (No. 1).....	2.....	13.....	\$27,453.
		12.....	\$23,087.
5.....	3.....		\$22,137.
		11.....	\$19,263.
6.....	4.....		\$18,179.
		10.....	\$17,532.
	5(+)	9.....	\$16,265/\$15,920.
7 ¹			\$15,222.
	6(+)	8.....	\$14,561/\$14,414.
8 ¹ (No. 2).....	7(+)	7.....	\$13,014/\$13,041/\$13,014.
	8.....	6(+)	\$11,685/\$11,712.
	9.....	5(+)	\$10,473/\$10,507.
No. 3.....	10.....	4.....	\$9,391.

¹ Officer exam entry levels.

INITIAL DEPARTMENT PROPOSAL (9 CLASSES—PARTIAL AT 2 POINTS)

FSO	FSS	GS	FS	Proposed salary
3 (No. 1).....	1.....	15.....	1.....	\$35,616.
		14.....		
4.....	2.....	13.....	2.....	\$29,770.
5.....	3.....	12.....	3.....	\$23,825.
6 (No. 2).....	4.....	11.....	4 ¹	\$17,979.
7.....	5.....	9.....	5 ¹	\$15,920.
8.....	6.....	7.....	6 ¹	\$13,014.
	7.....	6.....	7.....	\$11,712.
	8.....	5.....	8.....	\$10,507.
	9/10.....	4.....	9.....	\$9,391.

¹ Officer exam entry levels.

AFSA PROPOSAL (12 CLASSES—DIRECT GS/FS LINKAGE AT ALL GRADES AND STEPS)

FSO	FSS	GS	FS
3		15	1.
4	1	14	2.
5	2	13	3.
New class	3	12	4. ¹
6	4	11	5. ¹
	New class	10	6.
7	5	9	7. ¹
	6	8	8.
	7	7	9. ¹
8	8	6	10.
	9	5	11.
	10	4	12.

¹ Officer exam entry levels.

Note: Grandfather provisions would protect FSS grades against slight pay reductions involved in these linkages.

Mr. FASCELL. I went through this thing with you rather carefully, and it is a well organized statement, I might add.

I want to be sure, so I am going to ask it again: On square 1 you guys are for the bill?

Mr. HYDLE. Mr. Chairman, I have to—

Mr. FASCELL. With some amendments?

Mr. HYDLE. We have not decided to say whether we are for or against the bill. Our position is as I read it earlier today.

Mr. FASCELL. You would rather have individual amendments to the existing law?

Mr. HYDLE. We said what our initial position was.

Mr. FASCELL. It sounds very legalistic, Mr. Hyde. I would like to know why a lawyer advised you to say that?

Mr. HYDLE. This was more of a reaction of the Foreign Service. It was a groundswell of opinion that it would be better, for example, not to come up to the Congress seeking new legislative authority if we had not used to the fullest extent existing legislative authority. But the question of whether to have just a few amendments instead of a comprehensive bill, a draft bill, we feel, is overtaken by the Secretary's decision to present to you the draft bill, and our position on the bill is that we don't endorse it today, but that it does contain some provisions which would help the Service deal with its problems, and that we believe the most useful service we can perform today is to provide a detailed commentary on the bill, which we have attempted to do in writing and in our oral testimony.

Mr. FASCELL. You support several principles that are spelled out in the bill?

Mr. HYDLE. Yes, sir.

Mr. LEACH. Will the gentleman yield?

I am struck by the fact that this sounds like our position vis-a-vis Iran and Nicaragua. We are neither for nor against; we are confused. The women and men of these two subcommittees are somewhat confused as well. I would hope, very seriously, you would come out with a definitive position, because bills have to be voted up or down. I recognize your difficulty, but I am not convinced that the resolution of your membership is altogether helpful to the subcommittees.

Mr. HYDLE. Congressman, I recognize your difficulty. All I can say is that at this point this is the most definitive statement that the Foreign Service and AFSA, representing the Foreign Service, can

make; namely, a detailed commentary on the legislation. We assume, if the analogy used in discussing with our membership today, which is, if Howard Baker can say he has not yet decided whether he is going to support this SALT treaty, then we at this point can withhold a final decision on whether we support the bill.

We have recommended numerous amendments and the creation of legislative history, and we would like the bill to be protected from any attacks on the provisions that we like.

Down the road a way, I have confidence that our successor governing board will be able to make a more definitive statement.

Mr. LEACH. I would like to comment briefly. I am not sure I appreciate the analogy to Mr. Baker, but perhaps the board would want to retreat up to Camp David.

Mr. FASCELL. It sounds like we will be at this a long time, and Mr. Bleakley seems to be very intelligent and articulate, and I am sure he will have the board eating out of the palm of his hand before we get through. We look for whatever definitive positions will be forthcoming.

How long has it been since the association had Congress consider any amendments to the law?

Mr. HYDLE. Last year, Mr. Chairman, in the authorization process.

Mr. FASCELL. How long before that?

Mr. HYDLE. I believe it was a year before.

Mr. FASCELL. Is it fair to say it has been a continuing process?

Mr. HYDLE. Yes, sir.

Mr. FASCELL. Is it fair to say the Congress has tried to be responsive to the requests of the association?

Mr. HYDLE. It is very fair to say, and you, personally, have been very responsive.

Mr. FASCELL. I was not thinking about myself; I was thinking about Congress, generally. I want to get something on track in terms of what we are trying to do. I say this without any specific purpose except to make the record clear, that this Secretary of State, Cy Vance, in my judgment, has cooperated more than any Secretary of State in my experience—and I have been here 25 years—in trying to come to grips with the personnel problems.

What is your view?

Mr. HYDLE. I think that he has taken a very serious approach to this, and when we spoke to him about it in May, it was obvious he had read his briefing books, and he was able to ask specific questions about the legislation, the draft as it was then, and our position on it. There is no question.

Mr. FASCELL. In terms of the internal discussions within State in arriving at its position, I want to be sure that I understand that you are saying that the Department made the most extensive effort at consultation. Am I correct?

Mr. HYDLE. That is correct, sir. There has never been in our memory a more extensive effort to consult within the Foreign Service and between the Service and the management of the Department.

Mr. FASCELL. All I want to get here on record is the fact there has been a good faith effort on the part of management to come to grips with the problem. Otherwise, I certainly would not be here.

Mr. HYDLE. Yes, sir.

Mr. FASCELL. Because we are partially responsible for all this effort. We have been needing them for 10 years. Go ahead.

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STATEMENT OF ROBERT STERN, STATE DEPARTMENT REPRESENTATIVE, AMERICAN FOREIGN SERVICE ASSOCIATION

Mr. STERN. Mr. Chairman, when we first were told about this, and we went out to our membership to try and get responses, one of the things that became very clear, and perhaps reflects as to why we are coming out with what we are today, is that most of the abuses that this bill is designed to correct are abuses that were put in by previous management, often over the objections of the association.

In a sense, every couple of years a new team comes in, with great sincerity, with some sort of Holy Grail that is going to take care of all our problems; yet, 2 years later, we find ourselves looking for a new way of getting out of the newer mess we are in.

Mr. FASCELL. Let me tell you something then: I can't help but interject; we have the same problem in the Congress, and when the broom sweeps clean, many people say it does not change a darn thing; it is just more of the same.

Mr. STERN. This is the fear we had, sir. For example, one of the reasons put forward for Senior Foreign Service was, they thought at the senior ranks, that glut was caused by management's choosing unilaterally to give 22 years' time in class to senior grades. So we felt—and many of us still feel—we can administratively deal with many remedies and what we cannot deal with under the existing act is where we should be seeking the amendments.

As you rightly said, you have been very serious in working with us on these things, but nevertheless we are here. We do have this piece of paper in front of us.

Mr. FASCELL. I think we should work, and where it is necessary, we should establish the statutory base for whatever we want to do, if that is possible, and not leave it up to changes in administration either by executive order or by the internal dynamics of the Department, depending on who happens to be Secretary of State or who happens to be running the Department other than the Secretary of State, as was the case in the past.

Anyway, going ahead, on page 9 of your testimony, you indicate dissatisfaction with lateral entry programs, since it has the effect of increasing the number of women and minorities.

Are you saying that these groups are unable to perform their duties as well as white males?

Mr. HYDLE. No, sir.

Mrs. SCHROEDER. We would like to have a little expansion.

Mr. HYDLE. The lateral entry exists under the present Foreign Service Act. In 1975, an agreement was reached between the Department and AFSA which provided for bringing in women and minorities at the middle level; but the agreement provided this should be done consonant with the personnel needs of the Service, the specific functional needs in addition to the broader idea there is a need to be broadly representative of the American people.

The Department has ignored these functional needs in bringing people in; that was the problem we focused on in our testimony.

Mr. FASCELL. I have one more question: As exclusive bargaining agents for Foreign Service employees, can you specifically outline your responsibility to the members as they now are, and how you would perceive them under the proposed legislation?

Mr. HYDLE. I would like to invite our legal counsel to comment on that.

**STATEMENT OF KATHERINE WAELDER, LEGAL COUNSEL,
AMERICAN FOREIGN SERVICE ASSOCIATION**

Ms. WAELDER. Mr. Chairman, may I ask you to define what are the parameters of the information you are looking for?

Mr. FASCELL. I want to know how you relate to State and AID employees now, and how you are going to relate to them after enactment of this bill. Is there any change?

Ms. WAELDER. In whom we represent?

Mr. FASCELL. Yes.

Ms. WAELDER. We represent all Foreign Service personnel, both in State and in AID in separate agencywide bargaining units. Excluded from those bargaining units are those persons occupying positions defined as "management official" or "confidential employee."

Mr. FASCELL. Are those exceptions under Executive order?

Ms. WAELDER. Yes, sir.

Mr. FASCELL. Go ahead.

Ms. WAELDER. Under those formulations that have been in effect since 1971, approximately 90 percent of persons in the Foreign Service are within the bargaining unit; approximately 10 percent are excluded by that definition. Under chapter 10, as it is currently drafted, further personnel are excluded from the bargaining unit. The bargaining units would still be agencywide; there would be an agencywide bargaining unit for all Foreign Service persons, and each of the three foreign affairs agencies. That would be the Department of State, USICA, and AID. Each bargaining unit would include persons assigned domestically and assigned overseas.

The bargaining units would exclude those persons in positions defined as "management officials" and "confidential employees." It would also exclude certain other positions and other functions within the Department, including persons involved in internal security, intelligence or counterintelligence functions in auditing functions, and persons engaged in tasks on behalf of management personnel other than in a purely clerical capacity.

Those additional exclusions would bring the number of persons in our bargaining unit back down to—I believe—approximately 80 percent would probably be a fair estimate.

Mr. FASCELL. Mr. Hyde said 850 are excluded now under Executive order, and 1,200, I believe he said, would be excluded under the bill, and you just testified as to the enlargement of the exclusion contained in this bill when you defined categories of people.

Those 850 people are in what categories?

Mr. HYDLE. We commented on it directly in chapter 10.

Mr. FASCELL. The position you are taking with respect to additional exclusions is, they ought not to be added in the definition of "exclusive"?

Mr. HYDLE. That is correct, sir.

Mr. FASCELL. By virtue of the nature of their work?

Mr. HYDLE. Yes.

Mr. FASCELL. Whereas, management is already arguing the opposite?

Mr. HYDLE. I am not sure what they are arguing. The bargaining unit that has existed under Executive Order 11636 has worked fine with these categories included in the bargaining unit.

Mr. FASCELL. There have been no complaints?

Mr. HYDLE. None to my knowledge, and there is no case made by the Department.

Mr. FASCELL. That is why you made the statement—the burden is on somebody else?

Mr. HYDLE. That is right.

Mr. FASCELL. That is all.

Mrs. SCHROEDER. Congressman Leach.

Mr. LEACH. Do you support, at this moment in time, the window concept?

Mr. HYDLE. The threshold window concept, I believe you are referring to section 602(a), which says that within the parameters of time in class there will be a period of time during which one can apply for promotion into the Senior Foreign Service. The initial version of this was rigid; it said within 2 years or 3 years after you get into the FS-1 rank—now FSO-3—you had to start being considered for promotion and 4 or 5 years thereafter you were finished; if you had not been promoted, you would be able to hang around until your time in class had been completed, but not be promoted.

We opposed that because we thought it was too rigid and that a person's efficiency would decline if the person were not promoted but was still waiting for time-in-class to expire.

The 602(a) is an improvement over that, in that it makes it possible for the member of the Foreign Service to decide for himself or herself when to apply for promotion, and 602(b) also puts into legislation the requirement that promotion into, and attrition out of, the Senior Foreign Service be managed so as to stabilize promotion opportunities, so a person who made a decision on when to go in, or when to seek promotion, would not be playing such a game of Russian roulette.

With those caveats, we think that the section 602(a) as it exists is adequate.

Mr. LEACH. With the provision you have to request to be considered?

Mr. HYDLE. Yes.

Mr. LEACH. Do you like that?

Mr. HYDLE. We would rather have request rather than have a fixed date by which you have to seek.

I might say, also in AID, where there is at present no time-in-class, it would make no sense to establish a threshold window unless and until a reasonable time-in-class is established.

Mr. McBRIDE. I might add that our position necessarily assumes that time-in-class would be adjusted in tandem with the closing of the threshold window so when a person's window closed, his or her time-in-class would also end at roughly the same time.

Mr. LEACH. Do you feel you have a firm commitment from the Secretary of State on pay comparability?

Mr. HYDLE. Let me ask our guru on pay comparability, Bill Veale, to respond to that.

Mr. VEALE. It is my understanding, Congressman, that the Secretary appreciates the problem now in the Foreign Service, that we lack comparability with civil service in a number of areas.

I am not exactly certain of the degree of his commitment, particularly in connection with the passage of this new Foreign Service Act.

Mr. LEACH. Has AFSA undertaken any negotiations with OMB at this point?

Mr. VEALE. No; we have not.

Mr. LEACH. The reason I raised that, is State has testified it is concerned, but they have also testified that this proposal will cost nothing, which is somewhat contradictory. Now, my feeling is, State is sympathetic but I am not sure that there might not be some reason for AFSA to reserve judgment on the bill without a firm commitment.

Mr. HYDLE. We feel that option remains open to the new governing board under the formula. We have described concern in our position on the bill.

Mr. LEACH. Would you object, given the possible cost implications, to a phased-in pay adjustment over a 3-year period, for example?

Mr. HYDLE. I don't think we have a firm view on that.

Our view is, as I described, briefly, there should be a 12-class and 10-step system, and I would say that we would rather have phase-in than inadequate final solution, if we are forced to a choice between those two.

Mr. LEACH. Do you have a position on whether or not there should be a parachute, as there is in the SES?

Mr. HYDLE. We don't favor the parachute.

Mr. LEACH. Do you have a strong position on mandatory retirement?

Mr. HYDLE. We favor mandatory retirement at 60. Our distinguished legal counsel to my right submitted an amicus curiae brief to the Supreme Court in the *Bradley v. Vance* case which said, briefly, that mandatory retirement is part of the package of Foreign Service personnel system which is intended to assure what we called, colloquially, "up and out."¹

Do you want to add anything to that?

Ms. WAELDER. Not at this time.

Mr. LEACH. We all know the problems of stagnation in the Service today, but in principle I have never been totally convinced of mandatory retirement. If you look at other foreign services in the world, if anything, there is an elderly bias in many, many countries operating in that type of framework.

By the same token, one of the questions that I think was very realistically raised by AFGS is whether or not it is mandatory retirement you want, or tough selection out at a given age. One implies tough choices; the other implies arbitrariness. Which would you prefer?

Mr. HYDLE. We see mandatory retirement as part of the package of attrition mechanisms or culling mechanisms which include selection out for substandard performance and for excessive time-in-class.

But people who came into the Foreign Service and have advanced in the Service have done so in the context of a system in which there was mandatory retirement at 60 and other people retired and they were able to move up. When it comes their turn to leave, it is their turn to leave. But existing legislation and this draft both do provide, of course, that if a person is a Presidential appointee or if the Secretary otherwise determines that it is in the public interest, and we recommended using the test of the needs of the Service, that individual can stay on beyond 60.

¹ *Vance v. Bradley*, 39 CCH S. Ct. Bulletin, p. B1042.

Mr. LEACH. Did you or do you have an absolutely firm position on whether or not you can accept the steps, or the grades and step proposal, of the Administration versus your own?

Mr. HYDLE. Our position as of about a week ago when we, or the Governing Board was able to come to grips with this evolving situation is that at this point we favor the 12-grade, 10-step system parallel to the Civil Service, which is consistent with the concept of compatibility and, I think, easier to reconcile with the whole concept of equal pay for equal work.

Since this position has just been established and we are about to be talking to the OMB about it, it is probably too early to be talking about fallback positions and what we would finally find palatable.

Mr. LEACH. In the drafting of the legislation, did you guys consult at all with State Department management on the concept of a service development officer?

Mr. HYDLE. This is a recurrent theme that we have raised from time to time in the past, and we testified on it as recently as May 2, I think, before your subcommittee in discussing the united personnel system.

Mr. LEACH. One final question, just because it is of popular currency: Do you feel that we have an inadequate number of personnel abroad?

Mr. HYDLE. I think we feel in general that in the Department of State, at least the responsibilities that have been placed on the Foreign Service abroad have greatly increased over the last 20 years, particularly in areas such as consular service for Americans overseas or people who want to come here, or administrative service which the Department provides for other agencies which are themselves proliferating overseas. In AID there has been a great decrease in the numbers of people overseas due to ideas like OPRED and BALPA and MODE, so you end up with an agency which everyone now says is too much based in Washington and is not doing enough overseas where the actual problems are.

So I think that is a rather long answer to your question, but our answer is, there are not enough people serving overseas in the Foreign Service to do the jobs that are required of us by the Nation.

Mr. LEACH. Let me end with one comment: I think you are exactly right in stressing Foreign Service secretary and support personnel, particularly secretary, and I am glad you raised that issue as strongly as you did, because when we look at these issues, we sometimes lose sight of that part of the Foreign Service.

Thank you.

Mrs. SCHROEDER. Thank you.

Congressman Ireland.

Mr. IRELAND. Thank you, Madam Chairman.

Earlier testimony at this meeting concerned discussion of whether the Foreign Service could be handled just as easily as an overall part of civil service, and I would like to review that and get your comment in light of some comments you made. The scenario was that we could have everybody in the civil service, without a separate Foreign Service; be they State Department people, Commerce, CIA, when they went overseas they certainly responded to some qualification status, but at the same time then became eligible for benefits in different ground rules that were indicative of their service overseas.

Let me add that also implied in that scenario was, should they stop their tenure overseas they would then be like other civil servants serving domestically.

My question is, if you would address that, in two regards: First of all, I am aware that your testimony is that they should be separate, and this was separate. I refer to your comment at the very beginning about the uniqueness, that you believe the Foreign Service is necessarily unique and different from the civil service because it responds to the Nation's need for qualified service available worldwide.

It would seem to me that the scenario I outlined and which was in the previous testimony would also respond to that, and it would also respond to it not just in the State Department and AID but also for other members of civil service going overseas.

So it would seem that your statement here only does a part of the job for a small group of people. If your statement is true it should be true for everybody going overseas and the other, regarding your comment about a Foreign Staff Corps, and it would seem to me that if the scenario I outlined was in the original testimony there would be no need for that Foreign Staff Corps, simply because somebody then not serving overseas coming back would regain their position in the civil service.

Can you address that for me?

Mr. HYDLE. Yes, sir. The uniqueness of the Foreign Service that I tried to explain is related to the career concept, the fact that, for example, civil service rules do not permit transfer from a job to a job, from one job to another, unless it is voluntary and often in connection with a promotion. We are transferred or reassigned as we call it every couple of years or so to any position in the United States or overseas and the Service discipline requires us to accept these assignments.

In the foreign affairs agencies whose primary missions are overseas, that is the Department of State, AID, soon to be succeeded by IDCA, and ICA, it is logical to have a Foreign Service that is available for worldwide assignment and must accept worldwide assignment in the same way our military services do. Now in addition to that of course it is necessary to have people in the other domestic department and agencies of the Government who may be available for specific overseas tours and there are provisions in this bill that do speak about limited and temporary appointments of say one tour of duty that might respond to a specific assignment overseas.

Mr. IRELAND. The man who goes overseas for Commerce, isn't he just subject to the same hazards? Hasn't he got the same problems as the one who goes overseas for AID?

Mr. HYDLE. Commerce is a special case.

Mr. IRELAND. Commerce or Agriculture or what not.

Those problems that you are addressing that are unique, are unique for that guy too. Why should he be the same as the guy over there for AID?

Mr. HYDLE. Commerce is a bad example, because the Foreign Service overseas, how can we say it, we—

Mr. IRELAND. Address it from the standpoint of any American civil servant overseas. Should he be treated the same as any other American civil servant overseas?

Mr. HYDLE. Foreign Service people are expected to spend their entire career either overseas or in Washington, moving wherever the needs of the Service require. A civil servant in a domestic agency may only be required to serve one tour in a specific place overseas, but he is not subject to the same career discipline.

There is also an important need which is fulfilled by the Foreign Service personnel systems of the foreign affairs agencies more substantive in areas' background. That is people who are not only experts on a specific technical subject but who are also experts on the country they are serving in. That is the kind of special talents.

Mr. IRELAND. That is saying one special talent is better than another special talent. The guy who goes over for Commerce may be a lot more talented than the guy in the State Department or AID that went over with a generality. That is saying one specialty is more important than another.

Mr. HYDLE. We have not said one is better than another; we said they are different.

Mr. STERN. Since I am a former commercial attaché, I can respond specifically. Most Commerce officers overseas are Foreign Service officers. The exceptions to those are a few Commerce officers who on an exchange program serve a tour overseas, so they get an idea of the overseas dimension because they have the domestic responsibility in the United States. But one of the important things Lars has been getting to, not all our service is in nice places like London and Paris and Rome. We can get all the volunteers we want for that. It is when we have to send people to Ouagadougou that we are not able to find people willing to give up a good position to go to a place like that.

We accept the ability or, rather, the obligation, to serve in a place like Ouagadougou as much as a place like Rome. I have never served in Western Europe. My service has been in the developing world.

I think the part and parcel of it is, we spend years developing expertise in two forms, substantive, certainly. I am an economic officer, for example, but very definitely area and geographic. The person who comes occasionally from the domestic side may bring very high technical knowledge, and there are fine people there, but they are not necessarily the people who can relate that to the geographic, the area of responsibility.

Mr. IRELAND. What I am trying to establish—both of you are American civil servants overseas and we are not here to decide which one of you is more important; you are Americans overseas, and why should you have the same benefits?

Mr. STERN. But they do. In some cases they have better.

Mr. IRELAND. In that case, all we need is a civil service with an additional benefit for those serving overseas.

Mr. STERN. We look at it from the other point of view. When these people come over, we give them Foreign Service commissions often so during the specific period they do achieve the benefits. But we would suggest that an officer or staff person that spends the better part of his life accepting these assignments earns certain benefits such as the earlier retirement; whereas, a person who comes from a domestic agency serves one tour, perhaps two tours, overseas, does not earn that specific benefit when he returns to the United States.

Otherwise, we would have a situation, I think, where everybody would want a tour overseas. That way, everybody gets the benefit of age-50 retirement.

One of the objectives of this bill is to correct that anomaly and clearly distinguish between those people who spend the bulk of their lives overseas as opposed to those who put the bulk of their lives into domestic service. I think it is more similar to the military than it is to the civil service, and in many cases we have looked to the military for analogies. Like them, it is discipline. We go where we are sent.

If I can quote from the farewell to the troops when Secretary Kissinger departed, the one point he made was, despite all the problems he had with us—and he admitted he had some—the thing that struck him, no matter how difficult an assignment, including those where we brought the bodies of our people back, he never had any problem filling those slots afterward, and this is the kind of service we have and which we want to preserve.

Mrs. SCHROEDER. Congressman Buchanan.

Mr. BUCHANAN. Thank you, Madam Chairman.

First, let me explain where I am coming from. I feel, for all the deficiencies one might find, that we have the finest Foreign Service in the world, and for years—I believe the record will reflect—I have been a friend of the Foreign Service. There are two or three things I want to speak to that concern me a bit about your testimony.

First of all I hope you can come to a definitive position on the legislation itself. While I understand the desire to achieve equal opportunity in our society, we are dealing with a conflict of that and not anything simple. It is very hard to see how one can move from where we are without such mechanisms as lateral entry, to where we need to be in terms of opportunities for women and for minorities when, at this point in history, for too many Americans, equal opportunity is still much like cotton candy, and the Government is the Nation's largest employer.

Yet, if you look at the track record of the Government overall, as a major employer we still have some problems in areas, so I have some concerns about that problem.

Finally, I would like to ask a couple of questions about family members. You say, rightly, that you have initiated and supported most of the legislation in recent years to protect and enhance opportunities for spouses and other family members for training, employment, and career counseling. On the other hand, you express two areas of concern, the first being that you say, "Unfortunately, recent emphasis on the rights and needs of Foreign Service family members has in this zero-based area of budgetary limit adversely affected staff opportunity for training and assignment." Then you go on to express concern about the Foreign Service. You ask for legislative history making clear that training family members is in addition to, not instead of, training members of the Service, making training for members of the Service identical to that available to family members, and you go on in that theme.

As you are aware, the idea of the Congress was to make available for service all the many talented people who happen to be spouses or family members with the idea of replacing foreign nationals, not our people, for those persons.

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I would like the record to get very clear on that subject you are not saying that you are not supportive of that idea, are you?

Mr. HYDLE. Absolutely not. We do support that idea, and what we have said in our testimony is that we got off the track a little bit in abolishing Foreign Service career positions or leaving them vacant, and then hiring family members on a part-time, temporary, intermittent basis. There has been some abuse as we see it of the concept which we strongly supported.

Mr. BUCHANAN. We have felt some frustration because we have a really hard time getting the Department to do anything to implement the original idea which we had. We had thought that it would make very good sense for some of these very bright, capable Americans to replace foreign nationals, and we have had a hard time getting off the ground on that subject.

Mr. HYDLE. Could I return to your comment on equal employment opportunity?

We have supported equal employment opportunity within the Foreign Service and we support remedies for individual situations in which there has been past discrimination which, of course, is already provided under law through the EEO complaint system.

Where we have had arguments with the Department of State it has been over whether there should be programs which provide preferential treatment to people simply because they are members of previously disadvantaged groups at the expense of equal opportunity for all.

I would like to ask my colleague, State Department representative, Barbara Bodine, to comment further on that.

Ms. BODINE. We have absolutely no objection and firmly supported lateral entry programs in EEO programs at the junior level.

What we are concerned about is not that anybody thinks—and certainly not me—that women and minorities are not capable of doing the job; but those candidates who come into this system are fully capable of doing the job, the qualified candidates do exist, that they are screened, the proper candidates are selected and hired, that they are given the opportunities to develop their talents and experience, and they can come up to par with some other officers who have been in a little longer but they have not been given a preferential status simply because they are lateral entry or simply because they are women and minorities, that this type of program by giving preferential treatment to a separate group denigrates to an extent those who have come in from the bottom and worked their way up. It makes two separate classes of Foreign Service officers; and I would add that within the regular Foreign Service officers you also have women and minorities, so it is not a white male versus women and minorities. It is very much a career and special-privilege-class question.

Mr. BUCHANAN. OK, but we have a certain time for lag in that women and minorities in only very recent years have been afforded real equal opportunity in the Department of State and elsewhere. So, you have a generation or half a generation of women and minorities who never got a chance to get into the system. If you are a bright, capable person and might have all sorts of wonderful talent and might be a value to the country, and you could not get into the sys-

tem at a lower level, and you are not in at a point in life where it would be appropriate for you to enter it at a lower level, the only method of entry at this point would be lateral entry.

Ms. BODINE. There are some very talented people who for one reason or another did not choose to join the Foreign Service or were not able to join the Foreign Service at lower ranks, and now want to come in, and they do have talent and experience we can use. We fully support that program.

Mr. BUCHANAN. You are not saying the fact that a bright female person—my friend to my right, suppose she were a person who had all the capabilities but had not had the opportunity? The gentleman sitting behind you might have equal capabilities, but also the opportunity, so, therefore, is an experienced officer with a track record that is of value; but the reason she doesn't have that is because she never got in the door in the first place. That is an inequity for the Government to say he has ability and experience and from the point of view of the value to the Government and functional point of view he is of greater value than she.

Ms. BODINE. As I said, the lateral entry program is supposed to be designed to bring in women and minorities who for one reason or another did not, or could not, join the Department at the lower ranks because of whatever reasons. It is supposed to also be hiring for functional needs of the Service.

Now, let us assume you have a bright female who has been working in academia or journalism or something else and wants to come in, and does have experience, the background, and does have the proper credentials to fill a functional need. That is part of what the lateral entry program is set up to hire, and that is the kind of person it should be hiring, and that is what we do support.

Now, with the background that I have—they will not have three tours in the Foreign Service because they just joined, but they will have other experience to bring to bear and other experience that can be very useful.

I would also like to add that there should be equal opportunity in getting the proper kinds of training and experience; but that is separate and different from setting up criteria once they are in that keeps them totally segregated for the rest of their careers.

Mrs. SCHROEDER. I have one more question.

One of my frustrations in dealing with equal employment opportunities in the Foreign Service is very similar to the frustrations in our dealing with civil service on it. That is, women and minorities are taking this test and are denied entry based on it. Even though the test discriminates against the minorities and women we still hear that the test is the way to go, without verifying those tests. I get a little upset as I hear everybody defending that. If you went to Harvard, Princeton, or Yale and wear a crewneck sweater, we obviously know you are qualified. I don't tend to believe that and we have had fairly devastating testimony in our own committee on that.

Let me move to another thing which goes along with what Congressman Ireland was talking about.

That is you were suggesting that the Presidential appointment of Senior Foreign Service members in AID would reduce political abuse.

Do you know of political abuse in AID and how is Presidential appointment of the people going to reduce that possibility?

Mr. HYDLE. What I said, Madam Chairwoman was—I did not mean to link the two things. They were in successive sentences but not intended to describe a causative relationship. I said for the first time senior AID Foreign Service people would become, as members of the Senior Foreign Services, Presidential appointees with an opportunity to be promoted to highest rank now called Career Minister.

That is one thing. The other thing is that political abuse of the system should be reduced by which we had in mind, for example, the 5-percent limit on the numbers of noncareer appointees in the Senior Foreign Service replacing the—I believe you called it the AD—administratively determined—appointment authority that exists under the current Foreign Assistance Act.

Mrs. SCHROEDER. You are against the 5 percent, you would have zero percent?

Mr. HYDLE. We favor the 5 percent.

Mrs. SCHROEDER. Rather than 10 percent?

Mr. HYDLE. Yes.

Mrs. SCHROEDER. But you are not linking political abuse to Presidential appointment?

Mr. HYDLE. Not at all.

Mrs. SCHROEDER. To get back to the other issue, do you have any reason you could offer as to why women and minorities have done so poorly in entering into Foreign Service.

Ms. BODINE. On the women I am not entirely sure we are doing that poorly.

Mrs. SCHROEDER. They certainly have in the past.

Ms. BODINE. They have in the past. To a certain extent there have been changes. Some of it is social. You have greater numbers of women going into the kinds of discipline that prepare you for the written exam. You have greater number of women who are thinking about the Foreign Service as a career. You have changing family patterns and all of this. With the abolition of the law on married couples you have a lot of wives coming back in and a lot of wives taking the exam, once their husbands are already in or couples taking it together, so with the social changes you have a great many more women taking the exam and passing the exam.

The last couple of classes—and I can't give a firm statistic, have been almost 50-percent women. So the women are doing much better. They have also changed the exam. First the written exam has been changed and they have been trying to get out some of the biases. Second there is now a group dynamics exercise where a woman or any of the candidates are able to show their personal ability rather than just something that is specific in a written exam. And so they have been doing far better and they have been coming in in greater numbers.

Mr. HYDLE. I believe the recent statistics indicate that among women who take the Foreign Service exam they pass in approximately the same proportions as men.

Mrs. SCHROEDER. I wanted to ask you some questions about your testimony on compensation. It seems to me a lot of what a Foreign Service

officer does in a foreign country is gain contacts and so forth. And yet you are asking for both premium pay and a special allowance for excessive hours. I want to know when the Foreign Service officer is on duty and when he or she is not on duty? Would you consider cocktail receptions being on duty? Do you have guidelines for the committee if we really take into account these different proposals?

Mr. HYDLE. I believe you are thinking of our testimony on page 5. The repeal of the ban on premium pay for FSO's and FSIO's simply refers to the action that went into effect last October which says that FSO's and FSIO's cannot earn overtime or compensatory time or night, Sunday, or holiday differential on the same basis as people in other Foreign Service categories. That is what we have opposed.

We believe that the Subcommittee on International Operations' heart is with us on this, but they were unsuccessful in preventing that from going into effect. We have also suggested as a separate idea that the existing special allowance, or as we would call it, special differential, would be used to compensate especially communicators and secretaries who may not actually be on duty but who are on call by their phones. They can't go anywhere because they might be called to go on duty and they are severely restricted. If they actually have to go in on duty, then this category of people will receive overtime or compensatory pay.

But we believe there should be some compensation for the hours spent hanging around the phone at home. We don't claim you should pay a person the full hour's pay for a full hour hanging around the phone, but we would suggest the use of the special allowance concept, that if a certain job requires a certain amount of that, there is a way of compensating those people for the hours of restriction on their free time.

Mrs. SCHROEDER. You heard testimony from the prior group about the grievance problem. You are speaking in favor of expanding the union and yet, if under this bill only the union can trigger the grievance procedure, it is conceivable the union will be representing people on both sides of the argument or dispute. How do you recommend we are going to work out that conflict of interest?

I come to this from the private labor law sector, and I really don't comprehend why you are asking for that.

Mr. HYDLE. Madam Chairwoman, in our testimony on pages 11 and 12, we emphasize we have not sought the monopoly which the legislation would give, the exclusive representative over grievance representation and over access to the Foreign Service Grievance Board.

Mrs. SCHROEDER. So you would want the grievance section changed so it would not be the union only triggering it?

Mr. HYDLE. Yes; and we made that suggestion in the detailed section-by-section analysis. What we do seek, what we don't have now, is the right to be present during grievance proceedings, individual grievance proceedings, in order to make sure that these do not evolve in ways that are contrary to the interests of the whole bargaining unit, or the Grievance Board does not make an interpretation of a regulation which is contrary to the meaning that we attach to the agreement that produced the regulation.

That is all we are asking.

As far as representing both the supervisor and the grievant, this does not arise because it is the grievant who has a grievance against the department or agency, not against an individual supervisor, and it is not up to us to defend a supervisor against a criticism of him or her by a grievant.

Mrs. SCHROEDER. Not necessarily. It seems to me if you are representing both top level Foreign Service officers and also low level communicators, it is very conceivable you could get into a conflict.

Ms. WAELDER. If I could speak to this issue as well. The rank-in-person system of Foreign Service sets up a system by which persons move in and out of positions which may be in the bargaining unit in one tour of duty and out of the bargaining unit on another tour of duty, and the basic uniformity of personnel policies worldwide and applicable to everybody makes this kind of dichotomy between a supervisor and supervised employee that is typical elsewhere in labor relations less a feature of the Foreign Service system. It is equally possible a senior officer in an overseas post is going to have a dispute with the Department of State concerning how much weight he was allowed to ship of his household effects, and the officer responsible for that at the overseas post may be a junior administrative officer but it is his responsibility to interpret the administrative provisions. So the supervisor-supervisee relationship is not so integral a part of the labor relations.

What is more a part of our labor relations system is the uniform application of Foreign Service regulations worldwide, and these regulations, these policies, create the same kinds of difficulties for all of our employees serving overseas, whether they may be junior or senior.

Mrs. SCHROEDER. I hear what you are saying, I am not sure it is not just rhetoric. It is kind of like when we got into the question of picketing with the other group, who is the employer? It is always somewhere else. We are just administering and it is all the trickle-down type of thing. I feel like we are trying to nail Jello to the wall. We are supposed to be putting together a process that is going to work and we have to have some concrete definition of who represents whom and what triggers what and how you avoid conflict of interest and who is really involved in implementation of it and who can be held to task for different things.

And I am not sure we are getting guidance on that.

Ms. WAELDER. May I make two other points? I believe you stated a moment ago we were seeking to expand the bargaining unit. That is not correct, Madam Chairwoman. We are seeking to maintain the bargaining unit that has worked successfully for us since 1973. What we are seeking to do is keep the bargaining unit that has been in operation for all these years. We are not seeking to expand it. It is management that is seeking to bring it back in. We are seeking precisely the same bargaining unit that has been in effect and has worked for 6 years now in all of the foreign affairs agencies.

Mr. HYDLE. During which we have had the grievance procedures that would be substantially reenacted in chapter 11.

Mrs. SCHROEDER. It seems to me there is a logical reason why management has gone in that direction. Maybe it is because of the grievance procedure conflict they project.

Mr. HYDLE. If I can be allowed to speculate, it is simply that management, in order to get an administration position, has had to agree

with some of the people at the OPM who think in terms of title VII bargaining units. The position that has come out in the bill on the bargaining unit is a compromise between OPM and the Department of State.

Ms. WAELDER. You also spoke of conflict of interest. Both the existing Executive order and chapter 10 in the new bill do provide that any individual who has conflict of interest or apparent conflict of interest with respect to his official duties and his participation as the exclusive representative, may not participate on such an issue.

This clause we have used from time to time when an officer who may have had a role in personnel management on a prior assignment, on his subsequent assignment comes back into the bargaining unit and has taken an active role in the association. And we are conscious of the responsibility of officers to the Department of State.

Institutionally, this conflict of interest provision is one that has protected the system well and would continue to do so.

Mrs. SCHROEDER. I understand how that works but it still seems there is a broader application of where it comes. Let me ask one more question: Do you also wish to be present at grievance procedures if the employee does not want you there? Is that what you are also asking, because you want to be there not to protect the employee but to safeguard the interpretation of rules?

Ms. WAELDER. We seek to be there such that we may represent our interest if need be. There have been occasions when interpretations of agreements between the Agency and the exclusive bargaining representative have been at issue in an individual grievance hearing. We seek to be able to know and to put in our voice on issues that may effect the rest of our bargaining unit.

Mrs. SCHROEDER. So you would then request to be there whether or not the employee wanted that?

Let me also ask you how you justify preserving Foreign Service retirement benefits for domestic-only Foreign Service employees who have never gone abroad?

Mr. HYDLE. That was difficult, Madam Chairwoman. I think we concluded that it had been a mistake several years ago to bring into the Foreign Service people who really had no intention of going overseas, for whom there are actually no jobs overseas, but some of them came in with some understanding or promises in that connection and our conclusion was that it would be the best way to reestablish a clean distinction between Foreign Service people who are worldwide available and assignable, and other people who can serve well in the foreign affairs agencies but only in Washington.

The employee could either take the Foreign Service approach or civil service approach, each of which has some advantages and some disadvantages from the individual employee's point of view.

I might say briefly the ICA-AFGE agreement which dealt with this problem and which is referred to in, I think, 2103 or so, was a good agreement at the time, and had we not had this bill come up, we might well have taken the same approach they did, but now that the bill has arisen we think within the context of comprehensive legislation this is the best approach.

Mrs. SCHROEDER. That is how you justify negating their contract?

Mr. HYDLE. It looks as if their contract—if that is what it is—is going to be superseded after the end of the contract period.

Mrs. SCHROEDER. I think they testified it was open ended.

Mr. HYDLE. It is open ended in the sense their people can remain within the Foreign Service without having to go overseas, as I understand it.

Mrs. SCHROEDER. Does anyone else have any further questions? I think I will proceed to put the rest of mine in the record.

Mr. STERN. May I just comment on something you said. Before we got into this particular discussion you referred to the Foreign Service work overseas being mostly contact and I thought—

Mrs. SCHROEDER. I did not mean to say mostly. I said I think that is a large part of it.

Mr. STERN. It certainly is but these contacts are not an end in itself and it struck me the way the record might read it would tend to read like the contact work was the reason we were there rather than it was the analysis of what we would learn from our contacts. One of the problems we have in addition to the hours we spent outside of the office, with the cocktail parties and what-have-you, we tend to spend an inordinate amount of time in the office, well beyond 40 hours, and it tends to be an accepted thing that you have a real good bargain in the Foreign Service.

An officer can work 60 or 70 hours a week and he is not entitled to anything, and this is a good excuse not to hire more people. This is the way it has been working. All of us find the phone calls come at 6 o'clock and 6:30 in the evening to our desk even though normal duty hours are to 5:30, and a good portion of the Department is in every Saturday or at every Embassy because it is getting to be expected of us.

I think this was one of the points we needed to have made and I am sorry I forget the exact section—412 was it—that we sought to have repealed.

Mrs. SCHROEDER. So you would consider anything over 40 hours overtime in the office?

Mr. HYDLE. If that section were repealed, then we would be back in the same status as other civil servants and Foreign Service personnel categories with respect to premium pay including overtime, compensatory time, night differentials, Sunday differential, and the ability to waive those rights in order to participate in flexitime experiments and other innovations.

Ms. WAELDER. If I may pick up, this means anybody paid less than the level of GS-10, step 10, would on application be entitled to overtime like all other overtime employees, and anybody who earned more than that could put in for compensatory time. It is those provisions which are not applicable to Foreign Service officers but are applicable to all other civil servants and to all other Foreign Service pay categories.

Mrs. SCHROEDER. If there are no further questions, I think we will hold the record open for a while for more questions, and at this point I think we will adjourn the hearing.

Thank you very much for appearing.

[Whereupon, at 5:10 p.m., the hearing was adjourned.]

THE FOREIGN SERVICE ACT

WEDNESDAY, JULY 11, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees convened at 9:35 a.m., in room 2172, Rayburn House Office Building, Hon. Dante B. Fascell (chairman of the Subcommittee on International Operations) presiding.

Mr. FASCELL. Our subcommittees meet this morning to continue our hearings on the Foreign Service personnel reform bill and we have again with us this morning Ben Read, Under Secretary of State for Management, accompanied by Director General of the Foreign Service, Harry Barnes, and James Michel, Deputy Legal Adviser.

We want to pick up where we stopped last time during our section-by-section discussion of the bill. We had stopped on page 18 at section 321. In the meantime all of us have had an opportunity to get better educated on the bill, having heard from AFGE. This will give us the opportunity to pursue some of their concerns as we go along.

So let's start with section 321 with the fundamental question, subject to whatever my colleagues desire to ask at any point: Is this a rewrite of existing law, or is there something new in it; if so, what is it exactly that is new and why have changes been made?

STATEMENT OF HON. BEN H. READ, UNDER SECRETARY OF STATE FOR MANAGEMENT

Mr. READ. Thank you, Mr. Chairman.

We are ready to proceed accordingly. I might mention that we have prepared and will be submitting by the deadline you suggested, tomorrow, the written answers to 120 or 140 separate questions and I think that that will be fully responsive to the inquiries you made for the record and during the first hearings.¹ All but three or four answers have been prepared, and we will be prepared to discuss them at any time. I am delighted to proceed on this section-by-section basis.

I believe we had just completed the discussion of 321 and I will ask Jim Michel to pick up there if that is agreeable with you.

¹ The questions and answers referred to are contained in appendix 26.

Mr. FASCELL. Yes, sir.

Mr. MICHEL.¹ Section 322 on career appointments—

Mrs. SCHROEDER. Can I ask you again: You have the 5 percent in there rather than the 10 percent as in the civil service?

Mr. MICHEL. That is right.

Mrs. SCHROEDER. Is there any real reason why you changed that from the Civil Service Reform Act?

Mr. MICHEL. Yes. The Civil Service Reform Act's 10 percent, as we understand it, reflects the facts as they exist within the civil service; within the civil service there are about 10 percent noncareer personnel at the senior levels. In the Foreign Service it is about 5 percent, actually a little less than 5 percent, noncareer personnel at the senior levels.

For the same reason that the Civil Service Reform Act uses 10 percent, we have used 5 percent. We do not want to change what is permissible in the way of political or noncareer appointments at the senior levels.

Mrs. SCHROEDER. Thank you.

Mr. MICHEL. Should I proceed?

Mr. FASCELL. Yes.

Mr. MICHEL. Section 322 on career appointments brings together about five different provisions of the existing law and provides a single process for acquiring tenure in the Foreign Service. The procedure of a limited appointment during probation is applicable now to Foreign Service officer candidates and to the Foreign Service Reserve officers. The law just provides with respect to Foreign Service staff and to other personnel that the Secretary may prescribe regulations, including provisions for probationary periods. So this is essentially a codification of existing law and makes the same procedure apply to all the different categories.

Mrs. SCHROEDER. Mr. Chairman, may I ask a question?

Mr. FASCELL. Yes.

Mrs. SCHROEDER. I would like to know more about the boards. Are you going to put more in the language about the tenure boards? Is this entirely or primarily career people? Is there an appeal from the board's decision? Will there be standards? How is the selection going to be made? What are the guidelines? In other words, is there something more concrete there?

Mr. MICHEL. Typically the decision about whether to grant tenure to a probationary employee is a management decision and it is not something that is the subject of the kind of appeal rights that would exist for an employee who has tenure if the proposal is to separate the employee involuntarily.

The tenure board does operate, and would continue to operate, under precepts that are worked out with the exclusive representative of the employees. There is no appellate structure, but there is a negotiation that leads to the guidelines that are applied by the board.

Mrs. SCHROEDER. What about the performance standards?

Mr. MICHEL. The same performance evaluation is done on the candidate as is done on any other officer or employee in the Foreign Service. The individual does have the right to bring a grievance if he or she believes there is anything in the performance file that is unfair and prejudices the opportunity to acquire tenure.

¹ James H. Michel, Deputy Legal Adviser, Department of State.

Mr. READ. Can I add a footnote there. What we are doing here is extending the tenure process for career status in the Foreign Service. At present, tenure is granted too casually and we wish to give real meaning to this action. I think that we grant tenure more casually for non-Foreign Service officers than is done in most other organizations. I think this will help professionalize the Foreign Service and make a real contribution.

Mrs. SCHROEDER. I think that is right. Will it enable the same rights to tenure; will there be concrete guidelines?

Mr. READ. Yes.

Mrs. SCHROEDER. Or will it go the "Old Boys" network? I am pleased to hear you talk about that.

Mr. FASCELL. Let me pursue something on that section right there. As I understand it, with just a cursory examination of this matter, what you have eliminated is the statutory probationary period and left it to some board determinations?

Mr. MICHEL. No; the probationary period for Foreign Service officer candidates has been 48 months plus an additional 12, or 5 years.

Mr. FASCELL. Does that still remain in the law?

Mr. MICHEL. That remains in the law because the limited appointment cannot exceed 5 years. That is dealt with in section 331 of the bill.

Mr. FASCELL. Well, let me see.

Mr. MICHEL. When we say a limited appointment in 322, you have to read that with 331 which says a limited appointment may in no event exceed 5 years.

Mr. FASCELL. What does that mean? At the end of 5 years under limited appointments he is either in or that means he has tenure or he is out?

Mr. MICHEL. Or he is out.

Mr. FASCELL. Under the present system you say that is a ministerial function both for service and nonservice people?

Mr. MICHEL. At the present time this procedure contemplated in 322 applies to Foreign Service officer candidates and it is provided for by section 516 of the Foreign Service Act only.

Mr. FASCELL. So then 516(c), which is that last paragraph there, in its entirety remains as is?

Mr. MICHEL. Section 516(c) would be repealed if we borrow from 516(c) to get the procedure that is reflected in new section 522.

Mr. FASCELL. As read in 331.

Mr. MICHEL. Yes.

Mr. FASCELL. We have now gone full circle. I thought that is what you did; therefore, I will restate the proposition.

You have a 5-year limitation which was laid down in section 331.

Mr. MICHEL. Yes, sir.

Mr. FASCELL. So that changes the system that you have in 516(c).

Mr. MICHEL. Yes.

Mr. FASCELL. Now it begins to read clearly.

The other thing that is changed is that now you are going to make tenure a board process.

Mr. MICHEL. Throughout the ranks of the Foreign Service.

Mr. FASCELL. All candidates?

Mr. MICHEL. Yes.

Mr. FASCELL. Service and nonservice or whatever it is.

Now that is going to be a board process in the same fashion as upward mobility is a board process, is that correct? I mean the determination of tenure at a given period of time.

Mr. MICHEL. Yes.

Mr. FASCELL. Now how is the given period of time determined? When does the board act? What is the trigger?

Mr. MICHEL. They will look at the performance file.

Mr. FASCELL. I know, but when? Every 6 months?

Mr. MICHEL. I believe it is annually and they may decide to grant tenure after 2 years or after 3 years or after 4 years.

Mr. FASCELL. Is that based on rule, regulations, or precedent?

Mr. BARNES. It is called a Commissioning and Tenure Board.

Mr. FASCELL. Excuse me?

Mr. BARNES. This particular board has the opportunity to review, by regulation, those candidates who have been in the service for 2 years. They have to make their decision though before 4 years have expired and I expect that for the other categories we would set comparable rules. They would vary probably depending on the category.

Mr. FASCELL. You mean that as a newcomer, I come in on a probationary basis, and nothing happens to me for as long as 4 years?

Mr. BARNES. That is right.

Mr. FASCELL. But something could happen to me any time after 2?

Mr. BARNES. You could get your tenure and promotion after 2.

Mr. FASCELL. But I might not?

Mr. BARNES. Yes.

Mr. FASCELL. So I could be promoted but I would not have any tenure under the present system for at least 2 years.

Mr. BARNES. Yes.

Mr. FASCELL. Are those by regulations?

Mr. BARNES. Yes.

Mr. FASCELL. Is that going to be the same as far as present thinking is concerned with respect to the application of 332 and 331?

Mr. BARNES. As I indicated, I think our tentative thinking depends on the category.

Mr. MICHEL. You don't need the same length of time to make that decision for all occupational groups. It is thought that for the Foreign Service officer it is desirable to have a couple of tours of duty, a couple of different supervisors before you make that judgment. On the other hand, let's say that you have somebody who is a clerk in the mail room. You don't need 4 years to decide, yes, this is a good clerk and we will grant this person tenure.

Mr. FASCELL. OK.

Any other questions on that?

Let's go to the next section.

Mr. MICHEL. Section 323 establishes a normal maximum entry level for Foreign Service officer candidates. The class 4 referred to in the text of the bill is intended to correspond roughly to class 6 in the present Foreign Service officer salary structure. The present normal entry level is at class 7 and this section would provide a somewhat broader band for the entry level, taking into account the broader range of candidates we are now getting in terms of both age and education and experience.

Mrs. SCHROEDER. May I ask a question at this point?

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Is this the lateral entry issue?

Mr. MICHEL. To enter above class 4 would be a lateral entry. This is provided for in these two paragraphs indicating that in an individual case, someone could be brought in at a higher level on the basis of a determination if they have the qualifications and experience for which there is a need in the Service.

Mrs. SCHROEDER. We had some negative testimony on Monday, as I recall, on lateral entry from AFSA.

Is this basically a codification of the program as it is now operating or are there changes in it?

Mr. MICHEL. We have not retained some of the rigidities which make a distinction between people over 30 and under 30, and who have 3 years of Government service or 4 years of Government service, before they come in through lateral entry. Those did not seem appropriate to carry forward.

Mrs. SCHROEDER. But other than that, it is the same?

Mr. MICHEL. It is the same.

Mrs. SCHROEDER. There is no difference.

All right. Thank you.

Mr. FASCELL. Any other questions on section 323?

If not, let's go to section 324.

Mr. MICHEL. Section 324 concerns the recall and reappointment of career personnel. This is basically a codification of the present section 520 of the 1946 act. The section permits a retired member of the Foreign Service to be recalled and permits a former member who has resigned to be reappointed without having to go through the candidate process that we described.

The difference is that the language is generalized. Whereas the present law talks about recall of a Foreign Service officer only, this section talks about recall of a "member" of the Foreign Service. It would apply to all categories of personnel.

Mr. FASCELL. Any questions on that section?

Mr. Derwinski.

Mr. DERWINSKI. Mr. Chairman.

The provision there on length of service by a recalled member beyond mandatory retirement has been limited to 5 years. How would that affect a unique case such as you have with Elsworth Bunker who, if I understand correctly, has been beyond the retirement age for 15 years?

Mr. MICHEL. He was not recalled, but appointed by the President.

Mr. DERWINSKI. So in this section you are dealing with career personnel not subject to Presidential appointment and Senate confirmation?

Mr. MICHEL. Yes.

Mr. DERWINSKI. This restricts though, in part, the 5-year limitation?

Mr. MICHEL. The President can appoint to a constitutional office or statutory office, with Senate advice and consent, anyone he pleases and there is no age limitation and none intended by this bill.

Mr. DERWINSKI. Thank you.

Mr. FASCELL. All right. Let's take the next section which we partially discussed.

Mr. MICHEL. Section 331 establishes a 5-year maximum for limited appointments in the Service. This is consistent with the existing law

that applies to Foreign Service Reserve officers and extends the 5-year rule to all categories of personnel. At present, there is no such thing as a limited Foreign Service officer. Limited appointments in the Staff Corps are authorized, but the time period is set by regulation and is not specified in law.

Mr. FASCELL. Well, let me see if we are all using the same words. Noncareer—no tenure—is that what that means?

Mr. MICHEL. That is right.

Mr. FASCELL. "Other limited appointments in the Service" means—

Mr. MICHEL. Well, there are two kinds of situations in addition to career candidates in which you use the limited appointment. One is to bring someone in where there is a temporary need for that individual. They come into the Government; they work for a few years; and they leave. The other kind of a situation we would not want to call non-career. It is when somebody who is a career employee in some other agency goes into the Foreign Service on a limited basis and then returns to their career position in the civil service. This is also dealt with in the following section, section 332, on reemployment rights.

Mr. FASCELL. So "other limited appointments" means those categories which you just described.

Mr. MICHEL. These are career people but they are not career Foreign Service people.

Mr. FASCELL. And a time limited appointment means what?

Mr. MICHEL. A limited appointment.

Mr. FASCELL. What does "time" mean?

Mr. MICHEL. The word "time" in line 18 may be redundant.

Mr. FASCELL. Well, is a time limited appointment a temporary appointment always and is a temporary appointment always a time limited appointment?

Mr. MICHEL. No. A limited appointment may be for any length of time up to a maximum of 5 years.

Mr. FASCELL. So a limited appointment has a different connotation although it may be temporary up to 5 years? It is not temporary at all.

Mr. MICHEL. We use that for 1 year or less because such appointments are treated differently in terms of leave eligibility and retirement plan.

Mr. FASCELL. Now do you want to restate that?

Mr. MICHEL. All right. If someone is employed in the Government for less than 1 year, they don't go into the civil service retirement system; they are covered by social security.

Mr. FASCELL. Now that is a temporary appointment?

Mr. MICHEL. Yes.

Mr. FASCELL. It also happens to be a time limited appointment?

Mr. MICHEL. Well, the sentence reads "a time limited appointment in the Service for not to exceed 1 year shall be a temporary appointment." The sentence is in there simply for administrative convenience so that there is a statutory basis for designating certain limited appointments as "temporary."

Mr. FASCELL. Anything under 5 years is going to be temporary.

Mr. MICHEL. Under 1 year.

Mr. FASCELL. Clearly designated by statute.

Mr. MICHEL. Yes, and that identifies those people who are not in civil service retirement or—

Mr. FASCELL. Excuse me. I am not trying to nitpick but why couldn't that read, "any appointment in the Service for not to exceed 1 year shall be a temporary appointment"? What is the difference between that and what you have?

Mr. MICHEL. The only difference is that we would like to regard the temporary appointment as a subcategory of limited because there are some references to limited appointment in other places in the bill which are meant to include the temporary appointment.

Mr. FASCELL. A limited appointment then is anything under 5 years?

Mr. MICHEL. That is right, including a temporary appointment.

Mr. FASCELL. But a temporary assignment is anything under 1 year.

Mr. MICHEL. That is right.

Mr. FASCELL. They are both time limited.

Mr. MICHEL. Yes, sir.

Mr. FASCELL. By statute.

Mr. MICHEL. Yes.

Mr. FASCELL. Now are there any regulations which are in effect which need to be understood for definitional or clarification purposes?

Mr. MICHEL. As I indicated earlier, we would have regulations implementing the leave act and the retirement laws.

Mr. FASCELL. To discover what my benefits as the employee under either one of those categories to which this section would apply, which is anything under 5 years, I would have to look at regulations?

Mr. MICHEL. Well, there would be implementing regulations but the essential difference between other limited appointments and the temporary is that if you are less than a year, temporary, you are under social security rather than a Government retirement plan and you don't earn leave.

Mr. FASCELL. And all of that is fixed by regulation?

Mr. MICHEL. Well, it is fixed by other laws which are implemented by regulation—by the leave act and the retirement law.

Mr. FASCELL. I see.

Mr. MICHEL. This is essentially a cross-reference.

Mr. FASCELL. All right. Then these time periods were made keeping in mind requirements of other laws?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. As far as benefits are concerned.

Mr. MICHEL. Yes.

Mr. FASCELL. We are not at cross purposes?

Mr. MICHEL. No, we are not.

Mr. FASCELL. In other words, the time periods in section 331 have that in mind?

Mr. MICHEL. Yes.

Mr. FASCELL. OK. That clarifies it for me. Thank you.

Any other questions on section 331?

If not, we will go to section 332.

Mr. MICHEL. Section 332 concerns reemployment rights of a career Federal employee who accepts a limited appointment in the Foreign Service with the consent of his or her agency. Such an employee is entitled, as under present law, to be reemployed in their former position or an equivalent position at the expiration of their limited Foreign Service appointment.

Mr. FASCELL. Is that the present law?

Mr. MICHEL. Yes, sir. There is present law with respect to Foreign Service Reserve officers. This broadens this so that other personnel would also have the rights that are contained in the present law.

Mr. FASCELL. When you say "other personnel," does that mean all other personnel or some other personnel?

Mr. MICHEL. All other personnel. We have tried to avoid these distinctions by which they are treated differently. We think it is perhaps—

Mr. FASCELL. One of the things you are trying to do is to treat all employees the same as far as the application of law is concerned.

Mr. MICHEL. That is right. At present if someone comes into the Foreign Service for a limited appointment on the Foreign Service Staff Corps, they would not have statutory reemployment rights. If they came in as a Foreign Service Reserve officer, they would have. We generalize this and say they both have statutory reemployment rights.

Mr. FASCELL. And that is what this section does?

Mr. MICHEL. Yes.

Mr. FASCELL. Is this the origination of the so-called parachute concept that is bugging you with respect to the Senior Foreign Service?

Mr. MICHEL. No, this is when somebody moves from their normal civil service job to work for somebody else for a limited time in the Foreign Service.

Mr. FASCELL. I understand that. That raises the issue about moving up and out and then deciding you either can't cut the mustard or for some other reason a change is made. The question then remains whether you should go back to your old position and still be in the Foreign Service.

Now at least that is the way I understand the problem.

How does the administration address the problem in this bill? For example, what happens if someone goes into the Senior Foreign Service and stays for a number of years, but then for some reason doesn't work out—or would the circumstances be different?

Mr. MICHEL. We think there are very different circumstances.

Mr. FASCELL. That individual either stays in or whatever.

Mr. MICHEL. Yes. The civil service employee in grade 15 has a vested right in the particular position held by that individual. They are induced to go into the Senior Executive Service and accept the risks and benefits of that Senior Executive Service, and one of the things that is offered as an inducement to leave the security of that GS-15 position is a parachute clause.

Mr. FASCELL. In other words, you can go back to the 15 percent if he does not cut it.

Mr. MICHEL. If he does not make it in the Senior Executive Service.

Now the class 3 Foreign Service officer is subject to selection out for time-in-class or for low ranking already, before going up into the senior ranks.

Mr. FASCELL. So if you parachute him back it would be going backward trying to solve a problem that you have been trying to solve?

Mr. MICHEL. That is right. We think we are starting from a very different beginning in creating the Senior Foreign Service and applying that to an already existing up or out rank-in-person system.

Mr. FASCELL. So if you had a parachute clause applied to the Senior

Foreign Service, in effect what you would be doing would be limiting the selection-out process.

Mr. MICHEL. Yes; we would be recreating the congestion at another level. We would be moving the problem instead of solving the problem.

Mr. FASCELL. So basically the response which has been made by the organizations who advocate that parachute clause is that the situation is not the same, that they are not analogous.

Mr. MICHEL. We believe it is a misplaced analogy.

Mr. FASCELL. Not only is the problem different but the history is different?

Mr. MICHEL. That is true.

Mr. FASCELL. All right.

Any other questions on that?

Mr. BUCHANAN. I guess I would rather see civil service go toward Foreign Service rather than vice versa.

Mr. FASCELL. I think the whole process contemplates a sensible selection-out process predicated on production responsibility and some reasonable balance between that and the old system.

Mr. MICHEL. I might add that from the conversations I have had with the members of the career Foreign Service my impression is that there is general support for the preservation of selection out.

Mr. FASCELL. You testified to that. AFSA testified to that but the others are still holding out for the parachute clause. It seems to me to be reasonable to say that the situations are different.

Mr. MICHEL. Well, I think they are.

Mr. FASCELL. Let's take section 333.

Mr. MICHEL. Section 333 is another consolidation of several provisions of law concerning employment of family members.

Mr. FASCELL. Is there anything new in it?

Mr. MICHEL. I don't think there is anything new in subsection (a). It is all there in present law now but it is pulled together. At present, there is a separate law dealing with employment in the foreign national positions.

Mr. FASCELL. Jim, when you say it is pulled together, what does that mean?

Mr. MICHEL. Well, that means that we have now a section 401 of the State authorization bill of last year that said we should try to hire family members in vacant foreign national positions and convert them for use by American family members.

Mr. FASCELL. I remember that, our subcommittee wrote that in.

Now what other sections do you pull in?

Mr. MICHEL. There was a separate section that was enacted in the same bill that said that we should give equal consideration to family members for filling American positions and that was then provided directly in this section.

Mr. FASCELL. So you consolidated 431 and 413 with no substantive change?

Mr. MICHEL. Yes.

Mr. FASCELL. Simply grammatical changes.

Mr. MICHEL. Yes. Then we built in the authorization to use a local compensation plan or an American salary schedule as may be appro-

priated in the circumstances of the case which is now in section 444 of the Foreign Service Act.

Mr. FASCELL. Oh, I see. That is back on the next page.

So what you have done is pulled those three sections together.

Mr. MICHEL. Well, the provision on the next page in present 444(d) concerns the regulations which we have built in here, too.

Mr. FASCELL. Well, let me see if I understand you then. Starting on line 20 on page 21, is that all new?

Mr. MICHEL. No. If you look on page 29, the bottom of page 28 and the top of page 29 on the facing page, you will see the authority in present law for local compensation plans for alien employees.

Mr. FASCELL. Section 417, you mean? Oh, I see. I am sorry. Section 451.

Mr. MICHEL. Yes. It is on the facing page starting at the bottom of page 28 showing the 1946 act and then going up to the top of the page facing 29. It says that "these compensation plans are for employees and for U.S. citizens employed abroad who are family members of personnel." So we have taken that authority and moved it or cross referenced it back in section 333.

Mr. FASCELL. And that does not change the substantive application of that section?

Mr. MICHEL. No; that is only an additional source for it.

Mr. FASCELL. Mrs. Schroeder.

Mrs. SCHROEDER. I just wanted to ask: When the Secretary puts together regulations prescribing guidelines, will that include regulations on which pay scale applies or are there regulations on which pay scale applies?

In other words, you give equal consideration to employing qualified family members and then the Secretary is going to put together the guidelines.

Mr. MICHEL. That is right.

Mr. FASCELL. I am wondering which pay scale applies and then how you give equal consideration if you have different pay scales applying to different kinds of applicants.

Mr. MICHEL. Not to different kinds of applicants. I think the principal criterion will be how the job is classified. If you have a job that is normally filled by a foreign national, and that job becomes vacant when there is a family member at post who can perform that job, this section says you will give equal consideration to the employment of that family member instead of hiring another foreign national.

Mrs. SCHROEDER. And you would use the foreign national pay scale?

Mr. MICHEL. In that case.

Mrs. SCHROEDER. I see. So equal consideration then means that you are strictly looking at the applicant's qualification?

Mr. MICHEL. That is right.

Mrs. SCHROEDER. Then the regulations will, on the pay issue, be that once the job is classified as a foreign national job there will be equal consideration between foreign nationals and family members but the pay scale will be the same as it was?

Mr. MICHEL. We are still pretty early in the pilot program with this fairly recent authority. That program has been expanded, but I think we really need to get more experience before we can say definitely what the regulations will provide in detail.

Mrs. SCHROEDER. Thank you.

Mr. FASCELL. Mr. Buchanan.

Mr. BUCHANAN. Thank you, Mr. Chairman.

I am sure you and AFSA have expressed some concerns about this section in which the members of the subcommittee have a rather active interest, I must say.

What other kinds of jobs do you envision that might be filled by them under this section?

Mr. BARNES. Well, in terms of our present practices, there are jobs which are now filled by family members.

Mr. FASCELL. Through the normal process.

Mr. BARNES. Yes, there are actually several categories. We treat those employed full time as we would any other employee.

Then there is a category of people we would employ on a temporary basis and in a type of position we call a temporary or intermittent position and these could be a great variety of jobs—jobs that are ordinarily filled by Americans.

Mr. FASCELL. That is the 5 years or less category? One year or less?

Mr. BARNES. I was hesitant when I used the word "temporary" because I was afraid we might get back to that point.

Mr. FASCELL. There is a great necessity for us to be absolutely clear when we are describing something on the record. That is the only reason I keep going back.

Mr. BARNES. I understand. I was not using it as in the section we previously discussed. We have a category of employment of people where we do not need their services full time. It is temporary in that sense, not full time. We do now employ family members in such capacities.

Mr. FASCELL. You mean part time?

Mr. BARNES. Part-time intermittent and temporary. That is one concept together.

Mr. FASCELL. How about intermittent employees? Do you have those kinds, too?

Mr. BARNES. Yes, and we now employ people in such jobs which could be of great variety.

Mr. BUCHANAN. You are aware of the concern that was expressed of using family members to replace Foreign Service officers in slots that previously had been classified as regular Foreign Service positions?

Mr. BARNES. No, we are not contemplating that. We use these part-time, intermittent, temporary appointments when we have a gap between the departure of one and the arrival of another regular employee. We would use that authority.

Mr. BUCHANAN. One more word on the other side of the coin. We have been through this exercise several times but this program really is not off the ground in my judgment and understanding. I hope that the presence of this section in the proposed law, along with the language under the present law, really means that you are going to aggressively pursue this matter.

Mr. READ. We will, Mr. Buchanan. I found subsequent to the last hearing that the pilot program really had been going along at an almost nonexistent level. There were actually only two placements from when it was instituted in February or March until through June. We have now made it worldwide, and I do hope we will have some significant results to post you on by the end of the fiscal year.

Mr. BUCHANAN. Thank you.

Mr. BARNES. We have made this program available on a worldwide basis.

Mr. FASCELL. Mrs. Schroeder has another question on this problem.

Mrs. SCHROEDER. I just wanted to ask if you have provisions to locate jobs for spouses of Foreign Service officers in Washington when the spouses are rotated back here.

Mr. BARNES. You are talking of the sorts of spouses who are not regular members of the Foreign Service?

Mrs. SCHROEDER. That is correct. I understand what you are trying in the foreign areas. My question is: Once they come back here, do you help them? Is there any kind of counseling or help for spouses to get back into the mainstream here?

Mr. BARNES. Yes. We mentioned the Family Liaison Office which we set up about a year and a half ago and its function, among others, is to help the transition in this direction as well as the transition in the other direction.

Mrs. SCHROEDER. Thank you.

Mr. BUCHANAN. One more question.

Are there any positions where there would be a retirement benefit aspect of employment or would all the categories be such that there would not be?

Mr. MICHEL. There would be either Social Security if they are less than a year or civil service retirement system if they are—

Mr. FASCELL. If they qualified for a retirement system.

Mr. MICHEL. That is the function of the retirement laws.

One more point if I may, Mr. Buchanan. You referred to the AFSA concerns in the implementations of this program or the career personnel of the Service. Subsection (b) of this section at the top of page 22 contained the same admonition that was in section 413 of the previous law, stating positively rather than negatively that employment under this section must be consistent with the needs of the Service for positions for career personnel.

Mr. BUCHANAN. Thank you.

Mr. BARNES. Mr. Chairman, if I may. I'd like to add a comment to Mrs. Schroeder's question in terms of trying to provide employment opportunities for family members who return to the United States. We started some discussions with OPM about ways to enable those people who work abroad under these several programs to obtain credit toward civil service employment upon return to the United States. We are working out procedures so that when they come back they will not be disadvantaged by the virtue of having been overseas if only in terms of time of application.

Mr. FASCELL. Thank you.

We will stand in recess until we go cast this vote on the trade bill and we will come right back.

[Whereupon, at 10:21 a.m., the subcommittees recessed until 10:37 a.m.]

Mr. FASCELL. When we left we had finished 333, I believe, so let's go to 341.

Mr. MICHEL. Mr. Chairman, section 341 on Diplomatic and Consular Commissions is another codification of four existing provisions of law. The only substantive difference is that it refers generally to

members of the Foreign Service rather than separately to Foreign Service officers, Foreign Service Reserve officers, Staff officers and employees and Foreign Service information officers.

The only significant difference this makes, I believe, is with respect to the commissioning by the secretary of a member of the service as a vice consul. Under the present law that authority applies only to the Staff Corps. This would be generalized by the bill and could be a useful authority, for example, in commissioning officer candidates who have not yet been appointed by the President so that they could be assigned to consular functions more readily.

Mr. FASCELL. Do I understand then what you are saying is that the language beginning on line 15—

Mr. MICHEL. Line 15, yes, sir, used to apply only to the Staff Corps; now it says "may commission a member of the Service." So this would include, for example, officer candidates.

Mr. FASCELL. So the new language is "of the Service."

Mr. MICHEL. Yes, sir.

Mr. FASCELL. The way I understand it, it makes this authority applicable to anybody in the Service.

Mr. MICHEL. That is right.

Mr. FASCELL. Any other questions on this section?

Otherwise, it is simply a rewrite?

Mr. MICHEL. That is right.

Mrs. SCHROEDER. You want to keep the diplomatic corps separate?

Mr. MICHEL. No; excuse me. There are different commissions, diplomatic commissions and consular commissions. You will have a member of the Foreign Service who may be assigned to a consular post or to a diplomatic post but the consul in particular has some functions that are statutory. The best example, I think, is in the notarial area. A consular officer serves as a notary public and can notarize documents presented at the consular post.

Mrs. SCHROEDER. Couldn't the diplomatic officer do that?

Mr. MICHEL. Some can and some can't. It depends where they are.

Mrs. SCHROEDER. I guess we are talking about the two separate cones. One of the things we were talking about was the cone system and how equal they are. Does the cone system inhibit good career ladders for people in the consular corps?

Mr. MICHEL. No; the Foreign Service officer gets appointed today by the President, by and with the advice and consent of the Senate, and is simultaneously commissioned as the secretary in the diplomatic service and a consular officer.

What I was suggesting you could do under this section is that before that commissioning process when you are taking the candidate and assigning that candidate to an initial post, you could through the more simple procedure of a secretarial commission enable that officer to be assigned to a consular post to perform functions that require a commission under various other statutes.

Mr. FASCELL. So following 341 for a moment, the first sentence is the secretarial recommendation to the President.

Mr. MICHEL. That is right.

Mr. FASCELL. On diplomatic and consular commissions or both.

Mr. MICHEL. Yes.

Mr. FASCELL. And you make that distinction of diplomatic and consular to retain for diplomatic persons their immunities and privileges?

Mr. MICHEL. Privileges and immunities don't derive from the commission but rather from the capacity in which the person is assigned.

Mr. FASCELL. I guess the question I am asking then is why does it take three paragraphs to cite this authority? The Secretary may recommend and the President may with the advice and consent of the Senate appoint any member of the Service, a citizen of the United States, and commission that person as a diplomatic or consular officer.

Mr. MICHEL. Well, the second sentence reflects what is in the Constitution. The President appoints ambassadors and other public ministers and consuls.

Mr. FASCELL. Do we have to restate that in the law even though it is in the old law?

Mr. MICHEL. We don't have to, but for the same reason we state the President appoints chiefs of mission by and with the advice and consent of the Senate, it helps provide a complete statement of the process.

Mr. FASCELL. New law.

Mr. MICHEL. Yes, sir.

Mr. FASCELL. In other words, this is for clarity.

Mr. MICHEL. Yes; the Secretary recommends, the President appoints.

Mr. FASCELL. The Secretary has a direct commissioning authority.

Mr. MICHEL. That is right.

This third sentence is legally necessary as an exercise of Congress constitutional power to authorize a Cabinet officer to appoint what the Constitution calls an inferior or subordinate officer.

Mr. LEACH. Mr. Chairman, may I pursue this for a second?

Mr. FASCELL. Yes.

Mr. LEACH. You were with the American Institute in Taiwan. Do its employees lose their diplomatic and consular function and should such a possibility be noted in the language of the act?

Mr. MICHEL. I think that is all covered in the Taiwan Relations Act, Mr. Leach. That act provides that employees of the American Institute in Taiwan may perform functions that will have the effect under U.S. law as if they had been performed by a consular officer.

Mr. LEACH. There is no problem with this language with that bizarre exception?

Mr. MICHEL. There is not. They leave the Foreign Service to work for the American Institute. The legislation providing for this unique relationship in the case of Taiwan authorizes the negotiation of an agreement for privileges and immunities and deals with the authorities and powers of the personnel who work for the institute so that they are able to provide a range of services to American firms and citizens comparable to what consular officers can do.

Mr. LEACH. There is no problem with being promoted while you are in Taiwan?

Mr. MICHEL. No; this is specifically stated in the Taiwan Relations Act and the language of the act talks about reinstatement. I don't remember the exact language but it is reinstatement in the same or a higher position. The administration made clear to the Congress in the course of the consideration of that bill the intention to have the

selection boards consider people while they were not technically on the rolls because they were working for the institute.

Mr. LEACH. My question then is whether there should be any new language reflected here.

Mr. MICHEL. I think there is no need for anything additional here.

Mr. LEACH. Thank you.

Mr. FASCELL. One question keeps recurring, however. Why in the present law and in this restatement do we have to have the separate categories of diplomatic or consular officer or both? Why isn't there one descriptive generic term? I don't understand that yet.

Mr. MICHEL. This does not have to do with their personnel status. Their personnel status is that they are a member of the Foreign Service. This has to do with the fact that—

Mr. FASCELL. Functional status?

Mr. MICHEL. It has to do with their functional status because under international law and practice there are still consulates and there are embassies.

Mr. FASCELL. That is what I tried to raise before in talking about diplomatic privileges and immunities, although it does not directly apply. The reason you are using this breakout diplomatic or consular officer is simply international custom and, usage?

Mr. MICHEL. Yes, sir, and—

Mr. FASCELL. Wait a minute. Let's finish that.

Mr. MICHEL. All right.

Mr. FASCELL. There is no distinction in our law as far as the individual being a member of the Foreign Service.

Mr. MICHEL. That is right.

Mr. FASCELL. Now, he may have different functional duties depending on whether or not he is a diplomatic officer or a consular officer.

Mr. MICHEL. That is right.

The chapter on assignments, chapter 5, provides for assignment to any post or position. There is no distinction made between consular and diplomatic assignments.

Mr. FASCELL. But section 341 is Mrs. Schroeder's original question, simply to lay out in the law a legal distinction between diplomatic and consular commissions. Now if the only purpose of that is international precedent or usage, then I think we have to be quite clear. Otherwise, I don't see the necessity for the separation.

Why do you have to have the authority spelled out as a diplomat or a consular officer in the law if all you are doing is simply meeting what is international custom and usage? Why wouldn't the fact that the individual has been commissioned as a Foreign Service officer meet the requirements of U.S. law?

Mr. MICHEL. There are U.S. laws dating from the 18th and 19th centuries on powers and duties and functions of diplomatic officers and, more particularly, consular officers—the laws relating to notaries, the laws relating to services to American seamen, the laws relating to conservation of the estates of deceased Americans.

Mr. FASCELL. What you are saying is that in a series of U.S. laws you have a separate category for the consular function.

Mr. MICHEL. Yes.

Mr. FASCELL. Which cannot be integrated into the laws of the Foreign Service?

Mr. MICHEL. It has to do with the individual's particular assignment at a particular time and not with their personnel status. We are frequently called upon to—

Mr. FASCELL. Excuse me now. Can any other person other than a Foreign Service officer be clothed with the consular duties and responsibilities under other laws?

Mr. MICHEL. Congress could by statute, I think, authorize—

Mr. FASCELL. Any person.

Mr. MICHEL [continuing]. Any person to perform the functions of a consular officer.

Mr. FASCELL. In effect we did that in the Taiwan legislation.

Mr. MICHEL. Yes.

A foreign government might not accept or permit a person who is not a consular officer to perform those functions in its territory because it would be outside the normal arrangements under international law and practice whereby there are existing laws and procedures for accreditation of diplomats for notification of consular personnel. This is a historical distinction that persists into the 20th century. So if we notify someone to the foreign government as a consular officer, they say, OK, he can come in and perform consular functions.

Mr. FASCELL. He has no diplomatic status?

Mr. MICHEL. Unless simultaneously assigned to a diplomatic mission. We have some people who are notified as members of the diplomatic mission and they are also notified as consular officers.

Mr. FASCELL. But the acceptance process and the accreditation process is different?

Mr. MICHEL. That is right, and that is a matter of international law.

Mr. FASCELL. Let's take an example. Let's just for the moment assume that there are no categorical divisions within the State Department personnel system.

Mr. MICHEL. All right.

Mr. FASCELL. They are just wiped out, there are no cones.

Now what does this section do?

Mr. MICHEL. This says that you can take any member of this unified Foreign Service and assign that person to a position in a consulate or to an Embassy in a diplomatic capacity and you can provide that person with a commission that is evidence of his or her authority to act in a consular capacity or a diplomatic capacity as the case may be.

Mr. FASCELL. So the fact that you have categorical distinctions by rules and regulations within the personnel system really makes no difference as far as the statutory responsibilities are concerned, and the consular statutory responsibilities are not all in this statute?

Mr. MICHEL. That is right.

Mr. FASCELL. That leads to the next question. How many of those statutes do we have, and where are they? We ought to have those for the record. I don't know whether we have given any thought to the integration of those statutory responsibilities in this law but we certainly ought not to just pass over that. If we are going to go to this kind of trouble, we ought to take a look at that.

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Mr. MICHEL. We can provide those for the record, Mr. Chairman. They are found primarily in subchapter X of chapter 14 in 22 U.S. Code.

[The material referred to follows:]

LEGAL BASIS FOR THE FUNCTIONS OF U.S. CONSULAR OFFICERS ABROAD

The Foreign Service Act of 1946, as amended provides generally for the commissioning of Foreign Service officers and employees as consular officers,¹ and the assignment of such officers and employees to post abroad.² However, the Act does not purport to specify the functions of consular officers. Rather, it directs the officers and employees of the Foreign Service, under the direction of the Secretary of State, to "perform the duties and comply with the obligations resulting from the nature of their appointments or assignments or imposed on them by the terms of any law or by any order or regulation issued pursuant to law or by any international agreement to which the United States is a party."³

In addition, the Act authorizes the Secretary of State to prescribe regulations consistent with law "in relation to the duties, functions and obligations of consular officers. * * *"⁴

The proposed Foreign Service Act of 1979 contains similar provisions, and does not depart from the general scope and content of the 1946 Act.⁵

The Foreign Service Act thus merely acknowledges the existence of other authorities which determine the rights and duties of consular officers. Statutory sources of consular rights and duties are collected in subchapter x of chapter 14 of title 22, United States Code (copy attached). This subchapter contains 31 sections, generally derived from eighteenth and nineteenth century statutes, dealing with such diverse matters as solemnization of marriages, conservation of estates of decedents, certification of invoices, retention of papers of American vessels, and depositions and notarial acts. Other statutes specify the authority of consular officers with respect to visas,⁶ assistance to American vessels and seamen,⁷ and customs matters.⁸ In addition, consular officers are authorized by regulation⁹ to issue passports pursuant to 22 U.S.C. 211a, and their acts are given significance under some State laws.¹⁰

Consular functions are also specified in the various consular conventions and related treaties to which the United States is a party. These treaties reflect the views of the parties as to the appropriateness of various activities as legitimate consular functions. The most widely representative view of international practice in this regard is that set out in the 1963 Vienna Convention on Consular Relations.¹¹ The Vienna Convention is in force for the United States and some ninety-one other countries. Article 5 of the Convention (copy attached) lists twelve general areas of consular responsibility, including such matters as protecting the interests of the sending State and its nationals, promoting commerce, performing notariats, administrative and quasi-judicial services and dealing with ships and aircraft of the sending State.

Taken together, the laws of the United States and relevant treaties make clear that consuls are expected to perform a wide range of facilitative services on behalf of nationals of the sending State. They record births, deaths and marriages, notarize papers, issue travel documents, conserve estates of decedents, assist seamen, the ill and incarcerated, transmit letters rogatory, take depositions, and provide information on local business conditions. The implementing regulations of the Secretary of State¹² provide a fuller account of the functions of United States consular officers.

¹ 22 U.S.C. 907, 924, 938.

² 22 U.S.C. 909, 923, 937.

³ 22 U.S.C. 841.

⁴ 22 U.S.C. 842.

⁵ H.R. 4674, 96th Cong., 1st sess., §§ 104(1), 201, 341, 511.

⁶ Immigration and Nationality Act, 8 U.S.C. 1101 et seq.

⁷ See, e.g., 46 U.S.C. 656-659, 662-664, 677, 679, 682-685.

⁸ See, e.g., 19 U.S.C. 338-341, 1482, 1487, 1527, 1707.

⁹ 22 CFR § 51.21(b).

¹⁰ See, e.g., 22 CFR § 92.5.

¹¹ 21 UST 77, TIAS 6820.

¹² 22 CFR, ch. I, subch. H-K.

TITLE 22, UNITED STATES CODE, CHAPTER 14

SUBCHAPTER X—POWERS, DUTIES, AND LIABILITIES OF CONSULAR OFFICERS
GENERALLY

§ 1171. General application of provisions to consular officers

The various provisions of sections 168, 1173 to 1177, 1180, 1182, 1184, 1185, 1187 to 1194, and 1196 to 1203 of this title which are expressed in terms of general application to any particular classes of consular officers, shall be deemed to apply as well to all other classes of such officers, so far as may be consistent with the subject matter of the same and with the treaties of the United States. (R.S. § 1689.)

§ 1172. Solemnization of marriages

Marriages in presence of any consular officer of the United States in a foreign country, between persons who would be authorized to marry if residing in the District of Columbia, shall be valid to all intents and purposes, and shall have the same effect as if solemnized within the United States. And such consular officer shall, in all cases, give to the parties married before them a certificate of such marriage, and shall send another certificate thereof to the Department of State, there to be kept; such certificate shall specify the names of the parties, their ages, places of birth, and residence.

(R.S. § 4082.)

§ 1173. Protests

Consuls and vice consuls shall have the right, in the ports or places to which they are severally appointed, of receiving the protests or declarations which captains, masters, crews, passengers, or merchants, who are citizens of the United States, may respectively choose to make there, and also such as any foreigner may choose to make before them relative to the personal interest of any citizen of the United States.

(R.S. § 1707; June 25, 1948, ch. 646, § 39, 62 Stat. 992.)

§ 1174. Lists and returns of seamen and vessels, etc.

Every consular officer shall keep a detailed list of all seamen and mariners shipped and discharged by him, specifying their names and the names of the vessels on which they are shipped and from which they are discharged, and the payments, if any, made on account of each so discharged; also of the number of the vessels arrived and departed, the amounts of their registered tonnage, and the number of their seamen and mariners, and of those who are protected, and whether citizens of the United States or not, and as nearly as possible the nature and value of their cargoes, and where produced, and shall make returns of the same, with their accounts and other returns, to the Secretary of Commerce.

§ 1175. Estates of decedents generally; General Accounting Office as conservator

It shall be the duty of a consular officer, or, if no consular officer is present, a diplomatic officer, under such procedural regulations as the Secretary of State may prescribe—

First. To take possession and to dispose of the personal estate left by any citizen of the United States, except a seaman who is a member of the crew of an American vessel, who shall die within or is domiciled at time of death within his jurisdiction: *Provided*, That such procedure is authorized by treaty provisions or permitted by the laws or authorities of the country wherein the death occurs, or the decedent is domiciled, or that such privilege is accorded by established usage: *Provided further*, That the decedent shall leave in the country where the death occurred or where he was domiciled, no legal representative, partner in trade, or trustee by him appointed to take care of his personal estate. A consular officer or, in his absence, a diplomatic officer shall act as the provisional conservator of the personal property within his jurisdiction of a deceased citizen of the United States but, unless authorized by treaty provisions, local law, or usage, he shall not act as administrator of such personal property. He shall render assistance in guarding, collecting, and transmitting the property to the United States to be disposed of according to the law of the decedent's domicile.

Second. After having taken possession of the personal property, as provisional conservator, to inventory and carefully appraise the effects, article by article, with the assistance of two competent persons who, together with such

officer, shall sign the inventory and annex thereto an appropriate certificate as to the accuracy of the appraised value of each article.

Third. To collect the debts due to the decedent in his jurisdiction and pay from the estate the obligations owed there by the decedent.

Fourth. To sell at auction, after reasonable public notice, unless the amount involved does not justify such expenditure, such part of the estate as shall be of a perishable nature, and after reasonable public notice and notice to next of kin if they can be ascertained by reasonable diligence such further part, if any, as shall be necessary for the payment of the decedent's debts incurred in such country, and funeral expenses, and expenses incident to the disposition of the estate. If, at the expiration of one year from the date of death (or for such additional period as may be required for final settlement of the estate), no claimant shall appear, the residue of the estate, with the exception of investments of bonds, shares of stocks, notes of indebtedness, jewelry or heirlooms, or other articles having a sentimental value, shall be sold.

Fifth. To transmit to the General Accounting Office the proceeds of the sale (and any unsold effects, such as investments of bonds, shares of stocks, notes of indebtedness, jewelry or heirlooms, or other articles having a sentimental value), there to be held in trust for the legal claimant. If, however, at any time prior to such transmission, the decedent's legal representative should appear and demand the proceeds and effects in the officer's hands, he shall deliver them to such representative after having collected the prescribed fee therefor.

The Comptroller General of the United States, or such member of the Accounting Office as he may duly empower to act as his representative for the purpose, shall act as conservator of such parts of these estates as may be received by the General Accounting Office or are in its possession, and may, when deemed to be in the interest of the estate, sell such effects, including bonds, shares of stock, notes of indebtedness, jewelry, or other articles, which have heretofore or may hereafter be so received, and pay the expenses of such sale out of the proceeds: *Provided*, That application for such effects shall not have been made by the legal claimant within six years after their receipt. The Comptroller General is authorized, for and in behalf of the estate of the deceased, to receive any balances due to such estates, to draw therefor on banks, safe deposits, trust or loan companies, or other like institutions, to endorse all checks, bill of exchange, promissory notes, and other evidences of indebtedness due to such estates, and take such other action as may be deemed necessary for the conservation of such estates. The net proceeds of such sales, together with such other moneys as may be collected by him, shall be deposited into the Treasury to a fund in trust for the legal claimant and reported to the Secretary of State.

If no claim to the effects the proceeds of which have been so deposited shall have been received from a legal claimant of the deceased within six years from the date of the receipt of the effects by the General Accounting Office, the funds so deposited, with any remaining unsold effects, less transmittal charges, shall be transmitted by that office to the proper officer of the State or Territory of the last domicile in the United States of the deceased citizen, if known, or, if not, such funds shall be covered into the general fund of the Treasury as miscellaneous receipts on account of proceeds of deceased citizens, and any such remaining unsold effects shall be disposed of by the General Accounting Office in such manner as, in the judgment of the Comptroller General, is deemed appropriate, or they may be destroyed if considered no longer possessed of any value: *Provided*, That when the estate shall be valued in excess of \$500, and no claim therefor has been presented to the General Accounting Office by a legal claimant within the period specified in this paragraph or the legal claimant is unknown, before disposition of the estate as provided herein, notice shall be given by publishing once a week for four consecutive weeks in a newspaper published in the country of the last known domicile of the deceased, in the United States, the expense thereof to be deducted from the proceeds of such estate, and any lawful claim received as the result of such advertisement shall be adjusted and settled as provided for herein.

(R.S. § 1709; Mar. 3, 1911, ch. 223, 36 Stat. 1083; June 10, 1921, ch. 18, § 304, 42 Stat. 24; July 12, 1940, ch. 618, 54 Stat. 758.)

§ 1176. Notification of death of decedent; transmission of inventory of effects

For the information of the representative of the deceased, the consular officer, or, if no consular officer is present, a diplomatic officer, in the settlement of his estate shall immediately notify his death in one of the gazettes published in the consular district, and also to the Secretary of State, that the same may be noti-

fied in the State to which the deceased belonged ; and he shall, as soon as may be, transmit to the Secretary of State an inventory of the effects of the deceased taken as before directed.

(R.S. § 1710 ; July 12, 1940, ch. 618, 54 Stat. 758.)

§ 1177. Following testamentary directions ; assistance to testamentary appointee

When a citizen of the United States dies in a foreign country and leaves, by any lawful testamentary disposition, special directions for the custody and management, by the consular officer, or in his absence a diplomatic officer, within whose jurisdiction the death occurred, of the personal property in the foreign country which he possessed at the time of death, such officer shall, so far as the laws of the foreign country permit, strictly observe such directions if not contrary to the laws of the United States. If such citizen has named, by any lawful testamentary disposition, any other person than a consular officer or diplomatic officer to take charge of and manage such property, it shall be the duty of the officer, whenever required by the person so named, to give his official aid in whatever way may be practicable to facilitate the proceedings of such person in the lawful execution of his trust, and, so far as the laws of the country or treaty provisions permit, to protect the property of the deceased from any interference by the authorities of the country where such citizen died. To this end it shall be the duty of the consular officer, or if no consular officer is present a diplomatic officer, to safeguard the decedent's property by placing thereon his official seal and to break and remove such seal only upon the request of the person designated by the deceased to take charge of and manage his property.

(R.S. § 1711 ; July 12, 1940, ch. 618, 54 Stat. 758.)

§ 1178. Bond as administrator or guardian ; action on bond

No consular officer of the United States shall accept an appointment from any foreign state as administrator, guardian, or to any other office or trust for the settlement or conservation of estates of deceased persons or of their heirs or of persons under legal disabilities, without executing a bond, with security, to be approved by the Secretary of State, and in a penal sum to be fixed by him and in such form as he may prescribe, conditioned for the true and faithful performance of all his duties according to law and for the true and faithful accounting for delivering, and paying over to the persons thereto entitled of all moneys, goods, effects, and other property which shall come to his hands or to the hands of any other person to his use as such administrator, guardian, or in other fiduciary capacity. Said bond shall be deposited with the Secretary of the Treasury. In case of a breach of any such bond, any person injured by the failure of such officer faithfully to discharge the duties of said trust according to law, may institute, in his own name and for his sole use, a suit upon said bond and thereupon recover such damages as shall be legally assessed, with costs of suit, for which execution may issue in due form ; but if such party fails to recover in the suit, judgment shall be rendered and execution may issue against him for costs in favor of the defendant ; and the United States shall in no case be liable for the same. The said bond shall remain, after any judgment rendered thereon, as a security for the benefit of any person injured by a breach of the condition of the same until the whole penalty has been recovered.

(June 30, 1902, ch. 1331, § 1, 32 Stat. 546.)

§ 1179. Penalty for failure to give bond and for embezzlement

Every consular officer who accepts any appointment to any office of trust mentioned in section 1178 of this title without first having complied with the provisions thereof by due execution of a bond as therein required, or who shall willfully fail or neglect to account for, pay over, and deliver any money, property, or effects so received to any person lawfully entitled thereto, after having been requested by the latter, his representative or agent so to do, shall be deemed guilty of embezzlement and shall be punishable by imprisonment for not more than five years and by a fine of not more than \$5,000.

(June 30, 1902, ch. 1331, § 2, 32 Stat. 547.)

§ 1180. Certification of invoices generally

No consular officer shall certify any invoice unless he is satisfied that the person making oath there to is the person he represents himself to be, that he is a credible person, and that the statements made under such oath are true ; and he shall, thereupon, by his certificate, state that he was so satisfied.

(R.S. § 1715.)

§ 1181. Fees for certification of invoices

Fees for the consular certification of invoices shall be, and they are, included with the fees for official services for which the President is authorized by section 1201 of this title to prescribe rates or tariffs.

(Apr. 5, 1906, ch. 1366, § 9, 34 Stat. 101.)

§ 1182. Evaction of excessive fees for verification of invoices; penalty

The fee provided by law for the verification of invoices by consular officers shall, when paid, be held to be a full payment for furnishing blank forms of declaration to be signed by the shipper, and for making signing, and sealing the certificate of the consular officer thereto; and any consular officer who, under pretense of charging for blank forms, advice, or clerical services in the preparation of such declaration or certificate, charges or receives any fee greater in amount than that provided by law for the verification of invoices, or who demands or receives for any official services, or who allows any clerk or subordinate to receive for any such service, any fee or reward other than the fee provided by law for such service, shall be punishable by imprisonment for not more than one year, or by a fine of not more than \$2,000, and shall be removed from his office.

(R.S. § 1716.)

§ 1183. Destruction of old invoices

The Secretary of State is authorized to cause, from time to time, the destruction of invoices that have been filed in the consular offices for a period of more than five years.

(Feb. 24, 1903, ch. 753, 32 Stat. 854.)

§ 1184. Restriction as to certificate for goods from countries adjacent to United States

No consular officer of the United States shall grant a certificate for goods, wares, or merchandise shipped from countries adjacent to the United States which have passed a consulate after purchase for shipment.

(R.S. § 1717.)

§ 1185. Retention of papers of American vessels until payment of demands and wages

All consular officers are authorized and required to retain in their possession all the papers of vessels of the United States, which shall be deposited with them as directed by law, till payment shall be made of all demands and wages on account of such vessels.

(R.S. § 1718.)

§ 1186. Fees for services to American vessels or seamen prohibited

No fees named in the tariff of consular fees prescribed by order of the President shall be charged or collected by consular officers for the official services to American vessels and seamen. Consular officers shall furnish the master of every such vessel with an itemized statement of such services performed on account of said vessel, with the fee so prescribed for each service, and make a detailed report to the Secretary of the Treasury of such services and fees, under such regulations as the Secretary of State may prescribe.

(June 26, 1884, ch. 121, § 12, 23 Stat. 56.)

§ 1187. Profits from dealings with discharged seamen; prohibition

No consular officer, nor any person under any consular officer shall make any charge or receive, directly or indirectly, any compensation, by way of commission or otherwise, for receiving or disbursing the wages or extra wages to which any seaman or mariner is entitled who is discharged in any foreign country, or for any money advanced to any such seaman or mariner who seeks relief from any consulate; nor shall any consular officer, or any person under any consular officer, be interested, directly or indirectly, in any profit derived from clothing, boarding or otherwise supplying or sending home any such seaman or mariner. Such prohibition as to profit, however, shall not be construed to relieve or prevent any such officer who is the owner of or otherwise interested in any vessel of the United States from transporting in such vessel any such

seaman or mariner, or from receiving or being interested in such reasonable allowance as may be made for such transportation by law.

(R.S. § 1719; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

§ 1188. Valuation of foreign coins in payment of fees

Consuls, vice consuls, and consular agents in the Dominion of Canada, in the collection of official fees, shall receive foreign moneys at the rate given in the Treasury schedule of the value of foreign coins.

(R.S. § 1722; Apr. 6, 1906, ch. 1366, § 3, 34 Stat. 100.)

§ 1189. Exaction of excessive fees generally; penalty of treble amount

Whenever any consular officer collects, or knowingly allows to be collected for any service, any other or greater fees than are allowed by law for such service, he shall, besides his liability to refund the same, be liable to pay to the person by whom or in whose behalf the same are paid, treble the amount of the unlawful charge so collected, as a penalty, to be recovered with costs, in any proper form of action, by such person for his own use. And in any such case the Secretary of the Treasury may retain, out of the compensation of such officer, the amount of such overcharge and of such penalty, and charge the same to such officer in account, and may thereupon refund such unlawful charge, and pay such penalty to the person entitled to the same if he shall think proper so to do.

(R.S. § 1723.)

§ 1190. Liability for uncollected fees

Every consul general, consul, or vice consul appointed to perform the duty of any such officer, who omits to collect any fees which he is entitled to charge for any official service, shall be liable to the United States therefor, as if he had collected the same; unless, upon good cause shown therefor, the Secretary of the Treasury shall think proper to remit the same.

(R.S. § 1724; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

§ 1191. Returns as to fees by officers compensated by fees

All consular agents, as are allowed for their compensation the whole or any part of the fees which they may collect, shall make returns in such manner as the Comptroller General of the United States shall prescribe, of all such fees as they or any person in their behalf so collect.

(R.S. § 1725; July 31, 1894, ch. 174, § 5, 28 Stat. 206; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

§ 1192. Receipt for fees; numbering receipts

Every consular officer shall give receipts for all fees collected for his official services, expressing the particular services for which the same were collected. He shall number all receipts given by him for fees received for official services, in the order of their dates, beginning with number one at the commencement of the period of his service, and on the first day of January in every year thereafter.

(R.S. §§ 1726, 1727.)

§ 1193. Registry of fees

Every consular officer shall also register in a book to be kept by him for that purpose all fees so received by him, in the order in which they are received specifying each item of service and the amount received therefor, from whom and the dates when received, and if for any service connected with any vessel, the name thereof, and indicating what items and amounts are embraced in each receipt given by him therefor, and numbering the same according to the number of the receipts, respectively, so that the receipts and register shall correspond with each other, and he shall, in such register, specify the name of the person for whom, and the date when he shall grant, issue, or verify any passport, certify any invoice, or perform any other official in the entry of the receipt of the fees therefor, and also number each consular act so receipted for with the number of such receipt, and as shown by such register.

(R.S. § 1727.)

§ 1194. Account of fees; certification

Every consular officer responsible for the collection of fees, in rendering his account of fees received, shall furnish a full transcript of the register which he is required to keep, and certify that such transcript is an accurate and complete record of all fees received for the period shown.

(R.S. § 1728; June 28, 1955, ch. 196, 69 Stat. 187.)

§ 1195. Notarial acts, oaths, affirmations, affidavits, and depositions; fees

Every consular officer of the United States is required, whenever application is made to him therefor, within the limits of his consulate, to administer to or take from any person any oath, affirmation, affidavit, or deposition, and to perform any other notarial act which any notary public is required or authorized by law to do within the United States; and for every such notarial act performed he shall charge in each instance the appropriate fee prescribed by the President under section 1201 of this title.

(Apr. 5, 1906, ch. 1366, § 7, 34 Stat. 101.)

§ 1197. Posting rates of fees

It shall be the duty of all consular officers at all times to keep posted up in their offices, respectively, in a conspicuous place, and subject to the examination of all persons interested therein, a copy of such rates or tariffs as shall be in force.

(R.S. § 1731.)

§ 1198. Embezzlement of fees or of effects of American citizens

Every consular officer who willfully neglects to render true and just quarterly accounts and returns of the business of his office, and of moneys received by him for the use of the United States, or who neglects to pay over any balance of said moneys due to the United States at the expiration of any quarter, before the expiration of the next succeeding quarter, or who shall receive money, property, or effects belonging to a citizen of the United States and shall not within a reasonable time after demand made upon him by the Secretary of State or by such citizen, his executor, administrator, or legal representative, account for and pay over all moneys, property, and effects, less his lawful fees, due to such citizen, shall be deemed guilty of embezzlement, and shall be punishable by imprisonment for not more than five years, and by a fine of not more than 2,000.

(R.S. § 1734; Dec. 21, 1898, ch. 36, § 3, 30 Stat. 771.)

§ 1200. False certificate as to ownership of property

If any consul or vice consul falsely and knowingly certifies that property belonging to foreigners is property belong to citizens of the United States, he shall be punishable by imprisonment for not more than three years, and by a fine of not more than \$10,000.

(R.S. § 1737; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

§ 1201. Regulation of fees by President

The President is authorized to prescribe from time to time, the rates or tariffs of fees to be charged for official services, and to designate what shall be regarded as official services, besides such as are expressly declared by law, in the business of the several embassies, legations, and consulates, and to adapt the same, by such differences as may be necessary or proper, to each embassy, legation, or consulate; and it shall be the duty of all officers and persons connected with such embassies, legations, and consulates to collect for such official services such and only such fees as may be prescribed for their respective embassies, legations, and consulates, and such rates or tariffs shall be reported annually to Congress.

(R.S. § 1745; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

§ 1202. Medium for payment of fees

All fees collected by diplomatic and consular officers for and in behalf of the United States shall be collected in the coin of the United States, or at its representative value in exchange.

(R.S. § 1746.)

§ 1203. *Depositions and notarial acts; perjury*

Every secretary of embassy or legation and consular officer is authorized, whenever he is required or deems it necessary or proper so to do at the post, port, place, or within the limits of his embassy, legation, or consulate, to administer to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to do within the United States. Every such oath, affirmation, affidavit, deposition, and notarial act administered, sworn, affirmed, taken, had, or done, by or before any such officer, when certified under his hand and seal of office, shall be as valid, and of like force and effect within the United States, to all intents and purposes, as if administered, sworn, affirmed, taken, had, or done, by or before any other person within the United States duly authorized and competent thereto. If any person shall willfully and corruptly commit perjury, or by any means procure any person to commit perjury in any such oath, affirmation, affidavit, or deposition, within the intent and meaning of any Act of Congress now or hereafter made, such offender may be charged, proceeded against, tried, convicted, and dealt with in any district of the United States, in the same manner, in all respects, as if such offense had been committed in the United States, before any officer duly authorized therein to administer or take such oath, affirmation, affidavit, or deposition, and shall be subject to the same punishment and disability therefor as are or shall be prescribed by any such act for such offense; and any document purporting to have affixed, impressed, or subscribed thereto, or thereon the seal and signature of the officer administering or taking the same in testimony thereof, shall be admitted in evidence without proof of any such seal or signature being genuine or of the official character of such person; and if any person shall forge any such seal or signature, or shall tender in evidence any such document with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be deemed and taken to be guilty of a misdemeanor and on conviction shall be imprisoned not exceeding three years nor less than one year, and fined, in a sum not to exceed \$3,000, and may be charged, proceeded against, tried, convicted, and dealt with therefor in the district where he may be arrested or in custody.

(R.S. § 1750. Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

VIENNA CONVENTION ON CONSULAR RELATIONS

Article 5

CONSULAR FUNCTIONS

Consular functions consist in:

(a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;

(b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;

(c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;

(d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;

(e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

(f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;

(g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;

(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;

(i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defense of their rights and interests;

(j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

(l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the sending State;

(m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

§ 1204. *Authentication of documents of State of Vatican City by consular office in Rome*

Until the United States shall have consular officer resident in the State of the Vatican City, a copy of any document of record or on file in a public office of said State of the Vatican City, certified by the lawful custodian of such document, may be authenticated, as provided in section 1741 of title 28, by a consular officer of the United States resident in the city of Rome, Kingdom of Italy, and such document or record shall when so certified and authenticated, be admissible in evidence in any court of the United States.

Mr. MICHEL. Someone just reminded me that there are also a lot of State laws that refer to consuls. We cannot really get away from the fact that these historical distinctions exist.

Mr. FASCELL. You have to have a designation as a consular officer in order to make it clear to everybody what you are talking about.

Mr. MICHEL. The individual has the authority. We are often asked to certify that someone is duly commissioned and qualified to act at a certain location and in order to do that we think that this commissioning process is important.

Mr. FASCELL. And if you didn't have this authority in law, you would have to do it by regulation anyway.

Mr. MICHEL. We would have to do something so that the person who signed that authorization certificate really was acting properly within the scope of their authority.

Mrs. SCHROEDER. Will the gentleman yield?

Mr. FASCELL. Certainly.

Mrs. SCHROEDER. What would be wrong with commissioning everybody as both a diplomatic and a consular officer—give everyone a dual commission?

Mr. MICHEL. We do that generally for career people who are going out and who will be subject to various assignments.

Mrs. SCHROEDER. So just about everybody that is career gets a dual commission?

Mr. MICHEL. Yes.

Mrs. SCHROEDER. Who would not be?

Mr. MICHEL. A limited appointment. There is also the possibility that someone who is going out at the junior level as an officer candidate, as I mentioned, who had not yet gotten a Presidential commission might be given a secretarial vice consul commission so that they could perform these various statutory functions.

Mr. FASCELL. Any other questions?

All right. Let's go on to the next section.

Mr. READ. I might just interject, Mr. Chairman, if I may. The next three chapters contain quite a number of the new provisions which we are proposing. I think you will find that when we get to chapters 7, 8, and 9, just to hold out a light at the end of the tunnel, it is essentially codification in those particular chapters. But these next ones do require your very close attention.

Mr. FASCELL. OK.

Chapter 4, Compensation, Section 401.

Mr. MICHEL. Section 401 concerns salaries of chiefs of mission. This continues the existing law which provides for four levels of chief of mission salaries, at levels II through V of the Federal executive salary schedule. The difference in subsection (a) is only that existing law says there must be four categories and this subsection says every chief of mission shall be given a salary at any one or the other of those four levels. So it contemplates authority for continued distinctions among chiefs of mission but does not mandate that existing four-tiered structure.

The second subsection, subsection (b), is also drawn from existing law. This authorizes an exception to the rule that appointment of a successor vacates the incumbent's appointment. This permits the Ambassador who is departing the post to continue to be the Ambassador for a period of 50 days while getting back into the assignment procedures, even though a successor has been appointed.

Mr. FASCELL. What does the 50-day period mean?

Mr. MICHEL. The 50-day period is the period during which the outgoing chief of mission can continue to receive the salary for that post as chief of mission.

Mr. FASCELL. Is he paid on a monthly basis or semimonthly?

Mr. MICHEL. He is paid on a biweekly payroll basis.

Mr. FASCELL. Why wouldn't you make it 4 weeks, 6 weeks, 1 month? That is the question I am asking. What is the significance of 50 days instead of 49 or 61, if any?

Mr. MICHEL. There is nothing magic about 50 days. We simply took it from the 1946 act. It is intended to reflect a reasonable time.

Mr. FASCELL. It has no budgetary or administrative significance as far as the—

Mr. MICHEL. Its only significance as a particular number is historical.

Mr. FASCELL. It was a congressional compromise of some kind?

Mr. MICHEL. Perhaps it was in 1946.

Mr. BUCHANAN. What would be the normal time of transition? Would you ever need the 50 days?

Mr. FASCELL. It depends on the Ambassador's political skill.

Mr. BARNES. If I were to draw an average, I think we do use less than 50 but I can remember in the last 1½ years a couple of cases where we used the full 50.

Mr. FASCELL. I remember during one administration one Ambassador wandering around for 2 years.

Mr. MICHEL. On the expiration of the 50 days, there is not a termination of salary but reversion to the salary of whatever class the career officer held.

Mr. BUCHANAN. Would you envision an instance where you need more than 50 days?

Mr. BARNES. On the basis of my experience so far, no.

Mr. FASCELL. If you tried to increase that, there would probably be a revolution in the ranks.

Mrs. SCHROEDER. Is the chief of mission going to receive pay at level 2 or level 5 or somewhere in between?

Mr. MICHEL. There is an existing structure of post classification based essentially on the size and complexity of the mission.

Mrs. SCHROEDER. Is it size and complexity of our own mission?

Mr. MICHEL. Yes.

Mrs. SCHROEDER. Or the hardship post?

Mr. MICHEL. No, it is the size of the U.S. mission and the number of people who are there and the range of things it does.

Mrs. SCHROEDER. Would you get more money in Paris than in Uganda?

Mr. MICHEL. Yes.

Mr. BARNES. It has to do with the significance of our relations with that country, the scope of the responsibilities that the Ambassador has which are not tied into size but are—

Mrs. SCHROEDER. And you rejected the single pay rate; is that correct?

Mr. BARNES. We do provide for the possibility of changing.

Mrs. SCHROEDER. Why? Do you think there is that much difference? Is it that significant?

Mr. READ. We found, Mrs. Schroeder, that there was great reluctance to abandon the present arrangement at this time because there are obviously significant differences of responsibility. As you will see in the next section, those career persons who are appointed will have the opportunity to opt for the post classification pay level or they will be able to retain their regular class compensation and be eligible for performance pay. It did seem wise not to do away with post classification at this time. Under this language, a change is permitted if it is deemed sensible in the future.

Mr. FASCELL. Section 401 (b) is a restatement of present law.

Mr. MICHEL. That is right.

Mr. FASCELL. 411 is new?

Mr. MICHEL. 411 is new because it contemplates a new category, the Senior Foreign Service. The salaries for the Senior Foreign Service, according to this new section, are established by reference to the maximum and minimum rates for the Senior Executive Service under the

Civil Service Reform Act. We do contemplate at present using three salary levels, three classes, within this Senior Foreign Service.

Mr. FASCELL. Any questions on 411?

Let's take 421 before we break for this vote.

Mr. MICHEL. Section 421, the Foreign Service schedule, prescribes a single salary rate for the Foreign Service below the Senior Foreign Service threshold. This would replace the two existing schedules for Foreign Service officers and Reserve officers on the one hand and for the Staff Corps on the other. It is limited to the top of a GS-15, which is the breaking point also in the Civil Service Reform Act.

The provision for nine classes in this schedule is a prediction. The pay study is still under intensive review within the administration and one outcome might be a nine-class structure. We really have to provide details on this when we have completed the review of the pay study.

Mr. BUCHANAN. Which I assume would predate the enactment of this legislation.

Mr. MICHEL. Yes.

Mr. BUCHANAN. Everything may predate the enactment of this legislation. That is what I heard yesterday.

Mrs. SCHROEDER. I was going to ask some questions about the Hay Study. Have you not been subject to the pay comparability act? Then how did you get so far behind?

Mr. BARNES. That is what we keep asking ourselves.

Mr. FASCELL. Other than OMB and Congress, what has been the problem?

Mr. BARNES. Probably some initiative on our own part trying to bring data up to date so we had the basis for raising the question in a sensible way which we now have in the form of the study.

Mrs. SCHROEDER. But this may all be changed; is that correct? I mean, you may come out with a whole new pay scale.

Mr. MICHEL. Yes, but we cannot provide you the chart to show you what it is at this time.

Mr. FASCELL. Well, obviously we are going to require that before we move too far along.

Mr. MICHEL. Yes.¹

I might just add that there are a couple of objectives; one is comparability and the other is to facilitate interchange, first by having the Foreign Service schedule line up a little bit better with the civil service pay scale, and, second, to avoid the artificial distinctions that we now have with the Staff Corps being under a separate schedule.

Mr. FASCELL. Right now you have two separate schedules?

Mr. MICHEL. Yes.

Mr. FASCELL. All right.

We are going to have to go vote.

[Whereupon, at 11:06 a.m., the subcommittees recessed until 11:31 a.m.]

Mr. FASCELL. Let's go on. We are going to keep being interrupted, Mr. Secretary, I am afraid, so let's see if we cannot proceed until 12 o'clock and then we will have to call this off and start up again some other day as quickly as possible.

Where were we?

¹ The chart referred to is unavailable as of this printing.

Mr. MICHEL. Section 431, Mr. Chairman, assignment to a salary class.

This section is a change from the existing law only with respect to Foreign Service officers. It provides that the Secretary of State will assign a member to a salary class. This reflects the rank-in-person system rather than the rank-in-job system. The exceptions to that procedure are the chief of mission and the Senior Foreign Service member whose salary is determined by the terms of the appointment.

Mr. FASCELL. What about subsection (b) ?

Mr. MICHEL. In subsection (b), the first sentence reflects existing law. It simply reaffirms that the member can be assigned from place to place and from job to job but their salary is personal to them and not determined by the job to which they are assigned.

The second sentence states something affirmatively that has been the case generally in the past, that members of the Foreign Service can have their salary changed only in accordance with chapter 6 which provides the procedures for competitive promotion on a merit basis.

The reference to chapter 35 of title 5, United States Code, is a reference to the chapter concerning reductions in force and this reference preserves the current application of the reduction-in-force procedures to the Foreign Service members who are not Presidential appointees. That is the present law.

Mr. FASCELL. Any questions on this section ?

Mr. BUCHANAN. Mr. Chairman, I just want to note in passing that we have gone from "his" appointment in the old law to "his" or "her" in the new draft. I guess that represents some kind of progress.

Mr. MICHEL. That is a very deliberate change, Mr. Chairman.

Mrs. SCHROEDER. And veterans preference points apply, right ?

Mr. MICHEL. No, as to veterans, the fact of status as a veteran or disabled veteran is to be given consideration for appointment as a Foreign Service officer or Foreign Service information officer. It is not a point system.

Mrs. SCHROEDER. Doesn't chapter 35—

Mr. MICHEL. Chapter 35 is reductions in force. There is a veteran's retention in that. There has been very little use of the reduction-in-force authorities in the Foreign Service. No one here can think of a situation in State where there has been a reduction in force. There have been occasions in the Agency for International Development where there have been major program changes that have required this. The preference and the more normal procedure would be to use this act and the provisions for selection out to avoid overstaffing. This would be on the comparative merit basis in the procedure of the selection board.

Mr. FASCELL. Let me ask you this. Since RIF is across the board—

Mr. MICHEL. That is right.

Mr. FASCELL [continuing]. And this is a supplementary law, who has the elective right—management? The Department, in other words? There is no elective right in the employees, is there ?

Mr. MICHEL. On a RIF ?

Mr. FASCELL. No.

Mr. MICHEL. Excuse me.

Mr. FASCELL. On either the selection out process under this law or RIF under title 5 ?

Mr. MICHEL. The number of personnel—

Mr. FASCELL. In other words, the State Department could use RIF under title 5 if it wanted to?

Mr. MICHEL. If it wanted to.

Mr. FASCELL. But the election or selection of which law to use is not an employee right?

Mr. MICHEL. No, that is right. I was trying to recall the list of management rights which are reserved in chapter 10 and I think that the combination of determinations on budget and numbers of personnel would preserve that as a management thing.

Mr. FASCELL. Title 5 does not give the employee the right in terms of RIF except those rights which are spelled out in the law?

Mr. MICHEL. And the civil service regulations which would be applicable if an election were made to use that procedure.

Mr. FASCELL. Well, I had hoped that we would get a little further along, but it looks useless so we will do at least 5 more minutes.

Let's go to section 441.

Mr. MICHEL. Section 441 provides authority for performance pay for the Senior Foreign Service. This is drawn essentially from the Civil Service Reform Act provisions on performance pay and rank awards for the senior executive service. This is an award made on an annual basis in addition to basic salary. Those who are eligible are those who are serving in career Senior Foreign Service appointment or as career candidates. That parallels the Civil Service Reform Act.

We have also provided performance pay for those people who leave the senior executive service, where they were eligible for performance pay, and take a limited appointment in the Foreign Service. So their rights and benefits remain essentially unaffected by taking that temporary—excuse me, limited Foreign Service appointment.

The amount of the performance pay, the basic award is limited to a maximum 20 percent of salary and not more than one-half the members of the Senior Foreign Service may be granted those awards in any year. Additional awards beyond the 20-percent limitation may be made of up to \$10,000 for not to exceed 5 percent of the Senior Foreign Service and up to \$20,000 for not to exceed an additional 1 percent. That is all within the 50-percent limit.

The additional awards above the 20 percent of salary would be made by the President as under the Civil Service Reform Act, and this would be a judgment across agency lines as to an outstanding 5 percent and 1 percent on an annual basis.

Mr. FASCELL. Is there any substantial difference in section 441 and the civil service or are the only changes conforming changes?

Mr. MICHEL. The only thing that we have not taken from the Civil Service Reform Act is the 5-year bar between awards for meritorious or distinguished service. That frankly didn't seem to be a desirable limitation in that it says no matter how good somebody is, we cannot recognize that any more often than 5 years.

Mr. FASCELL. Any questions on section 441?

Well, we will start then next time with section 442. I want to thank you very much, gentlemen, for being with us today.

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Mrs. SCHROEDER. Mr. Chairman, could I just ask a question as to whether all performance awards could go to the State Department Senior Foreign Service rather than AID or ICA?

Mr. MICHEL. No. Each agency head makes the awards up to the 20 percent and then the President makes the awards on an inter-agency basis for distinguished or meritorious service.

Mrs. SCHROEDER. Thank you.

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

Mr. FASCELL. Thank you.

The subcommittees stand adjourned subject to the calls of the Chairs.

[Whereupon, at 11:42 a.m., the subcommittees adjourned.]

THE FOREIGN SERVICE ACT

TUESDAY, JULY 17, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees met jointly at 9:20 a.m., in room 2172, Rayburn House Office Building, Hon. Patricia Schroeder (chairwoman of the Subcommittee on Civil Service) presiding.

Mrs. SCHROEDER. We will call the meeting to order this morning. I would like to defer to the gentleman from Florida to introduce his distinguished colleagues.

Mr. FASCELL. Madam Chairperson, this is a rare occasion for me. I think the first time I did this was in 1953, and my distinguished colleague had already had more years of outstanding service to the U.S. Senate than I have had probably all my life. He is an unusual person, to say the least, but one thing that always sticks in my memory about Senator Claude Pepper is that he has always been far out in front of everybody else, certainly in the Congress of the United States in matters that affect human beings and social reforms which are now part of our everyday life. I just hope that I can match his creativity and enthusiasm.

I am very happy to welcome a very distinguished colleague from Florida as our first witness this morning, Hon. Claude Pepper.

Mrs. SCHROEDER. We welcome you, too.

STATEMENT OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. PEPPER. Thank you so much, Madam Chairwoman and Mr. Chairman.

First, let me thank my distinguished and longtime friend and colleague for his very kind words. You know, when you get up in years a little bit, you have to run mighty fast to keep from falling down. [General laughter.]

I tell him that I have found life is like riding a bicycle—you do not fall off unless you quit going forward. So, I try to do what I can to keep in motion, and I am very grateful to the two subcommittees for holding these hearings this morning, and I thank you very much for the privilege of being here with you.

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I will make a very brief statement and then I have, if they are both here, two retired Foreign Services officers who would like to make very brief statements, if they may. You can be assured that I will not be here too long, Madam Chairwoman and Mr. Chairman, because I have to be in a Rules Committee meeting at 9:45, but I am very grateful to both of your distinguished subcommittees for having this hearing this morning. I am here to urge you to include our legislation, H.R. 2694, to eliminate mandatory retirement of Foreign Service officers as part of any broader Foreign Service reform bill that you send to the floor.

As many of the Members will recall, last year, Congress took a great step in recognizing both the rights and abilities of the elderly by enacting H.R. 5383, my bill to abolish mandatory retirement for most Federal workers. I will say to my distinguished colleague from Florida, I have just returned from addressing the silver-haired legislature in Florida, where 133 men and women from all over Florida were elected by 95,000 participating voters. All of the elected people were over 60 years of age, and all who participated in the election were over 60 years of age. It would have been an inspiration to you to have seen the vitality and the dynamism in that group of people.

By the way, they passed the legislature last year. This is the second session. They passed 15 bills, 6 of which were approved by the regular Florida Legislature. That shows they have some knowledge of what they do.

The overwhelming votes of 359 to 4 in the House, and 88 to 7 in the Senate constituted a decisive declaration that the Federal Government should not continue to sanction or practice age discrimination against its employees. The Government should, instead, become a model employer, proudly casting a guiding light for all employers to follow into a new era in which individual competence, not age, determines how long a person is allowed to work.

Madam Chairwoman and Mr. Chairman, I am sure we all saw in the paper the other day a very graphic, deplorable fact. A little girl, 5 years old, was dying from old age. She had all the symptoms of old age at 5, cataracts, her skin took on a different complexion and character and all that sort of thing, because the aging mechanism in the body of that child had somehow become accelerated. Somehow it had gotten out of its regular order. That simply shows that all people do not age to the same degree or are of the same opinion.

Because your committees were planning to conduct this more comprehensive review of the Foreign Service system in 1979, H.R. 5383 did not include the Service. Tragically, every day that this exemption continues, qualified Foreign Service officers who reach the magic age of 60 are rewarded for their long service by being thrown out of their jobs.

By the way, Madame Chairwoman and Mr. Chairman, this month our House Committee on Aviation, the subcommittee chaired by Mr. Glen Anderson of California, is going to hold hearings on moderating and modifying the rule issued by General Cassado of NCAA, the Administrator, several years ago, mandatorily retiring all pilots at 60 years of age. In other words, that policy is going to be reviewed, even with commercial airline pilots, by a committee of our House.

So, this shows that more and more, our Congress is recognizing that qualification and competence is the criterion of employment and that

it is wrong to take an arbitrary age anywhere in the 60's as a criterion of one's mandatory retirement.

The main focus of the Foreign Service Act you are now considering is to make greater use of performance on the job. For example, promotions would be based on merit, and continued service would be dependent on meeting a quality standard in carrying out duties. I fully support these efforts to reward meritorious service and weed out those who are inadequate employees but it would be totally inconsistent to apply criteria of merit to Foreign Service officers who are under age 60 while maintaining the arbitrary age 60 rule for mandatory retirement. If competence and skill are important and can be taken into account with employees who are 30, 40, and 59, how can they be disregarded the moment a Foreign Service officer reaches age 60?

Let me give you one instance that occurred in a recent hearing of our Aging Committee on this pilot matter. A pilot for United Airlines was flying a big commercial plane from Los Angeles to Honolulu. He got 1 hour out of Los Angeles and he lost an engine. He tried to put it back in operation. He failed. He lost a second engine. He frantically tried to restore the operation of that. He lost a third engine, and he could not restore that, but that pilot was so competent and capable and courageous that he turned that plane around, flew it back to its origin, landed it without any damage to the plane or any injury to the passengers.

He received several awards and medals and eulogies, and 2 months later was mandatorily retired as incompetent any longer to fly an airplane. That just shows the inconsistency of that arbitrary rule. Defendants of the age 60 rule have cited hazardous living conditions abroad to justify the practice of mandatory retirement based on age. Obviously, as recent terrorist incidents point out, conditions abroad are not always ideal, but it is ludicrous to believe that a person loses his or her ability to cope with these stresses and strains or to function competently because of these conditions the instant they turn 60.

What makes this even more intolerable is that other employees of our Government who work abroad are not subject to this age discrimination. Right now, this Nation is represented by a 76-year-old Ambassador, Mike Mansfield, in Japan, and 68-year-old Leonard Woodcock is our Ambassador to China.

There are also many civil service employees in agencies like the Agriculture Department or the General Accounting Office who work outside the United States but are not subject to mandatory retirement because they are not in the Foreign Service. It is absurd that two employees—one in the civil service and one in the Foreign Service—could work next to each other overseas, perform comparable jobs, and live under similar conditions until they are 60, when the Foreign Service employee is automatically fired and his civil service counterpart continues to serve as long as he can perform his job.

The State Department has testified regarding their concern for an adequate attrition rate in the senior ranks of the Foreign Service to "make room" for the advancement of talented younger persons. We are all aware of the problems that could be created in an agency in which job advancement is limited. However, mandatory retirement based solely on age is not an acceptable method of achieving this. Ageism is as odious as racism or sexism, and nobody is entitled to move into a qualified worker's job just because they are younger.

It is time to stop sacrificing older workers on the altar of increased attrition and career advancement for the young. It is time to firmly reject the outdated stereotypes that form the basis for mandatory retirement. If there ever was a rational basis for forcing Foreign Service retirement at age 60, it no longer exists. Therefore, I strongly and most respectfully urge you to take this into account and rid the Foreign Service of the last vestiges of age discrimination.

I am sorry the other witness was not able to be here, but I would like to ask if you would be kind enough to hear Hon. Joe Glazer, who is a distinguished Foreign Service employee and would like to tell of his own experiences in respect to this matter under consideration. Thank you so much.

[Mr. Pepper's prepared statement follows:]

PREPARED STATEMENT OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF FLORIDA

Mr. Chairman, I am extremely pleased to testify before these two distinguished subcommittees as you consider legislation to completely restructure the foreign service system. I am here today to urge you to include our legislation, H.R. 2694, to eliminate mandatory retirement of foreign service officers as part of any broader foreign service reform bill you send on to the floor.

As many of the Members will recall, last year Congress took a great step in recognizing both the rights and abilities of the elderly by enacting H.R. 5383, my bill to abolish mandatory retirement for most Federal workers. The overwhelming votes of 359 to 4 in the House and 88 to 7 in the Senate constituted a decisive declaration that the Federal Government should not continue to sanction or practice age discrimination against its employees. The Government should instead become a model employer, proudly casting a guiding light for all employers to follow into a new era in which individual competence, not age, determines how long a person is allowed to work.

Because your committees were planning to conduct this more comprehensive review of the foreign service system in 1979, H.R. 5383 did not include the service. Tragically, every day that this exemption continues, qualified Foreign Service officers who reach the magic age of 60 are rewarded for their long service by being thrown out of their jobs.

The main focus of the Foreign Service Act you are now considering is to make greater use of performance on the job. For example, promotions would be based on merit and continued service would be dependent on meeting a quality standard in carrying out duties. I fully support these efforts to reward meritorious service and weed out those who are inadequate employees but it would be totally inconsistent to apply criteria of merit to Foreign Service officers who are under age 60 while maintaining the arbitrary age 60 rule for mandatory retirement. If competence and skill are important and can be taken into account with employees who are 30, 40, and 59, how can they be disregarded the moment a Foreign Service officer reaches age 60.

Conditions abroad are not always ideal but it is ludicrous to believe that a person loses his or her ability to cope with these stresses and strains or to function competently because of these conditions the instant they turn 60.

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There are also many civil service employees in agencies like the Agriculture Department or the General Accounting Office who work outside the United States but are not subject to mandatory retirement because they are not in the Foreign Service. It is absurd that two employees—one in the civil service and one in the Foreign Service—could work next to each other overseas, perform comparable jobs, and live under similar conditions until they are 60 when the Foreign Service employee is automatically fired and his civil service counterpart continues to serve as long as he can perform the job.

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ment of talented younger persons. We are all aware of the problems that could be created in an agency in which job advancement is limited. However, mandatory retirement based solely on age is not an acceptable method of achieving this. Ageism is as odious as racism or sexism, and nobody is entitled to move into a qualified worker's job just because they are younger.

It is time to stop sacrificing older workers on the altar of increased attrition and career advancement for the young. It is time to firmly reject the outdated stereotypes that form the basis for mandatory retirement. If there ever was a rational basis for forcing Foreign Service retirement at age 60, it no longer exists. Therefore and most respectfully, I strongly urge you to take this into account and to rid the Foreign Service system of the last vestiges of age discrimination.

Mrs. SCHROEDER. We will be delighted to welcome him.

Mr. GLAZER. If I could just take a few minutes—

Mrs. SCHROEDER. If you could move the microphone over, it would help.

**STATEMENT OF JOSEPH GLAZER, INTERNATIONAL
COMMUNICATION AGENCY**

Mr. GLAZER. I will just take a few minutes, since I know everyone has to run to other hearings.

I thank Congressman Pepper, because as a young man, I heard him talk eloquently on the Senate floor. As he grows older, like good violins and good wine, Congressman, you get better with age.

Mr. PEPPER. Thank you.

Mr. GLAZER. I would just like to speak very briefly as a Foreign Service officer and one who is over 60 who managed to get here by a combination of car and subway without too much difficulty.

Mr. PEPPER. Would you excuse me, Madame Chairwoman? I have to run to a Rules Committee meeting.

Mr. GLAZER. I would like to take a few minutes to tell you a story of one or two people who have been affected by this rule.

Once a great architect said that God is in the details, and instead of giving you a lot of numbers and speaking generally, I would just like to tell you the story of one man who was affected by this 60-year ruling and see if this makes sense in 1979.

Just the other day when they asked me did I know some people affected by this rule of 60, I talked to a few people who had been—I don't want to say executed, but eliminated from the Foreign Service immediately, and others who had been forced to convert back to a general service status which permitted them to work to 70 and if they like, beyond, and one of the administrators in the office came up to me and said, 2 days before he reached 60, he was called in and told, you are finished; you have to retire.

However, since he had been previously a general service employee, magically, he could convert. The only problem was, he would have to drop \$5,000 or \$6,000 in salary. I said, did you do a different job? No, the same job, exactly the same job. He had to take the \$5,000 or \$6,000 cut, because he hit the magic age of 60.

I said, maybe they didn't like you because you were not so good. He said, here are my ratings. You know, the Foreign Service and the general services every year rate the employees. They decide if you are good, superior, no good, should we promote you, are you eligible for an award, are you doing any useful service for your Government, et cetera.

I will read you one or two lines from this gentleman's ratings: "Superior honor award. Sustained outstanding leadership and performance as the agency's administrative services officer. Another agency honor award. Qualified for a position at the GS-16 level." This is a man who had been a GS-15 for 20 years.

At the urging of the agency, he became a Foreign Service officer, just a change in classification. When he reached 60, they said Foreign Service officers are no good any more, you go out. However, since he had been a GS-15, you can convert. However, now the job you are on is only a GS-14, and you have to take a \$5,000 cut. Here is another rating. Isn't this the kind of person that is needed in the Government?

One of the stalwarts in the Office of Administration, a thoroughly dedicated, competent, intelligent government executive who can handle almost any senior administrative job in Washington. We hope he continues to be happy in his present job, since we need him there.

Several years ago, this gentleman had been offered a GS-16 in one of the other agencies. He checked with his people, and they said, no, you stay here. One of these days you will be a 16, because you are as good as any 16. Then he changed to Foreign Service officer. He hit 60. Bam! He had to take a GS-14 if he didn't want to retire.

He handled many complicated reorganization plans. Now we talk about reorganization, and one of the reorganizations occurred when the International Communication Agency was founded. It was a merger of the old USIA with part of the State Department. Now, many of you Congressmen know that many times reorganization becomes disorganization, and when an agency is reorganized, it is sometimes worse than it had been before.

This gentleman was in charge of reorganizing 500 people, 50 different job classifications, getting furniture, space, telephones, and so on and so forth. All the ratings say he did a masterful job. Then his life changed because he hit the magic number—60.

Well, we could go on all the way like this. This gentleman used to have low blood pressure. He has got high blood pressure. He can't sleep nights. He has got two kids in college. He is trying to figure out what he is going to do.

I am going to close now. Most important of all, this gentleman says, look, I know there are guys in the Government who are lazy on the job; they goof off; they should have been fired when they were 35. Perhaps they never should have been hired; they should have been fired at 50 or 55.

But this is my record, he says. I am a dedicated civil servant. When I got out of Harvard, he says, I wanted to work for the Government in public service. Two days before I am 60, I get thrown out. It just so happens he was able to transfer. But others did not have that possibility. He says, is this right? Is this just? And he appealed to the director, and he was told they will take a look at it. But they don't want to make any exceptions. They don't want to open the door to the old, doddering men of 60 who have just done tremendous jobs for the agencies, similar to the pilot that Congressman Pepper mentioned.

I have just gone into one case, but I could name many others, others who were actually thrown out or eliminated. The other fellow who was supposed to testify here was retired at 60 and is looking for a job. Maybe he had an appointment and could not come here.

My boss, a very, very vigorous man who has served in Australia and Germany and Japan will be out on his heels in 2 or 3 months looking for a job or trying to figure out how to work it out to live on his pension. It just does not make any sense at all.

I was a Foreign Service officer, and I will close with these few lines. I am sitting at a desk doing a job as a Foreign Service officer, grade 3, because I had come in laterally. I had a choice of converting. I converted to a GS, and they said, well, the job that you are on is a GS-13, that means a \$6,000 cut. The same title, the same job, the same office, the same boss, the same secretary, the same title. The guys asked me, how is your new job going? I said, the only thing new about it is the fact that I hit 60 and I got a \$6,000 cut.

They said, well, that is crazy. It is crazy, but that is the law unless Congress changes it. Thank you very much.

Mr. FASCELL. It is time to change at least that part, Mr. Glazer. Let's get something on the record before you leave. I want to thank you for showing up with Congressman Claude Pepper. How long were you in Government?

Mr. GLAZER. Twenty years. I want to make it clear I am still with the Government. I had a choice of retiring but decided to stay on for several years, even though it meant a pay cut.

Mr. FASCELL. Where are you now?

Mr. GLAZER. I am with the old U.S. Information Agency, now the International Communication Agency, and I am known as a program development officer in the Division of Social and Political Processes. What that means is, we send people like Congressmen and professors overseas, to lecture on the United States, to help people understand our country a little better.

Mr. FASCELL. With that title, I would be suspicious. [General laughter.]

How long have you been over there?

Mr. GLAZER. In that job?

Mr. FASCELL. Yes.

Mr. GLAZER. In that particular job, I have been there 4 or 5 years. Before that, I had other jobs.

Mr. FASCELL. How did you transfer over there? There wasn't any problem?

Mr. GLAZER. I was about 58—

Mr. FASCELL. Age is no problem over in that agency?

Mr. GLAZER. None at all. If you are a Foreign Service officer and happen to be there, you get out. If the guy next to you is a general service officer doing the same job in that particular agency, he can stay on, in many jobs.

Mr. FASCELL. Under the present law, are you a Foreign Service officer or did you convert? Obviously the age requirement does not apply to you.

Mr. GLAZER. I was forced to convert if I wanted to stay on the job. I could have retired at 60. But my pension would have been about 30 percent of my current salary, so I decided to stay on.

Mr. FASCELL. I see. Have you gone up in grade so as to catch up with your salary?

Mr. GLAZER. No.

Mr. FASCELL. What is the largest number of people you ever had under your supervision?

Mr. GLAZER. Well, I don't have a large number of people under my supervision.

Mr. FASCELL. One, two, three?

Mr. GLAZER. Well, let's see. Three. That is all.

Mr. FASCELL. I will ask it a different way then. Did you ever fire anybody in your entire Federal service?

Mr. GLAZER. There was one secretary who was quite incompetent and we had to recommend that she be fired.

Mr. FASCELL. Did you have any difficulty? Were there any appeals or court suits?

Mr. GLAZER. Oh, yes, it was appealed.

Mr. FASCELL. How long did it take you to fire the secretary?

Mr. GLAZER. It took several years.

Mr. FASCELL. Mr. Leach.

Mr. LEACH. No questions, Mr. Chairman.

Mr. FASCELL. Mr. Derwinski.

Mr. DERWINSKI. No questions.

Mr. FASCELL. Are you guys all right? [General laughter.]

Mr. BUCHANAN. I have nothing.

Mr. FASCELL. Thank you very much, Mr. Glazer.

I suppose the record would be replete with many horror stories if you took it on a case-by-case basis, but we appreciate your vivid descriptions. We are seeking to eliminate inequities and, certainly, the one that has been raised by Senator Pepper is one that we will have to consider very carefully.

Thank you very much.

Mr. GLAZER. I just wanted to point out that there are many inequities. Thank you very much.

Mrs. SCHROEDER. The next witness this morning is Alan Campbell—we are delighted to have you with us this morning—the Director of the Office of Personnel Management. I welcome you, and I am delighted to have you with us. We are looking forward to your helping us with this bill.

STATEMENT OF HON. ALAN K. CAMPBELL, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Mr. CAMPBELL. Thank you very much, Madam Chairwoman, Mr. Chairman, and members of the two subcommittees.

I am pleased to have this opportunity.

Mr. FASCELL. Could you please pull that mike up?

Mr. CAMPBELL. Yes. Thank you.

I am pleased to have the opportunity to comment on the Foreign Service Act of 1979. The Office of Personnel Management's interest and activities in relation to the Foreign Service personnel system have been historically very broad. Through Executive Order 11434, we have significant responsibilities for advising the Secretary of State and the Director of ICA.

In addition, we are represented on the Board of Foreign Service and the Board of Examiners for the Foreign Service. These contacts have meant that the staff of the Civil Service Commission participated

in the earliest formulative stages of the plan to reorganize the Department's personnel system, and OPM has been consulted frequently in the final stages of development.

We have provided comments and assistance to those working on the plan, and we believe the proposed legislation before you represents not only significant change, but a step forward for the Service.

The Foreign Service Act of 1979 would, in many respects, parallel the Civil Service Reform Act. Certainly, the impact on the Service will be comparable to the impact which the Civil Service Reform Act is having and will have on the civil service. I know that you have been introduced to this bill by Secretary Vance and others who have preceded me. Rather than run the gamut of this wide-ranging piece of reform legislation, I will concentrate on those things which we are particularly pleased to see in this proposal or about which we have some questions.

First, the Department of State, AID, and ICA have recognized the need for a continuing and stable civil service component. The eventual savings, which will be brought about by clearly distinguishing between employees whose duties do not include overseas service and those who do, will be significant.

The Foreign Service personnel system is designed to give flexibilities and benefits to a worldwide service requiring mobility and hardship assignments and as such has a unique and important place in the array of Federal personnel systems. The attempt to adapt that system to jobs which did not carry the same requirements produced a great deal of difficulty and inequities. The proposed legislation requires conversion of employees who do not serve overseas and allows a painless transition by providing for no loss in pay or benefits as a result of conversion. We give our full support to the Department in its wish to make a clean start and support the Department in seeking authority to allow retention of Foreign Service benefits for those converted to the civil service.

We believe an addition should be made to section 2104(b) to clarify that the retention of coverage under the Foreign Service retirement system shall not extend to employees after transfer to another agency. We recognized that this was open to interpretation after the bill cleared the executive branch. However, without this limitation, those converted would be advantaged over those who had not converted by being able to transfer to non-foreign affairs agencies while staying in the Foreign Service retirement system.

The Foreign Service was specifically excluded from the Senior Executive Service in the Civil Service Reform Act. We warmly endorse the Department's proposal to establish a Senior Foreign Service, which has many features that parallel those of the Senior Executive Service. We particularly note that the Senior Foreign Service proposal will hold members accountable for their performance and reward those whose performance is outstanding.

We recognize that there are special conditions that affect personnel who have to serve overseas and that, therefore, it may not be practical to establish a Senior Foreign Service fully comparable to the Senior Executive Service which, as the members of this subcommittee know, became operational on July 13. We see the two systems as complementary, however.

There is a strong emphasis in the bill on the improvement of inter-agency coordination, as for example, through greater consultation among the foreign affairs agencies. We have long recognized a need for closer ties between the personnel regulations of the foreign affairs agencies. We have noted differences in the approaches between agencies which are both justified and unjustified. We, therefore, view it as a major goal to bring the personnel policies of the various Foreign Service agencies into closer conformity so that neither management nor the members of the Service will be disadvantaged by the existence of unwarranted differences.

Bringing compatibility to the personnel systems of the three foreign affairs agencies is one of the most important advisory roles of the Board of the Foreign Service which will be established in statute with OPM representation under section 206 of the proposed bill. The Board of Foreign Service has worked toward this end on many occasions in the past. The Board allows executive level management to influence personnel policy and, thus, is right in step with the objectives of civil service reform.

Having touched these high points, I should note that OPM has had a concern related to the inclusion of supervisors in the bargaining unit. Title X differs from title VII of the Civil Service Reform Act which states that a unit does not appropriately include—except as provided under section 7135(a)(2)—any management official or supervisor. We have generally thought it inappropriate to have any managers or supervisors within the bargaining unit. I recognize, however, that there are historical differences in the Foreign Service situation which the Congress may wish to take into account. I simply would not want action in this field to be regarded as indicative of the Congress views on other Federal personnel systems.

Another problem which we continue to have with the proposal relates to the employment of family members abroad. The authority of the Secretary, in section 333(c), to “prescribe regulations for the guidance of all agencies regarding the employment at posts abroad of family members of Government personnel,” goes beyond the Foreign Service.

We believe OPM should retain regulatory authority in this area for employment in agencies such as DOD. We realize that the sectional analysis states that these regulations shall be advisory and designed to set forth uniform standards and criteria. However, the draft language does not make clear that the regulations are “advisory,” nor does it recognize the legitimate role of the Office of Personnel Management in regulating employment outside of the Foreign Service.

Section 701(b) of the draft bill provides authority for functional training to family members in anticipation of their assignment abroad or while abroad. We read this authority as extending to family members of employees of non-Foreign Service agencies. We therefore endorse the provision with the understanding that family members of employees of all Federal agencies operating overseas will have access to available functional training in order to avoid favoring family members of one agency over those of others.

Despite the questions I have raised, this legislation has my positive support. I think it will contribute materially to the conduct of foreign affairs while affording proper consideration to the needs of employees.

This concludes my prepared statement, Madam Chairwoman. I shall be glad to try to answer any questions of the committee members.

Mrs. SCHROEDER. Thank you very, very much. Again, we appreciate having you here and helping us with this incredible task that we have undertaken. It seems like we have really gotten into personnel maybe more than we ever thought we would.

I have a lot of questions, and I suppose one of the things that we should start with is: Why isn't there a need for a separate Foreign Service? Just a very basic question.

Mr. CAMPBELL. I have become convinced after spending a great deal of time on this matter that the conditions of employment in terms of requirements placed on that service does justify a separate Foreign Service. On the other hand, we obviously are pleased that those people who do not have those obligations of overseas assignments and lack of choice in terms of where assigned will be now removed from the Foreign Service, and there will be a two-part personnel system in our foreign affairs agencies. It seems to me that that is the important contribution which this legislation will make, after having been down the road for some years, as you know, attempting to create one unified service for all people who work for a foreign affairs agency.

My experience has demonstrated, as well as some of the testimony which preceded me, the inadequacies of that kind of effort.

Mrs. SCHROEDER. Would you say the concepts like ranking a person or selection out are equally applicable to Foreign Service and to domestic service?

Mr. CAMPBELL. I think the applicability of those special provisions apply with special force to the Foreign Service, because of the nature of their assignments. I would argue that in the case of the top levels of the senior executive service, that some of those provisions are equally applicable there, that is, rank-in-person and some of the other provisions, but basically it is the difference in the kind of service demands that are placed upon the personnel, which I believe justifies the separate service as well as the historical pattern.

One cannot ignore what has been the case in the past.

Mrs. SCHROEDER. On page 2 of your statement, you say that converted FAS employees should use their right to Foreign Service retirement. Could you explain that?

Mr. CAMPBELL. We are talking here about people who are converted to the general schedule, and we are saying that if they stay with our foreign affairs agencies, that their Foreign Service retirement coverage should continue because those were the conditions under which they were hired.

If, on the other hand, they move to a non-foreign affairs agency, it seems to us that they should then convert, which they easily can, to the regular civil service retirement system.

Mrs. SCHROEDER. I guess the other question is, can you justify preserving earlier retirement rights for people who never served overseas and converted to FAS?

Mr. CAMPBELL. I think it can be justified only in terms of the sense of a contractual relationship in that they are now a part of that system, anticipated being in it all their lives, and to change that, we believe, would be inequitable.

Beyond that, there is no justification.

Mrs. SCHROEDER. Last year we were going through all the Civil Service Reform Act legislation. You had said that there had been only about 226 Federal employees that were fired on performance grounds in the previous 12 months. That was one of the reasons for civil service reform. It would allow managers more flexibility to fire incompetent employees. I am wondering if you have been able to compare that at all with the selection out procedure for Foreign Service and find out whether it worked significantly better than the adverse action that we have in civil service.

Mr. CAMPBELL. I would not be able to provide you numbers in my response to your question. We would be glad to provide that information for the record. I would say, though, that the selection out provision is not directly related to inadequacies of performance in the way that adverse actions are in the general schedule. I would simply suggest there are different standards involved.

I would anticipate that the selection out system produced proportionately more early retirements than is true of adverse action in the general schedule, but that is without having numbers in front of me.

Mrs. SCHROEDER. If we could have those numbers for the record, I think that might be helpful as we look at this.

Mr. CAMPBELL. Surely.

[The information referred to follows:]

While 226 separations for inefficiency represents approximately one-tenth of a percent of nonprobationary competitive service positions or about 1 in every 10,000, the average rate of selection out for Foreign Service officers in the Department of State has averaged, over the 10-year period of 1969 to 1978, 1 out of every 96 subject to selection out or approximately 1 percent. The raw figures show that an average of 35 Foreign Service officers have been selected out over the 10-year period of an average 3,345 who were subject to selection out. During that period 71 percent of the selection outs were under the time-in-class provision while 29 percent were selected out for substandard performance.

Mrs. SCHROEDER. If I could also ask you if OPM has made any efforts to provide employment for spouses of Foreign Service officers when they return and are on temporary assignment in Washington.

Mr. CAMPBELL. I do not know of any special programs we have for doing that. Obviously, the information would be provided through the general means by which one acquires Federal employment. Beyond that, I am not aware that we have made any special efforts.

Mrs. SCHROEDER. I think I would like to plead with you to try and make some special efforts. I know that you have said there is a problem with section 333 (c) in dealing with the family members in foreign posts.

Mr. CAMPBELL. Yes. Our only concern here is if the State Department provides training—which we strongly urge them to do and which they are doing—so that it would increase the possibility of spouses finding employment overseas, that such training programs be available to families of employees working for other agencies. We have discussed that, in fact, just very recently, and the State Department agrees with us that that is appropriate and will attempt to do so.

[The following information was subsequently provided:]

Our concern here is that many employees of the Defense Department, for example, are serving overseas in non-foreign-affairs agencies. We believe that it is inappropriate that the State Department make rules and regulations related to employees of other departments and agencies. This is a responsibility that the central personnel agency of the Federal Government has had and should continue to have.

Mrs. SCHROEDER. I sincerely hope we can implore you to also look at helping the spouses who are here in Washington on rotation.

Mr. CAMPBELL. I certainly hear you.

Mrs. SCHROEDER. Thank you.

Mr. Derwinski, do you have any questions?

Mr. DERWINSKI. Could you point out for us what provisions in the bill before us could be attributed to your early consultation and what specific input in the bill is therefore related to civil service reform?

Mr. CAMPBELL. I am not certain whether our impact was correct on these matters I am going to mention or incorrect just because they were a part of the Civil Service Reform Act, but there is no question that the Senior Foreign Service is molded after the Senior Executive Service, as are the special benefits in terms of bonuses and the like.

In addition to that, the prohibited personnel practices are taken almost directly from the Civil Service Reform Act, and thereby those prohibited practices are the same throughout the two personnel systems. Although there are some distinctions in the labor relations system, the provisions in the Foreign Service Act of 1979 parallel in many respects title VII, the difference there being primarily the inclusion of some managers and supervisors on the Foreign Service side which are excluded as far as the Civil Service Reform Act is concerned.

The merit pay provisions of the Civil Service Reform Act for 13's through 15's was, after much consideration, not followed in the Foreign Service Act, although a substitute of a greater emphasis on performance for in-grade step increases is a part of the legislation, and to that extent is followed.

I must say that I am very pleased with the amount of parallel that there is between the two pieces of legislation. I am hopeful that as a result of the careful consideration given by the people in the State Department in seeing the merit of what the House Post Office and Civil Service Committee and others did in the passage of the Civil Service Reform Act your committees will give favorable consideration to this legislative proposal.

Mr. DERWINSKI. What is your basic view on the mandatory retirement provision for Foreign Service?

Mr. CAMPBELL. I believe a strong case can be made for the mandatory retirement for those who are genuinely in the Foreign Service. That is that they respond to all of the demands of that service, and for that reason I think it is particularly useful that we clearly distinguish those jobs in the State Department which do not have those characteristics.

I would point out that the specific example given by Mr. Glazer of the fact that he had to move from a Foreign Service rank to a GS position that was greatly lower, is an example of the difficulty of having the two systems operate side by side. The fact is that with rank-in-person there is a great deal of freedom of jobs to which you can assign a person. When it became necessary to move to the general schedule, then the actual position classification becomes the important consideration, and that was clearly a job, as the situation was described, meriting a grade 13. Since the Foreign Service system is a rank-in-person system, assigning him to that job was completely appropriate, but it does show the difficulties in operating two systems when there is not a clear distinction as to the obligations of the two systems.

I would point out—and the State Department has this data more at their fingertips than I do—that there are serious problems, as people grow older, in their ability to accept assignments as required by the Foreign Service. As you look at the percentages as you go up the scale to age 50, you see that 50 percent, due to health conditions, family conditions, and the like, became difficult to assign abroad. So it may be that the age 60 cutoff is somewhat arbitrary, but I would suggest that empirical evidence points in the direction that it is a pretty good guide.

Mr. DERWINSKI. On that specific point, there isn't anything scientific about it, about the age 60 cutoff. They just may as well have been 59 or 61.

Mr. CAMPBELL. I agree with that. The fact is that all one has to rely on is the empirical experience of those who operate within the system. I would further make a point that the retirement system for Foreign Service officers is somewhat more generous than the general civil service retirement system.

Mr. DERWINSKI. Thank you, Madam Chairman.

Mrs. SCHROEDER. Congressman Fascell.

Mr. FASCELL. Thank you very much, Madame Chairperson.

You express a concern, Mr. Campbell, about section 333(c), which is language that the subcommittee wrote. I can assure you that it was our intention that it be strictly advisory and not preempt the responsibilities of OPM in any way. We will either make that clear by changing the language or whatever it takes to satisfy that viewpoint of yours.

Mr. CAMPBELL. I appreciate it very much.

Mr. FASCELL. We appreciate your calling it to our attention.

Mr. CAMPBELL. Thank you.

Mr. FASCELL. To get away from the purely mathematical limitation on employment, even though empirical evidence would suggest that it might be useful to do it that way, it seems that we ought to consider other criteria which are more acceptable. I think that is the point that has been made by the chairman of the Select Committee on Aging and others.

For example, I am not sure anybody can really object to a health requirement in those positions which clearly call for a health check.

How about other functional provisions? You mentioned, for example, the requirement of the Foreign Service officer to take posts overseas. Now, if the individual elects not to take such a post, regardless of age, it seems that you could apply the same criteria and solve that problem.

Mr. CAMPBELL. It is certainly possible that one could attempt to define, and I would urge that it be done with great care, the kinds of conditions which would entitle a person to remain or which would require a person to retire. I think that the experience with the 60-year mandatory retirement with the Secretary of State being able to make exceptions to it is in some way equivalent to that. The real question is, which side do you want to put the burden of proof on?

Here I would simply suggest that I at least, and I am sure the committee would, too, listen very carefully to the experience of the State Department in this regard. They are closer to it than I am and feel very strongly about the need for this kind of provision.

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Mr. FASCELL. Thank you very much.

Mrs. SCHROEDER. Congressman Leach.

Mr. LEACH. Mr. Campbell, are you familiar with the Hay Associates study?

Mr. CAMPBELL. I have not read the study. My staff has pointed out that that study has been done. There is an OMB, OPM, State, ICA, and AID task force currently examining the findings. There are some problems with it in relationship to the number of positions covered and the range of positions covered, as I understand it. It will, however, along with some further studies, be given careful consideration by both OMB and OPM.

Mr. LEACH. Are you prepared to support it?

Mr. CAMPBELL. Not until I know a great deal more about it than I do now and we have had an opportunity to examine it. On the basis of that review and other data, we will be ready in due time to make an appropriate recommendation in the pay area for the Foreign Service.

Mr. LEACH. I have often been concerned that it is very difficult sometimes to relate Government jobs with the private sector, but certainly there are many problems in comparing Foreign Service jobs with the private sector. That is what the Hay Associates study does. But it does seem to me to be very simple to relate Foreign Service pay to civil service pay, and, thereby, to relate comparable people with comparable people. In that sense it thus strikes me that a fundamental principle that ought to be carried out is the equivalency of Foreign Service pay to civil service pay. Does that strike you as reasonable?

Mr. CAMPBELL. Yes; I will accept that.

Mr. LEACH. In that regard, I hope you will look carefully at this issue. I do not know if it is by accident or for whatever reason, but the Hay Associates study relating to the private sector arrives at about the same number of percentage points in relationship to the Foreign Service system as with the civil service system. Particularly in the Foreign Service system you have smaller step increases in comparison to the civil service. You also have slower promotions, although that may or may not continue if there is mandatory retirement.

Let me ask you, you do support mandatory retirement for the Foreign Service?

Mr. CAMPBELL. I do support mandatory retirement for the Foreign Service.

Mr. LEACH. One of the interesting features in comparing the SFS and the SES is that in the proposed SFS there is a mandatory feature whereby the Foreign Service officer must propose himself for selection, at which point a time period is triggered in which he must then retire or be promoted.

Mr. CAMPBELL. Right.

Mr. LEACH. Do you support the notion of having a Foreign Service officer personally make this decision to propose himself, and second, is there an analogy to the SES in that regard?

Mr. CAMPBELL. Answering the second part of the question first, there is no question that candidates for the Senior Executive Service must make a decision to become a candidate. Now, you do not have

any of the triggering mechanisms and so forth after that fact, but the choice is in the hands of the person who is seeking that.

Mr. LEACH. The triggering mechanism?

Mr. CAMPBELL. We do not have a triggering mechanism, and that triggering mechanism in the Foreign Service is a product of the general Foreign Service System, which is an up-or-out system, and I would say that as long as you have that as part of the system, that it should apply to promotion or the Senior Foreign Service in the same way that it applies to other promotions within that Service.

Mr. LEACH. I understand that, but I am not sure your answer is specific. One of the hardships of the proposal, at least in the psychological sense, is that the person has to choose to be considered for promotion; at that point the question of time comes into effect. I am yet to be persuaded that there is any reason for that. I do not see why any or all people who have reached a certain level ought not to be eligible for promotion. Each officer must make that decision, but why do you need the triggering mechanism at the point that they make that decision?

Mr. CAMPBELL. I realize full well your expertise about the Foreign Service, and I must admit that I have not thought carefully about that question. I suggest when a person reaches that stage in their career where they become eligible, it should be automatic.

Mr. LEACH. Eligibility should become automatic without a penalty. That means there should be a time-in-class for that person if they do not achieve the SES or SFS. I am not sure why the time-in-class should be triggered by the personal decision to want to be considered for promotion.

Mr. CAMPBELL. I would suppose that is in a sense seen as favoring the Foreign Service officer, because they have the choice of not competing for the Senior Foreign Service, and as such protect themselves from whatever that may involve. I would suggest that that is done as a way of providing an additional protection against what will be a highly competitive group for the Senior Foreign Service. Whether that is an appropriate protection I will leave to you to argue with the Secretary of State.

Mr. LEACH. May I ask—and you do make recommendations to the Department of State—were there any recommendations of yours which were not accepted?

Mr. CAMPBELL. The only place where, after much consultation and discussion, we did not reach an absolute final agreement—although I became convinced that the special character of the system justified it—was in the inclusion of managers and supervisors in the bargaining unit.

Mr. LEACH. Do you feel that an employee organization ought to be able to negotiate on such matters as time-in-class, the number of contract extensions for the senior ranks and related matters?

Mr. CAMPBELL. I would hesitate to respond to those specific matters, because my general position is that there should not be the opportunity of negotiating over what I consider management decisions. I would think that, in relationship to some of the kinds of general questions that you have raised, that there may be appropriateness for some of them to be negotiated, but I would be very careful that in that process, the necessity for maintaining managers' flexibility not be undermined.

Mr. LEACH. Thank you.

Mrs. SCHROEDER. Mr. Pashayan.

Mr. PASHAYAN. Why are concepts such as a person being selected out for excess time-in-class and performance work uniquely applicable to the Foreign Service system and inapplicable to the domestic service system?

Mr. CAMPBELL. I have been repeating a bit in response to Chairwoman Schroeder's question. The distinctions really relate to character of service, the fact that it does have special requirements, the overseas obligations, the fact of not being able to select posts, being assigned to posts; all of those, it seems to me, require the very special set of conditions relative to that kind of very special service.

Mr. PASHAYAN. Let me ask one more question, and then I will be done. Apparently a number of elements of the Senior Foreign Service are different than the senior executive service, such as the absence of a parachute clause, the existence of a window for entry, and, I suppose, the decreased emphasis on managerial aspects of the Service.

Do any of these differences portend of potential problems?

Mr. CAMPBELL. I do not think so. They are differences which really are a product of the nature of the Foreign Service system. The lack of parachute rights relates to the up or out provisions of the Foreign Service. I think a parachute in that kind of system would be inappropriate. In relationship to the other matters, they, too, are drawn from what are the characteristics of the total system, but I am more impressed with the similarities than I am with the differences, and there are aspects of those similarities which I think are going to make a very useful contribution to, for example, interchange between the domestic and Foreign Service sides which I believe will add important things to both sides of that equation. The use of bonuses for performance is, I believe, important in the Foreign Service, where I think performance should be measured just as it is measured in other kinds of high-level jobs.

So, my satisfaction grows out of the similarities, and I do not feel that the differences in any way undermine those similarities, and the value of those similarities.

Mr. PASHAYAN. I guess I have attempted to ask yet one more question.

Mr. CAMPBELL. All right.

Mr. PASHAYAN. What is your opinion, subject to supervisor's opinion?

Mr. CAMPBELL. As I have said, we had problems with that from the beginning. In consultations with the State Department, I became convinced that there are sufficient differences between the role of supervisors in the Foreign Service versus the general schedule side, and if one examines the history of it, it justifies that difference.

Let me just add one point to the special characteristics in Foreign Service. As I understand it, many of the people who have supervisory, managerial responsibility in the Foreign Service do not have many of the kinds of decisionmaking powers that is true in the competitive service. They do not have many of the personnel powers that managers have on the civilian side in terms of hiring, firing, promoting, much of which is done centrally in the Foreign Service.

Those differences would justify a difference in treatment. I would like to repeat what I said in my testimony. I hope we do not take this as a model for any other Federal personnel systems in terms of the labor-management relations system.

Mr. PASHAYAN. One more last question. This will be last of the last questions. In that we do not know yet how well performance pay worked in the SES, is it a good idea to place the thrust on the SFS?

Mr. CAMPBELL. I am confident that the performance pay system for the senior executive service will work well. I am obviously encouraged as I know the committee people here from the Post Office and Civil Service Committee are, that over 95 percent of those eligible for the senior executive service have elected to join it, which is in very sharp contrast to what was predicted during part of the time we were debating this issue.

I must say that I foresee more problems with the merit pay part of our proposals for grades 13 through 15 than I see for the performance bonus system for the senior executive service.

Mr. PASHAYAN. Thank you very much.

Mrs. SCHROEDER. That leads me immediately into, then, are you disappointed there is no merit pay provision in this bill?

Mr. CAMPBELL. As I said earlier in my testimony, we would like to see merit pay in that part of the Foreign Service system. However, we are satisfied with the intent for greater use of the within-grade step increases as a means of beginning what we hope is in the direction of using merit pay in that part of the Foreign Service system. I believe getting the experience that we are going to get on the merit pay side will be very useful to the State Department 2 or 3 years down the road when they make a decision whether they are going to take that additional step. We are deep into establishing critical elements and performance appraisal as a backup for merit pay, and we are impressed by the enormity of the task that we have taken on.

I hope that as we learn, our lessons can be applied if the State Department decides they wish to move in that direction.

Mrs. SCHROEDER. So you hope they will become enlightened later on?

Mr. CAMPBELL. Yes.

Mrs. SCHROEDER. I just want to go a little further on this whole question of supervisors in the bargaining unit. I am not quite sure about it, and this is going to be a thing that will be very difficult for this committee, because we have had testimony both ways.

Mr. CAMPBELL. Yes.

Mrs. SCHROEDER. I am not sure whether I hear you saying that it is not your area. So, politically you would just as soon not get into it and defer by saying that, historically in the State Department it has been allowed, so leave it there, but do not make it a precedent. Or are you really saying it is a good idea in the State Department but for no other agency?

Mr. CAMPBELL. I guess that I would argue that what I am saying is some place in the middle of that. There is a particular management characteristic in the Foreign Service; many supervisors do not have the full range of authority that supervisors and managers traditionally have in the rest of the Government service. On the basis of that difference, I believe that the inclusion of supervisors in the bargaining unit does not raise the usual kinds of problems that it would in a

system where there was greater managerial authority, particularly in the making of personnel decisions, which after all is what labor relations is primarily about, especially when pay is the question. We are also mindful of the fact that some managers are excluded under the proposal based on their decisionmaking authority.

So, I am comfortable that the system as outlined in the legislation is workable and appropriate. I just want to be very sure that the record shows that we have a very strong position that management and supervisory people in general should not be included within bargaining units. We do happen to have a couple of exceptions in the Civil Service Reform Act which we were not very happy about, either.

Mrs. SCHROEDER. I realize that. As I say, we are just trying to construct the best of all possible worlds. I don't know if it would be a good idea to substitute the Civil Service Reform Act for the bill before us. I can understand why you really hate to go one way or the other, but I think you have been helpful in trying to say where you were.

Now, when the Secretary of State issues regulations for civil service employees, what kind are they going to be, and is that going to undermine any of OPM's authority?

Mr. CAMPBELL. No, I don't think so, if we are talking about the general schedule people. There will be an arrangement worked out whereby uniformity, where necessary, will be accomplished.

I would, however, quickly make the further point that we are in the process, as you well know, of a substantial delegation of personnel authority for decisionmaking to departments and agencies, and within that context the State Department's role in this regard is becoming increasingly like what we hope will be characteristic of the total system.

Mrs. SCHROEDER. So, you won't turn over the whole thing?

Mr. CAMPBELL. No.

Mrs. SCHROEDER. It would be very similar to other agencies.

Mr. CAMPBELL. Yes.

Mrs. SCHROEDER. Congressman Fascell.

Mr. FASCELL. Thank you very much.

There is a provision now pending in the conference on the economic assistance bill to provide for appointment of former Peace Corps staff to the competitive service without examination. Do you see any reason why that benefit would be in conflict with what we are trying to do in this bill?

Mr. CAMPBELL. I am sorry. The first part is that there would be the opportunity for noncompetitive hiring.

Mr. FASCELL. No, I am referring to noncompetitive appointment to the civil service for former Peace Corps staff, similar to procedures now in effect for volunteers.

Mr. CAMPBELL. I am going to, if I may, respond to that question in writing, because it does have some serious implications, and I want to be certain that I check with the right people on it. I am concerned, I am always concerned about automatic conversion systems, and therefore I would like the opportunity to check.

Mr. FASCELL. I would appreciate it if you would check that. The staff can give you the exact language that is now in conference. Since

we are going to act on that in the next day or two, we need to know what relationship that provision has to this bill.

Mr. CAMPBELL. We will get that to you just as soon as we can, and certainly before the conference committee takes final action.

[The information referred to follows:]

While various groups have been granted noncompetitive entry, there appears to be no compelling reason why this group should be accorded the privilege:

1. Together with Department of State, we reported against a similar provision to OMB last March.

2. The noncompetitive entry accorded to Peace Corps volunteers was a recognition of their dedication and talents, the vigorous screening they underwent, and the difficult conditions overseas under which they worked at subsistence pay levels. It is somewhat analogous to preference—a means of readjustment, of easing their transition back into the regular world of work. Peace Corps staff, on the other hand, are salaried Federal employees and are not subject to the unique demands volunteers faced.

3. Employees serving under Foreign Service limited appointments in State, AID, and ICA do not have such a benefit.

4. Employees serving under time limited appointments in the competitive service do not have the right to move to other jobs.

5. Peace Corps staff may file along with the general public in any of our open competitive examinations for appointment consideration.

6. We could consider administratively granting to Peace Corps staff eligibility to be hired noncompetitively, provided their employment system is found to meet certain merit system principles. One condition would require an unlimited type of appointment, analogous to our career-conditional appointment.

Mr. FASCELL. You are undertaking, as I understand it, a massive review of the performance evaluation system.

Mr. CAMPBELL. Yes.

Mr. FASCELL. It seems to me that there will be great benefit in some kind of interdepartmental review, because State is in the process of reviewing its performance evaluation system, and it seems to me that State and OPM could benefit from the experience of the other.

OPM has had tremendous experience, and if you bring new talent to bear on the subject, it would seem to be very useful at this point to have some kind of joint review without either one impinging on the other.

Mr. CAMPBELL. There is no question that to some extent that has already started and will become even more intense after this legislation is passed, and the Senior Foreign Service is put into effect.

I know the State Department has a great interest in the performance evaluation system that we are establishing for the senior executive service.

Mr. FASCELL. It seems to me with any Government personnel system, the biggest problem is, how do you get rid of the incompetent? The guts of that on this system seems to be a proper or realistic or truthful appraisal, depending on which word suits. I do not know that the military has a better system, either. I have looked at all those criteria and the selection from 1 to 10. I can imagine people checking off the boxes and running out of words in the thesaurus to describe in superior terms someone who is really incompetent.

[General laughter.]

Mr. FASCELL. The military used to have one. Maybe we ought to adopt it in the regulations. If an individual was a great piano player, that meant he was out. Maybe something like that would work. Thank you very much.

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Mr. CAMPBELL. Thank you very much, sir.

Mrs. SCHROEDER. Congressman Derwinski, do you have any further questions?

Mr. DERWINSKI. Mr. Campbell was so persuasive, I am left without questions for him.

Mrs. SCHROEDER. Congressman Leach.

Mr. LEACH. Thank you for coming before us, sir.

Mrs. SCHROEDER. Again, we appreciate all of the time that you have given us.

Mr. CAMPBELL. I appreciate the opportunity. Thank you very much. [Additional questions submitted to Mr. Campbell for the record follow:]

ADDITIONAL QUESTIONS SUBMITTED IN WRITING TO MR. CAMPBELL AND
RESPONSES THERETO

Question. Should the Foreign Service be included under Title VII of the Civil Service Reform Act (CSRA)? Why?

Answer. I believe that the Foreign Service is appropriately excluded from Title VII. From inception of the program in 1962 until December 1971, the Foreign Service was included under the same executive orders that governed the Federal labor-management relations program. Experience proved, however, that the Foreign Service, because of its unique conditions of employment, should be under a separate executive order. Subsequently, in accordance with a Presidential directive, a draft executive order was prepared. It was concurred in by the Board of the Foreign Service, the Secretary of State, and the heads of the other foreign affairs agencies. The Foreign Service program has operated reasonably well as a separate entity ever since. Nothing in the Foreign Service program suggests the need to change this arrangement. For these reasons, there was no serious consideration given to including the Foreign Service under Title VII during deliberations on the CSRA.

Question. What is OPM's view of the labor-management agreement International Communication Agency (ICA) signed with the American Federation of Government Employees (AFGE) in December 1977 which required that all conversions from Foreign Service domestic specialist to Civil Service status be voluntary?

Answer. I am aware of the agreement ICA made with AFGE (Local 1812) and can fully appreciate the circumstances under which it was agreed to. There is no doubt in my mind that the agreement was made in good faith on the part of ICA management with a view toward maintaining among employees a sense of security for their jobs and benefits, as well as avoiding possible litigation. However, in view of estimates that it would take a minimum of 20 years to complete the conversion program if it were done voluntarily, I believe the more desirable course is to effect such conversion through legislation, that would in turn provide for such benefits as saved pay and grade. This would include in particular the Foreign Service retirement provisions, as well as protection against loss of pay. The procedures for accomplishing the conversions could, of course, be left to consultation between the foreign affairs agencies and its employee representatives. The statutory conversion solution is not only fair but, we believe, preferable to a status quo situation which allows employees to remain under a personnel system designed for overseas work when they are not, in fact, subject to such assignment.

Question. Last year, you opposed efforts to exempt the Foreign Service from the Senior Executive Service (SES). Does the establishment of a separate Senior Foreign Service meet your objections?

Answer. Our original proposal for SES would have included members of the Foreign Service. In considering the proposal, however, the Congress excluded Foreign Service personnel from SES under 5 U.S.C. 3132(a) (2) (1). We believe the Senior Foreign Service proposed by the Department of State is in keeping with the basic concepts of SES, such as accountability for performance, and we therefore support it.

Question. A foreign affairs specialist employee converted to civil service will be protected in his or her Foreign Service retirement rights. If the bill passes as

now drafted, this employee could work well past age 60, while a Foreign Service employee would have to retire at age 60. My question is: Would this converted employee, working past age 60, be able to add 2 percent a year onto his or her amount of retirement?

Answer. Section 2104(b) of the draft bill allows the former Foreign Service employee to elect to continue to participate in the Foreign Service Retirement and Disability System. Section 836 of the draft bill requires retirement of participants in the Foreign Service Retirement and Disability System when they reach 60. Our discussions with State Department and Office of Management and Budget staff have revealed no intention to except the "grandfathered" employees from the section 836 requirement for mandatory retirement if they have chosen to continue under Foreign Service retirement.

Question. On page 2 of your statement, you mention that "retention of coverage under the Foreign Service Retirement System shall not extend to employees after transfer to another agency?" By transfer, do you refer to employees who leave the Foreign Service, not those who merely transfer on detail to another agency?

Answer. My remarks concern only the employee who transfers out of the foreign affairs agency on a nontemporary basis.

Question. One of the stated purposes of SES was to provide for transferability of senior executives between Government agencies. Does not the establishment of a separate Senior Foreign Service undermine the goal of interchangeability?

Answer. As indicated in the previous question, we initially proposed an SES that would have included Foreign Service personnel. One of the reasons for that proposal was the increased interchangeability such a unified system would provide. Having two separate systems, however, does not necessarily preclude interchangeability. The proposal for the Senior Foreign Service, for example, provides in section 521 for the temporary assignment of Senior Foreign Service members to SES positions for up to four years. We would be willing to consider the appropriateness of permanent interchangeability between the SES and the Senior Foreign Service.

Question. What will be the relationship between OPM and the Board of the Foreign Service after this bill passes? Will OPM issue any regulations applicable to the Foreign Service? What kinds of regulations?

Answer. The relationship of OPM to the Board of the Foreign Service is not expected to change under the bill. The Director of OPM is designated a member of the Board of Foreign Service under Executive Order 11264. We have developed significant expertise and familiarity with the Foreign Service system in order to add weight and significance to our representation. We hope that the Board of the Foreign Service will continue an active role in advising the Secretary on the operation of the Foreign Service system.

Under the proposed Foreign Service Act, the Foreign Service will continue as a separate personnel system, exempt from most OPM regulations. Significant exemptions are in the areas of staffing, position classification, retirement, and adverse actions. The Foreign Service does come under OPM's regulations, however, in the areas of health insurance, life insurance, conflict of interest, financial reporting requirements, and interchange of personnel with the competitive service.

Question. On Page 3, you say one of the major goals of the legislation is to eliminate any unwarranted differences between the civil service and the Foreign Service. What kind of unwarranted differences are you thinking of?

Answer. The testimony referred to greater coordination between those agencies operating under the Foreign Service personnel system rather than the elimination of differences with the civil service system. One of the differences recently identified through the Board of the Foreign Service concerned the different procedures and time required to separate Foreign Service employees. The differences between the State Department's procedures and those of ICA were very significant. Through the Board's advice, the systems were brought closer together to avoid even the appearance that employees of one foreign affairs agency were advantaged over another.

Question. Do you have any opinions about the Foreign Service grievance system?

Answer. We believe that the current statutory Foreign Service grievance system is, at the same time, both simpler and more rigid than the grievance systems for the competitive service. The Foreign Service system is a single system and it applies the same procedures to most grievances. It gives good procedural protec-

tions for the serious matters while affording the same procedures to minor complaints.

Question. Is it good management practice to have civil service and Foreign Service employees working side-by-side, especially in a situation like the Agency for International Development (AID) where the Foreign Service officers are detailed rotations home because of the fact that most Washington positions are encumbered by civil service employees? Is this a problem.

Answer. It is not an ideal situation when employees performing identical jobs work side-by-side under quite different conditions of employment. However, it is not a significant problem when all understand that the Foreign Service employee's assignment is temporary. This legislation will help resolve the problem which exists because many Foreign Service employees are serving permanently in domestic positions. We do not feel that it is appropriate for the foreign affairs agencies to use the Foreign Service authorities to appoint employees who are not going to serve abroad. The increased costs (primarily for retirement benefits) of operating under the Foreign Service personnel system should be justified by the overseas duties performed by the employee.

The situation at AID which prompts the apparent criticism in the question, is, we believe, being corrected by the identification of additional positions in Washington to be filled by Foreign Service employees. When brought into proper balance, the civil service positions in AID will not cause a hardship.

Question. Has your testing research department ever looked at the Foreign Service exam? What did they find out?

Answer. The written test used as part of the Foreign Service officer (FSO) exam is developed under a contract let by the Department of State to the Educational Testing Service (ETS).

Since ETS maintains security and control of the written test, OPM does not have copies. The content areas of the written test have changed over the years, but in general, the tests have included questions on:

1. General Background—understanding of institutions and concepts basic in the development of the U.S. and other countries.
2. English Expression—facility for clear and effective expression in written English.
3. Functional Field Test—basic information in administration, economics, politics, and cultural functions in a foreign environment.

The Department of State, on occasion, has approached OPM with proposals to use the Federal Service Entrance Examination (FSEE) and the Professional and Administrative Career Examination (PACE) in lieu of the contract developed test. In response to these consolidation proposals, the Personnel Research and Development Center studied the relation between the FSO exam and the FSEE and PACE written tests. The analyses showed that there was a sizable overlap in the applicant population, and that while the two OPM tests were similar to the FSO, the FSO written tests did a better job of differentiating between applicants with high levels of ability. The State Department did not carry through with the consolidation plans.

The entrance level hiring program has recently been modified to include a one-way assessment center to replace the panel interview. The assessment center activity was developed by ETS. Because of our interest in assessment centers, an extensive research study has been initiated by OPM's Personnel Research and Development Center to study and evaluate the impact of this technique on the selection program. About 1,500 candidates are processed through this phase of the program annually. As part of our assessment center research, we plan to study the impact of the assessment center process on minorities and women.

Question. The President has complained that there are too many U.S. Government employees abroad. Now, we have asked the Secretary of State, the heads of ICA and AID, and other witnesses which agencies are overstaffed abroad, and they all said that it was not them. Do you know what agencies are overstaffed abroad?

Answer. We have no first-hand knowledge which would enlighten the Committee. There is considerable work being done, however, under the direction of OMB to study the Executive Branch's overseas staffing requirements.

Question. Please comment on the provision of the bill which would limit to four years the length of time a Foreign Service officer can be assigned to a non-Foreign Service job in another agency. Is there any limit on the length of time a civil servant can be detailed to a Foreign Service job?

Answer. There is nothing in the civil service laws or regulations covering the length of details in either direction. We believe the 4-year limitation is reasonable. Details beyond this duration might turn into careers. In view of the early optional retirement available to Foreign Service employees, it appears prudent to assure that assignments made out of the Foreign Service carry reasonable limitations.

Question. As you foresee the impact on the reform plan on the Peace Corps personnel system, would Peace Corps have the flexibility to grant career status to any of its employees: To extend their employment beyond the traditional 5-year period?

Answer. The 5-year period is more than traditional; it is required by statute. Section 2506(a) (2) of Title 22 expressly prohibits Peace Corps staff service "for a period of more than 5 years." Status is a benefit of career or permanent appointment rather than temporary appointment. Employees with Foreign Service staff appointments of unlimited duration are eligible for career status under Executive Order 11219 (1965)—State, AID, and ICA staff with unlimited appointment already have this benefit.

Question. Do you see advantages in Peace Corps moving away from a strict 5-year rule?

Answer. While we would not object to legislation removing this restriction in order to permit unlimited appointments, we believe that the Peace Corps is in a better position to see whether the 5-year rule accomplishes what it was designed to and at what cost. Turnover of employees carries an obvious cost in not permitting a career system. It is difficult for us to assess the costs of the current limitation in terms of dedication or expertise lost.

Question. Under the present system, Foreign Service Nationals working for Peace Corps are in the same classification system as all other FSNs in U.S. missions, although many of them have considerably greater responsibilities than other FSNs, including supervision of Americans. Could you comment on whether envisioned reforms will impact on this situation?

Answer. Under section 444 of the Foreign Service Act of 1946, foreign nationals are now paid under local compensation plans that are based on prevailing wage rates and compensation practices for corresponding types of positions in the local economy. This policy would continue, under section 451 of the Foreign Service Act of 1979.

We are not aware of the specific situation which your question concerns. Foreign national positions, under both the present law and the proposed law, are classified according to their duties and responsibilities, and positions involving greater responsibilities are presumably classified in correspondingly higher levels, and thus paid at higher rates.

Mrs. SCHROEDER. Thank you.

The next witness that we have this morning is Ambassador Robert G. Neumann.

Ambassador Neumann, we welcome you this morning and look forward to hearing from you.

Mr. DERWINSKI. Madam Chairman, I was wondering if you would permit me a suggestion. Ambassador Neumann, I know you are a veteran and you have a long statement. If you could insert the entire statement for the record and maybe go over some high spots—I have read your testimony, and it raises more questions in my mind than anybody we have heard from. In fact, it is extremely provocative and enlightening, and the sooner we get to the questions, at least I will be most happy.

So, if you wouldn't mind.

Mrs. SCHROEDER. I think that is an excellent statement and an excellent suggestion. Can we put the statement in the record and just have you summarize?

Mr. NEUMANN. Of course Madam Chairman, you can do whatever you like, up to a point.

[General laughter.]

Mr. NEUMANN. Madam Chairman, Mr. Chairman, members of the committee, I had intended not to read my statement because I get bored doing that, and if I get bored, surely you would be, but I did intend to summarize and perhaps highlight some points. Is this acceptable?

Mrs. SCHROEDER. That would be very acceptable. Thank you.

**STATEMENT OF HON. ROBERT G. NEUMANN, SENIOR ASSOCIATE,
CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES,
GEORGETOWN UNIVERSITY**

Mr. NEUMANN. If you would just prefer to ask questions, I would be glad to go into that.

May I emphasize that I am a noncareer ambassador of 10 years' duration spanning one Democratic and two Republican administrations. I believe my highest campaign contribution was \$500 made at a mad moment of total abandon.

[General laughter.]

Mr. NEUMANN. So, I do not believe I fit into any recognizable category, and I think that at the end of my statement you may find that this is in fact so.

I have been encouraged by subcommittee counsel, and I hope this is not telling secrets, to address myself to broader questions than just the legislation. All my life, I have done what some woman or another told me to do, and I thought I should not interrupt my record at this late stage, so I want to address myself to two different parts, one the general and one the specific.

I might say that my interest in responding to the testimony, which honors me greatly, was that I am deeply concerned with the quality of the Foreign Service, and this is the priority which I address. After all, those officers are to carry out a good and effective foreign policy that stands between peace and war.

Now, the first subject to which I want to address myself and have in my paper is the distinction between career and noncareer ambassadors. Extreme statements have been made, of course, on that. There is a widespread idea that all noncareer ambassadors are campaign fund contributors of large amounts and otherwise unqualified. There was also the remark made by an unnamed high member of the Foreign Service that surely you would not appoint a businessman to command an army in war.

On the other side, there are those who say that all Foreign Service officers are some kind of Ivy League elite, and do not really know anything about life in these United States, and very often having met the payroll is a criterion for life. I do not know where that comes from, but I have heard it a good many times.

Let me state very strongly that what is needed for a good and effective ambassador is a combination of qualities which you find in no single service and in no one background. There is always the combination possible, and you find them in both. An ambassador should have a good idea of a cultural background of the country to which he is accredited. He should preferably know the language, although that differs very greatly from post to post. There are some places where it is ridiculous to send an ambassador without knowing the language.

I was Ambassador to Morocco, and to send somebody there who does not speak French is a joke, because he couldn't talk to anybody. I remember my Nigerian colleague, who was a sad figure because he could not talk to anybody. He did not know either Arabic or French. Yet, it is always more important to have something to say, because if you have nothing to say and speak the language, you are likely to be found out more quickly.

Rather than comparing an ambassador to a general, I would compare him to an executive of a large company. I do not believe that the president of a pharmaceutical company would have to be a chemist. He does, however, have to be able to absorb a large amount of knowledge on a large number of facts. He has to delegate. He has to be quick thinking. We all have had emergencies where, if you are wrong, you pay for it or somebody will pay for it, and there is this definite quality of leadership which, especially in an embassy, which is a relatively small organization, will be felt very quickly down the line, especially as the Foreign Service is a disciplined service and reacts very quickly both to leadership and to the absence thereof.

I submit, Madam Chairman and Mr. Chairman, that there are noncareer appointments that do not come up to that level. I must, however, add that I have met a number of career Ambassadors who did not come up to that level, either. I will not name any names, because I do not wish to spend the rest of my life in court, but the fact is that there is no guarantee in any career but only a combination of qualities, abilities, quickness and so forth, to performing that well. It is, of course, necessary that if one wishes to have a valid professional career service, that only a small number of ambassadors be from outside the career. But I think that having noncareer ambassadors is a healthy thing, and in line with the more flexible and mobile character of our American society.

Now, let me turn to the provisions of the bill. I want to emphasize that I would prefer—although I am, of course, open to all questions to the extent that I am qualified or reasonably knowledgeable—to confine myself largely to those things for which I have had an opportunity of observation and reflection.

I think one or two of the gentlemen ahead of me have referred to the absolute need of worldwide availability of the Foreign Service. This is one of the principal reasons, if not the only one, why I believe in the need for a separate Foreign Service. If we relied only on volunteers, we might have a three times over staffing of Paris and Rome, and not enough people for hardship posts, and there might be very few people whom we could get for the latter who would be good.

It is necessary, therefore, that people be assigned but there ought to be at least a possibility—I know it is not always achieved—to put the right person in the right spot.

Also, I have to emphasize that, having been for a good number of years Ambassador to Afghanistan, where health facilities are a sometimes thing, that there are considerable hazards, and one accepts those because one knows or should know what one gets into. There are also family strains that have arisen in recent years between spouses, especially about careers that have to be disrupted by foreign assignment. That cannot serve as an easy excuse.

In the present inflation situation, I am sorely convinced, however, from my acquaintance with the Foreign Service—not as Ambassador, but in the 19 years when I was a professor before I joined the Foreign Service, and now later, when I am associated with the Georgetown Center for Strategic Studies—that the overwhelming majority of Foreign Service officers would prefer the uncertainty of Foreign Service life and the uncertainty of careers which may not work out, in other words, the competitive advantage over career and employment security.

I am sure that is not true of everyone but I think that a good officer, and I really am frankly interested only in a good officer, is more interested in the competitive opportunities to do well and serve his country than he is in security.

It is also my impression, which I want to underline with deep conviction, that our Foreign Service compares very favorably with the foreign service of other countries with which I have come into daily contact in my 10 years of assignment. Of course it has a professional bias. So has every profession. In French there is a lovely word of “*déformation professionnelle*,” the deformation of a profession. None of us can be said to be without vice.

Now, a professional service has obviously to be based on merit, on a true merit system, and the question is, is this accomplished by the present system, and the answer has to be a resounding “no.” I want to emphasize, however, that some inequity is not the result of legislation. A great many remedies could have been brought about under the existing legislation within the management and the working of the system. One has also to bear in mind the caveat or the unwritten footnote that the same human beings with their failings who did not manage the old system very well are likely to manage, if that is the word, the new system, and that thought gives me pause.

Now, the principal problem of the present really serious situation, and I want to say that it is very serious, as I am observing every day, is that there is a tremendous glut in the upper ranks. This glut, of course, travels all the way down. I have the greatest admiration and respect for Congressman Pepper and Mr. Glazer. I do agree that there are inequities. I speak with feeling on this subject. I myself am, to my profound and growing regret, over 60.

[General laughter.]

Mr. NEUMANN. But the system has to operate on some kind of assumption, and frankly, if the 60 limit were not observed, at least for the next 10 years or so, I think the system would become absolutely unmanageable.

One other problem among several is the colossal inflation. Now, Chairman Fascell has referred to that. It is a very real problem, not only, of course, in the Foreign Service but in every service, including the military service. There is, in fact, no really true up-or-out policy, although I understand a new attempt was made recently on that. To a large extent it has been made worse by the cumbersomeness of grievance procedures and the permissive attitude of courts.

The other reason that we all know for the glut is affirmative action. This is laudable, but nevertheless cuts down on spots, and remember, we are talking about a small service and 1 percent, 2 percent of spots makes a lot of difference.

Political appointments have penetrated even into the lower grades, that is, grades 5 and 6. These younger political, or not political, but mostly political assistant secretaries are uncomfortable with older deputies, besides which there again is an attrition of positions that would otherwise be available.

The most absurd point of this evolution was reached on the promotion list of 1978, when only 13 people were promoted in the very crucial class from class 5 to 4. The situation has slightly improved since then as to numbers, but not very much. Even in those small figures, those that were promoted, and I know some of them, were not the best. The reason for that was humanitarian. Without promotion some of them might have been out on time and grade. So, in other words, there is no more merit system. An officer who in 1970 in class 5 would have had an expectation of rising rapidly to class 4 and 3 and be a clear candidate if he continued to perform well for class 1, cannot now have that expectation at all. In fact, the very best officers in the Department and in the Foreign Service now go in time frames, almost exclusively, unless they have the luck of an assignment in a place where they can have an opportunity for spectacular achievement, pulling the King or the Prime Minister out of a fire or throwing themselves on top of a hand grenade.

As I said before, the problem lies in the management of the system. By this I do not mean the management only, but throughout the system, the hands and the minds of all those who have authority, who write performance reports, and so forth. There is simply a lack of guts to tell a nice and not too bad but not good enough officer, Joe, I am sorry, but there is little opportunity for you to rise to a higher level, and it is better for you to look for other things, because after all, if you want to know, yes, Virginia, there is life after the Foreign Service.

[General laughter.]

Mr. NEUMANN. Now, again, this rating inflation is a common human problem. It speaks beautifully for humanity and very badly for efficiency. If one is the only supervisor who says this man is fine but there are certain real weaknesses, then one damns him beyond all recognition, because one stands out over all the others who are using up the superlatives.

Also, if one does not make such judgments early in an officer's career, there is a double problem. Many supervisors do not want to be too harsh on younger officers when they are in a class where they have not yet acquired the right to an annuity; but if one does not weed them out at that time, then the mediocre at class 4 or 6 will come up and be mediocre at class 3, and then it becomes political. The question is, if he wasn't good, why is he suddenly being penalized?

Well, very often he should have been penalized all along. So, in other words, penalizing is not a form of punishment. But what do we want? Do we want a social security system or do we want an excellent Foreign Service? I do not mean to sound as inhuman as I sound to myself, but life is hard, and choices have to be made.

If you are an executive, you have to make them.

Now, as to the Foreign Service Act of 1979, I see some very definite improvements, that is, if properly administered. The threshold provision to what used to be class 3 and now to the lowest class of the

Senior Foreign Service is, I think, a very important step and an opportunity to divide those with real ability from those who are perhaps just coasting along—again, I say, if rigorously applied.

The competitive provisions also have a managerial advantage in the sense that they are disguised. They are negative in a way, and can weed out without getting into the problem of grievance procedures. But this has also a difficulty, and here I frankly think I owe this committee frankness. I am in a dilemma. I realize the need of management to weed out in order to loosen up the present intolerable system, and rigidity that exists. On the other hand, I am a little troubled that the quotas are to be set without some kind of consultations.

Now, when I speak of consultations, I do not necessarily mean with the employees association or another established authority. What I have in mind is that management be obliged to consult outside its own ranks to assure that there is no intention of cleaning out the ranks to open them up for the politicization of the Service.

I might add, that politicization does not just come from the outside. It can come from the inside. It is the element of agreement and going along. I would like to see some control of this because that can be achieved by setting the figures in a way which does this without anybody being able to complain that he or she himself or herself was discriminated against. Here again, we are talking about a very small group.

Then I am troubled by the short periods in grade which are being contemplated. I have several reservations about the short periods in grade. One is, there are differences between assignments. It is impossible to give everybody the same wonderful assignment where they can show how good they are. Some assignments are dull, and do not give that opportunity. So if the rating period coincides with a dull assignment, the officer is in difficulties.

Second, and perhaps more important to me, is what goes on in the mind of the officer and what goes on in the mind of the evaluators when there are short periods. There can be punishment made for speaking out. This is true in every human organization. It is not just that people are so hidebound. It is that there is an enormous investment in any given policy. Everybody joins in order to carry it out, and then a critic says, now, wait a minute, this isn't so good. That is an irritant. That is a part of the way human organizations work, whether the Foreign Service, the military, a church organization, or a tennis club.

Therefore, what does an officer say to himself as he contemplates a short period of evaluation? He very likely will tell himself that it is better to quote the law and not rock the boat. This is not what we need in the Foreign Service. Mind you, I do not want everybody to rock the boat, but there has to be some rocking of the boat.

Third, there is the fact that panels—and I think these Foreign Service panels are about as good as panels can be—I have not served on one, but I am very respectful of the care and objectivity which they bring to their task—have certain unwritten preference for the well-rounded officer. In times of crisis, the well-rounded officer is sometimes pointless.

Forgive me for making a pun, but the person who is outstanding and may have some weaknesses to compensate for, that may be more important for a crisis job. The brilliant but uneven person is likely to be not well evaluated if the rating period is shorter. Now, I have in my testimony that the parachute clause might give a little more assurance. I recognize that this is in a sense a contradiction of the idea of rapid eliminations, but I do feel, in deference to the excellence of the Service, that giving a little more security perhaps in parts of that Senior Foreign Service class might encourage the availability of courage.

Finally, I made some suggestions which I do not suggest should be put into law, but some way should be found to bring them in. One suggestion was that one way of cutting the glut is to expand promotion, even double promotions beyond available slots. Now, this would have the difficulty of forcing a number of officers to accept positions below their rank, but at least they would have the satisfaction of recognition for their outstanding service—which presently simply does not exist.

Another suggestion was that the willingness of rating or reviewing officers to be critical in their ratings and reviews would in turn become part of the reviews of their records and a panel would be instructed to take a negative view of those who rate everybody in the 90- or 80-percent class. Finally, the parts of the inspector's report which deal with personnel should be taken more seriously because those are not people who work with the rated officers constantly. Under the present system—and again, this is not part of the law but reality—inspectors' reports are not taken very seriously.

I apologize, Madame Chairman and Mr. Chairman, that I spoke at such great length, but a professor almost automatically speaks 50 minutes. I hope I haven't.

[Mr. Neumann's prepared statement follows:]

PREPARED STATEMENT OF HON. ROBERT G. NEUMANN, SENIOR ASSOCIATE, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, GEORGETOWN UNIVERSITY

My name is Robert Gerhard Neumann. I was a noncareer ambassador of the United States for 10 years (Afghanistan and Morocco, 1966-1976) under one Democratic and two Republican administrations. Before that, I was a professor of political science at the University of California, Los Angeles, for 19 years, during which period I also served as Director of the Institute of International and Foreign Studies at that same institution. I am now associated with the Center for Strategic and International Studies of Georgetown University.

I am honored by the invitation of this combined committee to present my views. I have been informed that you are interested in my general observations on certain aspects of the United States Foreign Service, as well as on the proposed Foreign Service Act of 1979. I shall, therefore, address myself to both categories, but primarily to those items on which I have had an opportunity for personal observation and reflection.

GENERAL

A. Career and noncareer ambassadors

This is a subject on which tempers and editorial opinions flare easily. There are those extreme views which look at "noncareer" or "political" ambassadors as invariably wealthy campaign contributors or close political associates of a particular president, with few qualifications, interested primarily in the comfort and social aspects of ambassadorial life. There is also the other extreme view that—with very few exceptions, only career officers are qualified to serve as

ambassadors. On another extreme lies the opinion that Foreign Service Officers represent some kind of rarefied elite, untouched by the realities of American life, in particular, having never "met a payroll", and therefore people who ought to be viewed with distrust.

As so often in life, truth is not on the side of either extreme. To get at a more balanced appraisal, let me state what an ambassador is and what he or she does. An ambassador is termed "the personal representative of the President", which in most instances, does not exactly mean what it says. What it does mean is this: just as the President performs the entire range of executive functions of the U.S. Government, so does the American ambassador represent and carry out, to the extent applicable, those same executive functions abroad. He or she is the representative of all departments, not the State Department alone, although he normally reports to and through the State Department.

To do his or her work with maximum effectiveness and benefit for the United States, the ambassador must have as good and close a relationship as possible with the heads of state and government of the country to which he is accredited, while at the same time maintaining an independent and detached point of view, remembering at all times that he is the American ambassador to the host country, and not from it. The ambassador must have a keen appraisal and understanding of the culture, history, economy, religion, psychology, etc. of the host country without becoming an apologist for it. It is always helpful, but in many places absolutely essential that he have a command of the local language, although this is more important in one place than in another. But if a choice must be made, having something to say is more important than speaking the language, because if one has nothing to say and yet speaks the language, one is found out more quickly. An ambassador must also have a firm knowledge of the political and economic realities and problems of the United States; he should have the ability of being a good and careful negotiator, although the amount of personal negotiating may differ greatly from post to post; he should be a good manager, able to use effectively the specialized knowledge and experience of his multi-faceted staff. Dealing at the top level of the host government, he must have a good and up-to-date knowledge of the principal problems and projects with which both countries are concerned, without getting lost in details; he should exercise an executive's good judgment as to what he should handle himself and what he should delegate. He must be quick-thinking and quick-acting in crisis situations, with good judgment and without panic. Because the Foreign Service is, on the whole, very disciplined as well as sensitive, it responds very quickly, as I experienced, to evidence of decisive leadership as well as to the absence thereof.

An ambassador should have the personality, ability, and style to foster good cooperation and high morale among the Mission staff and local, as well as third country employees, but he must also be sufficiently toughminded when work performed is not up to acceptable standards. He should be of such a personality as to make him highly acceptable among both the host country and the American community. At the same time, much of an ambassador's work cannot be successfully accomplished without his ability to deal with the multiple and sometimes obscure channels of the Washington bureaucracy. He may be dearly beloved abroad, but if he cannot be effective in Washington he cannot be effective in his post. Above everything else he has to keep constantly in mind that his principal overall function is that of advancing the interests of the United States to the fullest extent possible, without interpreting this narrowly or too selfishly, as such an interpretation would not be in keeping with the values and ideals of our country.

From what has been written above, it can be easily seen that no single career, not even the Foreign Service career, will necessarily and inevitably prepare a man or woman for an ambassadorial or an equivalent assignment. What is needed is a combination of personal qualities, experiences, training, attitudes and personality. Whatever the background, he or she, being human, will fall short in some categories. The career Foreign Service officer who also has the other qualities definitely has an advantage. But even a successful Foreign Service career does not automatically produce good ambassadors.

On the other side of the equation, a non-career appointee with little or no governmental experience is handicapped, and if he also has little knowledge of foreign affairs, he will be seriously, perhaps fatally handicapped. If, however, he or she has all or most of the other qualities, as well as an analytical mind and a considerable ability to learn quickly, much of the handicap can, after a while, be overcome. Some countries actually prefer non-career or political ambassa-

dors—sometimes for the wrong reasons. Others regard the appointment of such a person as denigrating their countries' standing.

To make good selections one has to look at a variety of factors and personality traits. In my experience I have known both career and non-career ambassadors who were abominations. By and large, the worst non-career ambassador is probably somewhat worse—but not by much—than the worst career ambassador. And there are stars in both classes, as well as varying types in between. Hence, the peculiarly American system of political and career ambassadors has virtue, provided that the political group is strictly limited in size and that the appointees of both groups have the required qualifications.

B. The Foreign Service

The professional Foreign Service of the United States is, and must be, an elite corps in the same sense as the Marines are an elite among combat soldiers. But the word "elite" is sometimes misunderstood. The picture, or rather the caricature of the "striped pants" with strange accents from a few Ivy League colleges is totally out of keeping with the reality which I experienced.

In my 10 years as American ambassador, I have gained the deepest respect for the overall talent, ability, devotion, and patriotism of the United States Foreign Service. It compares well with the Foreign Services of every country with which I have had contact. I have never failed for lack of loyal and dedicated support. Of course I had subordinates of varying abilities and some, though happily not many, I had to remove. This is the unpleasant, but inescapable duty of an executive.

Because the responsibility of any but the tiniest diplomatic mission abroad comprises so many functions and relationships, both at home and abroad, it is vital that our missions be staffed by true professionals representing the greatest possible reservoir of personal and institutional knowledge, skill and memory. Career and non-career ambassadors alike, but especially the latter, are fools if they do not carefully consider the advice and warnings of their experienced professional staffs. I dare say that there is not a single ambassador who has not been saved at one time or another from a serious and embarrassing mistake by timely warning or advice. Of course the ambassador, like all top executives, must make the final determination, but at least he should know what problems and pitfalls he is likely to encounter.

To serve the mission well, Foreign Service Officers must be available worldwide, sometimes, alas, regardless of personal preferences, inconveniences, and dangers. For this reason alone, they cannot be under the rules and procedures of the general Civil Service. These dangers and inconveniences are very real. I myself lived under direct and personal assassination threat three times during my tours abroad, and nobody, certainly in Afghanistan, escaped a bout with a disagreeable form of amoebic infection, of which I had six. My younger son still suffers occasionally from its consequences. A casual visitor from home is sometimes dazzled by the servants and the elegant houses of diplomats, as well as the social life of the diplomatic career abroad; the visitor does not see that servants give us as much work as they save, that plumbing and power can be highly individualistic, even picturesque, that the often frantic social life is not just for fun, but for the purpose of receiving and passing information in an informal setting, as well as for the ever-present duty of representing one's country and showing keen interest in even the dullest exhibitions.

Foreign Service officers realize that they may frequently be out-of-pocket, especially in this age of inflation, and that their promotions and financial increments may arrive much more slowly than is the case with some of their classmates who have chosen other careers. They realize also that worldwide assignments may place great strains on family life and ties, as indicated by a distressingly high divorce rate and increasing rate of separations as spouses remain in the U.S. to continue careers while the FSO goes abroad. Most of them are willing to accept this, because they take justified pride in being members of an exceptionally highly-motivated, and highly qualified, as well as interesting life-long career service, whose effective diplomacy is what ultimately stands between peace and war. I can say with the deepest conviction that my 10 years of diplomatic service have given me and my wife greater admiration for my colleagues and deeper relationships than have the preceding 19 years of academic life in a first-rate university.

One of the rewards of a Foreign Service career is an opportunity, even at junior levels, to exercise very considerable degrees of responsibility. This of

course depends on the type of assignment. Not every Foreign Service officer can be quite that fortunate. Usually, such opportunities for an early exercise of responsibility are more readily available at small and middle-sized Missions than at very large ones. Fortunately, most Missions are in the former, rather than the latter category. Moreover, in my view and experience the most useful career officer is one who is specialized, but not over-specialized, because the exclusive specialist almost invariably overrates the importance of his or her particular sector. Hence, while career officers should, preferably, spend a major part of their careers in one or two geographic areas, they should have a few assignments in other regions as well for the sake of balance. Similarly, their service should be well-distributed between home and foreign assignments. An understanding of both the home front and the foreign areas is necessary for maximum effectiveness, especially as there is invariably a certain and frequently constructive tension between the home office and the Mission abroad. The career officer who is abroad all the time or almost so will inevitably lose touch with the realities and the changes of American political, economic and social life. The officer who is always in Washington will be like the Admiral in Gilbert and Sullivan's "H.M.S. Pinafore", "who never went to sea".

THE PROPOSED FOREIGN SERVICE ACT OF 1979

1. General observations

In view of the grave responsibilities resting on the professional Foreign Service, it seems evident that the United States must endeavor to have the best possible such service. Because it is a relatively small corps, and as the FSO component at most Missions is very small, poor quality and poor morale will quickly show up in a lowering of the total Mission performance. As every executive knows, a sound personnel policy requires that those with outstanding ability should be promoted rapidly and those who do not measure up should be dropped. Moreover, more is needed than brilliant ambassadors and ministers. First-rate trade negotiators, economic officers, discerning political analysts, quick-thinking and fast-acting consular officers are equally vital. Good armies must have good generals, but the generals cannot be effective without top notch company commanders and platoon sergeants.

Now I want to address myself to two overriding questions: does the present personnel system of the Foreign Service achieve, within reason, acceptable proximity to this ideal? My regretful answer is—"largely no". The second question is, does the new proposed Foreign Service Act of 1979 have reasonable expectations of remedying the just-mentioned shortcoming? My answer is—"only in part, and that at some risk". Furthermore, some of the problems cannot easily be remedied by legislation or reorganization. They can be remedied by better and more courageous management.

Let me be specific: this committee will undoubtedly have heard testimony to the effect that there is a glut, especially in the upper grades of the Foreign Service, that this has enormously retarded promotions throughout the system. Worse, the way this has worked out is that in view of the very small number of promotion slots available in recent years, promotions have tended to go not to the best and brightest, but rather to those adequate but not always first-rate officers, who, had they not been promoted, would have run out of time in class.

On the other end of the scale, the situation has, if possible, been even worse. The "up-or-out" provision which is not in the 1964 law, but is clearly in its legislative history might come into effect, to reactivate it, but the application of this principle has been enormously complicated by cumbersome and endless grievance procedures and especially the frequent, and in my opinion, excessively permissive decisions of courts.

Nobody would advocate the vesting of arbitrary power in management without adequate safeguards. But the system as it exists today is obviously not working well.

I must also state in all candor that the operation of the in-itself laudable and even necessary affirmative action program (EEO) has materially reduced the number of slots available for promotion, not only at the level of entry of EEO officers, but at subsequent levels as well, though in decreasing measure. A particularly drastic example is the promotion list for February 1978 when only 13 officers were promoted from classes 5 to 4, in contrast to over 30 promoted in 1967. Under such circumstances the loss to the regular FSOs of even a small number of slots has very disagreeable effects.

Furthermore, political appointees have penetrated below the usual levels, some of them even down to classes 5 and 6, thereby further diminishing the number of available slots. This has had serious consequences. The Carter Administration in particular, while appointing fewer political appointees to ambassadorial positions, has brought in a good many more "politicians" into the lower ranks than was the case in previous administrations.

The upshot of this is that we do not in fact have a merit system in the Foreign Service, or only to a very limited degree. An outstanding Class 5 officer who, with the luck of good assignments, would in 1970 have reached Class 3 in a very few years, and would have been considered well on his way to class 1 and top level assignments, could not expect such good fortune in 1979, even though he had exactly the same qualifications and assignments. In fact, the time difference between promotion of the outstanding and of the merely adequate has become nonexistent except in a handful of instances, where the luck of assignment and the accident of events have given an opportunity for spectacular and highly visible deeds. No wonder the best officers in the Service frequently feel demoralized and that they are sorely tempted by far more highly paid offers from business, from Capitol Hill, or other careers.

Moreover, middle grade and even junior officers who, because of their ability, occupy positions of considerable authority and sensitivity, are frequently, as I have often observed, handicapped by having to deal with foreign officials or military personnel far superior in grade and rank as compared to our people. This disparity does not remain hidden to their foreign counterparts who must wonder whether something is perhaps wrong with their American opposite number, or whether the fact that they have to deal with lower-ranking American personnel does not belittle their own status and dignity or that of their country.

I have no hesitation in stating that the present system is badly in need of improvement. But when I face the question, whether the newly proposed act is likely to achieve this, I am, frankly, assailed by doubt. There are several reasons for this:

The first is that much of the problem does not lie in the legislation but in the management and the operation of the system, and that many, if not all of the evils, could have been remedied under existing legislation. The glut, especially in the upper ranges, did not occur overnight: it was clearly foreseeable, evident for a long time. A more rigorous thinning out, not just on the top levels, but throughout the system, could have been accomplished by a greater supply of courage. What this would have meant was the responsible officers throughout the system would have had the guts to look colleagues and co-workers in the eye and tell them frankly when their performance quality under review indicated that they were unlikely to rise above certain levels, or even that they would have been well-advised to seek a different career. This situation has worsened because the Freedom of Information system has compelled rating officers to show their findings to the rated personnel. Of course, it is also true that the previous system of secret rating lent itself to abuse. I should add that these shortcomings do not only affect the Foreign Service system but the military and certainly the Civil Service system as well. Moreover, it is an international and not just an American phenomenon. It is perhaps a demonstration of human nature at its most appalling and least effective.

Another aspect of this lack of courage is the all-pervasive rating inflation. Few rating officers have the courage to tell their subordinates frankly where and when they have weaknesses. It is understandable; they are dealing with people, especially in the small missions abroad, with whom they work and mix socially every day. How much easier it is to give only a good rating and thus "avoid trouble". To be sure, they are perhaps a few more superlatives left to confer upon the truly outstanding. But the margin of differentiation becomes so small that it may not be easily visible to promotion personnel. If on the other hand, as I have seen on a few occasions, a conscientious rating officer does muster the courage to render an objective, hence not uncritical evaluation, he will inevitably inflict such a destructive and possibly fatal damage upon the rated officer's career, as to be far out of proportion to the result intended. This is of course because in the ocean of inflated evaluations the few honest ones stand out like acts of eternal damnation. A few courageous rating officers cannot change the system without doing incalculable harm. Only if a very large number of rating officers were to change their attitudes and take courage into their hands would there be a change.

This is even more the case when officers do not perform satisfactorily at a time when their age and years of service have not yet given them the right to an annuity. The temptation to take the easy way and not deprive a substandard, but decent and honorable officer of his livelihood, becomes overwhelming and he is likely to be allowed to coast along. This is humanly admirable, but destructive to the system. I have encountered a number of grade 3 officers whose performance was only mediocre and who should have been weeded out long ago, but neither had they deteriorated suddenly so as to justify expulsion at that late time. In this respect, the new proposed legislation offers distinct advantages provided the threshold requirements at (present) class 3 are vigorously enforced.

2. *Specific observations*

Is the proposed Foreign Service Act of 1979 capable of or likely to provide remedies? To the extent that the present situation is the result of human failings and gutlessness, the answer probably has to be no, because the same type of human beings will operate the new system. It is however, understandable that managers of personnel systems, any personnel systems, prefer laws and regulations which make it possible for them to do the unpleasant in an anonymous, impersonal fashion. If all, or most men and women were good, just, and courageous, few laws and regulations would be needed, but in the real world, this cannot be reasonably expected in any service or in any country. Therefore, one has to look at improvements of the system and its regulation so that the inadequate and mediocre can still manage (barely).

Does the new legislation then, hold out the promise of substantial improvement of the present inequities? "To some extent, yes". But only to some extent and that at some cost. Moreover, there are other remedies available, or a least worthy of serious consideration, which are not in the present proposal. Reforms proposed for the present grades 3 to 1—in particular, i.e. the creation of the proposed Senior Foreign Service, will give management an opportunity for accelerating attrition in the upper ranks. I am, however, concerned over three possible shortcomings:

(1) While the attrition is in part performed by the operations of panels, whose work in the past has been about as good as anything that could reasonably be expected, it seems likely that a larger part of the attrition will be accomplished by management's unilateral right of quotas for each class and changing them at will. This, being impersonal and not, or certainly not ostensibly directed against specific persons, could be arbitrary and open to abuse, unless subject to negotiations or independent review. One must overlook the fact that the total number of officers under consideration for these three classes is not large; therefore, even relatively small decreases in quotas can have drastic consequences and, in effect, clean out the ranks. If not carefully supervised and subjected to reasonable review and negotiations, it could turn into an opportunity for unfairness and an opening wedge for politicization. I do not say that this is likely to happen, and I am confident that this was not the intention of the present management and administration which has proposed this legislation. But in the real world, situations win out over intentions and the new legislation is likely to be with us for a long time, as evidenced by the longevity of the 1946 act.

(2) From sessions with many officers in the system and in management, I have concluded that the maximum time-in-class spans envisaged for each of the Senior Foreign Service steps are likely to be fairly short in order to achieve the desired attrition effect rapidly. I understand that 2-5 year and 1-3 year periods are currently contemplated. In my view this represents a double danger: (a) It is humanly impossible for all assignments to give Foreign Service officers equal opportunities to show their capabilities. An element of luck cannot be totally eliminated. If the rating period falls entirely or primarily into such an undesirable assignment the officer concerned will simply be out of luck. (b) More important for the good of the Service is the problem of conformity. The best and most capable officers are not always the easiest to work with. Busy and harried superiors may become quickly irritated with subordinates who bring bad news or warn too often. The fine line between reasonable criticism and carping is not always easily drawn. It may depend more on the irritation level of the superior than on objective conditions.

What will be the effect of this situation on the officer who has a relatively short timespan in which to succeed? The Foreign Service has its quota of heroes,

but this is a quality which cannot be expected of every man and woman, especially when heavy family responsibilities, peer pressure, and all the other factors of a competitive society exist. Very likely, the effect on many such officers will be that of "playing it safe" to mute their criticism, to "go along", to remain silent when perhaps they should have warned once more.

Therefore, I feel it to be my duty to warn against short timespans and against removing them from the necessity of broad consultations and negotiations. The better labor-management relations and the reinstatement of the Board of Foreign Service are steps in the right direction but without mandated consultation they do not go far enough because experience teaches that the Foreign Service management has merely consulted willingly unless circumstances compelled it to do so.

Furthermore, the most outstanding officer is not always the most well-rounded. People with great gifts sometimes have some weaknesses. Especially when the evaluation period is short, such officers may fall by the wayside to the great loss of the Service. All systems are somehow slanted towards the well-rounded and against the outstanding but uneven. But in times of peril the well-rounded often become pointless. In sum, with short evaluation periods and the just mentioned pull towards conformity, the risk of the proposed system may well be too great without a "parachute clause" which would give the individuals concerned a sufficient measure of security to do the unorthodox and the courageous.

Human frailty as well as political temptations being what they are, I hope the committees will consider writing some of this into the law. I do not feel the need nor the competence to propose a specific language. It is not my intention to over-dramatize the possibility of abuse. One hundred percent guarantees are neither available nor desirable in life. I would give the present administration and management full credit for sincere intentions towards fairness and absence of evil intentions. But some future administration could be excessively political and, without adequate safeguards, would be capable of rapidly "cleaning out the ranks". While that might not in itself give immediate license for politicization, the signals would be read very clearly. Politicization need not always occur by bringing in outsiders. Certainly the experience of the Kissinger Administration provided drastic evidence how top level officers who were critical of policy did not fare well. Other administrations might be on a "youth kick" or harbor other fixed ideas. The possibility of abuse is there.

3. Additional recommendations

I would like to conclude my testimony by suggesting consideration for certain measures which would, in my opinion, have very beneficial effects and which are not included in the present or past legislation or management practices:

(1) Expanding promotions including double promotion for the exceptionally capable regardless of or at any rate well beyond available positions in the grades indicated. This would enormously bolster morale and give recognition and reward to outstanding, usually younger officers who are now held back by the paucity of positions. This would of course have some undesirable results in forcing officers to accept assignments below their grades. I believe, however, that a policy of expanding promotion slots to the level of past years would mitigate the hardships of the present system, until the glut has disappeared, provided the promotions were "permanent", i.e. that a newly or more rapidly promoted or double-promoted officer would not later on have to "pay back" by being unduly held up elsewhere in his career.

(2) Fostering a major drive towards enforcing the "up or out" policy, not just in the senior grades but throughout the system. This will inflict personal hardships. The best we can hope is to strike a balance; my emphasis is primarily towards a better and more effective Foreign Service.

To bring about more truthful and more realistic evaluations two measures would seem helpful: (a) The willingness or unwillingness of the rating or reviewing officer to decrease the present evaluation inflation could be made part of the criteria on which those same rating and review officers would in turn be reviewed and rated both by superiors and promotion panels; and (b) more attention should be paid to the personnel evaluations contained in Inspector's reports. Foreign Service Inspectors both at home and abroad have two advantages: they are not the superiors and colleagues of the rated persons and they gain personal contact with the rated officer, which is not possible for the promotion panels dealing with a world-wide system. If the Inspectors' evaluations were taken more seriously by the promotion panels than is the case now, the evident discrepancies between the impressions of the Inspectors and of the rating and reviewing officer would be noted and questioned.

I would also like to draw the attention of this committee and of the Foreign Service management to an experiment undertaken by the U.S. Air Force in 1974. In order to counter inflated ratings, the panels were instructed to apply the following restrictions to the rating of all Lieutenant Colonels: 22 percent to the top category, 28 percent to the second, the rest to be divided among categories 3, 4, 5 etc.

This created great unhappiness because it meant that 50 percent could not hope for promotion. Perhaps the figures were too harsh and the system was discarded. But it is significant that as soon as that happened, ratings jumped to the previous 98 percent excellent level.

(3) Finally, attempts should be made to honor, recognize, and perhaps grant monetary reward to those officers who perform very well on certain levels but do not have the capabilities of becoming chiefs of mission. The Foreign Service needs good economic officers who may not be so outstanding at political analysis, it needs to foster managerial talent of which it is, in my experience, in short supply, it needs to encourage good economic and commercial officers, etc.

Beyond all that, a massive educational and psychological effort should be made over time, and not just once, to impress on Foreign Service officers, especially on new officers, that they should not measure their achievements solely by attainment of ambassadorial rank. In this respect the military services have perhaps succeeded somewhat better in making a larger proportion of officers accept the fact that only a few can become general officers to attain a flag rank, and that being colonels is also most honorable. Perhaps some way can be found to make the ambassadorial position a little less awesome, to induce and infuse a more collegial atmosphere. I will not deny that I fully enjoyed ambassadorial power and perks and anyone who claims that he does not is probably a liar. I am not so much thinking of the physical, statutory, or regulatory privileges and powers as I am of better human relations at home and abroad. In that respect, ambassadorial magnificence seems sometimes like the last vestiges of feudalism.

The present moment is a low point in the morale and the cohesion of the Foreign Service. Reform is urgently required. The proposed new law is in many respects a step in the right direction, although I have earlier voiced certain reservations which I hope will be taken into account. However, the main causes of the problem are not caused by the old legislation and may not all be remedied by the new law. Better and more courageous management is required, not only by the formal part of management but also by all officers throughout the system who have authority over others.

Mrs. SCHROEDER. No; we thank you very much for being here this morning. I must say, though, as I listened to you, I am rather perplexed as to what kind of a solution you foresee. You talk about giving managers more flexibility, but in so doing, don't you run the risk of internally politicizing the organization much more? How can you begin to guarantee that all managers are going to be efficient, objective? Where is that great objective criterion in the sky? Is it people who are not so well rounded but may be much more specialists? How do you get that proper mix, and how do you develop a system where you can be assured that you are going to have the type of Foreign Service that I think we would all like to have if we could just find an objective criterion that would not be abused in so doing?

Mr. NEUMANN. Madame Chairman, the question is very pertinent. I do not think the total truth is available. Only God has the perfect truth and we have relative aspects thereof. As to performance reports, which are really the gut of the system, I made a suggestion of how an office can be forced to be more critical by knowing that he or she will be rated and rated perhaps poorly on some points if year after year reports come out that say that everybody is just splendid.

Mrs. SCHROEDER. So you would say that you recommend not necessarily a quota system, but there would almost be a certain number that would not get through the gate, or you would become suspicious of the person writing the performance report.

Mr. NEUMANN. That is correct. That is the same as when in one of your very large classes in the university, you have 80 percent A's. That is unlikely to be accurate. That happens now.

I mentioned the attempt by the Air Force to say that only half of those rated can be in the upper percentage. It broke down because too many people were deprived of the possibility of advancing. That is why I hesitate directly to suggest that you set quotas, but the fact is, there has to be some method of gradation because there are some who are not as good as others. Yet this can be reflected in the performance report.

One other thing is, the State Department Foreign Service form is excellent. In fact, it is too good. There are so many categories in which one has to respond that the narrative section becomes less important. This is a subject you can argue up and down Capitol Hill and beyond, but it is in the narrative that the distinction can be made. Then, of course, once the distinctions are made, the panel has an opportunity to judge. I think one comes closer to a good judgment with a narrative than with a range that may lie between 98 and 100.

Mrs. SCHROEDER. Well, let's go to your experience. When you were an ambassador, did you write any negative evaluations?

Mr. NEUMANN. I wrote some.

Mrs. SCHROEDER. Were people ever selected out?

Mr. NEUMANN. I did find that certain people did not come up to par and they did eventually leave the Service. There were not many. This was not done through evaluation. The ambassador evaluates—that is, rates, in contrast to reviewing other people's rating—only very few people, mainly his deputy and the heads of the agencies. Then he reviews a number of other people. Well, my deputy was selected by me, and he was not selected for his blue eyes. So, I found my evaluated people very good.

I know of one of my deputies who had an attack of courage and rated somebody not altogether negative, but brought out his negative qualities, and there was hell to pay for that, because in effect he stood out and condemned the man, and the man was notified. Again, there is no way of doing this unless it is done very broadly. This is why I am concerned.

Mrs. SCHROEDER. If it is done very broadly, then don't we compound the problem of getting well-rounded people?

Mr. NEUMANN. Not if you have reviews by the officer, reviews by the next officer, by his superior, then by the panels, by the inspector's report, and if you also have, of course, a Secretary of State who is interested in the Foreign Service and in the personnel, and who lets it be known that he wants people to be evaluated with these criteria in mind.

Then, as I said, in this relatively small and responsive Service, you will get results. There will be some hardships, yes, we cannot avoid those.

Mrs. SCHROEDER. I guess I understand that, and I think I see what you are saying, but you also needed a Foreign Service that works well together. There must be some cooperation, and if you are forcing them all to be that competitive, when you put any kind of ratio on it, you get into the problem that we have in the military, where everybody is out trying to make the other guy look bad because of the internal politics of the situation.

Then there is another question when you analogize it to the military, and that is, how much of it is the State Department's fault for not taking the people and assigning them to tasks that they are most uniquely qualified to do. You take an engineer and have him peel potatoes. The extremes we know in the military very well. The question is, doesn't that happen a lot in the State Department, too, because of its rotation system? You misuse a lot of your talent, so it is not just all the rating system?

Mr. NEUMANN. Madame Chairman, these are big questions. As to becoming overcompetitive, I don't want to say whether this is or is not true in the military. I am not a military man, except for war-time service. But I do not believe this is a very serious danger in the Foreign Service. I think that, first of all, missions, speaking of the foreign operation with which I am better acquainted, missions are small. People serving there live in glass houses. If one looks bad, everybody looks bad.

I am sure that many Foreign Service officers have been tempted not to tell something to a political ambassador and to let him fall on his face, but they do not do that because it is a damage to their country.

I must say that the degree of patriotism and dedication is very, very high. I do not think overcompetition is a serious problem. If I were to achieve a mission again, and I got notice that somebody had deliberately refrained from warning somebody who then performed badly, I think that person would not have a brilliant future ahead of him. I do not think overcompetition is a very real danger.

Your second question, would you repeat it, please?

Mrs. SCHROEDER. Well, my question is, are we utilizing our manpower properly? Are we utilizing the talent base? Do we have a talent base assessment, and are we assigning them properly?

Mr. NEUMANN. No, certainly often we are not. I do not know that there is an ideal assignment process, and of course some dull jobs also have to be done. But, no job is really dull unless it is filled by a dull person. I prefer the time when assignments were controlled by the bureaus rather than by the central system, because the bureaus knew the posts and they knew the people. Of course, there was favoritism, because people wanted to hold onto the good ones.

I do believe that officers should not serve all of their Foreign Service life in one geographic area. It is good for them to understand that there is a world outside Europe or the Middle East or Latin America. It broadens them. It makes their minds more flexible. But looking at it from the field where I was, of course, quite frankly, fighting like hell to get the best possible officers, and the hell with the others, I found the bureau control system more flexible than the central system.

Mrs. SCHROEDER. Thank you very much.
Congressman Fascell.

Mr. FASCELL. Ambassador, what is your opinion of the present state of morale in the Foreign Service?

Mr. NEUMANN. I think it is about as low as I have known it, and I have known it low most of the time. [General laughter.]

There are many reasons, but one of them is, of course, the promotion system. I must say that Foreign Service officers do appreciate the opportunity to have important and exciting assignments, even when

they are not promoted, and of course that is very often the case right now.

I do not want to go into things that might be interpreted as political. They are not intended so. Let us say that some administrations are better than others, and some do not exist when it comes to administration. There are some funny things happening in the making of policy which appall Foreign Service officers. You find that to some extent in all administrations, but some, as I said, are worse than others.

I think that would be about as much—

Mr. FASCELL. Mr. Ambassador, starting with the assumption that legislation is not the panacea for all ills, you do agree, however, that certain legislative reform is essential, and that this bill that is before us is a step in that direction?

Mr. NEUMANN. Yes, sir.

Mr. FASCELL. Coupled with all the other things, such as the required management of the entire program?

Mr. NEUMANN. I support that.

Mr. FASCELL. What do you think of the possibility of institutionalizing evaluations in a complementary sense—that is with an “e”—to the present system of positive evaluation, so as to spread the base of negative evaluation by institutionalizing negative evaluation? It is entirely possible, for example, that you could have a totally positive, superior rating for an individual on the positive side, and the same officer, given the opportunity by meeting specific negative reporting requirements, would be able to spell out those negative things, since everybody else would have to do the same thing.

Mr. NEUMANN. Mr. Chairman, there is such a requirement in the present forms.

Mr. FASCELL. But that is narrative.

Mr. NEUMANN. No, it is in the form that he has to say which are—

Mr. FASCELL. I understand, but isn't that a selection process of pick 1 out of 5 or rate from 1 to 10 in a scale of judgment factors that are laid out in the evaluation form itself?

In other words, if your choice is poor, medium, and good, or whatever the ratings are on a scale of zero to 10 or zero to 5, it is going to be very difficult for that one person just checking off in that fashion, you see.

Mr. NEUMANN. Well, sir, in the present forms, or at least those that I am familiar with, there was a question something like, “which are the disadvantages or shortcomings of the officer,” and you have to respond to that. But if you ask me in effect is this working as desired, the answer has to be “no.”

Therefore, I recommended a way in which the rating officer is forced to consider not just the brilliant qualities but also the other ones. I would personally prefer this in regulations and perhaps in the legislative history of this bill rather than in the text.

Mr. FASCELL. Oh, yes, I wasn't thinking of legislation.

Mr. NEUMANN. Because we are talking about an experiment.

Mr. FASCELL. I am not talking about the text of the legislation either at this point. That will be far beyond what I would like to see in legislation. The legislation is to lay down the broad, basic concepts and criteria. The rest of it is up to common sense in management, but I was not thinking about that. I was thinking about a review of

reforms in the program so that you would institutionalize in a non-narrative sense negative qualities in the same sense now that you rate judgment, initiative, leadership on a scale from zero to 5 or zero to 10, to force a rating on those negative qualities.

That is what I have in mind. Not being a personnel expert, I wouldn't have any idea how you do that, but I think there might be a way to do it.

Mr. NEUMANN. I would agree with the desirability of this, Mr. Chairman. My preference would still be to put it to the officers—

Mr. FASCELL. In other words, run it through the system.

Mr. NEUMANN. Run it through the system, but then have the review panels of the Foreign Service go over the book and say, here is somebody who has had nobody but geniuses in his commission. Let's look into this.

Mr. FASCELL. Given the limited number of geniuses, I think it might be a good criterion. What do you think about the current system?

Mr. NEUMANN. I do not think it is working very well. I am opposed to it. I think it had a good purpose to elevate, for instance, economic officers. One of the weaknesses of the Foreign Service is thinking that political officers form a special elite. I know there are hundreds of regulations that say differently, but it ain't so.

The economic and commercial officer is not as honored in the system as the political officer. Then there is the very difficult question of the consular cone. It is mostly juniors who are assigned to consulate duties. That is a good thing in many respects, because it is a tough but very good experience. One is dealing with the dregs of humanity who have gone into prisons and hospitals and I would hate to see an officer in the upper ranks who has not had that experience, because an ambassador certainly would at one time or another have some horror happening where he has to step in and has to understand what the position of the consular office is.

At the same time, consular work as such really does not go into higher ranking jobs. To keep a person in that kind of activity is to say that this person really is not fit for other duties.

Mr. FASCELL. With or without the current system, don't you have an internal dynamics problem that legislation cannot address directly, which means that as long as you do not have mobility in a small service, and somebody has got to do the nitty gritty work, that person may be stuck in a dull job for years?

Mr. NEUMANN. That is true, sir. You have had assignment to these jobs before you have had a system. What we need is a personnel system as well as counselors to the individuals, classes of officers who seek a change in assignment if the man is not frozen into a consular assignment for 15 years.

Mr. FASCELL. So that is an internal management problem.

Mr. NEUMANN. That is an internal management problem.

Mr. FASCELL. Doesn't that also then get back to one of your ideas about short-term time in grade? If because of the lack of mobility a person is frozen not in job but in time, how does that solve anything?

Mr. NEUMANN. In my experience, which evidently is limited although it is fairly long, this does not happen too often. The persons are in effect competing for assignments. The rules may not say so, but they have friends who walk the corridors. They figure out where

there are openings. The positions in which outstanding qualities cannot be shown are not that many. The consular officer can show outstanding qualifications, and I have had some, fortunately, who were just absolutely wonderful and who are now higher up in a career. They showed those qualities already there.

You may be a class 6 or 7 officer or even 8, because there is no class 9, but when somebody walks in from the street with a gun on you or a defector, or when you have something involving a citizen in a very tricky kind of situation, a decision has to be made right then and there, and it had better be right.

Mr. FASCELL. With the personnel system of any given agency as an inverted cone, and a given rate of flow from the top due to separation, and a given rate of flow coming in at the bottom, and no change in numbers because of OMB requirements or OPM requirements or the Congress or whatever it is, the only opportunity available for mobility is to move people inside the system. Now, whether that gives you upward mobility or not is something else again, because the rate of time and grade is dictated, if you are going to keep people from moving out at the top.

Mr. NEUMANN. You have the 60-year out. You have the necessary narrowing from the fact that there are only so many Presidential appointments available, so you have the weeding out. All that I think is essential to merit the assignments of people, whether you have a cone system or not, is to give people a chance not only to show what they can do, but also to learn. The Foreign Service, like many other things, is a constant learning experience, and some people look at the ability to learn and turn it away, and some are eager to jump to it. That is where the difference comes to.

I think the system is manageable.

Mr. FASCELL. Thank you.

Mrs. SCHROEDER. Congressman Derwinski.

Mr. DERWINSKI. Mr. Ambassador, I would like to get your specific recommendations, and then tie them back through your general commentary. There are a couple of points you made which I think are very practical. If I could have you look at page 12 of your testimony, the second paragraph, where you speak of middle grade and junior officers who have assignments in which they must deal with foreign officials who outrank them in grade. What you are really saying is, where there is a certain amount of protocol, a standoffish attitude of a person with a superior title, and their reluctance to deal with someone of a lesser title, that ties into your other recommendation that we accelerate promotion by title.

Now, would you tie these two points together? You didn't in your statement, but it seems to me that that would be your solution; wouldn't it? To give people title increases rather than pay increases along the way. Just to have these more impressive titles, they are able to deal more effectively with equivalent foreign officials.

Mr. NEUMANN. First of all, on dealing with foreign officials, you are speaking, for instance, about my experience in the Middle East and South Asia. Those are in young countries where officials are young in years, but often of very high ranks. This lies in the nature of the birth rate and the education and so forth. There also are civilizations

which are highly rank-conscious, and there is a certain difficulty in relating an officer with very junior rank to one with a very high one.

After a while, he overcomes it if he is outstanding, because the qualities win out over rank, but not in the beginning, and he may not have another chance.

Secondly, there is a certain amount of entertaining involved, and the entertainment allowance is never sufficient in any rank. Especially junior officers or middle-grade officers frequently have to dip into or usually have to dip into their pockets. Certainly I did as ambassador and I did not entertain lavishly, and I have a wife who is a good manager.

But I was speaking not just of rank in the embassy, which would be first, second, or third secretary or consul, and so forth, because that corresponds to other criteria, but I was speaking of grades and class, because believe me, the foreign officials know thoroughly what class one belongs to, just as we know where they stand in their pecking order.

My remark was for promotions in the Foreign Service, and not to titles. That is a separate question. The titles in missions, Mr. Derwinski, are sort of an old-fashioned one. You have an ambassador or Minister and the first or second or third secretary from the days in the 18th century, where that was all that you had. Many of these titles are figurative, and have no practical significance.

Mr. DERWINSKI. Just as an aside, I share your concern that we have been rather miserly with the representation allowance of our personnel abroad.

Mr. NEUMANN. Did I say that?

Mr. DERWINSKI. Well, you talked about having to dip into your own pocket, and I personally feel that we should be much more liberal in that regard, but that has nothing to do, of course, with this legislation.

What about the point you discussed, and here I am referring specifically to page 19 of your testimony, in the first paragraph, where you specifically mentioned the Kissinger administration and, the unacceptability for the Secretary of having top-level officials associated with him who might be critical of any of his policies.

I understand he is known as a man of substantial ego, but you did imply that certain appointments of younger officers in this administration would produce a different effect because of the age difference. They do not seek the counsel of subordinates who are much older than they are.

Mr. NEUMANN. I said two different things. One is, Secretary Kissinger had outstanding qualities, but he did not suffer from a lack of confidence that he was right.

Mr. DERWINSKI. You are being the typical professor. [General laughter.]

Mr. NEUMANN. I will let that pass. [General laughter.]

There were many interesting situations in which people who did not share his views found themselves disadvantaged. This is perhaps another subject, but there is something bigger in not only the Foreign Services but in any system. Policymakers can argue only so long and eventually have to decide. Sometimes there is great pressure as if there were the unwritten footnote, take all the time you want, say 3 minutes.

In such a situation of pressure, the critic is not welcome. The dividing line between constructive criticism and obstructing is a very fine one.

I think Foreign Service officers by and large know that dividing line, but some are more sensitive than others. There is, therefore, the danger, and I know cases of that, where an officer was doing his duty and yet was disadvantaged. I will give one example, but I won't name names. I think that will keep me out of court.

In Pakistan—I am speaking now of a country in which I was not Ambassador, but next door—there was always tension before the war of 1971 between the Embassy in Islamabad and the Consulate General in Dacca, which was then called East Pakistan, and is now Bangladesh. When the rebellion which led to war started, the Consul General in Dacca reported accurately that atrocities were committed. This was not welcome in our Embassy. That man's career did not profit from that. He spoke up. He warned. He was right, and sometimes in every service, military or what have you, it is dangerous to be right. Even in married life, this can happen. [General laughter.]

Mr. DERWINSKI. How well I know. [General laughter.]

I was interested in your testimony. I gather you have gone far beyond the bill which you dealt with overall what you say is a needed but perhaps just partial reform. Would that sum up your viewpoint?

Mr. NEUMANN. You read me exactly right.

Mr. DERWINSKI. Thank you.

Mrs. SCHROEDER. Congressman Buchanan.

Mr. BUCHANAN. Nothing.

Mrs. SCHROEDER. Congressman Leach.

Mr. LEACH. Thank you, Madame Chairwoman.

Mr. Ambassador, I would just like to compliment you on what I think is an extraordinarily thoughtful analysis, particularly of the very personal aspects of the Foreign Service system, and I couldn't agree more wholeheartedly with the observations about the cone system. I think cones are for Good Humor men and not for the Secretary of State.

I would like to follow up on one comment that you made in response to another question, and ask if you could elaborate on it as applied to the morale problem in the Foreign Service.

As you know, this administration has made some controversial foreign policy decisions, but putting aside the substance of the decisions, you implied that there are some institutional aspects of decisionmaking that are troublesome to you. Could you comment on those institutional aspects that bear on morale?

Mr. NEUMANN. Yes. There is always a built-in tension between the State Department and the White House. This is probably inevitable, and has gotten worse in recent decades, because of the change of the political system. The elected President, whoever he is and whatever party, comes into office surrounded by a group of young and eager aides, campaign aides who now believe that the world will change because they are there. They have a mandate. They were elected, and this is, after all, pretty powerful.

The State Department—not just the State Department, but the Defense Foreign Minister and the British or the Russian—it is amazing how much we are alike there. It is a very depressing idea. They all believe that foreign policy has to rest on continuity and predictability, and not on violent gyrations.

There is between the State Department and the White House a built-in conflict which is, I find, constructive. It is kind of a rage which teaches, because there is on the part of not only the Foreign Service but any foreign service always an excessive belief that one should do things the way they have always been done. One should not worsen relations with other countries, even when you ought to worsen them.

On the other hand, there is a political impulse toward rapid and sometimes dramatic changes. The two impulses have to rub against each other. Sometimes the Foreign Service feels cut out of the decision. This has been true under several administrations. The professional Foreign Service thinks the White House is somewhat unprofessional, and vice versa.

Mr. LEACH. In your testimony, you discussed the serious threat of politicization of the Foreign Service. For example, you said the 5 and 6 levels have had an increased number of political appointments during this administration. Do you consider that to be a serious problem, and how extensive is it?

Mr. NEUMANN. It is extensive and it is serious. It is not necessarily precedent-setting, because such appointments are Presidential decisions. I hope that future administrations, whether it is Mr. Carter or somebody else, will reconsider this. In terms of an already existing glut, it means another cutting in on the few promotable positions which are available. The glut did not happen overnight. It took us a long time to recognize it.

Mr. LEACH. One of the most thoughtful observations you made, I thought, related to the principle of double promotions. In fact, last year, in the Civil Service reform bill, I submitted an amendment which was accepted on double promotions in the Civil Service, but which got lost in the House-Senate conference.

I think that is a very, very positive suggestion. Frankly, I would hope we could incorporate that type of wording within this particular bill. It strikes me as one of the most worthwhile ways of recognizing the very best in the career service.

Mr. NEUMANN. Thank you, Mr. Leach. I would like to add that I have received in recent years, in this year let us say, inquiries from young foreign services officers in the middle grades about advice of possibly seeking other careers because of that very thing. Those are all people who I hope would not be lost to the Foreign Service.

Mr. LEACH. Let me just ask to go a little bit further. One of the problems is the demography in the Foreign Service. You have a glut of people at the top agewise. Clearly the administration has recommended to us, and you have indicated that you are in sympathy with, the prospect of mandatory retirement based on age. Are there institutional ways that can get at the very same thing in a nonpersonal way? We stress nonpersonal because you emphasized it so often occurs that it is very difficult for bosses to tell subordinates they are through.

In abstract, it is easy to say that mandatory retirement in the Foreign Service should be handled by good management, but it is often difficult to have confidence in that approach. For example, could one enforce earlier retirements without setting a mandatory retirement age by abbreviating time in class and then making extensions allow-

able only up to a given percentage? Would that type of approach get at the same end, or would you think that would have inherent practical problems?

Mr. NEUMANN. Of course, in the upper ratings, the suggested system of the Senior Foreign Service has that effect by the setting of quotas. I have addressed myself to that. In the junior and middle rate, I think the time in grade could in some instances be shortened. I am not too certain about that. What is done in some industries and some universities is that some organized assistance is given to people who may be quite adequate but not quite good enough, assistance to find other careers for them so that the human problem is answered. Perhaps this could be done here. But if you want an excellent service, some people will not make it. There is no way out. We were created equal by opportunity, but not by capability.

Mr. LEACH. Thank you. I agree with that observation. I might only say that your presence before us certainly vindicates the price of having some noncareer ambassadors. We are honored you took the time to testify.

Mrs. SCHROEDER. Thank you.
Congressman Buchanan.

Mr. BUCHANAN. Thank you, Madam Chairwoman.

I want to thank you for your testimony. I have read all of it, but I apologize for being out of the room for some of it.

Let me ask you, you suggest that there should be a parachute clause. Would not this increase the problem of the glut in the upper ranks of the Foreign Service?

Mr. NEUMANN. Yes, Mr. Buchanan, and I have admitted that I am guilty of contradiction in the dilemma. If one were sure of perfect evaluations, I would drop the parachute clause, but because of the danger that some people who are good may nevertheless fall by the wayside, especially when the quotas are small, I wanted to raise that point.

I am not making it as a strong point, and I am frankly divided within myself. Fortunately, it is you who will decide and not I. Your point is well taken. This is also in the view of management. I am a little bit torn here.

Mr. BUCHANAN. Thank you.

I appreciate very much your testimony. You make a point that we have had a good many amendments offered around here to require the language capability of various persons, and I was particularly taken with your point that while it was important if you have something to say, if you don't have anything to say, that it would be apparent more quickly if you spoke the language. I must say I found some merit in that remark.

Mr. NEUMANN. If I may extend it a little bit, I would like to say that I speak personally three languages completely fluently, two others fairly well, and two others badly, not counting Latin and Greek, so I am attuned toward language capabilities, but it varies greatly. Now, in a French-speaking area it is simply senseless to appoint somebody who does not speak French, because the French are arrogant about their language. But you are just not there when it comes to a difficult language like Arabic and Persian, which I know somewhat. There, to

require knowledge of the language is asking an awful lot. The SSI of course, in Arabic is 20 or 22 months.

Now, fortunately, there are many posts where Arabic is required, but when it comes to Persian, that is spoken in only two countries, Iran and Afghanistan. That is quite a disincentive. In some countries, for instance, in Saudi Arabia, some of the top structure of the country is not quite comfortable in English. Many people are. Also, there are countries where a King or a President feels that he ought not to speak in a foreign language even if he understands it quite well. There you are heavily handicapped if you do not speak the language. If you work through an interpreter, then you work through somebody who, if he is not from your own staff, you never know how he interprets, and I have seen some very spectacular examples of misinterpretation, some of them intentional.

In one country, which I will not mention, not one to which I was assigned, the chief interpreter has a power position which is quite unparalleled and which has in effect put a barrier between the Ambassador and the people with whom he has to deal.

Mr. BUCHANAN. Well, somebody who speaks only Southern Baptist needs an interpreter. I certainly appreciate what you are saying.

[General laughter.]

Mr. NEUMANN. That is a very important language.

Mr. BUCHANAN. That is the language of our President.

[General laughter.]

Mrs. SCHROEDER. Thank you very much.

Congressman Harris.

Mr. HARRIS. Thank you, Madame Chairman.

I appreciate your testimony and the insights you have given us. I have one, perhaps two questions. I see some problems discussed in the Foreign Service. They seem to be analogous to some of the problems we have in our military. As far as the concept of up or out, how does that relate to your testimony? Do you think up or out type of policy is beneficial to the Foreign Service?

Mr. NEUMANN. Yes, sir, I do. You cannot have excellence unless there is an up or out policy. There is no excellence if you are kept in the same class for a long time. In the military service, of course, you have the additional necessity that you cannot have an army in which people are beyond the age in which they can physically perform. The mental performance is not always related to age. But I see no other way. In other words, yes.

Mr. HARRIS. I have always wondered. I recently have had the experience of discussing problems with the military over the weekend. I often wondered, though, if there isn't a type of person who is an excellent captain that we really sort of destroy by promoting to major. Why shouldn't there be those who can have a career as a captain without being promoted to major?

Mr. NEUMANN. The point is well taken, Mr. Harris, but first of all, in the combat services, you wouldn't want a 50-year-old captain commanding an infantry company.

Mr. HARRIS. Excuse me for speaking that way, but why do we insist on application of the "Peter Principle" with regard to the Foreign Service? Do we continue to promote someone until he has reached his level of incompetence?

Mr. NEUMANN. I have found this is frequently true, although nothing that anybody says will always be true with human beings. If you keep a person in grade for a very, very long time, he is likely to get more frigid, dissatisfied with life, and less useful.

Mr. FASCELL. How long have you been in public office, Mr. Neumann?

Mr. NEUMANN. Not long enough. I declare myself incompetent on that. [General laughter.]

I think there are sufficient regulations which allow flexibility for the one unusual person, and of course we got to the question of specialists who have an unusual and very valuable specialty which is not promotable by its nature, but the Foreign Service does not have too many of those, and there are other ways of making them available.

Mr. HARRIS. You were speaking of the one a while back. I was trying to visualize government in general terms. If we picture each agency as a cone, and we had to work with personnel on a series of cones, I was wondering if there isn't vertical mobility between the Foreign Service and other elements of the Government just as there is with other agencies. I have known people who were trade fair specialists in the Department of Agriculture who got a better job in the Department of Commerce. Is there a special problem with the Foreign Service, that that type of mobility is not possible, that they have to fund upward mobility within a particular cone?

Mr. NEUMANN. The point is well taken. I think there is a problem. I do not look to other Government agencies or departments as promotional opportunities, but I do think we could—especially if my recommendation of more promotions even if there are no slots were adopted—find a temporary place for a Foreign Service officer in State and county government. It would be very good for him. Or even—now, this is very difficult to manage—in industry or in a bank.

It is very important that a Foreign Service officer when he goes abroad has a good grasp of the realities, political, economic, employment, the whole.

I personally would love, if it were possible, for most of the better economic counselors to have had a couple of years in a bank or in a major business. This has certain problems, but certainly I think they could serve in State government, even local government—and I think there have been some such cases—as well as in other Federal agencies.

I know of one former officer in one of my embassies who is still in the Foreign Service, but working in the Environmental Protection Agency, and he finds that very absorbing.

There is one danger, of course, which is the same as in the military service for attachés. That is, while one is out of line, promotion becomes much more difficult. But again here, management can improve that. This is not something that is easily legislated or put even into rules.

Mr. HARRIS. Thank you.

Mrs. SCHROEDER. Thank you very much, and again, we thank the witness for being here this morning. I think that is the last witness of the morning, and with that, the hearings are adjourned. Thank you. [Whereupon, at 11:50 a.m., the hearing was adjourned.]

THE FOREIGN SERVICE ACT

WEDNESDAY, JULY 18, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees met at 9:30 a.m., in room H-236 of the Capitol, Hon. Dante B. Fascell and Hon. Patricia Schroeder presiding.

Mr. FASCELL. We meet today to hear Mrs. Marguerite Cooper King who is vice president for State of the Women's Action Organization. That does not sound right to me. Is that correct?

Mrs. KING. Vice president for State Department of the Women's Action Organization. The Women's Action Organization covers three agencies. We have three vice presidents.

Mr. FASCELL. Following Mrs. King's testimony we will continue with Secretary Read.

Mrs. King, we are delighted to have you here and we will be happy to hear from you.

STATEMENT OF MARGUERITE COOPER KING, VICE PRESIDENT FOR STATE DEPARTMENT OF THE WOMEN'S ACTION ORGANIZATION

Mrs. KING. Thank you very much, Mr. Chairman.

Let me tell you something about what the organization is very briefly. The Women's Action Organization represents employees and their spouses of the three foreign affairs agencies, State, AID, and USICA. It began as an ad hoc group in 1970 dedicated to the removal of discrimination from our personnel system and to promote equal opportunity for all employees regardless of sex.

This ad hoc group to improve the status of women in the foreign affairs agencies received the Presidential Management Improvement Award in 1972 for the reforms it had stimulated. These included the revision of policies and regulations to remove barriers and penalties imposed on Foreign Service women employees who married. Up to that time it was virtually impossible for a Foreign Service woman employee to be married or to have a dependent. It also was to prohibit discrimination in assignments—

Mr. FASCELL. What year was the ending of the dark ages?

Mrs. KING. 1971, sir.

To establish the right of family members to be considered private persons and the right to work abroad amongst other reforms.

In recent years we have supported upward mobility programs for support and officer level employees in the civil service and the Foreign Service, participated in the Department's review and formulation of an affirmative action program, supported class action suits against the Department of State for sex discrimination, sponsored the spouses' skills data bank and the formation of the Family Liaison Office and provided a series of programs for all employees explaining the available procedures for personal career advancement.

I come before you today on behalf of the Women's Action Organization to ask that equality of opportunity in all aspects of employment in the Foreign Service be included as a statutory requirement of the Foreign Service Act of 1979.

In its present form the legislation describes as an objective in sections 101 (a) (3) and (b) (2) that the Foreign Service should be representative of the American people, operated on the basis of merit with fair and equitable treatment for all. The Foreign Service Act of 1946 also called for a representative service but it is not now representative in numbers, grades, functions and regions.

We have not come here to complain but to set out the facts and to suggest some parts of the proposed legislation that need to be changed to facilitate equal employment policies and practices to insure that American foreign interests are represented by the best that this Nation has to offer.

Let me speak first about women employees of the Department with some mention of our sister agencies, AID and ICA. I will then turn to the concerns of Foreign Service spouses, overwhelmingly but not totally women.

Foreign Service officer-level women in the three agencies face similar problems. They are few in number. They make up only a minuscule proportion of the senior grades and policymaking positions. They are not given positions commensurate with their qualifications and potential and their promotions are slower than for their male colleagues.

Let's first look at Foreign Service officers, FSO's, in the Department of State. Women make up only 10 percent of the entire FSO Corp. I have provided a chart so that we can see where the women are and what kind of work the women are doing.

This is on page 16 of the attached, part of a brief filed in the U.S. District Court for District of Columbia as part of two class action suits brought against the Department.

[The information referred to follows:]

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IV

CURRENT STATISTICAL EVIDENCE FURTHER DEMONSTRATES SYSTEMIC SEX
DISCRIMINATION BY THE DEPARTMENT OF STATE

1. INTAKE OF WOMEN AS FSO'S

As we have noted previously (February 17, 1978, Mem., p. 9), while 44 percent of college graduates were women, in fiscal years 1970-77 women made up only 7 percent, 6 percent, 17 percent, 16 percent, 22 percent, 13 percent, 20 percent, and 16 percent of the officers appointed to the Foreign Service. Memorandum Junior Officer Intake, fiscal year 1966 through March 1977, Richard Masters, PER/BEX, to Dudley Miller PER/REE, March 2, 1977. In 1978, only 16 percent of the officers appointed were women. FSO Intake By Exam (By Sex), M/EEO, 10/5/78, Pl. Ex. 3. Thus, since 1975, the average intake has been only 16 percent women. This is in spite of the fact that recent statistics show women earning more bachelor's degrees than men in foreign area studies and foreign languages (Report on Women in America, The United States Commission for UNESCO, p. 16, Pl. Ex. 4) :

BACHELOR'S DEGREES AWARDED IN 1974-75

	Females	Males
Foreign languages.....	14,879	4,600
Foreign area studies.....	1,739	1,464

2. PLACEMENT OF WOMEN IN CONES AND PROMOTIONS

We have explained previously how the Foreign Service is divided into functional fields of concentration which are referred to as cones. February 17, 1978, Mem., p. 9. Within cones, there is further division into functions. We have previously shown that female Foreign Service officers are disproportionately placed in cones which provide less responsibility and are less advantageous in terms of career advancement. Women are placed far more than men into the cones which have fewer positions in the upper classes and which receive fewer promotions. They therefore have far less opportunity to reach the top. See August 24, 1976, Mem., pp. 4, 12-14; February 17, 1978, Mem., pp. 32-33; July 7, 1978, Mem., pp. 6, 7.

Department of State statistics as of December 31, 1978, and of January 31, 1979, further demonstrate this disparity. The Department's own analysis of March 1979, shows that on December 31, 1978, only 36.4 percent of all women were in the Executive, Program Direction, Political, or Economic/Commercial cones or functions while 63.6 percent of the women were in the Administrative and Consular cones. Women FSOs By Primary Skill (Cone) 12/31/78, M/EEO, 3/79, Pl. Ex. 13. In addition, the table on p. 246, derived from the Department's own statistics, compares male and female FSOs by rank and cone or function as of January 31, 1979, and reveals little, if any, change from earlier statistical patterns.

COMPARISON OF MALE AND FEMALE FSO'S BY RANK AND CONE OR FUNCTION (DATA AS OF JAN. 31, 1979)

Cone or function	Executive		Program direction		Administration		Consular		Political		Economic/ commercial		Rank totals com- bined	Rank totals by sex	
	M	F	M	F	M	F	M	F	M	F	M	F		M	F
Career Ambassador.....													17	17	
Career Minister.....	14		3										265	257	8
FSO-1.....	27	2	116	1	22	2	7	2	51	1	34		305	299	6
FSO-2.....	1		49		38	2	16	1	104	1	91	2	673	634	39
FSO-3.....			10		104	12	49	7	289	8	182	12	775	719	56
FSO-4.....					107	14	93	19	294	12	225	11	621	526	95
FSO-5.....					93	17	114	48	216	18	103	12	489	383	106
FSO-6.....					78	24	86	49	124	12	95	7	161	135	26
FSO-7.....					36	5	44	4	17	2	38		11	8	3
FSO-8.....					4			2				1			
Subtotals (by sex).....	42	2	178	1	482	76	413	140	1,095	54	768	66	3,317	2,978	339
Function columns totals.....	44		179		558		553		1,149		834		3,317	3,317	

¹ Combined totals.

NOTES TO TABLE

In addition, there were 3 male "specialists" (doctors, lawyers, etc.) (1 FSO-1, 1 FSO-2, 1 FSO-3) and 1 female on detail (FSO-5).

Grand total FSO's as of Jan. 31, 1979: 3,321.

Data derived from Department of State computer print-out as of January 31, 1979. Pl. Ex. 5.

This most recent data shows that while 34.7 percent (1,149 officers) of all FSOs are in the desirable and advantageous political cone, only 15.8 percent of female FSOs (54 officers) are in that cone. Even more dramatic is the fact that while 5.4 percent (174) of all FSOs are in the program direction cone, only 0.6 percent (1 officer) of all female FSOs are in that cone. In addition, 1.3 percent of all FSOs (44) are in the "Executive" function but only 0.5 percent of female FSOs (2) are in that function. Conversely, while only 16.7 percent (553 officers) of all FSOs are in the less desirable and less advantageous consular cone, fully 41.1 percent (140 officers) of all female FSOs are in that cone. The situation has remained the same or worsened since December 31, 1978. On that date there were four women in the Executive function and two in program direction. Pl. Ex. 13. Even that small representation had been halved by January 31, 1979. Thus, women continue to be kept out of professionally desirable and advantageous cones and functions while men are placed in the desirable and advantageous cones and functions in disproportionate numbers.

The desirability of certain cones and functions is also evident from the table. There were 232 FSO-1s occupying positions in the Executive function and the Program Director, Political and Economic/Commercial cones. They constituted 87.5 percent of all FSO-1s. There were 2,073 men (69.9 percent of all men) in these cones and functions; only 123 women (36.2 percent of all women) were assigned to these cones and function. The administrative and consular cones are less desirable because they have only 33 FSO-1s assigned to them. This is only 12.4 percent of all FSO-1s and thus there is less opportunity for promotion to that rank in those cones. Nevertheless, 63.5 percent of all women (226) are assigned to these cones while only 30 percent of all men (895) were assigned to them. As has been noted above, the situation essentially the same on December 31, 1978. Pl. Ex. 13. These figures demonstrate that women are seriously handicapped as to promotions by their cone and function assignments.

During the years 1973, 1974, 1975, 1977, and 1978, FSO promotions to the high grades of FSO-1, FSO-2, and FSO-3 were unevenly distributed in favor of the executive, program direction, political and economic/commercial cones and functions, where most male FSOs are placed, and to the detriment of the consular and administrative cones where most female FSOs serve. This discriminatory distribution of promotions is apparent in the following tables (Sources: Department of State Newsletter, June 1974 and March 1975; M/EEO, 1977 and 1978 FSO Promotions By Sex, 2/77, 4/78, Pl. Ex. 6).

PROMOTIONS IN THE EXECUTIVE, PROGRAM DIRECTION, POLITICAL AND ECONOMIC/COMMERCIAL CONES AND FUNCTIONS¹

[By percent of all promotions to the class]

	1973	1974	1975	1977	1978
FSO-1.....	73.0	93.3	84.7	88.0	90.0
FSO-2.....	72.6	88.9	79.5	81.5	71.4
FSO-3.....	71.9	81.5	68.1	77.6	76.0

PROMOTIONS IN THE CONSULAR AND ADMINISTRATIVE CONES

[By percent of all promotions to the class]

	1973	1974	1975 ²	1977	1978
FSO 1.....	27.0	6.7	15.3	12.0	10.0
FSO-2.....	27.4	11.1	19.3	18.6	23.8
FSO-3.....	28.1	18.5	30.2	21.0	24.0

¹ The figures for 1973 and 1974 are based on materials which did not distinguish executive and program direction promotions

² Plaintiffs have not been able to obtain figures for 1976.

Since, as we have seen, women are disproportionately placed in the consular and administrative cones, these figures again demonstrate that women are seriously harmed by their cone and function assignments.

Analysis of male and female officers by rank further demonstrates the discrimination in promotions. It remains a fact that a far higher proportion of men than women have reached the higher grades. As we have noted before, as of June 1974, 2.6 percent of the women and 6.8 percent of the men were FSO-1; in 1975, the figures were 2.9 percent of the women and 8.5 percent of the men; and in 1976, the women and men were 3.2 percent and 9.6 percent of the FSO-1 officers respectively. As of January 31, 1979, 2.4 percent of women were FSO-1s while 8.6 percent of men were in that grade. For 1974 through 1976, the percentages of women and men who were FSO-2s were 2.2 percent/11 percent, 2.2 percent/10.2 percent, 2.4 percent/9.5 percent. As of January 31, 1979, the percentages were 1.8 and 10.0, respectively. In grade FSO-3, during the years 1974-76, the percentage of women and men were 12.1 percent/19.2 percent, 9.3 percent/19.5 percent and 10.5 percent/21.7 percent. As of January 31, 1979, the figures for FSO-3s were 11.5 percent of women and 21.3 percent of men. Department of State, M/EEO, Department of State Comparison of Status of Women Employees—By Grades and Pay Plans as of 12/31/74 and 12/31/75, p. 3 (March 1976); Department of State, M/EEO, Department of State Comparison of Status of Women Employees—By Grades and Pay Plans as of 12/31/75 and 12/31/76, p. 3 (March 1977); Table from p. 16. Thus, the proportion of women in each of these high grades has actually declined since 1974.

As of 1974, 38 percent of the men had attained class 3 or higher and 16.9 percent of the women had done so. The most recent data, as of January 31, 1979, show that 39.9 percent of men were in grades FSO-1 through FSO-3 while only 15.7 percent of women held those ranks. Thus, again the disparities actually increased.

The distribution of male and female Foreign Service officers within each cone also shows that the women are disproportionately in the lower grades. For instance, in the political cone, as of June 1974, 34.4 percent of the men and only 17 percent of the women were in classes 1 through 3. In contrast, 66.1 percent of the women and only 34.1 percent of the men were in classes 5 through 7. Department of State, M/WA, Women FSO's by Cone as of 6/30/74. As of January 31, 1979, 40.5 percent of the men in the political cone were in classes 1 through 3 while only 15.0 percent of women in the political cone were in those classes. Classes 5 through 7 had only 32.6 percent of the men but had 48.5 percent of the women.

3. ASSIGNMENT TO KEY POSITIONS

We have previously shown a pattern of assigning women to the least critical positions available to individuals at that level and to the least important assignments within a particular job category. February 17, 1978, Mem., p. 13. This pattern continues. For instance, as of November 1978, there were only four career female FSOs who were ambassadors and none of them were assigned to Class I missions. Instead they held ambassadorships to Surinam, Mali and Papua, New Guinea (three of the smallest, and least important embassies) and Finland. Department of State, M/EEO, Some Women in Key Positions (November 1978), Pl. Ex. 7.

Women principal officers (in charge of subordinate posts within a country) are located in Cebu, Izmir, Zanzibar, Monterrey, Mazatlan and Perth. *Ibid.* None of these cities are major posts and most people would be hard-pressed to locate them on a map of the world. Women Deputy Chiefs of Mission are located in Suva and Wellington, two obscure and insignificant posts. *Ibid.* Women are counselors of Embassy (in charge of a section) in only three posts. *Ibid.* In the United States, ten upper echelon women are assigned to administrative jobs and two have jobs in the consular cone. *Ibid.* As we have seen above, these are the least desirable areas of the Department. Only six women have high-ranking jobs in the political area and only one has a high-ranking position, in the Bureau of Economic Affairs, *Ibid.*

4. APPOINTMENT TO MIDDLE-LEVEL POSITIONS

The Middle-Level hiring program is supposed to be an affirmative action program for women and members of the minority groups. It brings people in as reserve officers in classes 3, 4, and 5. Even within this program, however, women

are not receiving equal treatment with men in that, as a group, they are being hired at lower ranks and at lower "steps" (pay levels) within ranks. As of January 1, 1979, 82.6 percent (23) of all women hired in the Middle-Level program came into the Foreign Service at the class 5 level. Only 13 percent (3) came in as class 4 officers and only 4.3 percent (1) was in class 3. In contrast 53 percent (8) of the men were hired for class 5 while 40 percent (6) came into class 4 and 6.6 (1) was a male class three officer. Therefore, although the program is intended to improve the balance of women as compared to men in the mid-grades, in fact it is increasing the imbalance because women are being hired in disproportionate numbers at the lowest grades, compared to the men being being appointed. M/EEO, Middle Level Hires as of 8/15/78 and 1/1/79, Pl. Ex. 8.

There is also a significant difference between women and men in the step level within each grade. Of the 19 women hired as FSR-5, 63 percent were hired at FSR-5/4 or below. The same pattern is repeated in the hiring of FSR-4. 100 percent of the women were hired at FSR-4/4 or below, whereas only 33 percent of the men were hired at FSR-4/4 or below. *Ibid.*

V

ADDITIONAL CURRENT EVIDENCE OF SYSTEMIC SEX DISCRIMINATION WITHIN THE DEPARTMENT OF STATE

Both the Department of State itself and the Justice Department Task Force on Sex Discrimination in the Federal Government have found important aspects of systemic sex discrimination in the Department.

1. FAILURE TO ACCORD WOMEN EQUAL PROFESSIONAL STATURE

A survey of overseas posts by the Equal Employment Opportunity Office of the Department of State found that female officers in some cases did not even attend country team or staff meetings, were kept poorly informed about activities and issues, and were only rarely included in policy-making. Department of State Newsletter, October 1978, pp. 23-24, Pl. Ex. 9. The Justice Department Task Force noted that "the participation of women as official delegates [to international conferences] remains very low," that "women professionals are often given less substantive work than are male counterparts," and that "[w]omen generally have less private office space than men." Interim Report to the President by the Task Force on Sex Discrimination, Civil Rights Division, U.S. Department of Justice, October 3, 1978, Pl. Ex. 10, pp. 245, 150.

2. FAILURE TO ASSIGN WOMEN IN A NON-DISCRIMINATORY MANNER

The Justice Department Task Force stated that "the Department continues to fail to assign women to certain, countries as a result of traditions and cultures of the receiving country." Pl. Ex. 10, p. 242. It also noted that this violates a Presidential Memorandum that all overseas assignments are to be made in a non-discriminatory manner. *Ibid.*

3. FAILURE OF EFFORTS TO RECRUIT WOMEN

The Director of Equal Employment Opportunity for the Department, Under Secretary of State for Management Ben H. Read, has acknowledged publicly that the Department has been failing in its efforts to bring representative numbers of women into the FSO corps. Speaking at the Department's "Open Forum," he said (Department of State Newsletter, March 1978, p. 57, Pl. Ex. 11):

It showed * * * the percentage of women up to 9 percent * * * [an increase of] 3 percent, in an entire decade. The mid-level affirmative action program to which you refer, was instituted in 1975, [with] a goal of 20-10 minority, 10 women—in each year. The grand total of 17 had been taken in by the end of the last fiscal year and, as of then and as of today, there has not been one conversion [from reserve to FSO status] from that group. * * * The * * * comparison is very, very modest * * *.

It should be noted that in 1959 and 1960 9 percent of all FSOs were women. M/EEO Women Foreign Service Officers (FSO), Twenty-Year Study, 2/78, Pl. Ex. 12. Thus, all that the Department has accomplished is to get back to the level which had been achieved in those years. As Mr. Read tacitly acknowledges, this hardly corrects the discrimination which women have suffered.

CONCLUSION

For the reason stated above, the accompanying evidence, and the memoranda of August 24, 1976, February 17, 1978, and July 7, 1978, we respectfully submit that Plaintiffs' Motions for Orders Certifying these suits as Class Actions should be granted and that the class certified should consist of all present and future female Foreign Service Officers and applicants.

Respectfully submitted.

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DELMAR KARLEN, Jr.
Attorneys for Plaintiffs.

Mrs. KING. Before going to the chart I want to draw some distinctions between the personnel systems of the Foreign Service and the civil service.

In the former, there are eight Foreign Service officer grades plus Career Minister going from the bottom, an FSO-8 to the top, an FSO-1. Career Minister. We do not have any women career ministers. Second, unlike the civil service, Foreign Service personnel are not hired for a specific position in which they may hope to move up to increasing responsibility. Foreign Service officers are considered generalists. They are given certain specialties or functions and periodic assignments, usually within that broad specialty.

To go back to the chart, it tilts south by west; most women are in junior grades, FSO-8 to 5. There is a dearth of women in the senior grades. Only 2.4 percent of all women FSO's are at the FSO-1 level and 1.8 percent are at the FSO-2 level. For purposes of comparison, those percentages for men FSO's are 8.6 percent and 10 percent, respectively.

I wish I could say that we are doing at least better than before. That is not true. The percentage of women is actually decreasing in the top grades as detailed on pages 19 and 20 of the attached brief. I would be glad to explain that later if you like.

The chart also shows that women have been placed in career categories, specialties or functions, where the opportunities for advancement are severely limited. Senior grades are concentrated in the executive, program management, political and economic/commercial functions. Where are all the women found? The relationship between function and promotion is analyzed on pages 17 and 18 of the attached.

There appears to be no rational, performance-related reasons for such concentrations based on sex. Until there is a more equal distribution, women cannot hope to advance to the top in comparable percentages with their male colleagues nor can management be assured that they are getting the best personnel at the highest level of our career service.

Key to advancement is assignments, made for each officer on the average of every 2 years. It is the way you gain additional experience and responsibility, learning how to deal with the varied and complex aspects of our foreign relations, to negotiate, represent, and develop policy on behalf of your country. Yet the assignment process is overwhelmingly in the hands of men where the "old boy" network perpetuates the selection of a few for the best positions without requiring open competition among all qualified candidates.

In competing for assignments women candidates face several roadblocks, obstacles that exist largely in the minds of the men and the few women making personnel decisions. Women are not given supervisory

positions generally; they fail to recognize the leadership qualities in women and often presume men do not like being supervised by women.

Stereotypes about what kind of work is appropriate or natural to women limit their assignment choices. Let me give you some examples. Women are seen as personnel or consular officers but not as labor or political-military officers. Such stereotypes ignore individual qualifications and limit assignments for women.

Gallant but old-fashioned assignment officers are often reluctant to assign women officers to hardship or hazardous posts. Women took the same oath of office and expect to take their fair share of such duty. Such assignments can often be career advancing. It is this same old-fashioned attitude that makes assignment officers believe that women officers cannot be effective in countries where local law and/or custom accord low status to their women. The problem I assert, is in the minds of American personnel officers rather than in the minds of other diplomats and host country officials.

Women have served with excellence in every part of the globe including the Middle East, Africa, Latin America, and Asia. My personal experience has been that the prestige of the U.S. diplomatic corps is universal and that personal competence and skills, not sex, are the basic criteria for success as a diplomat as in any other career.

The effect of such bias in assignments has been to limit the opportunities for women and to fail to use efficiently the resources of the Foreign Service.

A study by my organization in 1975 showed that of all senior Foreign Service career women officers in all pay plans, 43 percent were serving in positions at least one grade beneath their personal rank. This is most graphically illustrated by career ambassadorial assignments. Not only are women chiefs of mission few and far between, currently six career women are such, but they are appointed to those countries to which we assign the lowest level of priority and importance in U.S. foreign relations. That is explained in detail on page 20 of the attached.

We have four classes of posts, class I is the highest and class IV is the bottom. I do not know if there has ever been a career woman officer assigned to a class I post and I think most of them have been class IV posts in our entire 200-year history.

There are other officer categories in the Foreign Service. The reserve limited and unlimited officer categories and Foreign Service Staff officers face the same stereotypes by personnel officers that limit women's entry, assignments, and promotions in disregard of their individual qualifications and potential.

Most women in the Foreign Service are secretaries at the staff or support level below the officer grades. The president of the American Foreign Service Association, Lars Hydal, mentioned these problems on July 9.

We agree that they are deprived of appropriate professional status, adequate pay including compensation for long overtime and standby duty and that they are unfairly hit by local duties and taxes their higher salaried officer colleagues are exempt from.

We support his call for priority negotiations by the Secretary to protect noncommissioned employees from such local duties and taxes and for increased funds to insure appropriate language and area training for staff personnel.

In addition to these problems related to the secretarial profession, Staff Corps women are also disadvantaged in comparison with their male colleagues. In promotions in 1977, 67 percent of all Staff Corps women were eligible for promotion against 33 percent for men; yet their promotions were only 11.6 percent compared to 16 percent for men. In part, this is because men are concentrated in staff functions that have higher career ceilings than women. Women have difficulty breaking into those functions. Again, a problem of concentration in certain functions.

There is a large segment of the Department of State work force that is civil service. While we are here to address an act titled and almost entirely concerned with the Foreign Service, in State the civil service is a little over one-third the size of the Foreign Service, 3,632 versus 9,161.

The civil service component at State has historically been neglected. That was the finding of a 1975 Civil Service Commission study, "Personnel Management in the Department of State," which went on to say that "performance evaluation and training of civil service employees is ineffective, lacks adequate planning and followthrough and fails to meet even minimum requirements." It also said that "promotion program administration fails to meet even basic and minimal merit system requirements, causing serious violations and providing no assurance to management that the best qualified are selected and no assurance to the employees that they are being equitably considered."

Civil service women are overwhelmingly at the bottom of the ladder, only 6 percent of all civil service women employees at State are at the senior and the middle levels, 43 percent are GS-7 through 11 and 51 percent are GS-6 and below.

Because of the slow pace of progress, in 1976 we decided that it was necessary to seek justice by going outside of the Department. We had until then prided ourselves that we worked with management for reform from within.

We joined in support of a class action suit charging systemic discrimination by the Department against women FSO's. After almost 3 years, that and a parallel suit have just been certified for class action last month. The Department has failed to respond to the issues and sought endless delays.

We must in honesty look at this situation from a historical perspective. So long as women had to be single as a condition of employment in the Foreign Service, this was not going to be an attractive career.

Women employees' position today is the accumulated result of many years of discrimination that cannot be overturned at once. We believe that we must begin by ending current practices of discrimination and locating skills and resources that are now underutilized and take affirmative action to place those resources where we need them to get the job done.

For many years affirmative action plans have been time consuming but largely ineffectual exercises. The Department paid only lip service to equal opportunity. Senior leaders made pronouncements that were ignored in practice. Secretary Vance made a new attempt when he came aboard and formed an executive level task force on affirmative action.

The Women's Action Organization provided studies and suggested remedies. Although not as specific or effective as we had hoped, we joined with several employee groups representing minorities in support of the task force recommendations. Those were emasculated along the road when they were turned over to the career ranks to translate into specific plans of action.

Let me say that there were two areas in the affirmative action plan as it made its way down into the plans for implementation that were progress of some sort.

On the civil service side, they started an upward mobility program for lower level civil service employees, GS-7 and below. They strengthened a merit promotion system that they had begun several years earlier. Those are two things on the civil service side that came through that plan.

On the Foreign Service side, the only part that we would really consider affirmative action was support for the special EEO hiring programs that brought in 20 at the junior level and 20 at the middle level without having to go through the written examination process.

The reason why the goals and recommendations that the Secretary had supported did not make it through the bureaucracy is, I believe, that those in the career service who believe in those stereotypes and do not realize that their gallantry is a form of discrimination were unlikely to come up with recommendations and relevant affirmative actions that would address the special problems of women and minorities. Even the surviving recommendations of modest effect were attacked and challenged by our own professional association, AFSA.

This is a bleak picture indeed and it is no better for minorities at State. I wish I could tell you that the Department is moving toward becoming an equal opportunity employer. As you can see from my prepared text, it is not.

I do not mean to imply that there has been no progress, but the progress is so slow that even if maintained for 10 years at an accelerated pace, it would still leave the Foreign Service unrepresentative.

They are bringing in more women officers, 16 percent per year. How long would it take you to bring in 100 percent per year to come up with something that begins to be reflective of the percentage of women in the work force and women in American society in similar kinds of responsibilities?

I do want to record our appreciation for Secretary Vance's personal attention and leadership in awakening in State some realization that the present distribution of rewards and responsibilities reflects a long history of bias and Assistant Secretary Moose's wise leadership of the original affirmative action task force.

It should be clear from the above that the Department on its own is unable or unwilling to carry out the goals mentioned in the first chapter of the proposed act, to be representative of the American people, to insure merit principles for selection and advancement and equal opportunity in all aspects of employment. The Office of Equal Employment Opportunity is not mentioned in the bill. Its mandate needs to be strengthened.

More than that, equal opportunity in all aspects of employment must be required under the law you are now considering. For that purpose we propose the following changes.

Section 301 under "General Requirements of Appointment," part (b) should add "equal opportunity" following "merit" to read "in accordance with the merit and equal opportunity principles."

In section 511, "Assignments to Foreign Service Positions," part (a), add "and equal opportunity" following "merit" so that it would read "in accordance with merit and equal opportunity principles."

In section 601, "Promotions Based on Merit," part (a), add "and equal opportunity" following "merit" to read "shall be based on merit and equal opportunity principles."

Let me divert from my prepared speech to tell you one of the reasons why this emphasis is terribly important and more important than I understood when I wrote my testimony.

The American Foreign Service Association has asserted that the Department is exempt from existing EEO laws and regulations and particularly the Executive order relating to affirmative action. As AFSA's testimony has made evident to you, they have argued repeatedly that equal employment opportunity is somehow distinct from or even opposite to merit principles.

We opposed their proposed amendment to section 101(a)(3) that would add "members of the Foreign Service." AFSA's comments on section 101(b)(2) are obviously meant to prohibit affirmative action. This would be contrary to the merit principles of section V, section 2302(d) of title V of the United States Code which says nothing in this section shall be construed to prevent affirmative action.

In order to clarify the law's intent, section 102(7) under "Definitions" regarding merit principles, should identify not only section 2301 but also section 2302 of title V. It is the latter section which prohibits discrimination and protects affirmative action. I don't know why the Department's proposed text cites only section 2301. Why not section 2302 also? I do not know.

Or there should be a new section in the law that specifies that nothing in this act is intended to rescind or supersede any existing law or regulation with regard to equal employment opportunity. As long as our professional association is saying that the Foreign Service is not covered by any statute, that it is not bound by any Executive order on any regulations or equal employment in the Department of State or Foreign Service, I think we need to do something about that.

In order to insure oversight and implementation of this responsibility for the Department as a whole, it is proposed that the Inspector General's responsibilities should include an examination of whether merit and equal opportunity principles have been observed in the management of the Department and missions abroad. That would be added to section 205(a).

The act calls for maximum compatibility among the personnel systems of State, AID, and ICA. I regret to assure you that women Foreign Service employees of those agencies also face discrimination in all aspects of employment.

AID lags behind both State and ICA in the proportion of women in the senior ranks. In AID, women are generally absent from policy positions and from midlevel positions with significant program and policy roles; entering junior officer classes have included few women

and AID does not provide adequate opportunities for low- and mid-level women with needed skills, interest, and potential to advance. That is to say AID has a need for certain categories of employees such as sociologists. They have employees who are secretaries who have degrees in those subjects and they are not using them.

Mr. FASCELL. It sounds like the Army.

Mrs. KING. There you go.

In recent years the position of Foreign Service career women has deteriorated within AID while the civil service women have remained stationary. It is with considerable misgivings that women in AID contemplate a change in the Agency's personnel system toward one more heavily staffed under Foreign Service than under the civil service rules.

In ICA, the percentage of women Foreign Service information officers, FSIO's is 16 percent. That is slightly better than the comparable figure for State which was 10 percent. They are concentrated in the cultural rather than informational functions. There is the now familiar dearth of women in the senior grades, policy, and managerial positions and there is discrimination in assignments to certain geographical regions.

Women in the civil service are clustered in the lower ranks and in certain sex-stereotyped functions. ICA Foreign Service secretaries have many of the same problems as their State counterparts. This situation has not changed basically in the past 2 years except slightly downward for a decrease in the intake of women as junior officers and in women civil service officers at the middle level.

Given the familiar pattern of discrimination and lack of progress toward equality of opportunity, we suggest that the Board of the Foreign Service with an interagency mandate for Foreign Service personnel include in its responsibilities the promotion of personnel policies and practices based on merit and equal opportunity principles. That is section 206.

While we support a strong professional association to represent employees' concerns, we have often found AFSA unsympathetic to the concerns of women officers and spouses. We understand their feelings against what has been called "reverse discrimination" and believe steps taken in the name of affirmative action in other places have sometimes been foolish.

We believe the Women's Action Organization has been responsive to these fears and have proposed remedial actions that would generally open up competition so that women and minorities could compete on the basis of merit.

So long as AFSA's membership is preponderantly white males, we will continue to have misgivings about its willingness to represent our interests. For the moment, we have no proposed changes to suggest in the proposed act relating to labor-management relations but are studying them to insure that our rights are protected. We will do that study in August and will get back to you in September.

Before I conclude, let me say something on behalf of Foreign Service family members. We sponsored the spouses' skills bank because we support the employment abroad of spouses and believe that the

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Department is the loser when it fails to recognize spouses as potential employees and is being just arbitrary and unjust when it places obstacles in the way of their employment outside of the mission.

We worked alongside the American Association of Foreign Service Women for the creation of the Family Liaison Office in the belief that information and counseling was essential for our Foreign Service families.

We, along with the American Association of Foreign Service Women, AFSA and a group representing the support staff are actively examining the problem mentioned by the AFSA president concerning Staff Corps perception that training and assignment benefits recently promoted for family members adversely affect Staff employee's opportunities.

We do know that there is a regular cadre of qualified spouses who take their skills and desire for employment from post to post around the world. They serve with limited appointments and save the Government transportation and housing costs. Others serve in part-time, intermittent and temporary—called PIT—positions to fill in during periods of peak workloads. Such employees have met American standards of job qualification and should not be expected to accept local standards of pay as described in section 333(a) and 451(a)(1). I believe this latter section is one with which you will be discussing with Mr. Read later this morning.

The women and men who have joined and supported the Women's Action Organization have done so because of their commitment to equal opportunity and their concern about being able to sustain a happy, healthy family life despite the disruptions and difficulties of our mobile occupation.

I appreciate the time you have given today to consider the conditions of employment for women in the Department of State and our sister agencies and of the concerns and resources of family members of the Foreign Service. We hope you will see to it that equal employment opportunity is more firmly captured in your bill.

I also request to submit for the record two letters which we have sent to our employees, one of October 25, 1978, which describes the affirmative action plan of the Department of State and our comments on about six sections—I think there were 10 sections totally. The second letter of May 1979 relates to the class action suit and explains what the grievance is and what the remedy requested is and the progress.

Mr. FASCELL. Without objection, the two letters referred to will be included in the record.

[The letters referred to follow:]

WOMEN'S ACTION ORGANIZATION,
May 1979.

Situation Report: Class Action suit on Behalf of Women FSOs.

DEAR WAO MEMBERS AND FRIENDS: The wheels of justice turn incredibly slowly. We are still waiting for the hearing on a "class action" certification in the U.S. District Court for D.C. for the two parallel suits (now consolidated) charging discrimination by the Department on the basis of sex. It is now almost three years since the original EEO complaint was filed.

Briefly, the cases charge that the effect of the Department's personnel system is to discriminate against women FSO's in recruitment, selection, appointment, assignment, evaluation, promotion, training, awards, selection-out, etc. This is

based on the statistics, going back over ten years, that show that women as a group, in comparison with men, are disadvantaged. For example, fewer women than men are recruited for the FSO exam; fewer are passed; more are assigned to the consular, personnel, budget and fiscal functions (where the number of jobs above O-3 is miniscule); and fewer are assigned to certain regions, certain functions or supervisory positions generally. In the top ranks and in most career-advancing jobs, they are woefully underrepresented. This demonstrates clearly that there is a pattern of practices and policies that are unfair to women.

The suits are brought as a "class action" because the systemic unfairness falls on women as a group. It is not based on individual complaints or specific personnel actions, although some can be given to illustrate the case. It does not affect your right to file a grievance or complaint regarding a specific action that happened to you personally.

The two suits attack the Department's personnel system rather than particular individuals. In broad terms they ask that: (1) a court determination be made that women FSO's have suffered from systemic discrimination; (2) the Department be enjoined from continuing personnel policies and practices which discriminate against women; (3) a court order be issued setting forth specific corrective measures (affirmative actions) to eliminate and prevent discrimination; and (4) where appropriate, women FSO's be granted remedial action, such as retroactive promotions and accompanying back pay in those cases in which they would have been entitled to such promotions if the system had not discriminated against them.

In our most recent letter (October 25, 1978) we described the current status of the Department's Affirmative Action Plan. While it contains some modest proposals for the Civil Service, it fails to address the problems of discrimination in Foreign Service assignments, counselling, promotions, training, etc., nor to make meaningful recommendations that would permit women to compete equally with men. Even if it were totally implemented, as is, it would not significantly help women employees. Even so, the most important aspects of the Plan are being opposed by AFSA. Obviously, we must continue to pursue the court case if any effective change is to come about.

In the winter and spring of 1977/78, WAO urged the Department to consider negotiating a settlement of the suit. At that time, although the Affirmative Action Task Force recommendations were still merely statements of general goals, without concrete substance, we felt that there was some possibility of progress through negotiations. The Department was slow and vague in its response. The plaintiffs in the suits continued their attempts to find a reasonable basis for settling the suits through negotiations between July 1978 and January 1979. Plaintiff's lawyers met with representatives of the Department and presented specific proposals. However, they were never given a substantive response and the Department used the negotiations as a basis for delaying the law suits in the court. For these two reasons, the plaintiffs ended negotiations in January.

As you can see, since our last letter on the suits to you (December 1977) there has been a lot of to-ing and fro-ing but little progress. Lawyers for the plaintiffs submitted their motion for class certification in the two cases on February 17, 1978. Briefings on the motion for both plaintiffs and defendant were completed on July 7 and the case was then ready for oral argument. On November 1 there was a status conference of the lawyers before Judge Smith. At the request of the Department oral arguments were postponed until January 30, 1979, when the Department requested postponement for a further time to submit additional documents. Plaintiffs filed an additional memorandum with supporting documents on April 17, 1979, in response to the affidavits filed by the Department in March.

In all this time, the court has not heard nor passed on the substance of the suit. We are still fighting over technical details as to whether women FSO's are to be considered as a group (the "class" certification). The reasons for the delay are only incidentally the result of legal niceties. More important has been the continuing lack of response from the Department—either as a deliberate attempt to delay in order to avoid the issues and discourage the plaintiffs, or the result of lack of attention to the suit by Department officials, or both.

As of April 1979, legal costs to the plaintiffs were over \$36,000 (recoverable should the suit succeed) paid largely by Alison Palmer. WAO has made very modest financial contributions, has gathered and analyzed statistics, developed concrete, illustrations of past discrimination, and prodded management. You

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can help, if you will, to improve the career chances for yourself and your women colleagues by contributing money or examples of your experience. The enclosed form may be used for either.

We will keep you informed of the checkered progress of the suit.

Sincerely,

BARBARA J. GOOD,
President.
MARGUERITE COOPER KING,
Vice President for State.

P.S. : It is again time to renew your membership in WAO. Unless you have paid your dues since January 1, 1979, you should fill out the enclosed form and return it with your check. Costs of stationery, printing xeroxing, etc., have shot up and we would appreciate any additional contributions you can make. One check will do, for the WAO legal fund for the suit, for membership, for contribution to WAO. Please indicate on the enclosed forms how you would like your check to be divided.

Enclosures.

WOMEN'S ACTION ORGANIZATION,
October 25, 1978.

Situation Report : Department's Affirmative Action Plan.

DEAR WAO MEMBERS AND FRIENDS : We have been hard at work to put some teeth into the recommendations of the Affirmative Action Task Force. You will recall that the Secretary set up an executive-level Task Force in March, 1977, which came up with some 90 recommendations : half related to increased efforts at recruitment (largely for FSOs) and half related to other aspects of employment. We concentrated our efforts on this latter half.

The recommendations, which received the Secretary's blessing in November 1977, were turned over to an Implementing Working Group under the direction of M/EEO to work out a plan of action. The results, in by March/April 1978, were a mixed bag (see the attached summary). There were some hopeful first steps toward an upward mobility program for lower-level Civil Service employees, some good proposals for a more open, better advertised merit promotion system. On the whole, however, the results were disappointing. We collectively spent some 100 hours in meetings, gathering information, writing, editing, typing, xeroxing and collating a serious and responsible critique which went to M/EEO in June.

In July we met with Under Secretary for Management Benjamin Read, to urge that certain high priority and non-controversial actions recommended by the Implementing Working Group be taken at once and that other categories be referred back to a panel for review and refinement. For example, we recommended that the Secretary clarify what he meant by affirmative action (removing barriers to genuine equal competition and to commit the Department to seek a proportionate number of women and minorities in all levels, pay plans, region and functional specialties) ; to begin immediately with EEO training for BEX examiners, tenure and commissioning boards, promotion panels and inspectors ; to give expanded PER resources to upward mobility and merit promotion programs for the Civil Service.

At the same time we rejected other broad categories of recommendations as failing to meet the minimum standards of an "affirmative action" program. "Affirmative action" is designed to identify and address the special problems that women and minorities face that prevent them from competing equally on the basis of merit. For example, sex role stereotyping which results in women being placed as clerks and secretaries instead of communicators ; as consular officers instead of political officers. But, the recommendations on career recounseling, for example, apply across the board for all employees (focused on FSOs, natch!), with only a passing reference to EEO. Affirmative action also implies attempts to increase the proportion of women and minorities in all areas and levels where they are underrepresented. This does not mean taking unqualified women, but making special efforts to consider or search out qualified ones. In this sense, the recommendations on assignments, promotions, etc., lacked "affirmative action." Those on recruitment and training were merely misdirected.

I regret to report that Deputy Assistant Secretary Burroughs (EEO) and Under Secretary Read (M) gave us no reason to believe that the Department

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will move quickly on the non-controversial aspect nor recommit for review the recommendations we opposed. AFSA President Lars Hydal conceded, at that July meeting, that while isolated incidents of discrimination do exist in the Department, he believes that women and minorities are not systematically discriminated against or disadvantaged by the system. From this and other encounters we are convinced that AFSA will not support affirmative action on the grounds that its meaning is unclear and is suspect as constituting "reverse discrimination".

So, friends, the way is dark and uphill every inch. And, we are in there battling. The Secretary's speech on EEO at the WAO awards ceremony in September was positive: certainly better than the wishy-washy recommendations of the Implementing Working Group. That was good. The Department's modest G.S. upward mobility program seems to be moving ahead on schedule, although we are uncertain of the impact on it of the freeze on hiring.

Attached is a brief summary of the recommendations of the Implementing Working Group on an Affirmative Action Proposal for the Department. Should you like a copy of our consolidated report to Ben Read, including our comments and recommendations on the 90-odd proposals (70 pages), send us \$2.00 for copying expenses along with the form below.

We have indicated in the space below whether your dues are current. If not, please see the separate form for renewal, with fee schedule, below.

Sincerely,

MARGUERITE COOPER KING,
Vice President for State.

Your dues are/are not current.

SUMMARY AND COMMENTS ON AFFIRMATIVE ACTION PROPOSALS OF THE SECRETARY'S EXECUTIVE-LEVEL TASK FORCE AS REVISED AND ENLARGED BY THE IMPLEMENTING WORKING GROUP

I. UPWARD MOBILITY

A. *Civil Service*.—A new upward mobility program coordinator is to begin operation, by November 1978–February 1979, of a program for GS-7 and below based on designated positions and candidate selection (Recommendation No. 50).

WAO comment.—It is right to focus on this level: 51 percent of all women and minority employees are in this group. Progress is slow, however, and the outlines of the program are still vague. We want the program accelerated and other programs for higher level GS employees instituted (see Training, Merit Promotion).

B. *Foreign Service*.—For the Mustang program: will revise qualifications to include credit for self-improvement, provide traveling panels for Mustang candidates (to become FSOs) (No. 51). Proposed a new program for support level employees of all plans to move into new areas of specialty (No. 52).

WAO comment.—Entry qualifications for Mustang candidates are still too high. The two programs should be amalgamated and developed into one which permits employees to acquire new specialties and move up, within support level as well as into the officer level.

II. ASSIGNMENTS (F.S.)/MERIT PROMOTION (G.S.)

A. *Foreign Service*.—The Task Force had recommended that the Department "encourage consideration of employees in EEO categories for all vacancies, giving them favorable consideration when deemed competitive" (No. 66). The Implementing Working Group changed this (and other similar recommendations) to "assure that EEO category personnel are equitably considered . . ."

WAO comment.—The specific implementing steps recommended failed to address the problem of sex-stereotyping in jobs. Additionally, the Working Group failed to bite the bullet and recommend that the underrepresentation of women and minorities in certain areas be a favorable factor in choosing between qualified candidates. EEO goals should, we feel, be given the same kind of consideration now given to other non-performance related "needs of the Service," e.g., the requirement of officers to spend a certain proportion of their careers in Washington and overseas, the development of area and language expertise. WAO also recommended that FSRs and FSRUs should be considered for FS designated positions and used before permitting outside hire.

B. *Civil Service*.—Instructions to Merit Promotion panels should stress affirmative action . . . (No. 71); make certain, where possible, that lists of best qualified

candidates . . . include persons in EEO categories . . . ; and greater publicity should be given to the Merit Promotion system, how it works and vacancy notices; develop individualized career counseling for the Civil Service (No. 75).

WAO comment.—Improvements are required so that G.S.-7s and above, not covered by the G.S. upward mobility program, are given a chance to advance commensurate with their skills and potential. The Implementing Working Group recommendations were relevant and helpful. Additionally, position requirements should be written in such a way as to permit the widest possible competition and FSI or off-site training provided where it would qualify an employee for a vacancy.

III. PERFORMANCE EVALUATION (G.S. AND F.S.)/PROMOTION (F.S.)

A. Performance Evaluation.—All evaluation reports should comment on contributions to EEO (No. 76), record EEO training (No. 77) and give full rather than cursory evaluations for all employees in "dead-end" positions (No. 78). Ensure that EEO-category employees are given equal consideration in assessing potential for future assignments (No. 79). The Working Group added to the Task Force recommendations by proposing that consistent guidance be given selection boards and the Commissioning and Tenure Board (No. 79A).

WAO comment.—We support these proposals. They correctly identified the problems of underutilization of low expectation related to sex-role bias as well as the unreasonable criteria being applied to Mustang and lateral entrant candidates.

B. Promotion (F.S.: see II.B above for G.S.).—Revise F.S. precepts to ensure that they stress affirmative action (No. 70) appoint women and minorities to selection boards (No. 73).

WAO comment.—Panel precepts should charge members with identifying and discounting bias when it appears in reports by supervisors and inspectors. We also believe that it is fair to ask panel members, when having to choose the rank order among equally qualified employees, to give particular consideration to women and minority employees who have previously been disadvantaged because of bias unrelated to their job performance.

IV. TRAINING AND COUNSELING (G.S.-F.S.)

A. Training.—Implement comprehensive programs of training for G.S. employees (No. 53), supervisors should encourage subordinates to take appropriate short-term training (No. 54). Improve training opportunities such as language, area, administrative, etc., for "certain groups such as secretaries and communicators and long term training for consular officers."

WAO comment.—These are important advances in principle for G.S. employees. They need to be monitored to ensure that they are adequately made a part of counseling and merit promotion programs. The recommendations for language and area training misses the boat re: women's special concerns. These are the failure: to view young women as serious professionals ("they will soon get married and leave"); to provide adequate or career advancing administrative and consular officers; or to recognize the leadership potential of women calling for long-term or senior training.

B. Counseling.—Proposed that counselors without professional training in counseling be given that training; counselors should spend more time on counseling rather than placement (No. 8). A program should be designed to identify and help "troubled" employees (No. 60).

Comment.—The recommendations have no particular EEO focus nor do they propose "affirmative action." They fail to address the special problems of women and minorities through stereotyping and low expectation. Biased advice by counselors only reinforces their disadvantages by perpetuating their low self-esteem. Nor did they recommend an improvement in the ratio of counselors to employees which are grossly inadequate for all except junior and mid-level FSOs.

V. OTHERS

Lack of time and resources prevented WAO from commenting on other Working Group proposals covering orientation, position descriptions, and EEO training. We have not included here our critiques of proposals on recruitment, image and publicity, and selection and hiring (which focused on FSOs).

Mr. FASCELL. Thank you very much, Mrs. King, for a very damaging piece of testimony.

Let me see if I understand. Other than statutory changes which you suggested with respect to equal opportunity language and the reservation with respect to labor/management, there are no other specific legislative matters that you are concerned with?

Mrs. KING. The reason why we have not come out on specific aspects is because women are found in all functions and you often have a conflict of interest. There will be officers and secretaries in the Foreign Service and civil service whom we represent. We were unable therefore as an organization to comment on other substantive parts of the law.

We merely ask that it be equally enforced.

Mr. FASCELL. That the law be equally applicable? I have never heard anybody else say anything otherwise. If they have, they do not know what they are talking about.

This intrigues me. Is there some relationship between this organization and other organizations? Just exactly what are you talking about?

Why can you not comment on whatever you want to comment on?

Mrs. KING. We could, but if you know anything about the women's movement, about the only thing which unites them is they do not want to be discriminated against.

Mr. FASCELL. That sounds like men. What does that have to do with it?

Mrs. KING. That is the reason why as long as we are here representing the Women's Action Organization, that is the only part that is appropriate for me to address.

Mr. FASCELL. Are you in the Foreign Service?

Mrs. KING. I entered the Foreign Service through the written examination in 1956.

Mr. FASCELL. I was just curious about the reservation you placed upon yourself as an individual. I do not understand but it is all right with me.

Mrs. KING. I am representing my organization. If you would like my personal views, I would be glad to give them to you. If you want the views of my organization, I think it is proper for us to stick to that.

Mr. FASCELL. Let's talk about this organization. Tell me about it so I will understand exactly whose view we have.

Mrs. KING. We represent Foreign Service and civil service.

Mr. FASCELL. All Government employees?

Mrs. KING. In State, AID, and USICA.

Mr. FASCELL. Men and women?

Mrs. KING. Men and women and their spouses. That is officers and secretaries.

Mr. FASCELL. No one outside the agencies?

Mrs. KING. No, unless they are retired. Only a few continue to be interested.

Mr. FASCELL. Except for the fact that you are a separate organization, what is your relation to AFSA?

Mrs. KING. We formed in 1970 as did the blacks and hispanics and the Asian Americans. Those are the minority groups I know about and there may be others.

Mr. FASCELL. You all have separate organizations?

Mrs. KING. Yes. We organized on behalf of equal opportunity for women in about 1970 and you will be speaking to the Thursday luncheon group which represents the blacks on the 31st.

One of the reasons why we did so was because very frankly we were not being adequately represented by the American Foreign Service Association. I do not know how representative that organization is of current employees. I do not know how many of its members are retired members.

Mr. FASCELL. Is that a good question to ask without asking yourself the same question?

Mrs. KING. I can tell you. We have three retired members.

Mr. FASCELL. I am talking about representatives of the community, whatever that community happens to be. I do not know that it is valid but it certainly is the guts of the case as far as women are concerned in the Service. If you are going to apply it to the organization as they come out of that Service, I do not know where you stop.

I guess the assumption is that not only is AFSA nonrepresentative in the agency sense as an agent, but nonrepresentative in its character and nonrepresentative in its makeup. I gather that is the assumption. I do not know whether that is a fact or not. It is certainly the assumption I am left with because you have so many other organizations who want to go out and have an identification.

Mrs. KING. Certainly there has been a lack of response by AFSA and AFSA has not been responsive to special concerns.

Mr. FASCELL. I was citing from the response, the fact that they do not go in the right direction or the buttons are not pushed right. I was thinking strictly about the makeup of the organization as not being representative of the community which it is supposed to represent. If there are not enough women in there then it is impossible for that group to be representative any more than it is for your group to be representative since there are not enough women in the group to start with. That is the only point I was making.

I do not ignore the politics of the situation in terms of the need for identity.

Mrs. KING. I am a member of AFSA and many people within my organization are. I have two members here. One is from AID and one is from USICA. About our representativeness, we are in the midst of our annual membership campaign so I cannot tell you how many members we have because we are in the midst.

Mr. FASCELL. As far as I am concerned, it is not even relevant any more than the makeup of AFSA is relevant but if you think it is relevant, it becomes important.

Mrs. KING. If the people who vote, if half of their members are retired or one-third of their members are retired and they are operating on ideas that were current and in vogue 30 years ago, that is not going to help us today.

Mr. FASCELL. The 18th century. It is not going to help you. It is the old story of political power. Around here as an example, you can do anything if you have the votes. If you do not have the votes you are not going to do anything. You can be eloquent and you can be intelligent.

Mrs. KING. You can even be right.

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Mr. FASCELL. Mr. Leach.

Mr. LEACH. I can understand that since this side of the table seems to have a monopoly on rightness and not votes.

Mr. FASCELL. This side of the table goes in both directions.

Mr. LEACH. Let me comment briefly on the cone system. I think anyone who has ever been associated with the Foreign Service has very, very strong opinions. I happen to be convinced that it is damaging at the entrance level. So many people feel they have a slightly better chance if they choose a consular or administrative cone; and the Service, when they get locked into the cone concept, wants to choose a given percentage in that direction. This applies particularly to women who may not have as much alleged political background, and particularly the minorities, so you get locked in from the start.

Oddly enough, in politics in America, anyone who has ever run for an elected office knows women do all the work and are all the smart politicians.

I think it is damaging to promotions in a reverse discriminatory way in the junior ranks and the opposite for the senior ranks. Having once reached the austere rank of an FSO-5 as a political officer, I was told by one promotion board that I would have an immediate promotion if I switched to economics and a delayed one for politics. I think that is absolutely wrong.

As everyone knows toward the end of the spectrum, political officers get most of the top promotions. There is no reason to put that slant in the system.

I think the cone system is devastating to the psychology of officers. What you have in the Foreign Service is a class system to begin with and this makes a caste system within a class system. That is an outrage.

I also think it is damaging to training because, as most people who have served overseas know, some of the best initial training is at the consular level or possibly the administrative level. You get locked into a political cone and you are strapped. There is no reason that the Foreign Service should not be far more flexible.

I would strongly advise the State Department to dispense with the cone system virtually in its entirety. As I said somewhat facetiously, but I think it is correct, at the last meeting of this hearing, cones should be used by Good Humor men but not Secretaries of State.

With that as a prolog, could you comment why in your judgment there seems to be a decreasing number of women at the top levels although an increasing number at the bottom?

Mrs. KING. It is the sociological phenomenon as well as historical phenomenon that women in American society entered the work force in positions to which they were previously kept out during the Second World War and immediately after the Second World War. Those women are now approaching involuntary retirement age.

I have attempted to get the statistics on the ages of the women in classes I, II, and III. More than half of them look like they are going to be retired within the next couple of years.

That is the sociological reason.

Mr. LEACH. If I could interrupt you for a second, we have a vote and we will recess briefly. The chairman is back.

Mr. FASCELL. We will be back in a few minutes.

[The subcommittees recessed for a vote on the floor.]

AFTER RECESS

Mr. FASCELL. We will continue.

Mr. Buchanan.

Mr. BUCHANAN. Thank you.

Do you believe the Foreign Service entrance exam itself discriminates against women?

Mrs. KING. We know statistically it does. We know it screens out women more rapidly than men. I have some figures with regard to the number of people who actually apply to take the exam, who actually take the exam, who pass the written exam, who take the oral and pass the oral. The statistical difference is 5 to 10 percent.

The worst case recently was in 1975 when 14 percent of all men who took it passed and 4 percent of all women who took it passed it.

We are not really quite certain why that is so. That is the business of the people who make up the examination to find out why it is so.

Recently the Department has changed its system of the oral examination. Instead of having three, largely men, although increasingly women, go out on these panels, drilling you for an hour, you now have an all-day examination. I think there are six applicants in each group being examined. I do not know whether there are three or six examiners. They do an in-basket test, a written test, and a little oral. They put them through some work simulation games.

Although that only began in January, I am told women are doing much better on that.

The problem with the old oral examination is the problem we face in assignments and promotions. It is what women call the problem of invisibility. If I have a qualification and you do not ask me about it, then I never have a chance to let you know. If you already presume that because I am a woman and marriageable, that I will get married and leave and the Department is going to lose all the money it has invested in my training, then you are already in a mind set that discourages you from bringing in women.

We definitely do believe that there are problems in recruitment, to make certain that with the appropriate training women are encouraged to take the test as well as especially the written examination. We want a much more thorough review of that to identify what is in the examination. We know there is a bias. We know statistically there is a bias. We do not know exactly what it is.

I remember one question which at the time I scratched my head and could not figure out why it was relevant. Why is it relevant to know the name of the last holy Roman Emperor? What does that have to say about your ability to issue visas and to mediate between quarreling ship captains and seamen in Bombay? I do not know.

Mr. BUCHANAN. I am pleased to hear your comment on the change on the oral examination. There has been an impression that has been misinformed. There has been the presumption that a woman would be a consular rather than a political or economic officer and this has had some impact on the nature of that examination and the rating of the person.

Mrs. KING. We are also very concerned about the way women get appointed to cones because the qualifications that they are looking for which place you in a political cone or economic cone, consular cone or

administrative cone, again, we do not know how relevant that is to what may be reasonably expected of you throughout your lifetime career.

One of the reasons why we have asked for a representative service in all grades and all functions in all regions is because you do not need to recruit more women for the consular corp. Thirty percent of all women officers are consular officers. You do not need to recruit more women in the typing pools. Women are already there. Only 4 percent of all women officers are in the political cone.

Mr. BUCHANAN. How would you assess the recent action by the Department to expand on a worldwide basis the former pilot program of Foreign Service spouses' employment?

Mrs. KING. I am not quite certain I understand.

Mr. BUCHANAN. This committee had insisted that Foreign Service spouses be considered for employment, primarily thinking in terms of replacement of foreign nationals, and that there be training. State had instituted the program on a pilot project basis which had accomplished approximately nothing.

Quite recently they expanded that worldwide.

Mrs. KING. In Japan, the local salaries just may exceed the American salaries. In India and Pakistan in which I have spent a considerable amount of my career, it would give them one-tenth of the salary of an American.

I think you have to look at what work is being done. If the spouse has gone through the Civil Service Commission or through the Department of State exams, did their typing test, their shorthand and then qualified as a Foreign Service reserve secretary, if you ask her to go to Indonesia and pay her one-third of an American salary, I do not think she is going to be very happy about that. However, there may be some positions in which she has no skills that are any different from a local employee and the same salary may be just.

I do think you have to be flexible.

Mr. BUCHANAN. We provided for part time employment also. Our intent in the subcommittee was not to put down women but to provide employment opportunities for women who had no employment and were all spouses. There are Foreign Service spouses around the world who are totally unemployed and who have talents and resources which may be of a value to our Government. They have no employment opportunity because they are spouses of American Foreign Service officers.

Our hope had been some of these talents and resources might be used by our Government.

Mrs. KING. There are lots of ways. There was a very good memorandum that came out of USICA. It was when I was in Bombay. It had to be in the late 1960's. It said that women should be considered for work that is part-time, full-time temporary, contractual, et cetera. You were to use your imagination. If you have an exhibition coming in and you are going to be terribly busy, rather than bringing people out from Washington to beef up the mission, examine what resources you have at the post. There are going to be certain situations in which it is most efficient and most just to use spouses who are at the post.

There will be other situations in which the Service will have a continuing need for persons with certain kinds of skills—functional or regional—so it should develop a cadre of career employees with those skills and expertise.

One of my problems with the act is there is a lot of detail in here that I just think is dangerous to put in an act because it limits your flexibility and the world certainly changes. The Foreign Service has changed fantastically since I entered 23 years ago.

We are not talking about a bill that is only going to be good for 5 years. It is going to be around for 30 years. I would think in this case what you perhaps need to do is to state what your objective is and to authorize the Secretary of State to issue the appropriate regulations rather than to attempt to define the program and give the numbers and all of the rest.

At least this Secretary of State, I have faith, would really attempt to do that and in a way that would be fair for both employees and spouses.

Mr. BUCHANAN. The basic thrust of your testimony is certainly something I identify with in providing equal opportunity for women and persons regardless of sex in the Foreign Service and throughout the Federal Establishment and is something long past due.

I hate to read these statistics, Mr. Chairman. I keep hearing these reassuring things from various parties and then I look at the statistics.

Mr. FASCELL. You do not expect the Department of State to be any better than any other agency, do you?

Mr. BUCHANAN. I would expect it to be less good probably, Mr. Chairman. I am very discouraged at the whole record.

Mr. FASCELL. Look at the University of Alabama.

Mr. BUCHANAN. You cannot hit me, Mr. Chairman, because I would say "Amen."

Mrs. KING. One of the reasons why I think USICA and even the Department of State may be having a little difficulty with getting women into the Foreign Service is the same woman who is graduating from college and even going through law school has a lot of choices in law firms and businesses and media that they did not have before.

I do not know that the Foreign Service can offer a career as attractive as others now available in our society as a whole.

Mr. BUCHANAN. In society as a whole the Federal Government is the physician who is actively engaged in trying to heal what ails the rest of society. The physician has failed to heal himself at all in my judgment. That may be prejudice but I feel very strongly about the Federal Establishment.

I hope we can do better.

Mr. FASCELL. Mr. Buchanan, I am delighted you found Mrs. King militant enough for you.

Mr. BUCHANAN. He is giving me a hard time. I told him in private we finally had a witness that was militant enough to suit me.

Mr. FASCELL. I thought it ought to be on the record.

Mrs. KING. Absolutely. Thank you, sir. There are a lot of pluses and minuses. I am here to talk about the minuses.

I did make some changes in my prepared testimony as I went along. There have been some efforts and there has been some progress. I think the real problem is the lack of an affirmative action program in the Department of State that deals with equal employment opportunities.

Mr. FASCELL. The most important thing about that as far as I am concerned, as you have stated on the record, is that this Secretary of

State and those around him are very much committed. They certainly have impressed me that way.

Mr. BUCHANAN. I believe that is true.

Mr. FASCELL. The only reason we are even fooling with this bill is because Secretary Vance made a commitment to this subcommittee that the administration would get behind it and make all the necessary internal changes that are going to be required to deal with affirmative action and equal employment opportunities and all the other things that need to be done.

Mrs. KING. You should draw this to the attention of those who draft your revisions to this bill. AFSA, AFGE and others have claimed that the amendment to the Civil Rights Act of 1963 by title VII and the Executive order—extending to Federal agencies the prohibition against discrimination—does not apply to the Foreign Service. As I understand it, the reason for this is that the Civil Service Commission was to implement these provisions and there are those who claim that it does not cover the Foreign Service. They also claim that the Executive order on affirmative action does not apply to us.

Mr. FASCELL. We appreciate the emphasis. We got the point the first time. I was not aware of that position. I cannot imagine there is any legal base for it. That is my immediate reaction without looking at the statutes. That is what I would call beer conversation.

Jim?

Mr. LEACH. I am not sure beer would be an appropriate analogy for the Foreign Service.

Mr. FASCELL. You are trying to promote that old myth that everybody drinks martinis straight up.

Mrs. KING. Not in the tropics, gin and tonic.

Mr. LEACH. I would like to test your militancy. Would you favor a constitutional amendment calling for busing between cones? John Buchanan has been very interested in this issue. He has been on both sides. [Laughter.]

Mrs. KING. I think we may have gotten one. We are examining it. It is quite obvious if you stack all the women officers when they come in under the consular cones and the budget and fiscal and personnel functions in the administrative cone, that things are not going to change.

AFSA was for freezing cones the way they were. My understanding of the Department's position—a much better witness would be the gentleman sitting to my right—is that there is an opportunity to change your formal skill code—the code relates to the specific function within the cone—over several years if you can get successive assignments in a code different from your present code. For example, say you are a secretary and you are interested in doing budget and fiscal work which will permit you to rise to grade levels not available for secretaries. You will go to the personnel people and tell them about university or other training you have in accounting or budget work and your interest in getting an assignment in a budget and fiscal position. If you succeed, that job is probably for 2 years. Then you try to get your next assignment in the same budget and fiscal code. At that point, as I understand it, you are eligible to be considered to have your skill code changed from that of a secretary. There is a review process in this: It will depend upon the need for budget and fiscal personnel and

your qualifications. But, this new procedure unlocks the bars at the gate which now prevents change.

Mr. LEACH. I would like to stress that you get locked into a system when you start to accept people initially in one cone or another and you advertise for that cone. I think any of us that have ever been associated with the Foreign Service are truly impressed with the competition to get in but not infrequently are appalled by those that are finally selected. There is an irony beyond belief.

As a graduate student, I looked at my friends who took the exam. It always struck me that the exact people that I would have taken did not get accepted and those that I would not, did. I think part of the problem really is this conal structure. It also has the disadvantage of making people think they will have an easier chance if they choose a less attractive cone. It also has the disadvantage of possibly reducing the chances of those that might have chosen a more competitive cone. I really think it should be examined.

That has nothing to do with the fact that quite obviously within State one develops specialties. One develops regional specialties. One develops trade specialties. People concentrate and that is very reasonable but they do not necessarily have to specialize forever.

One of the most interesting parts of your testimony related to the fact of underutilization; that is, 43 percent of women were serving in positions one grade below what they were qualified for. It has always struck me that is a problem in State not just of women but maybe of everybody, in the sense State is loaded with enormously qualified people who spend a good part of their career in underutilized positions.

Would you say that this 43 percent is about average compared to everyone in State or is it specifically negative for women?

Mrs. KING. We did that study for the Interdependence Subcommittee of the President's Commission on the International Women's Year. We recommended—and the Commission agreed—that the President direct the Secretary of State, the Administrator of AID, and the Director of USICA to make a comparative analysis for men and women of Foreign Service ranks and positions held. That analysis was never done. We have asked the Department for it on two different occasions. The one answer did not tell us anything because they have lumped together the figures for the various Foreign Service categories—FSO's, FSR's, and FSRU's. Any analysis of personal rank versus position grade has to separate occupational functions and grades, for example, are women administrative officers of grade 3 doing as well as their male peers? Otherwise, the comparison is lost, the percentages are skewed when you compare lower level occupations like nurse and secretary in which women are concentrated with higher level occupations like doctor and political negotiator in which men are concentrated. But, we have been unable to get the Department to be responsive on that issue.

Mr. LEACH. In general, do you support the principle of making a provision for the possibility of double promotions and do you think that might be beneficial to minorities and women?

Mrs. KING. Under the present promotional system, it would be devastating for women and minorities.

Mr. LEACH. Why?

Mrs. KING. Because the people in the promotion panel are reading efficiency reports that have been written by supervisors—predominantly men—who do not see the actual qualifications and potential of their women subordinates. They do not see women as leaders.

Mr. LEACH. That is another issue.

Mrs. KING. If you are saying there should be a system for remedial promotion, yes, of course.

Mr. LEACH. I didn't have in mind the remedial issue. Rather, the possibility in a select number of cases for extraordinary merit to be the basis of a double promotion.

Mr. FASCELL. That exists, does it not?

Mrs. KING. The problem is not that there is a lack of women of extraordinary merit but that their merit goes unreported. Right now there is some opportunity for accelerated promotion. But, preference is given—in my grade for example—to those who have been in grade for 5 years. I do not know what the periods are for preference in promotion in other grades. At the present time, if you really are a superstar with outstanding efficiency reports but you have only been in grade 1 or 2 years, you can still be promoted but your chances are greatly reduced. Identification of the "superstars" is one of the functions of the promotion panel.

I tend to think that unless you are really talking about remedying past errors of great substance you should not have double promotions. So long as bias persists and is reflected in efficiency reports, women and minorities would not benefit from double promotions. Promotion panels put on the "fast track" people who have done well in demanding jobs working under influential people. If women are not given demanding jobs then they never have a chance to show what they can do.

The promotional system is so bound in with your assignment system that the two are inseparable. And, it is the same psychological barriers and mind set in both that women face. Bias is still formidable and women do not have a chance.

If I had a chance to say where affirmative action would take place in the Department of State after entry, I would say assignments.

Mr. BUCHANAN. Could that not be another piece of the puzzle? Since the problem is the dearth of women in the upper levels, it would seem to me if you corrected these other things, a double promotion might be one of the pieces to help change it.

Mrs. KING. There was a proposal in the midsixties by the Special Assistant to the Under Secretary, then Deputy Under Secretary for Management. That proposal was a very interesting one. What she said was:

We lack women in the senior grades. We will go through and select some in the middle grades that look like they are superior but have not had a chance to show what they could do. Let us sit down and figure out what kind of assignments they would need in order to become ambassadors within 5 years or 10 years.

I was one of the people who was selected for that. I had to sit down and try to figure out as a practical matter what I would have to learn in 5 years to be an ambassador in 10 years. You do not want to put a woman into a position or anybody into a position in which they are going to fall flat on their face.

That was the program. Do you know what happened to that program in my case? The first assignment proposed for me was to a class 3 position—a supervisory one—in a country and function in which I had perviously served. There was such a vacancy in 1971 but the assignment officials wouldn't make the assignment. His point of view was "why should she be given that opportunity? I am a grade 3 officer. Why should she have it and not me?" So, despite the support in principle to the program of accelerated assignments for selected middle-grade women by the Deputy Under Secretary for Management, to the best of my knowledge, the program never got off the ground.

In my view, that was a very imaginative program. It did not promote you out of turn but put you in a good position to earn an accelerated promotion. Obviously, if you are working at a grade one level higher than your personal rank and doing a good job of it the promotion boards will take that into consideration. That may be a better plan than double promotion.

Mr. FASCELL. I do not know about the dynamics of any organization more than two which I am running. I think any system you build is going to be subject to human dynamics. Even guys outside the Department run the Department or try to. I can think of one right now making more money than he deserves but his friends were selected and they are in the right places.

I am not saying anybody is disloyal. It is a fact of life.

If there were no women on the selection board, how do you get selected?

Mrs. KING. It is not just any women on the selection board. It has to be a woman who understands women's positions and the nature of the bias. Sometimes the issue is very difficult to identify as relating to discrimination on the basis of sex.

If you have been given a good position and you walk into your new office and you are seen as a powder puff, you are never asked to do anything. You are never told what happens in the country team meetings. You are never permitted to read the cables which is your work's lifeblood. You do not know what is happening. Your advice is never asked.

That is so subtle and it is very difficult to get around.

Mr. FASCELL. It forces you into the other stereotype, the obnoxious woman.

Mrs. KING. Yes. If a man is aggressive, he is considered masterful.

Mr. FASCELL. If a woman fights for her rights, right away they say she is a troublemaker.

Mrs. KING. It is difficult to put women on the selection boards especially in the higher grades because there are so few higher ranking women. We have suggested that they take recent retirees, women who have recently retired who attain high rank and put them on as public members if needed in order to beef up the promotion system.

There are a lot of very creative ideas like that which we have suggested in the past. Our problem with the affirmative action program was that the career employees who set out to implement the recommendations did not know what the problem was. Therefore, their solutions were irrelevant where they even addressed the EEO. I regret to say that in assignments and career counseling and training, they did not even address EEO.

Mr. BUCHANAN. Thank you.

Mr. FASCELL. Thank you very much, Mrs. King.

Mrs. KING. Thank you very much for letting me come.

Mr. FASCELL. I am almost afraid to say "gentlemen." According to my book and the record, we finished our section-by-section examination on page 28 last time and we start with section 442, "Within Class Salary Increases."

Just point out the substantive differences if any.

Mr. READ. We are ready to proceed in that way, Mr. Chairman. We would also appreciate the opportunity to address the WAO legislative proposal and we could address it on paper or whatever way you wish.

Mr. FASCELL. If you would like to comment on it, that would be fine.

**STATEMENT OF HON. BEN H. READ, UNDER SECRETARY FOR
MANAGEMENT, DEPARTMENT OF STATE**

Mr. READ. In the most general vein as the Department's equal opportunity officer, I welcome and agree with the thrust of Mrs. King's remarks. There is no question that there is a catchup of enormous proportions. As the Secretary made clear, we feel we have made some progress and Mrs. King was good enough to state that also.

We are very mindful of the distance to go. The techniques and ways of doing so are described in the 140 questions and answers which we have filed in response to the committee's request. They are very detailed responses on the exam process and on the changes which were made to attempt to get at these factors.

On the legislative proposals, I do not recall the AFSA testimony as Mrs. King does, although I was not here and I simply read the AFSA prepared testimony in advance. We want there to be no ambiguity about the full applicability of equal opportunity provisions of law to the Department.

As you know the words "merit principles" appear repeatedly throughout the bill and are fully applicable to the Department. The No. 2 principle is equal opportunity.

Mr. MICHEL. If I may, Mr. Chairman, there are two points. First, it is the legal position of the Department of State that title VII of the Civil Rights Act applies to the Foreign Service and to the Department of State.

Mr. FASCELL. We will just say that and that is the end of it.

Mr. MICHEL. The merit principles referred to in this bill are defined in the bill as the merit system principles set out in the Civil Service Reform Act. They apply anyway, but we wanted to give that emphasis in this legislation.

Mr. FASCELL. I think probably for legislative esthetics a restatement of the applicability of title VII is the easiest way to handle it rather than interspersing it all through the bill in the equal employment language.

Mr. MICHEL. Title VII of the Civil Rights Act is not referred to in the bill. It is referred to in the bill as merit principles.

Mr. FASCELL. I understand that. I am talking about Mrs. King's testimony and going back to the applicability of title VII of the Civil Rights Act.

Mr. MICHEL. We do not need to refer to title VII of the Civil Rights Act. I think everyone agrees it does apply.

Mr. READ. It is title I of the Civil Service Reform Act which has these important provisions.

Mr. MICHEL. The first of the merit principles is that recruitment and selection and advancement should be determined on the basis of knowledge and skills in open competition which assures that all receive equal opportunity.

The second of the merit principles is all employees should receive fair and equitable treatment without regard to political affiliation, race, religion, national origin, sex, marital status, age, or handicapping conditions.

We think these principles specifically include in the concept of merit the notion of equal opportunity and we are concerned that by saying "merit and equal opportunity" we will suggest they are two different things. In the Civil Service Reform Act, one is a part of the other.

Mr. FASCELL. That occurred to me also. I think we could handle that in language in the report with respect to the reference to title I of the Civil Service Act and the definition of merit principles including equal opportunity rather than trying to amend the definition in this act which might be confusing.

We will have to think about that but that is my immediate reaction to it although I do not know how the others feel about it. That is something we can examine as we go along.

Mr. MICHEL. Section 442 of the bill, "Within Class Salary Increases," is a generalization and a simplification. The existing law has two provisions for within class salary increases, one for officers and reserve officers and the other for the Staff Corps. The one for the officers and reserve officers is quite detailed. It says that the "within grade" comes every July if you have been in class for 9 months and have not had an equivalent increase in pay. It defines an equivalent increase in pay in some detail, and includes in the definition any other increases the Secretary may designate by regulation.

We have substituted for this unnecessary verbiage a formula that says members of Foreign Service will get periodic within class increases unless the selection board decides performance falls below the standards of the class.

The notion of additional step increases is in existing law and is carried forward in subsection (b). We think the possible denial of a within class increase and possible double within class increase would work better for the Foreign Service than the "merit pay" concept of the Civil Service Reform Act.

We have had a lot of discussions with employee representatives and others and the civil service approach seems to present some special problems with implementation in a worldwide, highly dispersed Foreign Service.

Mr. FASCELL. Any questions on this section?

Mrs. SCHROEDER. I have some questions.

Are you going to set any target numbers for how many people in a class are going to get double step increases?

Mr. READ. We thought it would be unwise to do so certainly in the law, Mrs. Schroeder, because it is first and foremost the function of

the selection boards under our system which are independent entities and not subject to outside influence.

Mrs. SCHROEDER. In other words, could everyone get it? Does this have any merit?

Mr. READ. Obviously it will be "x" percentage at the top only who qualify and "x" percentage below who are denied such increases. I think the determination has to be left up to the boards as to who is deserving to be in those categories as defined. The precepts will be worked out with great care.

It will also be a matter of available money because it may have to be a zero net sum.

Mrs. SCHROEDER. Where will that money come from?

Mr. READ. As I say, it may have to be a zero sum in terms of who gets double increases and who have increases withheld. I want to emphasize that this will not affect the annual cost of living comparability increases which go to all employees whose pay is not capped.

Mrs. SCHROEDER. We had a gentleman testify yesterday about how everybody wrote up wonderful performance ratings for everybody else. The real question is how do you prevent that from happening. You say you have to prevent rating inflation because for everyone who goes up you are going to have someone who does not get a raise to keep the money.

Mr. READ. Unless there is additional funding in the authorization-appropriation process.

Mrs. SCHROEDER. Thank you.

Mr. MICHEL. Section 451, "Local Compensation Plans," is unchanged from existing law except for a parenthetical reference at the top of page 29 to participation in local social security plans. This participation in local social security plans with respect to foreign national employees is authorized by current law. The parenthetical reference here is to emphasize that type of employee benefit as a preferred method of compensation for the foreign nationals.

Mr. FASCELL. What about the issue raised by Mrs. King with respect to spouses and other family members?

Mr. MICHEL. This section provides affirmative authority for the Secretary to pay Americans who are family members at local rates. That is a preservation of existing authority that was enacted last year.

The particular application of that will have to be very carefully implemented because of the problems of some places where local employees make more than Americans and some places where they make far less and you have to look at the particular job.

We thought for purposes of this bill, and given the fact that the pilot program has not given us a great deal of experience to make judgments, that it was better to leave that flexibility in the law than take it out. What we have in the bill is the family members may be paid at American rates or at the foreign national rates. The bill does not seek to determine which will be used.

We may find this does not work. We would not like to be deprived of the flexible authority to try to work this out in a way that will maximize employment opportunities.

Mr. FASCELL. All right. Go ahead.

Mr. MICHEL. Section 452, "Salaries of Consular Agents," is somewhat more flexible than the present law, which contemplates classes of consular agents. The Secretary then decides whether a particular consular agent has enough work to do and is in a locality that warrants one class or another. This bill provides for the Secretary to decide more on an individual basis in a particular case what the consular agent's workload is, taking into account the salary rates paid in the particular locality, and to set the consular agent's salary on an individual basis.

Mr. FASCELL. Is "consular agent" defined?

Mr. MICHEL. "Consular agent" is listed as one of the categories of Foreign Service personnel. The consular agent is an American or a foreign national who is a resident at a place where there is some need for consular services but not enough to establish a regular consular post and assign a consul or consul general with a staff of people serving on a rotational basis.

Mr. FASCELL. That is a secretarial appointment under section 303.

Mr. MICHEL. Yes, sir. It is generally a part-time job held by a businessman.

Mr. FASCELL. Defined in section 103.

Mr. MICHEL. Yes.

Mr. FASCELL. Subsection 103(7).

Any questions on section 452?

[No response.]

Mr. FASCELL. Section 453.

Mr. MICHEL. Section 453, "Compensation for Imprisoned Foreign National Employees" in effect extends the Missing Persons Act to foreign national employees who are imprisoned abroad as a result of their employment by the United States. This is no change from the existing law. The present law incorporates this authority within section 444 of the 1946 act on local compensation plans. It is really not a compensation plan. It is an incidental, separate feature of employment for foreign nationals and we broke it out and made it a separate section.

Section 461, "Temporary Service as Principal Officer," combines two sections in the 1946 act which dealt separately with such temporary service as head of the diplomatic mission or as head of the consular post. The substance of the two sections of existing law is the same. It seemed unnecessary to preserve that distinction so we simply combined and generalized the language. This authorizes the Secretary to determine the amount of additional pay not to exceed the pay of the usual principal officer which should be given to a member of the services temporarily in charge of the post.

Mrs. SCHROEDER. Mr. Chairman?

Mr. FASCELL. Mrs. Schroeder.

Mrs. SCHROEDER. In the civil service, detailed employees do not get paid the higher rate until they have been there for 6 months. How do you define "temporary"?

Mr. MICHEL. The way that the limit is set by regulation is to establish a minimum time of service as temporary principal officer or chargé d'affaires before the chargé d'affaires' pay becomes applicable.

If the Ambassador is away for a week and the deputy chief of mission is serving as chargé d'affaires for a week, there would be no salary differential. If the Ambassador is away for 2 months, the chargé d'affaires would receive a differential for the second month.

Mrs. SCHROEDER. Would it make sense to apply the same rule as in the civil service? Would you have an objection to 6 months?

Mr. READ. The problem as I see it, Mrs. Schroeder, is those periods or gaps are indeterminate. It depends frequently on the Presidential appointment process which may be suspended between administrations or at other times for policy reasons. Frequently, the full load is placed on the No. 2 person for extended periods of time, but for whatever period it is a heavy set of responsibilities.

Mrs. SCHROEDER. We have the same problem in the civil service. That is why I am wondering why we should make a distinction. Would it not be easier to make it similar?

Mr. MICHEL. We have not provided for any specific period in the legislation. This might well be a subject for discussion in the compatibility forum in which the Office of Personnel Management participates. We would not want to legislate any period in this bill.

Mr. BARNES. I am not familiar enough with the civil service practice. The chargé d'affaires does serve as a representative of the President during that period when the Ambassador is absent and has the responsibilities not only for the State Department component but for the whole mission.

Mr. MICHEL. Section 462, "special allowances," continues without change section 451 of the 1946 act. This provides for a special allowance for Foreign Service officers who are required to work substantial hours in excess of normal requirements. The Foreign Service officers under the present law do not receive overtime under the premium pay chapter in title 5 of the United States Code.

Mr. BUCHANAN. Mr. Chairman?

Mr. FASCELL. Mr. Buchanan.

Mr. BUCHANAN. We are pleased to do the special allowance thing because they do not receive overtime. It is my understanding that the requirement has limited this to some 100 persons. That is not in the present law and not in your new section. I wonder why the limitation if I am correct?

Mr. READ. It was an exchange of letters which Senator Pell—

Mr. BUCHANAN. Extracted.

Mr. READ. Thank you. At the time of passage of last year's law.

Mr. BUCHANAN. Is this a permanent commitment? Will it apply to the new law as well?

Mr. READ. It is on the record. There is no duration set. We are following the existing law.

Mr. BUCHANAN. Thank you.

Mr. FASCELL. It involves a change in mind or change in personnel whichever comes first.

Mr. BUCHANAN. Maybe they could all hand in their resignations.

Mr. FASCELL. I think the Senator would find that extremely difficult. Let's go to chapter 5.

Mr. MICHEL. Section 501, "Classification of Positions," restates in a somewhat simplified way the present section 441 of the 1946 act, which distinguishes between Foreign Service positions in the Depart-

ment and Foreign Service positions abroad. This section simply lumps them together and says the Secretary will establish the classifications for positions to be occupied by members of the Service.

Mr. FASCELL. Any questions?

[No response.]

Mr. MICHEL. Section 511, "Assignments to Foreign Service Positions" combines a number of provisions in the 1946 act which now provide separately for the assignment of Foreign Service officers, Reserve officers, Staff Corps, alien clerks, and employees. It says the Secretary may assign members of the Service to any position in which the member is qualified to serve.

The principal difference I think is the reference to the new merit principles in the Civil Service Reform Act. These are to be followed as applicable, in the assignment process.

Subsection (a) does emphasize the rank-in-person system of the Foreign Service.

Mrs. SCHROEDER. Mr. Chairman, I am confused. Could you tell me how many civil service employees are serving in Foreign Service positions and vice versa?

Mr. MICHEL. Subsection (b) sets forth a general policy that Foreign Service positions are to be filled by Foreign Service personnel, but also it is designed to permit interchange with the civil service. We have not tried to put a cap on that and say not more than 5 percent, or that for every Foreign Service officer in a civil service job, you may have a civil service employee in a Foreign Service job. Those kinds of mathematical formulas when you are dealing with a relatively small service can operate in a particular situation to deny the opportunity to make a particular assignment even though it makes a lot of sense.

I think this is something we will want to watch because they are different personnel systems and you do want the Foreign Service person in the Foreign Service job. We would like to have this broad authority for interchange where appropriate. This is a matter that could be discussed extensively within the Department, in the interagency context with the Office of Personnel Management, and with representatives of employees.

Mrs. SCHROEDER. Do you have the numbers of how that works now?

Mr. READ. We could supply them, Mrs. Schroeder. I do not know what the ratio is at the moment. We have 140 Foreign Service officers on assignment elsewhere and that includes a broad variety of things which you will see in one of the next sections. I do not know what the other agencies' total is at the moment. There are a variety of interchange agreements.

Mr. MICHEL. The final subsection (c) continues the existing authority of the President to assign a member of the Service to serve as a chargé d'affaires. That authority is given to the President rather than the Secretary because the chargé d'affaires is a chief of mission as defined and has those authorities and responsibilities as the President's representative.

Mr. FASCELL. Section 521.

Mr. MICHEL. Section 521, "Assignments to Agencies, International Organizations and Other Bodies," is derived primarily from sections 571, 573, and 574 of the 1946 act. It provides for the other side of the subject addressed in section 511(b). Section 511(b) says you can put

non-Foreign Service people in Foreign Service positions. This section says you can put Foreign Service people in non-Foreign Service positions.

What is new in this section is a 4-year limitation at the top of page 37. These assignments outside the Foreign Service can be very useful in broadening experience and as a step in career development. If you took somebody in the Foreign Service and put them in the civil service for a long time it could be detrimental to career development. This 4-year limitation applies in addition to the 8-year limitation on assignments within the United States which we will come to later. This is going to apply, for example, if the member of the Foreign Service were assigned to an international organization having an office in Geneva. The maximum of that assignment would be 4 years.

The other difference which should be noted is in subsection (b) (1) on page 36. Under the present law, section 571 of the Foreign Service Act of 1946, a member of the Foreign Service who is assigned to a civil service job with a higher salary than the member's Foreign Service class gets a salary differential equivalent to the difference between the Foreign Service class of that officer and the salary of the position which he is serving in.

If you have a Foreign Service officer who comes back to Washington and is assigned to the Department of State to a Foreign Service position higher than the personal class, they get no salary differential. If they go to a position of comparable rank in the Commerce Department, in a civil service job, they get a salary differential.

I think in practice this tends to diminish some assignment opportunities that might otherwise be present. It is at variance with the rank-in-person system. We provided in this bill to maintain the rank-in-person system whether they are assigned to the Department or assigned to another agency.

Mr. BUCHANAN. Mr. Chairman?

Mr. FASCELL. Mr. Buchanan.

Mr. BUCHANAN. Maybe you have not gotten to it and I do not want to run ahead of you but there has been a change pertaining to the language to the Congress. Am I running ahead of you?

Mr. MICHEL. This is in this section also.

Mr. BUCHANAN. You emphasize outside Washington, D.C. We had a quota thing but we did not have an emphasis on outside Washington, D.C.

Mr. READ. There is a 20-percent limit in existing law, Mr. Buchanan, to assignments to the Congress. When we have a program which at present totals 16 or 17 officers, it gets rather ridiculous to have such a precise percentage. We felt the thrust of the Pearson amendment which is the root of this was to get people out to the State and local governments as part of the Americanization effort; not to have them here in the Washington milieu.

We felt that emphasis should remain as we understood it from the original Pearson amendment.

Mr. BUCHANAN. I thought the situation was there were people assigned to the Hill and what does this do to that now?

Mr. MICHEL. It does not remove that authority. It remains. It just does not quantify it.

Mr. READ. Twenty percent seems like too rigid a statutory requirement.

Mr. BUCHANAN. You add the language "so long as assignments under this paragraph emphasize service outside Washington, D.C."

Mr. READ. Which they now do.

Mr. MICHEL. It was the original intent as we understood it.

Mr. BUCHANAN. That comes out including assignment to a Member of office of Congress. It seems to me those who are assigned to the Congress might, as is now the case, more logically work here than out in a district office.

Mr. READ. That is understood.

Mr. MICHEL. The paragraph provides authority to assign people to State and local governments, public schools, community colleges, and offices of Congress and says, of that total, the assignments should emphasize service outside Washington, D.C. That is, assignments to Congress should not become so much of that total as to detract from that overall objective.

Mr. BUCHANAN. Fine. I just wanted to clarify what you meant.

Mr. MICHEL. Rather than a 20-percent cap it should not be so many to detract from the overall emphasis of the paragraph.

Mr. FASCELL. All right. Section 531.

Mr. MICHEL. Section 531, "Service in the United States and Abroad," introduces a new express provision that personnel of the Service shall be obligated to serve abroad and shall be expected to serve abroad for substantial portions of their careers.

It combines this new expression with the 8-year limit on assignments within the United States which is from the 1946 act. I think the current law implied that normally career personnel would serve abroad. This has now been made explicit.

Mr. FASCELL. Up to now it has been implicit but not explicit?

Mr. MICHEL. Exactly.

Mr. FASCELL. Was it covered in regulations?

Mr. READ. It has been a basic underlying premise but never articulated in regulations or law as we think it should be. It is a basic principle of the Service and does not represent any change in that regard.

Mr. MICHEL. That is right.

Mr. FASCELL. What you want to do is provide a statutory base for the definition of "Foreign Service"?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. It is so fundamental it should be in the statute and not left to the regulations?

Mr. MICHEL. Yes. This addresses the notion of using the Foreign Service personnel system as a way to staff the domestic positions in the Department. It provides as a matter of law that this is not going to be the way the Foreign Service personnel authority is used.

Subsection (b) is changed from existing law. We have a provision in section 572 in the 1946 act which says Foreign Service officers shall be assigned to the United States for periods of not less than 3 years during their first 15 years of service.

There is no provision that deals with other categories of Foreign Service personnel. We think there is less need for a mandatory requirement today than there may have been in 1946 when we did not have Foreign Service positions in Washington and the tendency was for the assignments to continue overseas for extended periods without reassignment or re-Americanization.

We have provided a more general statement; that is, consistent with the needs of the Service, the Secretary shall seek to assign all U.S. citizen members of the Service to Washington at least once during each 15-year period.

There are some categories, communicators in particular, where it may not be possible in all cases to meet that goal simply because there are very few communicator jobs in Washington; most of them are overseas.

Mr. FASCELL. What is the present law or regulation with respect to U.S. reassignment?

Mr. MICHEL. The present law with respect to Foreign Service officers is they must be assigned to the United States at least once during their initial 15 years of service and nothing for the rest of the Foreign Service.

Mr. FASCELL. This is expanded to include everybody?

Mr. MICHEL. Yes, sir.

Mrs. SCHROEDER. Mr. Chairman?

Mr. FASCELL. Mrs. Schroeder.

Mrs. SCHROEDER. How is this going to work with AID?

Mr. MICHEL. It will cover AID as well.

Mrs. SCHROEDER. How are you going to make that work? Do you not have a topheavy problem?

Mr. MICHEL. Topheavy?

Mrs. SCHROEDER. I think we had some testimony on that. Doesn't AID have a problem with rotations to Washington?

Mr. READ. There is that problem but this particular provision is one they have not raised an issue with at all in the long discussions with us.

Mrs. SCHROEDER. Can AID comply with it?

Mr. READ. They have not flagged it as anything that would give them a problem. It does have universal applicability.

Mr. FASCELL. The fact that they have fewer people overseas does not change the thrust of this section. You have to bring them back.

Mr. MICHEL. There is a qualifier "consistent with the needs of the service" that provides some flexibility.

Mr. FASCELL. There is nothing to prevent rotation every 2 years if you want to do it.

Mr. MICHEL. No, sir. You cannot serve for more than 8 years in the United States.

Mr. FASCELL. That 8-year limitation remains the same? It is the current law?

Mr. MICHEL. It is now 4 and 4. It remains 8.

Subsection (c) is new. This provides authority for sabbaticals for the career members of the Senior Foreign Service as is provided by the Civil Service Reform Act for the senior executive service.

Mr. FASCELL. Sabbaticals are now permitted, are they not?

Mr. MICHEL. This is 11 months with pay to go off and study. I guess we now have assignments in the training program.

Mr. BARNES. Or we have leave without pay.

Mr. MICHEL. We do not have anything quite like this, which is in the Civil Service Reform Act.

Mr. FASCELL. This institutionalizes sabbaticals by law with pay?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. As contrasted with the present system which uses a variety of covers in order to get your people out on sabbaticals.

Mr. MICHEL. Someone can take leave without pay to study what they want to study. If they want to study what the Department wants them to study, they can be assigned to go to school.

Mr. FASCELL. All right. Section 541.

Mr. MICHEL. Section 541, "Temporary Details," is a technical provision. It provides that if someone is given a job for a temporary period not to exceed 6 months, you will not call that a new assignment but it is called a temporary detail. It does not break their assignment.

The present law provides for such a distinction between assignment and detail and draws the line at 4 months. We made it 6 months in here just to provide a little more flexibility.

Mr. FASCELL. What is the relationship between this and what Mrs. Schroeder was talking about with the civil service?

Mr. MICHEL. If someone comes back to serve on selection boards, as an example, while they are assigned to a Foreign Service post abroad, they are going to be in Washington for 2 months. We would not say your assignment to Rome is terminated and you are given a new assignment to the selection boards in Washington and then you will have to go through an assignment panel and process at the end of that 2-month period. This says without interrupting your assignment you are detailed for 2 months. It does not affect salary.

Mr. FASCELL. It does not get involved in the assignment panel and process?

Mr. MICHEL. It is an administrative convenience in the interest of efficiency.

Mr. FASCELL. Chapter 6.

Mr. MICHEL. Promotions based on merit, section 601. Subsection (a) simply confirms that promotions shall be based on merit. This is in existing law. We changed it to refer to merit principles. Again, this is a reference to the principles of the Civil Service Reform Act.

Subsection (b) provides for continuation of the use of the selection boards in the promotion process, and it extends as a matter of law the application of the selection board system to members of the service other than Foreign Service officers. At present the selection boards are required by law to be convened only for Foreign Service officers. They are provided for by regulation for the Reserve officers and Staff Corps.

Mrs. SCHROEDER. Mr. Chairman, we had a lot of discussion with a witness yesterday about this. Our witness professed that most of the evaluations were laudatory. If that is true, how do you make distinctions? How is this going to really end up being any kind of a merit selection?

He said evaluation reports were all laudatory or most of them were. You always have that issue of fairness and the politics involved in how the board is selected and all those type of issues. We had some very long discussions about all this yesterday but most of it was philosophical rather than substantive.

Mr. READ. The problem essentially is an implementation and administrative one in that the system has a problem with inflation of language. There are many steps in the present process that determine the selection board. It is a continuing effort. There are about five questions in the written material which address what we are trying to do there.

That problem exists before, during, and after this legislative process. It is something we have to work on continually.

When you get the members of the Service to express their views on various facets of Foreign Service life, they have more confidence in the selection board process than in any other single facet of their Foreign Service career procedures.

Mr. BARNES. We have been doing some reviews recently of the form we use to see whether we could provide some changes there. We are going to try to get to a fairer and more objective type of reading and have had discussions with the American Foreign Service Association whom we need to consult about those proposed changes.

As you know, it is a problem in the old system of evaluation which has been the keystone of the civil service reform effort. It is one which is discussed very widely in the private sector, how do you find an evaluation system that will last long enough to be useful without being corrected.

Mr. FASCELL. One of the thoughts which occurred to me while we discussed that was institutionalizing a negative evaluation along with a positive evaluation by identifying those qualities and individual characteristics in a negative sense as well as in a positive sense. You are looking for judgment and initiative and leadership qualities, independent judgment, et cetera. They are usually standardized in the selection of 1 to 5 or 1 to 10 weights.

It seems to me that you could force evaluations on negative characteristics of individuals equally as well without making a narrative so there would not be any difficulty in articulating what it is you do not like.

Mr. READ. We do that both in number systems and in narrative systems.

Mr. FASCELL. The negative aspects?

Mr. READ. Yes. Although the ratings gravitate upward.

Mr. FASCELL. It is the basic characteristic of most people.

Mr. LEACH. Mr. Chairman, I would like to put this issue in a little different perspective. For all of the problems inherent in Foreign Service promotions, the Foreign Service does a better job than any institution in the U.S. Government in terms of the effort, time, and fairness put into the process. If anything, with all the problems in this system, I think it ought to be replicated in other Government agencies rather than turned upside down.

There certainly are problems with a small group living with each other that you get into on ratings. Every once in a while you have an arbitrary person who wants to fight the system in such a manner that it works to the disadvantage of the individual.

I have always found there were grounds for appeal and there were grounds for understanding. There were sometimes implicit ratings of the rating officers on how they rate other people.

I remember they had a form in which you rated excellent, superior, or good and categories of excellent. Everybody got an excellent rating, but they might be a third step down in excellent instead of the first step. It is a subtlety that is understood by the review boards, but which might not be understood by the outside world.

I think we can stress too much the problem without recognizing that the end effect is really a very good one. When you contrast this with

civil service procedures, it is just dramatic. The only other area that does a comparable job, although I do not think quite as good, is the high levels of the military. With all our problems with some military selection, I think the military should be commended on their system as well. The civil service has a lot to learn.

Mr. FASCELL. All right. Let's go to section 602.

Mr. MICHEL. This section is "Promotion Into and Retention in the Senior Foreign Service." The first subsection sets out the basic idea that these promotions will be on the basis of selection board recommendations and that they will be made from among members who are serving in class 1 of the Foreign Service Schedule.

Bear in mind we had earlier discussed the 5-percent ceiling on noncareer people in the Senior Foreign Service. The vast majority, about 95 percent, of the people who come into the Senior Foreign Service, will come in through this promotion process through the recommendations of selection boards.

The subsection provides that the Secretary will establish a period within class 1 which is a promotion zone during which persons may be considered for entry into the Senior Foreign Service.

Mr. FASCELL. This is all new?

Mr. MICHEL. Yes, sir. Subsection (a) and subsection (b) also are new. Subsection (b) is a legislative direction to the Secretary to keep in mind in the process of promotion and retention at the senior ranks the need of the service for continuing admission of new members and for effective career development and promotional opportunities. It is to try to maintain a balance in the system and not get it clogged up at one place or another so the whole thing does not work as it should.

Subsection (c) preserves with respect to the Senior Foreign Service the exemption from affidavit requirements which is in the existing law for Foreign Service officers. The Senior Foreign Service members will continue to be appointed to a class and their promotions will be affected by reappointment. This simply says when they are reappointed they do not have to sign an affidavit that they have not paid for their appointment and that they will not strike against the Government.

This comes out of an experience involving a Foreign Service officer who had been recommended by the selection board and was promoted while in missing status and was unable to sign the affidavits. We went through a very difficult time getting him what he was entitled to.

This preserves that authority.

Mr. LEACH. Mr. Chairman?

Mr. FASCELL. Mr. Leach.

Mr. LEACH. In this general area, a very distinguished former ambassador of the United States testified yesterday that there has been a politicization of the Foreign Service even down to the ranks of 5 and 6. Would you care to respond for this administration to that charge?

Mr. READ. Yes. We have analyzed that charge repeatedly, Mr. Leach. I really do not think it bears up in close scrutiny. In terms of outside appointments, at the beginning of any new party administration, there is a curve up and then it trails off.

The cycles as you try to track them from 1961 to 1969 to 1977 are really quite similar. Unfortunately it is hard to find the records of the schedule C appointments in those earlier years in the ranks below ambassadorial.

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We cannot assert with complete confidence that our analysis is correct but we think there is little to distinguish the schedule C type of appointments that have been made through FSR appointments in this period.

Mr. LEACH. What about lateral entry type of appointments?

Mr. READ. Lateral entry in recent years has been exclusively in the affirmative action/equal opportunity area. In terms of safeguards against politicization of the sort Ambassador Neumann is referring to, one very clear safeguard is the fact that people who come in as assistants to the principal officers of the Department will no longer be Foreign Service Reserve as they have been in the past. They will be civil service since they have no obligation to serve abroad. You also have the 5-percent limit on the noncareer appointments in the SFS.

I do not think that concern is justified.

Mr. LEACH. Thank you.

Mr. FASCELL. Selection boards, section 603.

Mr. MICHEL. Section 603 directs the Secretary to establish selection boards for the evaluation process. This section describes the functions of the selection board as including the ranking of members on the basis of performance and then provides, in addition, the selection boards may make various recommendations for promotions and awards of performance pay and so forth and other recommendations as the Secretary may prescribe by regulation.

Mr. READ. An illustration would be within class increases which we referred to earlier.

Mr. FASCELL. This is simply a rewrite of section 623?

Mr. MICHEL. Yes, sir. It is less detailed and provides there will be selection boards.

Mr. FASCELL. No substantive change?

Mr. MICHEL. No, sir.

Mr. FASCELL. All right. Section 612.

Mr. MICHEL. Excuse me. It is substantively different in that it has a broader application. It applies not only to Foreign Service officers but to all members of the Senior Foreign Service and those receiving salaries under the Foreign Service schedule.

It changes the scope of the law.

Section 612, "Basis for Selection Board Review," describes the two areas that provide guidance to the selection board. Under subsection (a) they look at the records of individuals, the performance files, and under subsection (b) they look at the precepts that are provided to them by the Department which describes the needs of the service. They are looking at these two sources of guidance—what are the needs and what are the capabilities of the individuals they are evaluating to meet those needs—in arriving at their judgments.

Mr. FASCELL. Where are the precepts prepared? What section?

Mr. MICHEL. The precepts are prepared in the Office of the Director General. They are subject to negotiation with the exclusive representatives of Foreign Service employees in each agency before they are finally promulgated and sent to the selection board.

Mr. FASCELL. The discussion on precepts, is that an institutionalized procedure?

Mr. BARNES. The discussion with the employees' representatives?

Mr. FASCELL. Yes.

Mr. BARNES. Yes, sir.

Mr. FASCELL. Is that by regulation or by precedent or custom?

Mr. MICHEL. It is under the Executive order on labor/management in the Foreign Service now, and will be continued under the labor/management chapter in this bill.

Mr. FASCELL. That raises the question of Executive orders which bear on this whole question of law and whether or not there will be any changes or any contemplated changes in the Executive orders.

Mr. MICHEL. The easy example is Executive Order 11636 on labor-management relations that would be superseded by chapter 10 of this bill. For neatness, we might recommend that the President revoke it at some convenient opportunity.

Mr. FASCELL. Are there any others?

Mr. MICHEL. There may be others. I believe there are one or two old Executive orders that delegate regulatory authority from the President to the Secretary, whereas we provided the regulatory authority directly to the Secretary in this bill.

Mr. FASCELL. Have the existing Executive orders been reviewed in light of this legislation?

Mr. MICHEL. We have not done a comprehensive study of that. I can tell you what I know of them. There is not much that needs to be done in that respect.

Mr. FASCELL. Let's leave it this way as far as the committees are concerned; if a review of Executive orders indicates some substantial change required as a result of these laws or brought about as a result of some new thinking in the Department, we would like to be privy to whatever those substantial changes are.

Mr. MICHEL. We will provide a note for the record on that if you like.

Mr. FASCELL. I do not know that you need to do that right this minute but somewhere along this process before the bill is final, either in the House or the Senate, I think you are going to have to face that problem. If there is not anything substantial, you are on the safe side.

Mr. MICHEL. We will provide that, Mr. Chairman.

Mr. FASCELL. Section 613.

Mr. MICHEL. Section 613 is a continuation of existing law. It is based on section 612 of the 1946 act. It simply provides that the personnel records of members of Foreign Service will be confidential and available only to the President, the Secretary and those authorized to work on them, and legislative and appropriation committees of the Congress charged with oversight of the Foreign Service.

Mr. FASCELL. How does this section relate to the Freedom of Information Act?

Mr. MICHEL. This section is a subsection (b) (3) statute under the Freedom of Information Act. It is a statutory basis for denial of a request from a member of the public to look into the performance files of a member of the Foreign Service. It also reinforces the position that under (b) (6), the privacy paragraph in the Freedom of Information Act, that to review the contents of somebody's personnel file would be an invasion of their privacy.

Mr. FASCELL. Does this section add anything to the law or take anything away from the law?

Mr. MICHEL. It adds the (b) (3) point that here is a specific statute where Congress has said it does not want the general public looking into personnel files. It is a very much shorter and easier case to make before a court than to have to argue on the facts of the case whether this or that paragraph in the efficiency report is or is not a clearly unwarranted invasion of personal privacy.

It facilitates the defense against suits designed to get into personnel files of other people.

Mr. FASCELL. By whom?

Mr. MICHEL. By a member of the public, someone who feels they want to see more about an individual. They come in and say they want to see that person's personnel file.

Mr. FASCELL. How about rehashing for me again why it is you have to have this section in this law if you are covered under the Privacy Act?

Mr. MICHEL. The Freedom of Information Act provides a number of exemptions from the general requirements.

Mr. FASCELL. One of them is personnel records.

Mr. MICHEL. One of them is records that would involve a clearly unwarranted invasion of privacy.

Mr. FASCELL. What you are saying here is that an examination of the personnel records would clearly be an unwarranted invasion of privacy. You are making a statement of law.

Mr. MICHEL. We are putting that question to rest as a matter of law so we will not have to litigate whether particular parts of a performance file, for example, do or do not constitute such an invasion.

Mr. FASCELL. Do you have some case law problems on this which would point out exactly what you are talking about?

Mr. MICHEL. I do not know of any specific case law problem on this. This has been in the law for so long I guess it has precluded litigation. I think repeal of existing authority could lead us to lawsuits where we would have to defend the proposition that a particular record is an invasion of personal privacy.

Mr. FASCELL. You take it from section 612 which is the existing section of the law?

Mr. MICHEL. The 1946 act, yes, sir.

Mr. FASCELL. You build on that to take into account the Privacy Act?

Mr. MICHEL. Yes. We retain the provision that the individual whose record this is will have access to their own record.

Mrs. SCHROEDER. What if somebody is trying to find out whether the selection boards are really operating properly? Would they be denied access of a comparative evaluation under the Privacy Act?

Mr. MICHEL. A researcher?

Mrs. SCHROEDER. Or a union or the professional representative.

Mr. MICHEL. Yes, they would be denied access.

Mrs. SCHROEDER. Is that not a broader denial than has been extended in other areas? I do not think the Privacy Act dictates that denial in that instance. I am going back to our previous discussion where we talked about all the problems with the selection board. The question is what if someone really wants to question this.

Mr. MICHEL. You do have the Foreign Service Grievance Board who would have the right of access to these records.

Mr. READ. There is nothing to prevent a probe which would require the Department to give extensive information about the workings of those boards, short of turning over the files.

Mr. FASCELL. It seems to me you have two things here. One is internal and one is external.

What is the applicability of the law internally at the present moment? Does that change with this section? The way I see it right now it does not.

Mr. MICHEL. That is right, it does not.

Mr. FASCELL. In other words there is no infringement or diminution of either the Privacy Act or the Freedom of Information Act as far as the internal accessibility is concerned. You add nothing and you take nothing.

Mr. MICHEL. I do not think we are changing the existing law.

Mr. FASCELL. Let's read it.

Mr. MICHEL. Section 612, "* * * shall be confidential and subject to inspection only * * *" and it lists by whom and section 613 of the bill is the same language.

Mrs. SCHROEDER. The thing that concerns me is: Let's take a minority group which claims that they were never promoted as a group under the selection boards. There is really no way they can ask for that group as a class, right, or is there?

Mr. READ. It would depend on the individuals who might or might not wish to utilize their files in that way. We are, for instance, in the WAO class action suit providing massive data. It does not include personnel files and no suggestion has been made by the plaintiffs that we provide them. Obviously it is within the individual's prerogative to do what he wishes with his or her own file.

Mr. LEACH. With regard to the right of various committees to have access to these files, has that often been requested and is the individual notified of committee interest?

Mr. BARNES. I have not heard that there has ever been a request.

Mr. LEACH. If the issue is to maintain privacy, committees are not necessarily the best means of so doing. As long as there is no history of abuse in that regard there is no reason to change it.

Mr. FASCELL. There are political dynamics involved in that most committees do not want to solve personnel problems.

Mr. LEACH. You are so right.

Mr. FASCELL. I think you had better have a very special kind of memorandum so that we can use it as a basis for the committee report with respect to section 613, very carefully analyzing the points that all of us have raised so we can eliminate as much question as possible in the language in the committee report. If necessary, we will have to restate the exact language of the laws that are now on the books.

I think the saving grace as far as this one is concerned is the fact it is a restatement of the existing law. That is not much of a saving grace if people start to ask questions.

Mr. MICHEL. We will provide that for the record.

Mr. FASCELL. Section 621.

Mr. MICHEL. "Implementation of Selection Board Recommendations" preserves the existing law in section 623 of the 1946 act. This section provides that the recommendations will be submitted in rank order and the promotions will be based on the recommendations of

the selection board in the order that the selection board evaluated the members.

Mr. FASCELL. The board actually rates numerically a whole class?

Mr. MICHEL. Not the whole class, but they will make a rank ordering of those at the upper level in the promotion eligibility area. That rank order list is submitted by the selection board to the Secretary. This section says he cannot take somebody who is not on the list or is at the bottom of the list and make him the one you promote.

Mr. FASCELL. How does it work with respect to assignments without regard to change in status?

Mr. READ. It is absolutely unrelated to assignments.

Mr. FASCELL. I was just wondering how the assignment process works.

Mr. BARNES. Mr. Chairman, in what sense?

Mr. FASCELL. In the sense that an ambassador in country X says I want Joe Blow because I worked with him 6 years ago in China and I like him better than a guy who is on some list somewhere so I get the guy I worked with in China. I know that happens every day. I am just wondering how the assignment process works.

Mr. BARNES. It involves what we call assignment panels. There are variations depending on whether you are talking about new junior officers or senior officers.

Mr. FASCELL. Assignment panels and all that, is that all by regulation?

Mr. BARNES. Yes

Mr. FASCELL. There is nothing in this law and nothing in the present law. It is an internal administrative function fixed by regulation?

Mr. MICHEL. Correct.

Mr. FASCELL. That function is the selection first of assignment panels, the naming of assignment panels?

Mr. BARNES. In the Bureau of Personnel, we have a division called Foreign Service Career Counseling and Assignments. That division is made up of groups of individuals who are responsible for the assignments to the various bureaus of the Department. In addition, we have counselors who are concerned with career advice for various groups or cones, various groups of Foreign Service employees. Representatives of both the assignment side and the counseling side meet in panels.

There is a panel that works on the assignment of secretaries. There is a panel that works on the assignment of communicators. There is a panel that works on the assignment of economic officers and so on.

Mr. FASCELL. Is this process subject to some kind of grievance procedure or is that outside the scope of the grievance procedure process?

Mr. BARNES. There are grievances filed.

The panels then hear the competing claims of individuals who say I want to go into this, or of such and such a bureau which says we want so and so. They try to reach a judgment as to what makes the most sense bearing in mind some of the things we have been talking about; namely, what are the needs of the Department and so on.

Mr. FASCELL. They have the unenviable job of weighing the balance of the actual needs of the service, the requirements of the individual who seeks a particular assignment and the influence of somebody who is trying to get an individual assigned.

Mr. BARNES. That is right.

Mr. FASCELL. Those indescribable personnel networks that exist ultimately determine what happens. I am not trying to be critical.

Mr. BARNES. There is an influence but I would not say it ultimately determines it.

Mr. FASCELL. The whole process is meant to be as objective and fair as possible with human beings who basically are not.

Mr. BARNES. That is why you bring these competing elements to bear.

Mr. MICHEL. Mr. Chairman, one clarification is you cannot bring a grievance of your assignment per se. You can bring a grievance alleging that the regulations of the assignment procedures were not followed in your case. If you say I do not want to go to Bombay, you cannot grieve that as such.

Mr. FASCELL. You are required to go wherever you are sent.

Mrs. SCHROEDER. Mr. Chairman, is the authority in the last sentence of section 621 where the Secretary can remove an individual's name ever used?

Mr. READ. Yes, it has been used, Mrs. Schroeder, rarely. The type of rare case that would bring it into play is for instance when an investigation of wrongdoing starts after the selection board is sitting and when there is no contact with management. There would be nothing to reflect that fact in the performance file.

Mr. BARNES. I recall one case in the last 2 years.

Mrs. SCHROEDER. That is what the regulation is for?

Mr. MICHEL. Yes, that is the purpose.

Mr. FASCELL. Section 631.

Mr. MICHEL. Section 631 provides an exception to the general rule of promotion based on the rank order by the selection boards. This authority is necessary so that in cases where the Foreign Service Grievance Board or an equal employment opportunities appeals examiner, or the special counsel of the Merit Systems Protection Board finds that the employee should have been promoted, that grievance can be remedied by granting a promotion.

Mr. FASCELL. Are both of these boards in this law?

Mr. MICHEL. The Merit Systems Protection Board is created in the Civil Service Reform Act. That is a new reference in this bill to bring it up to date.

Mr. FASCELL. That is merely a reference to the Civil Service Reform Act?

Mr. MICHEL. Yes. There is some overlapping jurisdiction between the Grievance Board and the Merit Systems Protection Board.

Mr. FASCELL. The Grievance Board is reconstituted by law in here?

Mr. MICHEL. Yes, sir.

Mr. LEACH. Do you have authority now to double promote? Has it been used in the last 4 or 5 years? Do you know of instances where a 6 became a 4 or a 5 became a 3?

Mr. MICHEL. I do not believe we have that authority.

Mr. READ. I am not sure it is precluded but it is not specifically authorized. Where we intend to have that operate in the future is at the lower grades when you really come in at the bottom. We are thinking first and foremost here of the officer category.

Mr. FASCELL. The next section, please.

Mr. MICHEL. The next section is drawn from section 633 of the 1946 act. It is "Retirement for Expiration of Time-in-Class." This section authorizes the Secretary to establish maximum time-in-class for the career members of the Senior Foreign Service, Foreign Service Officers Corp and those other members whose salaries are comparable to those of Foreign Service officers.

We now have a time in class requirement for Foreign Service officers and Reserve unlimited. The bill does away with the reserve unlimited concept, but what we have in mind is still that people who are performing comparable functions to officers, at a comparable salary level, could be made subject to time-in-class.

Mr. FASCELL. You will have to go back to square one for me. I thought we just had a category of personnel.

Mr. MICHEL. We have Foreign Service officers. We have eliminated the distinctions between Reserve, Reserve unlimited, and Staff sub-categories. The list at the beginning of the bill refers to Foreign Service officers and then it refers to Foreign Service personnel. We wanted to minimize labels and get away from these multiple groupings that we have developed over the years.

Mr. FASCELL. Foreign Service personnel, an example would be a consular agent?

Mr. MICHEL. No, consular agent is an additional category.

Mr. READ. Everyone who is currently in the Foreign Service Staff Corps would be Foreign Service personnel.

Mr. MICHEL. It says Foreign Service personnel paid under the Foreign Service schedule. That means everybody who is today Reserve, Reserve unlimited or Staff Corps except Foreign Service officers. We are saying time-in-class will apply to the Senior Foreign Service, to the Foreign Service officers and to those others who are at a rank comparable to officers. The present law says Reserves unlimited are subject to time-in-class.

Mr. FASCELL. "Career" as used in this subsection (a) (3) means what?

Mr. MICHEL. It means one who has completed a probationary period and the tenure board has said yes, this person should be granted career status and then is appointed under a career appointment.

Mrs. SCHROEDER. Does that mean, first, that you would also apply time-in-class regulations to communicators, secretaries, et cetera, and, second, is time-in-class a negotiable issue?

Mr. MICHEL. On the first point, I do not think we have many secretaries who receive pay comparable to that of Foreign Service officers. Communicators is a difficult one because some at present are Reserve officers and some are Staff Corps. I do not know that any judgment has been made on the categories in addition to FSO's who will be subject to time-in-class, whether that includes communicators or not.

Mrs. SCHROEDER. It appears to be comprehensive.

Mr. MICHEL. The criterion of pay comparable to salaries of Foreign Service officers establishes the outer limits of the authority. The idea is to identify by implementing regulation persons who are in professional occupational categories and pay levels comparable to Foreign Service officers.

Mrs. SCHROEDER. That's right. Therefore, a secretary's pay would not be comparable to a Foreign Service officer's?

Mr. MICHEL. A secretary would not be subject to this.

Mrs. SCHROEDER. Even though she is in the Foreign Service personnel system? A communicator would likely be in the system. At that point you may have trouble with your time-in-class?

Mr. READ. Some are presently covered by time-in-class. We do not intend any major change of practice by this provision.

Mrs. SCHROEDER. What do you mean by secretaries are not presently subject to time-in-class?

Mr. READ. And they will not be.

Mrs. SCHROEDER. What about the people who fall under this?

Mr. READ. Some of the Foreign Service Reserve officers unlimited are now subject to time-in-class when they have jobs comparable to professional Foreign Service officers' assignments and are in such categories and that would continue in those cases. There are many specialists who are in the FSRU ranks to whom the time-in-class rules now apply. That would not change by virtue of this proposed change of law.

Mr. FASCELL. The time-in-class rule applies if there is comparability in salary?

Mr. MICHEL. That is the outer limit of the authority. It does not necessarily mean that everybody who is paid a salary that is equivalent to that of a Foreign Service officer at the lowest level will be made subject to time-in-class.

Mr. FASCELL. How do we make that clear? Why is it clear to you and not to me?

Mr. READ. Mr. Chairman, on page 43, we have in the section-by-section analysis attempted to spell out a little bit more detail. It reads that time-in-class regulations may distinguish among occupational categories which is the current situation. They are professional type categories that would continue to have such rules applicable.

Mr. FASCELL. As I understand it there is nothing new in section 641 except you add Senior Foreign Service.

Mr. MICHEL. In lieu of reference to Reserve unlimited.

Mr. FASCELL. You use subsection (a) (3).

Mr. MICHEL. That is correct.

Mr. READ. And the remaining language at the end of that section.

Mr. MICHEL. We have added some language to make explicit what we believe is implied in the 1946 act in the last sentence.

Mr. FASCELL. Where are you reading?

Mr. READ. Page 44, lines 5 through 8.

Mrs. SCHROEDER. Does this new language preclude it being a negotiable issue?

Mr. MICHEL. No.

Mrs. SCHROEDER. Is it a negotiable issue?

Mr. READ. Not now.

Mrs. SCHROEDER. Would it be under this bill?

Mr. READ. Not per se. Our effort in chapter 10 was not to make subjects that were negotiable, nonnegotiable or vice versa. It was an attempt to let the bargaining process continue to determine what should be negotiable and nonnegotiable between the parties with the exceptions noted.

Mr. FASCELL. Subsection (c) is simply a restatement of subsection (b) in section 633 of the present law?

Mr. MICHEL. That is correct.

Mr. FASCELL. Subsection (c) in the proposed legislation on page 45 is a restatement of subsection (b) of section 633 in the old law.

Mr. MICHEL. That is right, limited to the time-in-class aspect of section 633.

Mr. FASCELL. Subsection (b) on page 44 is all new?

Mr. MICHEL. Yes.

Mr. FASCELL. Tell us what that does.

Mr. MICHEL. Subsection (b) provides if somebody has gotten to the highest class they can get to or to any class the Secretary so designates if they are in the Senior Foreign Service, then time-in-class still applies to them. However, when their time-in-class expires, they are not automatically out. Their career appointment can be extended on a limited basis for not to exceed 5 years. That extension would be something that would be granted and renewed on the basis of the recommendations of the selection boards.

Mr. FASCELL. How do you reconcile (b) and (c)?

Mr. MICHEL. The idea here is that you do not exclude the people at the top from the scrutiny of time-in-class and the selection board review but rather you allow them to continue only on the basis of meritorious performance determined by a selection board judgment.

Mr. FASCELL. The language on lines 4 and 5 on page 45 is new language?

Mr. MICHEL. That is right. It builds in this notion of the limited career extension.

Mr. FASCELL. What you provide in (b) is an opportunity for extension without automatic termination?

Mr. MICHEL. Beyond the time-in-class.

Mr. FASCELL. You have an additional review?

Mr. MICHEL. That is right, a selection board process.

Mr. FASCELL. All through the selection board process which gives you some additional flexibility which is what you are after, I gather.

Mr. MICHEL. At present people at the top are not subject to time-in-class. This says they are subject to time-in-class but since there is no place for them to be promoted to, the selection board can decide if their performance is good enough to recommend extension.

Mrs. SCHROEDER. Does this not give the Secretary a lot of new authority? He can then grant that extension, correct?

Mr. MICHEL. That is not a broad discretionary authority because he can only grant the extension if the selection board finds that the performance of the individual merits an extension.

Mr. FASCELL. To the extent that it contributes to compression in the top grades, it is a decision that the selection board will have to recommend?

Mr. MICHEL. Correct.

Mr. READ. The needs of the service reference on lines 22 and 23 on page 44 is an added safeguard in the overall numbers that would be set.

Mrs. SCHROEDER. Is the Secretary bound by the listing of the selection board? Will the selection board classify them? If you get through the selection board, say there are five that all come through the selection board with recommendations, can he take any of the five?

Mr. READ. No; he has to follow recommended rankings if they are within the overall numbers that have been set.

Mrs. SCHROEDER. That may be something we will want to clarify.

Mr. MICHEL. There is a needs of the service element here that has to be factored in. If there are five good performers and you have jobs for three of them, that becomes very important.

Mr. BARNES. It may be your requirements fit the ranking, but not necessarily.

Mrs. SCHROEDER. You can also write the job to fit the one you want which is when the "old boy" system surfaces again.

Mr. BARNES. I meant in terms that you might need someone whose specialty is in a given area.

Mrs. SCHROEDER. I think that is conceivable and you want that kind of flexibility. You want to make sure that flexibility cannot be distorted so that somebody writes the requirements to meet the person that he wants to get.

Mr. READ. I agree fully.

Mrs. SCHROEDER. The question is how we put that in the legislation. I think we have seen that abuse going on a lot, especially in the civil service.

Mr. MICHEL. The procedures here would be something that would be negotiable. Chapter 10 provides that the ways in which you carry out management rights are subject to negotiation. There would be a safeguard there as well.

Mr. FASCELL. Section 642.

Mr. MICHEL. Section 642 is the other half of old section 633 of the 1946 act. This is the selection out, not for expiration of time-in-class but because the selection board finds that the individual is just not performing up to the standards of the class. It is what we call the low-ranking selection out.

This builds into the statute the requirement for administrative review including an opportunity to be heard which was required by the U.S. District Court for the District of Columbia in the case of *Lindsey v. Kissinger* in 1973. The bill contemplates a continuation of the review procedures that have been established to implement that decision.

Mr. FASCELL. I gather that meets all the requirements of the Administrative Procedures Act for specific review process prior to going to court?

Mr. MICHEL. This would be an exhaustion of administrative remedies before going to court. It would not be an APA-type hearing.

Mr. FASCELL. I understand that.

Mr. MICHEL. This would be an exhaustion of the administrative remedies.

Mr. FASCELL. Section 643.

Mr. READ. I might add, Mr. Chairman, from here on we get increasingly into codification of existing law for the remainder of the chapter.

Mr. FASCELL. If that is what it is, we want to know on the record.

Mr. MICHEL. Section 643, "Retirement Benefits" continues the selection-out benefits. Section 634 in the 1946 act provides that somebody who is retired either for time-in-class or substandard performance—

Mr. FASCELL. Is there any change in the benefits?

Mr. MICHEL. We have added that somebody who is eligible for voluntary retirement gets an immediate annuity but that is just common sense. The rest of it is about the same as existing law. The existing law is if you are retired from class 1, 2, or 3, you get an immediate annuity and otherwise you get a month's severance pay for each year of service up to a year's pay. We preserve that distinction. It is a rank-based distinction on retirement benefits when selected out.

Mr. FASCELL. Section 651.

Mr. MICHEL. Section 651 is a codification of the existing section 637 of the 1946 act. I think the only difference is we have provided that the Foreign Service Grievance Board is to be the body that conducts the hearing before somebody is separated for cause. This is a function where the Grievance Board has expertise, rules of procedure and we think they will be able to do a good job. The members of the Grievance Board who served in private industry as arbitrators and umpires and so on, typically hear private sector separation cases. We think this is an improvement.

Mr. FASCELL. "Shall be granted a hearing before the Foreign Service Grievance Board," lines 14 and 15.

Mr. MICHEL. That is right. The present law says before the Foreign Service Board. The Foreign Service Board does not conduct hearings. It hires a hearing examiner to conduct the hearing and then reads the record. Its members are not used to these kinds of situations.

Mr. FASCELL. Tell me the meaning of lines 21 through 24.

Mr. MICHEL. Lines 21 through 24 make this an exclusive remedy. You cannot go to the Grievance Board again and say you have a grievance about your separation. You cannot go to the Merit Systems Protection Board in the Civil Service and get a second administrative hearing. In other words, this hearing is administratively final. You can go to court of course, but you cannot have two, three, or four hearings.

Mr. FASCELL. The purpose of that language is simply to have one single administrative review?

Mr. MICHEL. Yes. It provides finality to the hearing provided for in this section.

Mrs. SCHROEDER. Is the language in lines 9 and 10 about promoting the efficiency of the service, is that meant to mean exactly the same thing that it means in the civil service?

Mr. MICHEL. There is a common law of cause to promote the efficiency of the service. The courts have developed what is such cause. It must be job related and so on. The intent here is to apply that body of decisional law.

Mrs. SCHROEDER. Thank you.

Mr. MICHEL. There is no change in (b) or (c) which provides for the retirement benefits if someone is separated for cause.

Mr. FASCELL. Section 661.

Mr. MICHEL. Section 661 is again a codification and it pulls together what had been dealt with separately for separate personnel categories in the 1946 act. It simply says the Secretary may terminate limited or temporary appointments and if the termination is for cause, then the individual is entitled to a hearing as provided for under the preceding section. Otherwise there is no hearing required to terminate a limited appointment.

Mr. FASCELL. Section 671.

Mr. MICHEL. Section 671 is a more general statement of the Secretary's authority to terminate consular agents and foreign national employees. This section is intended to provide a very broad authority of the matter of U.S. law. The foreign national employee who is fired tends to go to the local labor court and not to the U.S. courts. We thought a very broad authority would be better so we would not encourage local employees to come to the Court of Claims.

Mrs. SCHROEDER. We got into this with Panama when we changed the whole status of Panama. The question is what do you do with Panamanian employees? Does that concede they are under foreign labor law? Would that allow them the right to strike and so forth in some instances?

Mr. MICHEL. This is a very murky area as to the scope of the immunities of a diplomatic mission and whether that extends to matters of local labor law. We try under our local compensation practices authority to follow local salaries. We do not pay below the local minimum wage. We provide the severance pay and other benefits of the local system.

Mr. FASCELL. There is no way you can deny a foreign national the protections of his own law.

Mr. MICHEL. They do go to court.

Mr. FASCELL. You can limit his redress in the American jurisprudence system. Is that what you are trying to say?

Mr. MICHEL. That is essentially what we are trying to do. Let's say in the case of a reduction in force, if the local employee feels we violated his rights under local labor law and he goes to the labor court, he is able to proceed in that forum. We have a multiplicity of remedies issue. We do not want him coming to the Court of Claims and pressing that claim there as well.

We have provided somewhat more general language saying the Secretary must give due consideration to the local criteria and procedures but it does not provide the same specificity as applies in a case that involves separation of an American employee.

Mr. BARNES. Another reason is it does provide some general reassurance to our foreign national employees that we are not going to be arbitrary.

Mr. FASCELL. The main purpose is to spell out clearly the authority of the Secretary?

Mr. MICHEL. That he has this authority as a matter of U.S. law, that he is not violating our laws if he terminates a local employee.

Mr. FASCELL. I think we had better stop here, gentlemen, with chapter 7.

We thank you and we will see you shortly.

[The subcommittees adjourned at 12:35 p.m. to reconvene at the call of the Chair.]

THE FOREIGN SERVICE ACT

TUESDAY, JULY 24, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees met at 9:35 a.m., in room 2172, Rayburn House Office Building, Hon. Patricia Schroeder (chairwoman of the Subcommittee on Civil Service) presiding.

Mrs. SCHROEDER. I would like to welcome everyone to today's hearings on the Foreign Service bill.

This morning, we are going to focus on an issue which is of very special concern to me, and that is the plight of the Foreign Service spouses. Wives and husbands of Foreign Service personnel are shuttled about the globe with their working spouses. They suffer the same hardships, dangers, and disease. In addition, they are acutely affected with loneliness and alienation.

I firmly believe the Government owes something to Foreign Service spouses. The Government is obligated, it seems to me, to provide spouses with training to equip them for foreign environments, job placement assistance when their working spouse is rotated to Washington, meaningful and remunerative opportunities for employment in a foreign country, health benefits that do not end if their marriage does, the right to share in their working spouse's retirement benefit in proportion to the length of their marriage, and sincere thanks for their contribution to mission that they carried on abroad.

Nonworking spouses have been taken for granted much, much too long. One of the results of this attitude has been the growing number of poor older women who have been stripped of support at the time that their marriages are ripped apart. We must deal with this problem throughout society. Creating meaningful solutions for Foreign Service spouses is a first step.

This morning's panel includes Lesley Dorman, Marcia Curran, and Patricia Ryan. If any one of you would like to offer your comments first, we will be very happy to have them. Then we could open the panel for questions.

Does anyone else have anything that they would like to add?
Congressman Leach.

Mr. LEACH. I didn't, but I do feel that you have expressed very much the point of view that should get more hearing in this Congress. Your

legislation, H.R. 2857, is landmark legislation, and will get the constructive support of the minority.

Mrs. SCHROEDER. We welcome you again, and if you would proceed.

**STATEMENT OF LESLEY DORMAN, PRESIDENT, ASSOCIATION OF
AMERICAN FOREIGN SERVICE WOMEN**

Mrs. DORMAN. Madam Chairwoman, and members of the committees, the Association of American Foreign Service Women deeply appreciates the opportunity to testify before you today. We are especially grateful to the members of these two subcommittees for the concern and understanding of the human side of Foreign Service personnel matters, a concern which has been demonstrated during these and previous legislative deliberations.

Our independent volunteer organization has existed since the early 1960's to meet welfare and educational needs in the Foreign Service community, raising funds for scholarships and participating in many local community projects. Our members are women, both employees and wives, who spend the majority of their working lives in worldwide service representing the American people abroad.

While life in the Foreign Service is stimulating and has undeniable rewards of personal growth, travel and international friendship, the darker side is seldom recognized. We experience the alienation of culture shock, the isolation of language inadequacy, the hazards of rigorous climate and endemic disease, the trials of evacuations, and the pervasive fear of terrorism.

Considerable energy has been expended by the women themselves in finding creative responses to these hardships. The AAFSW has organized seminars and workshops, and pressed for training to prepare individuals for life abroad, because we believe that the prepared individual is the self-reliant individual.

In 1976, the AAFSW began to recognize that changes in American society were creating stresses in the Foreign Service community. The association formed a Forum Committee on the Concerns of Foreign Service Spouses and Families which subsequently presented a report to the Secretary of State based on responses to a mailing of 9,000 questionnaires.

The forum report, which we have made available to each member of the committees, remains the most significant document to date on family life in the Foreign Service, and it continues to provide the basis of an ongoing dialog with the Secretary of State.¹ We feel that without the sympathetic hearing accorded us by Secretary Vance, the human costs of family participation in the Foreign Service would have continued to go unrecognized.

Two major recommendations of the forum report which have been implemented by the Department are the establishment of the Family Liaison Office and the Spouses' Skills/Talent Bank. The Family Liaison Office, known as M/FLO, represents the nonprofessional interests of the Foreign Service community in the policymaking councils of management. FLO provides us, at last, with a recognized channel of communication.

¹ The forum report is contained in appendix 3.

Since the opening of the office in March 1978, FLO has been inundated with requests for advice and counsel on such questions as dependent employment, schooling, allowances, divorce, medical and mental health problems, and evacuation services.

FLO also operates the skills/talent bank, a computerized record of spouse employment résumés. We are concerned that FLO might be cut back or eliminated under a different Secretary of State. Even now FLO needs additional space and staff. Therefore, we urge Congress to monitor future authorizations for the support of this valuable service.

In its response to the forum report, the Department of State posed the question of "whether the Foreign Service, with its high international mobility and increasing demands on the time and energy of one family member, can accommodate the modern, highly educated American family in which both parents work and both share parenting and homemaking responsibilities."

We feel that if the Foreign Service is to be truly representative of American society today, which is stated as one of the basic objectives of the proposed act, then that accommodation must be made.

In the past two decades, the political, social, and economic role of women in America has changed significantly. Increased mobility, longevity, education, combined with the economic necessity brought about by inflation and soaring divorce rates, have radically altered the American woman's way of life.

Census figures show that two-thirds of married women in America are presently employed. It is clear that the American woman needs and expects to have a broad range of work choices and to be able to pursue a meaningful career. The Foreign Service spouse is concerned that long-term international mobility, combined with structural barriers to employment will continue to exclude her from establishing her own economic base through a career or, at a minimum, through recent work experience. Pressures for spouse employment will continue to mount and must be met with imaginative programs.

No matter how earnest the desire to become economically independent through her own paid employment, many Foreign Service wives will sacrifice the earning potential of their most productive years in helping their families make unending cross-cultural adjustments and in voluntary community responsibility. The Foreign Service homemaker is a vital resource abroad, enriching the overseas communities with thousands of hours of donated service.

For these women, divorce exacts a heavy toll. Our association is deeply concerned about the hardships of the many divorced Foreign Service wives who are left after long years of unpaid Government service abroad with no employment record, no modern skills, no social security, no shared annuity, no survivor benefits, and exorbitantly expensive medical insurance.

In order to protect these women, the Foreign Affairs agencies must recognize earned rights for spouses and former spouses to survivor benefits and shared pensions.

We have received support on this point from Hon. Loy W. Henderson in a letter which we have made available to you today and which we would like to submit for the record.

[The letter follows:]

JULY 11, 1979.

When I was Deputy Under Secretary for Administration of the Department of State, I appeared before a subcommittee of the Senate in 1959 and defended the position that Foreign Service wives make a different contribution from wives of civil servants. In reference to Foreign Service widows, I said "a surviving widow, in a very real sense, has earned her annuity."

The following year I spoke on the same issue before a subcommittee of the House of Representatives and told them, "It has seemed to us unfair that a woman who, for instance, has devoted 30 years of her life working for the American Government abroad with her husband should lose her annuity if she should remarry after her husband dies."

Since that time, there have been many changes in society. Unprecedented numbers of marriages which have endured for years are ending in divorce. It seems just as unfair to deprive a former wife of many years standing of her survivor annuity as it seemed then to deprive a widow of any annuity should she remarry. They have "earned rights" to their modest recompense.

Most Foreign Service wives have spent their lives in accordance with ground rules laid down by the government. Government regulations "discouraged" them from seeking employment overseas. Until 1972 they were graded annually along with their husbands. Although no longer thus graded, the overwhelming majority of Foreign Service wives, realizing that their cooperation with their husband in a spirit of helpfulness adds to his effectiveness, have continued to work with him as a partner for the American Government.

If, after years of joint work with her husband, the marriage of a Foreign Service wife should end in a divorce, she has at present no "earned" rights. If the same woman were a widow, she would be provided for; if only a "former wife", she is a non-person so far as the Government is concerned.

These women have given up the productive years of their lives following their husbands around the globe. It seems to me that they have clearly "earned their rights" and that the time has come for the government to honor such rights.

LOY W. HENDERSON.

Mrs. DORMAN. We do not feel that it is appropriate for the AAFSW to take a position on the proposed Foreign Service Act of 1979 as a whole. We do feel that any new act should fully recognize the unique sacrifices and adjustments required of Foreign Service families so as to make clear the justification for the Secretary's authority to help families in special ways. We also wish to comment on sections which directly affect Foreign Service dependents and families.

We would also like to reserve the option to suggest further changes in the act to assist the Foreign Service family.

At this point, I would like to introduce two of my colleagues, both Foreign Service wives, who will offer specific comments on the bill. They are: Marcia Curran, on my right, chairman of the Forum Committee on Employment and Career Development; and Patricia Ryan, chairman of the Forum Committee on Retirement.

We will be happy to respond to questions at the end of the prepared statements.

Mrs. SCHROEDER. Thank you very much. We appreciate that.

Do you want to summarize, or do you want to read your statement?

Mrs. CURRAN. I know that it is long.

Mrs. SCHROEDER. If you would like to summarize it, that would be fine, too, and we could put it in the record as it is.

Mrs. CURRAN. I would like to read certain parts. Actually, in the section where I deal with the different sections of the act, number by number, the ones in my particular bailiwick, I have added a great deal of editorial comment which I would hate to lose. So, if it would not take too long, I would like to read the whole statement. If you would prefer that I summarize, I will do so.

Mrs. SCHROEDER. No, that is fine. I just wanted to find out what you wanted to do.

STATEMENT OF MARCIA CURRAN, FORUM COMMITTEE ON EMPLOYMENT, ASSOCIATION OF AMERICAN FOREIGN SERVICE WOMEN

Mrs. CURRAN. Madam Chairman, and members of the committee.

Many Foreign Service dependents wish to provide for their own economic security through employment. They find it difficult to sacrifice jobs, tenure, and pension rights in the United States to face limited employment abroad. It is the continuous geographic mobility as well as bureaucratic restrictions on employment which put the Foreign Service family member who wishes to work at a special disadvantage.

Jobs abroad are scarce. Local work laws frequently mean that the spouse must look to the U.S. mission for employment opportunities. Yet, all such jobs are temporary, low in pay, carry no promotion potential, earn no credit toward Government status and offer no adequate retirement program. It is these circumstances which justify more flexible and open employment programs for Foreign Service dependents.

The Department of State, the International Communication Agency and the Agency for International Development have begun to recognize the need for such programs, despite the long history of discouraging married women from working. This is evident in recent actions and in sections of the proposed act.

Encouraged by legislative authorization, the Department has expedited, through the A-1/A-2 regulations, a program which could open up employment on local economies for official American family members. It has held widely attended career counseling workshops at the Foreign Service Institute, and has begun to set up a skills/talent bank to assist spouses in their search for employment.

As a pilot program, it has approved spouse participation on a space available basis in FSI functional training courses. ICA and AID have offered to do the same for some of their training programs. These employment programs are discussed more fully in our recent Report on Dependent Employment, which you have before you, or in your offices, and which we would like to submit for the record.

Unfortunately, there seems to be considerable attitudinal resistance to the idea of spouse employment among some members of the Foreign Service community. Marguerite Cooper King of the Women's Action Organization has carefully described the situation faced by working women in the State Department and other Foreign Service agencies.

From her testimony last week, it is clear that women, and most Foreign Service spouses are women, have a very long way to go to achieve equality of opportunity even if they are already within the career system. AAFSW is grateful to WAO for its dedicated efforts to expand dependent employment opportunities.

I would like to cite several examples of resistance to spouse employment within the Foreign Service. In the testimony of the American Foreign Service Association on July 9, 1979, before these committees, the outgoing AFSA president stated that "recent emphasis on the rights and needs of Foreign Service family members has adversely affected Staff Corps opportunities for training and assignment."

We have met numerous times with Foreign Service employee organizations to analyze this claim. We have repeatedly requested documentation of cases in support of such statements, but have never been given any which could stand careful examination. We admit that the

fear of an adverse impact is there, but the proof of actual disadvantage is not.

We are saddened when we hear that Foreign Service Staff, and particularly secretaries, are worried about job security and assignment opportunity because of spouse employment. It is our understanding, and this is a matter which we have recently verified, that the Department of State is always ready to hire Foreign Service secretaries. There never seem to be enough.

Some Foreign Service secretaries say that spouse employment deprives them of some of their highly valued excursion tours and, thus, reduces their opportunities to advance into new skill areas. It is our understanding that the secretaries have, for many years, long before spouse employment became an issue, complained of the lack of sufficient excursion tour assignments.

Furthermore, we have also learned that excursion tours are usually set up far in advance of actual tour, and it is unlikely that spouse employment, which is always temporary, frequently emergency, filling of staffing gaps, would threaten opportunities for the secretarial staff.

AAFSW will always be among the first to defend the rights of the Staff Corps against any real and substantiated inequities.

Mrs. SCHROEDER. Could you tell us what an excursion tour is?

Mrs. CURRAN. An excursion tour, as I understand it, and Susan McClintock behind me, who is the head of skills bank, can correct me if I am wrong, is an opportunity for a secretary to go abroad on TDY, temporary duty, to fill a nonsecretarial position. In other words, it gives her a chance to show her abilities to do other things.

Mrs. DORMAN. More important, it gives her the opportunity to be raised in grade. Secretaries can only go so far in grade, and this affords the opportunity for secretaries to be upgraded, and to change her skill code.

Mrs. CURRAN. In this connection, we fully support the Staff Corps request, stated in the AFSA testimony, for the opportunity to take orientation, language training, and professional training for upward mobility.

On the other hand, we have noted that if the spouse wants to practice a skill which is not perceived to threaten traditional Foreign Service career categories, there seems to be less resistance. For example, the medical division has recently endorsed the use in Foreign Service posts of the professional skills of spouses who are clinical social workers.

A few months ago these spouses created the Association of American Foreign Service Clinical Social Workers, and took their case to the Department. The resourcefulness of the spouses, combined with the growing awareness in the medical division of the need for such services, resulted in this employment breakthrough.

AAFSW will continue to search for ways to expand work opportunities and will, at the same time, search for ways to reduce resistance to and ungrounded fear of these job programs. Since pressures for more dependent job opportunities will inevitably increase, we hope that the foreign affairs agencies will actively work to create a more positive climate.

I would like to go into section-by-section comment, and there are only a few sections which I comment on.

Section 332. We believe that this section might be the appropriate place to add language which could protect the Foreign Service spouse or dependent who must give up a Government position in order to accompany the Foreign Service employee abroad. Reemployment rights and/or credit for Government status should be offered in this section.

Civil service status, a kind of reemployment right, can never be earned in temporary jobs. It is earned only in permanent jobs, and then only if the person remains in such a position for 3 years or more without a break in service of more than 3 days.

The mobility of Foreign Service life and the fact that all Government jobs abroad are temporary, unless the person is already a member of the career service, make earning status extremely difficult. At present a spouse can work for as many as 5 years in temporary jobs and still not earn status.

Section 333. The language "renewable limited appointments," which is applied in this section to the employment of family members, eliminates one inequitable aspect of the present employment situation for spouses. Under the old system, a dependent could have only 5 years of cumulative temporary employment. This designation does away with that 5-year time limit.

The language at the end of section 333(a) appears to allow flexibility in the choice of pay scales for American family member employees. This is an improvement over State's interpretation of the law authorizing American family member employment in certain vacant foreign national positions.

In our report on dependent employment, we outlined the inequities of paying local wages to American family members in foreign national positions: At one end of the scale, you have wages below the U.S. minimum wage; and at the other, you have wages higher than that of comparable career Foreign Service personnel. We continue to take the position, as does WAO, that all official Americans employed by the foreign affairs agencies abroad be paid according to American pay scales.

This foreign national/American family member program, as the committees have learned, took so long to get off the ground that only one of the original designated jobs was still open when permission was given to hire. I believe that the number of slots has now gone up to three worldwide.

Even though we expect this number to grow more rapidly now, it is evidence that a higher priority must be put on spouse employment programs.

Section 333(a) refers to the employment of family members abroad in positions to which career Foreign Service personnel are not customarily assigned. It is our understanding, after discussion with management that this language does not preclude the possibility that dependents may, on a temporary basis, fill positions which are usually filled by Foreign Service personnel. If the committee interprets this language differently, we would want to seek changes.

Some of the more interesting jobs dependents are offered abroad are those which usually are filled by career personnel, but are vacant for several months or longer, or are in less desirable posts and do not attract career personnel. It is our understanding and hope that

the language of this subsection and that of subsection 333(b) permit the temporary hire of qualified dependents to fill such career positions. In this way no career personnel will be displaced, the Department's needs will be served, often at a lower cost, and dependents will be offered needed job opportunities. This would be no threat to the job security of career personnel.

Section 701(b). "The Secretary may provide to members of families of such personnel—all foreign affairs personnel, in anticipation of their assignment abroad or while abroad—functional training for anticipated prospective employment under section 333." This is new and we wholeheartedly support it. Dependents can fulfill vital, short-term staffing needs if they are trained to do so.

However, under the present operating rules for this program there are some problems: Admission of dependents on a space available basis means that up to the last minute there is uncertainty about spaces. In one case, a person was taken out of one course after she had begun it.

It also means that very few spaces are available for family members. Also, only the consular and the budget and fiscal courses, not the general services nor the personnel courses, have been opened to spouse participation. At one point in the present pilot program the issue of preferential treatment for each agency's dependents arose. This problem has been overcome and now each agency's dependents are treated equally.

Section 705(b). This section authorizes the skills/talent bank. We believe that the first line should read: "The Secretary shall facilitate the employment of spouses of Foreign Service personnel." It is our concern that under a different Secretary of State the skills bank may be phased out or starved for resources. Even at the present time, it needs additional staff and resource support to do its job. Its only staff person holds a part-time, temporary position.

Section 705(b)(3) refers to assisting spouses in obtaining "overseas employment." We agree with AFSA's testimony that the word "overseas" should be removed if it means that skills bank personnel cannot counsel the spouse for stateside employment. It is just as essential to assist a dependent for employment in the States as overseas. The two go hand in hand.

In fact, if the skills bank operation is to serve the whole person, there can be no logical separation between stateside and overseas job counseling in the case of Foreign Service dependents.

We are often asked if any of these programs assist male spouses. The answer is an emphatic "yes." There is, of course, no distinction made on the basis of sex. It may interest you to know that at the present time there are at least 20 male spouses represented in the skills bank.

Additional recommendations—we would like to raise a number of matters which are not addressed by the act, which we feel must receive attention. We recommend that the foreign affairs agencies give serious consideration to the following:

(1) Need for administrative or legislative action to permit Foreign Service spouses to earn credit toward Government employment status on an incremental basis. The Department has offered to assist us

through cooperation with the Office of Personnel Management to find a solution to this issue. We hope that we will see some progress soon.

(2) Need to make available on a regular basis midlevel and senior level positions for spouse employment. The present system which offers nothing higher than an FSS-8 is an anachronism, a hangover from the days when temporary jobs were always clerical.

Regulations for temporary hires should be changed to permit hiring at higher grade levels. The Foreign Service agencies should look into the possibility of making part-time permanent GS positions available overseas for spouses hired at post. We also recommend part-time permanents here in Washington.

Mrs. SCHROEDER. Mrs. Curran, I am very sorry, but we have just had our second bell. So we are going to have to take a temporary recess while we go vote. But we shall return shortly.

Thank you very much, and we will be right back.

[A recess was taken.]

Mrs. SCHROEDER. We will continue now.

Mrs. CURRAN. I was on point 3 of additional recommendations.

(3) Need to look for ways to recognize and compensate the highly involved diplomatic spouse who devotes untold volunteer hours to the work of U.S. missions and community projects abroad, and without whose contributions of time and talent the quality of our presence abroad would be vastly diminished.

We would like to submit for the record at this time the results of AAFSW's time-use survey.

A first step to recognize this contribution is in the works. A senior spouse job description has been developed. It represents a career-focused, skill-oriented approach to diplomatic spouse activities. We would like to see more steps taken in this area.

To start with, we would like to ask the committees to put language which OMB removed back into the act. It would permit payment of representational expenses to American family members.

(4) Need for adequate retirement programs for spouses working in temporary, part-time or limited hire positions. We would like to see the renewable limited appointment permit participation in the civil service retirement system. Those who have left civil service jobs behind should be allowed to continue their participation in the civil service system while working abroad. Senior spouses who volunteer their efforts full time, performing diplomatic and community services abroad, should be permitted to pay into social security.

Some of these needs could be met by administrative regulations. Others will require legislation. For the AAFSW, spouse employment and career development will continue to be a priority concern. So long as these issues are manifest throughout American society, the Foreign Service community will feel their effects and must respond one way or another.

The demonstrated interest and concern of the members of these committees have already played an important part in the progress that has been made. We will continue to seek your support. We know how effective it can be.

Thank you for your attention. With your permission, I would like to give Patricia Ryan an opportunity to testify.

Mrs. SCHROEDER. Thank you very much. We appreciate your very comprehensive presentation.

Mrs. Ryan, we welcome you.

STATEMENT OF PATRICIA RYAN, FORUM COMMITTEE ON RETIREMENT, ASSOCIATION OF AMERICAN FOREIGN SERVICE WOMEN

Mrs. RYAN. Madam Chairman, members of the committee, ladies and gentlemen.

Today, I want to consider the problem of the divorced Foreign Service wife, and to begin by reminding you of some facts.

First, the concept of no-fault divorce has swept the country. There is no longer any defense against a unilateral decision by one partner to end a marriage.

Second, a recent study by the University of Texas projects that 38 percent of the young women now in their late twenties or early thirties will be divorced at least once at some point in their lives.

Third, the divorce rate in marriages that have lasted longer than 15 years has doubled in the past decade.

Fourth, despite mythology to the contrary, alimony is awarded in only 14 percent of divorces. To make matters worse, fewer than half the women receive payments with any regularity after the first year. In any case, payments cease when the husband dies, often leaving a divorced woman with desperately little money at the exact time in her life when she most needs it. Indeed, the fastest growing group of persons subsisting under the poverty line are older women.

Last, I draw your attention to a statistic that currently is not known. The divorce rate in the Foreign Service. For whatever reason, the State Department has never kept any record of this information. No one suggests that whether a particular employee has been divorced should be on public record, but surely these data should be kept in numerical form to show how the Foreign Service, in comparison with other ways of life, affects marriages. The family liaison counselors tell us that much of their time is spent dealing with divorce cases.

Keeping these facts in mind, let us move on to the difficult problem of annuities for divorced Foreign Service spouses. Our approach is based on a concept of marriage as an economic partnership of coequals. Contributions to the partnership may be in earned wages or in unpaid activities such as those traditionally delegated to the homemaker and mother.

In assessing the value of these activities, a Maryland court in 1975 awarded damages of \$1.5 million to a man and his two children for the loss of their wife and mother. The court assessed the value of the mother's services to the children for a period of 8 or 9 years at over \$60,000. Society, however, generally ignores the economic contribution of the homemaker in questions of divorce.

Our view is, further, that the Foreign Service wife has special impediments to economic independence, resulting exclusively from her husband's employment. Cultural, legal, and linguistic barriers prevent her from working overseas. When she can work, constant international mobility, as Mrs. Curran pointed out, usually prevents

her from vesting in any sort of retirement plan. Earlier Government policy, as you heard from Ambassador Henderson, discouraged her from working at a paid job.

It is the existence of these unique conditions which are the grounds for granting special relief conditions to the Foreign Service wives, not necessarily granted to members of other Government services. We do not feel that we are in a sense better than any group of wives, but rather that no other group shares all the ways in which we are disadvantaged in attaining economic self-sufficiency.

The U.S. Government has an obligation to compensate wives for this loss of opportunity to create their own economic base. This obligation is independent of the marital relationship.

In addition, Foreign Service wives frequently perform hours of unpaid service for the Government. Our time-use survey shows that wives of middle- and upper-rank officers donate from 1 to 4 weeks of work per month. One Ambassador's wife logged the equivalent of two full-time jobs in activities related to her husband's employment.

There is no present method for reimbursing wives for their work, because there is no satisfactory means of rating the work.

Let us turn now to the proposed Foreign Service Act of 1979, section 821 (b) (2). We are grateful to see this provision included which would require permission of the affected spouse to waive his or her survivor annuity. We would, however, like to see the protection extended to former spouses who have resided with the participants on assignments in the service for the requisite 10 years.

Next, let me simply mention section 864 (b) which authorizes payments of sums otherwise due to an annuitant or a participant to another person pursuant to the terms of a court decree of divorce. These provisions are similar to those in Public Law 95-366, enacted in 1978 for civil service. This section begins to nibble at the problem. However, the court order approach is not satisfactory to us. I will discuss the reasons for this in a moment.

Now we turn to a section which has disappeared. An earlier draft of the bill contained a proposal to deal with the question of a survivor annuity for a divorced spouse, again pursuant to a court-ordered property settlement. It required that the former spouse be married to the participant for at least 10 years during the latter's employment in the Foreign Service.

OMB requested that the section be excised and placed in a separate bill. The administration would prefer to consider the issue under the rubric of pensions in the Presidential Commission on Pension Policy.

While this decision may be appealing from the standpoint of rationalizing effort, it is dismaying for divorced Foreign Service wives because it will cause a 3- to 4-year delay at best. Some of these wives have almost nothing. Some live in terror that they will not die soon enough, before rampant inflation or the death of their former husbands reduces them to abject penury. They need relief now.

There are grave disadvantages to the court-ordered approach to these issues adopted by the Department. There is the enormous expense of access to the courts, especially for appeals. There is the lack of precedent for awarding parts of pensions and survivor annuities. There are widely varying divorce laws from State to State, which would

result in different women receiving widely differing awards of a Federal benefit for the same deprivations.

There is little or no awareness among jurists of the special problems faced by Foreign Service wives. Furthermore, these women are frequently cut off from community roots or connections, and often rely on their husbands' lawyers or on ones they recommend.

In an effort to provide desperately needed information for Foreign Service wives, in September 1978, the AAFSW sponsored a seminar on legal and financial implications of Foreign Service life. We hope the newly published compendium will be available to all wives.

For these reasons, we greatly prefer Representative Schroeder's bill, H.R. 2857, which would automatically give a former spouse who was married to a participant for at least 10 years a prorated share of the retirement and survivor's annuity. The exact amount of the former spouse's annuity would depend on the number of the years of marriage that overlap with credited years of service toward retirement.

The only drawback of Representative Schroeder's bill is that it does not solve the problem of those already divorced, especially those whose participant or annuitant spouse has died. A possible solution may lie in the grantee approach used in Public Law 94-350 in 1976 which gave widows of Foreign Service employees retired before 1960 a minimum annuity.

If Representative Schroeder's bill were made retroactive to cover existing former spouses, present second spouses of participants or annuitants would be adversely affected and would require some relief. Second marriages made in the future, however, would be protected by the knowledge of the exact entitlement of the former spouse.

I would like to discuss one last matter, the extraordinary hardship visited upon the divorced Foreign Service wife by the withdrawal of medical insurance. At present, if she applies within a specified period after her divorce, her former carrier must accept her without a physical examination. However, she receives only limited hospitalization coverage, sometimes excepting preexisting health problems, and may be charged up to \$1,600 per year for this inadequate coverage.

Because so many health conditions are caused by or exacerbated by inadequate medical care overseas, this is a particular cruelty. We would like to have health insurance renegotiated to provide a better deal for divorced women so that the costs of the actuarial risk are spread over the entire system.

This concludes the views of the Association of American Foreign Service Women. Also here today is Elizabeth Thurston, for 30 years a Foreign Service wife, who wishes to speak to you about problems related to the ones that I have just discussed. So, if you wish to defer discussion until the conclusion of Mrs. Thurston's remarks, we will be happy to do so.

Thank you very much for the attention that you have given us today. Mrs. SCHROEDER. Thank you very much, Mrs. Ryan.

We welcome you, Mrs. Thurston. It is very nice to see you this morning. We have your statement in front of us, which we will include in the record in toto. If you want to summarize it at this point, that would be fine. Then, we will proceed with questions.

**STATEMENT OF ELIZABETH SHERMAN THURSTON, ASSOCIATION
OF AMERICAN FOREIGN SERVICE WOMEN**

Mrs. THURSTON. My testimony deals with the Foreign Service divorced wife and the appalling disgraceful economic conditions in which she is frequently left, especially after a long marriage. One of the basic structural deficiencies in the Foreign Service which proposals for the new act are supposed to correct is the—

growing numbers of persons who have never and will never serve abroad, yet have been given Foreign Service status, thus risking the integrity of the system and its special benefits intended exclusively for worldwide obligated personnel. [Department of State Newsletter, July 1979, p. 10.]

The extraordinary problems arising from this worldwide service are not confined to the employee. They are family problems. Yet, under the present law and under the proposed law, it is the Foreign Service divorced wife who alone is denied special benefits to alleviate the effect of the unique sacrifices she has made in also having been obligated to live anywhere in the world.

The serious restrictions on the Foreign Service dependent wife's opportunities for continuing education, career development, and secure retirement income have been brought to your attention by the other members of the Association of American Foreign Service Women. As a group, Foreign Service wives, regardless of their education and their industry, will always be the most financially dependent of all wives of Federal employees.

The phenomenal increase in the divorce rate in the last 11 years has been reflected we know, in the Foreign Service, and perhaps to a greater degree than elsewhere because of the unusual strains of Foreign Service life.

On June 5, 1977, an editorial in the Washington Post stated that "for every two marriages in the United States this year, there will be a divorce." The prediction came from the National Center for Health Statistics. The divorce rate in California was already 50 percent on January 1, 1970, the effective date of that State's innovative "no-fault" divorce law, which deprives even an innocent spouse of any defense to a divorce action, or any bargaining power regarding support or property division.

Today, the divorce rate in California is 80 percent, and at least one no-fault ground for divorce is now available in all but three jurisdictions. These staggering statistics impel a new look at our traditional views of marriage and the laws evolving from them. Of particular importance here is the traditional view of the Department of State that Foreign Service wives are part of a team—"two for the price of one."

It is the law that the day a woman marries, she commits herself to serve her husband, performing domestic chores and caring for children, without pay, and for only such support as her husband chooses to provide. This support was to be for her lifetime, for if she outlived her husband, she was to inherit a share of his estate. Thus, by law, a wife works for security, not for pay. Divorce is, therefore, a violation of her right to share in the accumulations her labor helped to create.

The legal requirement that a married woman work in the home without pay and, as a Connecticut court recently stated, "labor faithfully to advance her husband's interests" is limited, of course, to the marital partnership. Yet the Department of State has, from the beginning of our diplomatic history, until recently, exploited the nonemployee wife of a Foreign Service officer by inducing her to extend her homemaking services to embrace establishing and maintaining a residence suitable for the representational duties of the employee husband, planning, supervising, and frequently preparing official lunches, dinners, and receptions—the latter at times for several hundred guests.

From providing a catering service for the Government, the wife's role was augmented to include charitable activities in the host country, by teaching English, working in hospitals and nurseries, in binational organizations, and in other "good works" programs.

The most significant research ever conducted in relation to Foreign Service wives was, in my view, that undertaken a little over 1 year ago by the Association of American Foreign Service Women Newsletter. On a provided form, wives were asked to record daily for 1 month the hours of unremunerated work they contributed to the official functioning of U.S. missions. It was found, as could be expected, that the wife of an ambassador or chargé logged more hours than others, but the total number of hours each wife worked is revealing: Nearly half the wives of officers with representational responsibilities contributed more than 40 and less than 120 hours a month—more than one and less than three 40-hour workweeks.

One ambassador's wife reported 328 hours and 30 minutes, or as translated in the report, almost 11 hours a day, 7 days a week, enough for two full-time jobs, and where a career officer is appointed an ambassador, the wife who has made these contributions all along his career is a professional; she has had 20 or 25 years of "in-service" training.

Foreign Service wives are unique among wives of public officials in that they frequently serve their Government without pay for 30, and in some instances as many as 40 years. In a free society, this unprecedented and unparalleled imposition on a Foreign Service wife was perhaps a natural enlarging of the wife's responsibilities to her husband, although without legal sanction. By no stretching of the marriage contract can it be construed as requiring in "appropriate" cases a married woman to work for the U.S. Government without pay. Pressure was applied by grading the nonemployee wife on her skills and devotion in performing these services. Her record was considered along with her husband's own efficiency ratings in determining the officer's eligibility for promotion. In some instances, transfers were made because the wife's particular abilities were required at a post.

The wife's cooperation was further secured by a regulation stating, in part, as follows:

It is the Department's policy to discourage acceptance of employment abroad for profit by wives of diplomatic officers because it is considered incompatible with their diplomatic status and because it is generally recognized that an officer's success in representing his country abroad depends in a measure upon his wife's support by her participation in appropriate foreign relations activities at the post. [Foreign Affairs manual, vol. 3, personnel, June 29, 1961, Sec. 628.4.]

Efficiency reports on wives were discontinued only in 1972, when a new policy defined the husband and wife teams and the wives' participation in the representational activities of a post:

As a voluntary act of a private person, not a legal obligation which can be imposed by any Foreign Service official or his wife. * * *

The Department believes that emphasizing the voluntary nature of wives' contributions will strengthen and enhance the traditions of cooperation and common purpose which have characterized Foreign Service life. [Department notice, policy on wives of For. Serv. employees, Jan. 21, 1972.]

The statements in the 1972 directive are significant in that they are acknowledgments that the rule requiring the Foreign Service wife to perform her unpaid services was given the force of law, and that the purpose of now freeing her was to encourage her to work even harder.

It can be readily seen that there are two partnerships involved here, the marital partnership, and what can be appropriately called the Foreign Service partnership. The first paves the way for the second, but once the nonemployee wife has performed substantial services under the Foreign Service partnership, the Government is indebted to both partners, not to the husband alone. The debt to the wife was recognized by the Congress from time to time by providing special benefits not enjoyed by the wives of other Federal employees. In 1960, a statute authorized a Foreign Service widow to remarry before the age of 60 without forfeiting the survivor annuity. [Public Law 86-612, Sec. 2 (a) 74; 1960 U.S.C. Congress.]

At House hearings on the bill, Hon. Loy W. Henderson, then Deputy Under Secretary of State for Administration, explained this distinction:

Our reason for this provision is that some wives of our Foreign Service personnel work just as hard over the years as their husbands do. They have tremendous responsibilities in the field. The wife is a party to a kind of partnership arrangement. It has seemed to us unfair that a woman who, for instance, has devoted 30 years of her life working for the American Government abroad with her husband should lose her annuity if she should marry after her husband dies. [Hearings before Subcom. on State Dept. Organ. and for Oper. of Com. on For. Affairs, H. of R., 86th Cong., on S. 2633 and H.R. 12547, Feb. 1, 2, 9, 16 and June 2, 1960, p. 181.]

Later in the hearing, Ambassador Henderson was asked to clarify a phrase in the proposed bill relating to the termination dates of the annuities to widows and dependent widowers, which in the latter case would cease upon a widower's becoming capable of self-support:

Mrs. BOLTON. Is a widow not included in that last phrase? Should the widow continue to receive it even though she might have become self-supporting?

Mr. HENDERSON. Yes, she would. She may run a boarding house. She would still be entitled—

Mrs. BOLTON. And if she remarries, she is entitled to it?

Mr. HENDERSON. Yes. [Id., p. 195.]

Earlier, Senate hearings on the same subject include in the appendix a similar question by Senator Mansfield and the following answer by the Department of State:

Wives of Foreign Service officers have always been regarded as making a material contribution to the successful discharge of their husband's representational responsibilities abroad. In addition to the support provided their husbands in carrying on official entertainment they perform important representational

functions independently by participating in women's organizations and charities or by teaching English either at the American cultural centers or elsewhere at the post of assignment. Through these various activities they establish useful and friendly contacts with important elements at the roots of public opinion. In effect, the officer and his wife are a team working together for the United States. The surviving widow in a very real sense has earned her annuity and is entitled to it whether or not she remarries. It is for this reason that both the existing and the proposed legislation provide for continuation of her annuity until her death. [Hearings, Subcommittee on Foreign Relations, U.S. Senate, 86th Cong. on S. 1502, July 6 and 15, 1959, appendix p. 235.]

At the Senate hearings Ambassador Henderson testified as follows:

I would like to take advantage of this opportunity to dwell particularly upon the situation of the widows of Foreign Service personnel. They are in a unique position. The wife of a member of the Foreign Service has many duties and responsibilities placed upon her. She, as a partner to her husband, also undergoes strains and hardships in representing the United States abroad. The Government owes a debt to her as well as her husband. Nevertheless, in spite of certain remedial actions which have been taken by the Congress, the widows of many of our Foreign Service personnel find themselves still in straitened circumstances. [Id., p. 172.]

And at the same hearing the following exchange took place:

Senator SPARKMAN. It is a known fact, is it not, that many of these annuitants, particularly the widows, who have no separate source of income have been in rather desperate straits?

Mr. HENDERSON. Yes, sir. As I said in my statement a few moments ago, I do not think that the situation of some of the retired Foreign Service people, particularly the widows, reflects very favorably upon the United States.

Senator SPARKMAN. I certainly think you are right, and in my view we have been entirely too long in correcting that situation. I think it imperative that we get legislation that will correct that situation which I think reflects unfavorably upon this great country of ours. [Id. p. 176.]

The Foreign Service Annuity Adjustment Act of 1965, effective October 31, 1965, provided for adjustments in widow's annuities, and for annuities for widows and wives of annuitants whose husbands had not elected a survivor annuity retirement, and whether or not the widow had remarried—Public Law 89-308, 89th Congress, H.R. 4170, October 31, 1965, 79 Stat. 1130.

The same act mandated a survivor annuity for the Foreign Service wife under section 821(b) (2), as follows:

At the time of retirement, the annuity of each married male participant computed as prescribed in paragraph (a) of this section shall be reduced by \$300 to provide for his surviving wife a minimum annuity of \$2,400, except that, if his annuity is more than \$4,800, he may elect up to 50 per centum of such annuity for his surviving wife. * * * [74 Stat. 839.]

Up to this time a mandatory survivor annuity was unknown in the Federal retirement systems. Its legality has not been challenged, and indeed it would be unreasonable for a husband who had elected an amount above the minimum to question the validity of the statute, for, in effect, his consent is implied when he requests that deductions at four times the rate for the minimum annuity be made to provide his wife with a larger annuity.

The designation of the wife at retirement as beneficiary, the Foreign Service wife who had labored beside her husband, was described as irrevocable. Both husband and wife signed the form stating:

1. In accordance with the requirements of section 821(b) (2) of the Foreign Service Act of 1946, as amended, I understand that my annuity will be reduced by

the amount specified (\$300.00) in order that my wife (the name follows) to whom I was married (the date follows) may receive upon my death the minimum annuity of \$2,400;

2. I hereby elect to receive upon my retirement from the Foreign Service a reduced annuity in accordance with section 821(b)(2) of the Foreign Service Act of 1946, as amended, and I hereby designate my wife (the name follows) to whom I was married on (the date follows) to receive upon my death an annuity in the amount of (the amount follows). [Form JJ-37, 11'68, formerly Form JS-559.]

The Foreign Service wife's contributions notwithstanding, it has been the administrative practice to deny the survivor annuity, whether provided under the mandate or not, to the wife at retirement if divorce rather than death dissolves her marriage.

Deductions from the annuitant's payments continued until 1978 and the fund became the beneficiary. But if after divorce an annuitant remarried his former Foreign Service wife, she again became entitled to a survivor annuity, with no minimum length of remarriage before entitlement. These special benefits were all eliminated by the 1976 amendments.

The position of the Department of State in denying a survivor annuity to a wife divorced after retirement is that she cannot meet the definition of "surviving wife," which means having been married to the annuitant for, under the present law, 1 year immediately preceding his death. The definition is the same as that under the civil service retirement system, but the provisions of the two systems differ greatly. In the first instance, the civil service system has at no time mandated that a married male employee's annuity be reduced to provide an irrevocable annuity for his surviving wife to whom he was married at retirement, describing her by name and date of marriage, on a form signed by both spouses. The wife of a civil service annuitant must rely on her husband for the answer to whether or not he has elected a survivor annuity. If he will not inform her or if she wants to verify his reply she has no recourse, for the Civil Service Commission will tell her nothing. If her husband has provided a survivor annuity, the designated beneficiary is his "widow", without any further identification. The only place the wife's name appears on the form is in connection with a mailing address.

The beneficiary designations in the two systems have different legal effects. The irrevocable designation of the Foreign Service wife at retirement, by name, vests the survivor annuity in her immediately; it becomes her property, it is not an expectancy. Divorce is immaterial, surviving the annuitant is the only contingency.

Support for this conclusion is found in the upholding by an appellate court of a trial court's awarding to a divorced wife the proceeds of a Civil Service "retirement policy" under the following facts and law:

In 1950, Ellis Hatcher designated the beneficiaries of his policy as follows:

Mamie L. Hatcher, if living, otherwise, to James F. Hatcher.

The same form described Mamie L. Hatcher as "wife," and James F. Hatcher as "brother."

The named beneficiaries were not changed at the time of the divorce or subsequent thereto. The former wife remarried and became Mamie Hatcher McDowell, but she was nonetheless found to be the primary

beneficiary when Ellis Hatcher died intestate in 1964. Mamie Hatcher McDowell applied for and received the proceeds of the policy.

The one basic issue on appeal was: Did the decree of divorce divest Mamie Hatcher McDowell of her right to the proceeds of the retirement policy? The court's answer follows:

The fact that Mamie Hatcher McDowell was described as "wife" of the insured does not change the result. The word was merely descriptive of her relationship to him. The fact that at the date of his death the description no longer applied is immaterial. The beneficiary is the *person*. The description of her status is a mere *identification* of the person. The situation is quite different from that in which a policy is made payable to the "widow." [*Stokes v. McDowell*, 424 F2d 910, Supreme Ct. of Wash. 1967. Italics in original.]

The terms "retirement policy" and "retirement benefits" used by the court above could refer to a lump-sum payment or a life insurance policy, for they are the only benefits in the civil service systems permitting the designation of specific persons, where the participant is married.

It is well-settled law that an instrument in which no right to change the beneficiary is authorized, or the right to change the beneficiary is not reserved, the property vests when the instrument is signed. This principle is applicable whether the instrument is a life insurance policy, a trust, or an annuity.

The right to change the beneficiary in an annuity policy is dependent on the terms of the policy. [*Norton v. Equitable Life Assur. Soc. of U.S., D. C. Mass.*, 124 F. Supp. 704, aff 219 F2d 706.] Where a right to change the beneficiary has been reserved in an annuity contract, a beneficiary during the annuitant's lifetime has no vested interest [In re *Bayer's Estate*, 26a2d 202, 345 Pa. 308], but only an expectancy. [Id.] The word irrevocable means that a contract cannot be revoked at the will of one party over the objection of the other, but that it can only be set aside for facts existing at or before the time of its making, which would permit revocation of the contract. [*Indep. School Dist. v. Hedenberg & Co.*, 7 N.W. 2d 511, 516, 214 Minn. 82; *Zimmerman v. Cohen*, 139 N.E. 764, 765, 236 N.Y. 15.]

The Department of State recognized the Foreign Service wife's property right in the survivor annuity in a letter to a Foreign Service wife dated May 11, 1970 from J. Edward Lyerly, Deputy Legal Adviser for Administration, which states, in part:

As I indicated to you earlier the fact that a divorce from Mr. X will terminate any entitlement to an annuity for you based on his Foreign Service annuity makes it essential that this issue be fully considered in dividing the assets and property accumulated during your marriage.

No one is required to compensate for the loss of an expectancy, only from the loss of property. The question arises: Can a husband legally defeat the wife's vested interest in the survivor annuity by obtaining a divorce? Apparently the Department of States thinks he can by an award of offsetting property. This position is insupportable. Who can reasonably determine the value of a survivor annuity, and who has the very large sums that would normally be involved in such a trade-off. Nor is it a comfortable position for a divorcing husband to find himself in: He buys out the Foreign Service wife's irrevocable interest in the survivor annuity, and now under present law he can hand it to his wife acquired after retirement as a gift, but it is still characterized as irrevocable; so if the later marriage fails he could be required to buy out the identical property twice! And it could have rapidly doubled or tripled in value, based on the new beneficiary's life ex-

pectancy. Very few divorced wives receive a portion of the primary annuity, and it is doubtful that even one has been compensated for the loss of the survivor annuity.

Another unreasonable position taken by the Department of State is that of prohibiting a divorcing husband from retaining his Foreign Service wife as beneficiary of the survivor annuity even when he desires to do so. Nor is he permitted to take the larger deduction from his own annuity to provide a survivor annuity for her, not as his wife, but as a person of insurable interest.

In addition to the first group of distinctions between the Foreign Service retirement system and that of the civil service—a mandated survivor annuity for the Foreign Service wife, designating her as beneficiary by her name, in an instrument which both spouses signed—there is another with significant legal effect. It is the recognized fact that the Foreign Service wife has earned her retirement benefits in a partnership above and beyond the marital partnership, direct contributions to the U.S. Government. The excerpts from congressional hearings already brought to your attention employ repeatedly the terms “earned” and “partnership.”

Earned means to merit or deserve, as for labor or service, to do that which entitles one to a reward, whether the reward is received or not, to acquire by labor, service, or performance. [*Cold Metal Process v. C.I.R.*, C.A. 247 F2d 864, 872.] Earnings—money or property gained or merited by labor, service, or the performance of something; that which is gained or merited by labor, services, or performances. [Abbot's Law Dictionary, p. 412.] Also, the gains of the person derived from his services or labor without the aid of capital. [*Brown v. Hebard*, 20 Wis. 330, 91 Am. Dec. 408.]

A “partnership” is a voluntary contract between two or more competent persons to place their money, effects, labor and skill or someone or all of them, in lawful commerce or business with the understanding that there shall be a communion of the profits thereof between them. [*Berthold v. Goldsmith*, 65 U.S. 536, 24 Haw. 536, 16 L. Ed. 762.]

Applying the above definitions to the testimony in congressional hearings, Department of State directives, and other documents embodied in this testimony, it is established that the Foreign Service wife has worked for the Government. It is also established that her services have been recognized as valuable; of such value, in fact, that in return she was assured “an annuity until her death,” even if as a widow she remarried before the age of 60. This is further proof that the annuity is the property of the Foreign Service wife, a right not a gratuity, and thus not subject to loss through a contingency such as remarriage or lack of actual need. If the employee husband had died after 10 years in his career his wife would have made less substantial contributions to the Foreign Service than most other wives. Why, then, should the annuity be denied the divorced wife who performed the same services, but for three or four times as long? Today a wife is as helpless in preventing dissolution of her marriage by divorce as is a wife in preventing dissolution by death where the husband has a terminal illness.

Mrs. SCHROEDER. Mrs. Thurston, I am sorry, but we have just had the second bells, so we are going to have to take a temporary recess to go over and vote. We shall return as soon as we can get back from the floor.

Thank you.

[A recess was taken.]

Mrs. SCHROEDER. We shall reconvene the hearing.

Again, excuse us for having to interrupt to go vote.

Mrs. THURSTON, did you want to complete your statement, then?

Mrs. THURSTON. It depends on your time.

I had not marked this to read as a summary, and it would take more time to look ahead and do it that way, I thought.

Mrs. SCHROEDER. Go again and finish reading, that is fine.

Mrs. THURSTON. We have no choice but to live in our time, a time of the most rapid social change in history. Much of the resulting stress and many of the illnesses that follow could be diminished by the revocation of the antiquated laws that no longer serve the social good. The divorce rate is approaching 50 percent. We cannot continue to treat a divorced wife as if she were dead. She has the same minimal needs for survival as a widow, but there the comparison ends. The widow inherits the estate and the annuity. Under a law effective in 1976 a wife acquired by a Foreign Service annuitant can be named the irrevocable beneficiary of the survivor annuity formerly made the irrevocable property of the Foreign Service wife. The last wife in line takes as a windfall after a marriage of as little as 1 year the fruits of the Foreign Service wife's lifetime of very demanding labor. The Department of State treated her like a wife, using her services, even insisting upon them and insuring them by prohibiting her from seeking employment abroad for pay. And like a husband, the Department of State promised to take care of her when her work was done, then like many husbands, failed to honor that commitment.

It has been repeatedly held that the marriage contract is not a contract within the meaning of the clause of the Constitution which prohibits "impairing the obligation of contracts"—*Adams v. Palmer*, 51 Me. 481, 483. Even so, the treatment of the Foreign Service wife like a wife by the Department of State for its own purposes does not free it from the constitutional prohibition.

A contract for an annuity must be founded on a consideration. [233 N.Y. 300.] It need not be cash; it may be property, services rendered, [*Wash. L. & T. v. Darling*, app. D.C. 132.] or a promise to render services. [*Cox. v. Maxwell*, 24 N.E. 50, 151 Mass. 336.] The adequacy of consideration for an annuity is determined as of the time the contract was made. [*Dalton v. Florence Home for Aged*, 49 N.W. 2d 595, 154 Neb. 735.]

Applying the above rules to the Foreign Service survivor annuity contract leads to the conclusion that both the Department of State and the Congress regarded the wife's unsalaried services a valuable consideration. The adequacy of consideration for an annuity being determined as of the time the contract was made, it appears that the Foreign Service wife and only the Foreign Service wife could meet that test, given the nature of Foreign Service work. Yet, if she is divorced, the contract, her contract, is given to a wife acquired after retirement, the amount of the optional annuity elected and other provisions, apart from the beneficiary designation, remaining fixed. Can the law effective October 1, 1976, authorizing a wife acquired after retirement to be named beneficiary of the survivor annuity retroactively divest the Foreign Service wife at retirement of her earned annuity?

The Department of State deals with this issue by regarding the divestiture as occurring at the time of divorce, not when the new beneficiary was named. But such rationale must rely on the definition, in

the statute of a "surviving wife," taken from the Civil Service statute where the beneficiary designation of "widow" is all that identifies the person entitled to the benefit. As has been pointed out above, such a designation depends solely upon status, whereas the Foreign Service designation identifies the person. In the latter case, divorce after retirement is immaterial where the annuitant is denied the privilege of changing the beneficiary.

If reliance on pre-enactment law was reasonable, and investments of great value were made on the basis of such reliance, and retroactive application completely destroys the value of such reliance, the strongest case supporting unconstitutionality of retroactive application of the change in the law is made. [Retroactivity of the 1975 California Community Property Reforms, *Wm. A. Reppy, v. Southern California Law Review*, May 1975, pp. 977-1048.] Unimpaired pre-enactment rights involve cases where injustice to the objecting party is so apparent by retroactive application of the law that no social policies of the legislature could constitutionally justify the impairment of that party's rights without compensation. [*Id.* at p. 1051.]

The letter of Ambassador Henderson submitted for the record by Mrs. Dorman restates the strong support for Foreign Service wives which characterized his testimony in 1959 and 1960. In my talks with him in recent years he has unequivocally stated that the Foreign Service annuity must remain with the Foreign Service wife. That was his intent in his earlier testimony, but then he was concerned with widows, for at that time one heard almost nothing about divorces in the Foreign Service. Congress provided special benefits for Foreign Service wives in 1960 and again in 1965 when the annuity was made mandatory. Should a husband be permitted to frustrate the will of Congress by his unilateral decision to obtain a decree of divorce? Congress should now take the steps necessary to protect the Foreign Service wife's "annuity until her death," applying the law retroactively to restore that which she has spent a working lifetime to earn. Cost is not a consideration, whereas here, the Government would be paying a recognized debt.

Thank you for this opportunity to appear before you.

Mrs. SCHROEDER. Thank you very, very much. I really am completely sincere when I compliment you for being incredibly well prepared and presenting a very, very strong case for your position on a wide variety of matters affecting Foreign Service spouses and their families.

I know you have mentioned that you wished that my bill could be retroactive, and also that we don't have any statistics on how many Foreign Service families have been divorced. Is there any way that we could estimate any benefits from making that retroactive, and what it would cost?

I guess, what I am saying is, we are having enough trouble with the Office of Management and Budget going prospective, and we don't have anything for a cost estimate, that I know of, to go retroactive. I am wondering if you have looked at this at all?

Mrs. RYAN. Only that we would assume that you would have to use the figures of society at large, and hope that this would give you some kind of a ballpark figure. We have no reason to know whether it would be higher or lower than society in general. I think that this is what you would have to do in making an estimate of what these programs might cost.

I think also, in discussing the costs, we should take into consideration the cost of not doing it, the cost of supporting women on welfare

or on medicaid. If they are supported by a family member, then the cost of their care is taken off the income tax of the person who does support them.

There is an enormous loss in not implementing more things in Mrs. Curran's area, in the loss of underutilized talent, and in loss of revenue from income that would be produced by women having more jobs. There is the cost of losing a trained officer if he resigns because of the lack of opportunities for his wife to develop her own skills and talents. It costs over \$25,000 to test, investigate, and train a person, without considering the loss of his subsequent training and years of experience and contact. All of these things are costs that do not get figured into the system.

Mrs. SCHROEDER. We have also had some discussions as to whether or not it might be feasible to say that retroactively it would be permissible for the spouse who was then in the Foreign Service for his or her annuity to be split. If that were the way, then that might be more acceptable. Do you think that there would be any kind of pressure within the Service that might make that effective, or do you think that it would have to be mandatory?

Mrs. RYAN. I think that it would just continue the male base of the whole problem. I think, given the unhappy state of most divorced people, the likelihood of a man saying that he wants his wife to get it, is a pretty slender reed for her to depend on.

I think the compliance with alimony being 50 percent indicates something about that feeling. Certainly, it should be possible for a man who wants his former wife to get it, for her to have it.

Mrs. SCHROEDER. Are there any statistics on whether or not more spouses are not accompanying Foreign Service spouses abroad?

Mrs. RYAN. I think that this is clearly happening. Again, I think that the Department is not keeping any statistics that I have heard about. We all know of people who are doing this, and this has almost never happened before without some kind of overriding personal reason of an ill family member or something of that sort. It is clear that this is happening.

Mrs. SCHROEDER. Is this causing any problems to the Foreign Service?

Mrs. CURRAN. Are you asking me?

Mrs. SCHROEDER. Any of you.

Mrs. CURRAN. Are you speaking now in terms of employment? In other words, that spouses are not going abroad because they would not be able to find the kind of work that they wanted, or any work at all?

Mrs. SCHROEDER. Or just plain refusing to go.

Mrs. CURRAN. There are people who are not going, but we don't have any figures on that. It is very hard for us to know how many there are. We have tried to do a survey of it, and some of the questionnaires have come back, but very few for us to be able to get a really good reading on this.

We all know of cases where this has happened, and we know of cases where it is about to happen. But to be able to put a percentage figure on it, I think, would be pulling it out of the blue. We would not be basing it on very much.

Mrs. SCHROEDER. So, while you are very supportive of the Family Liaison Office, they have not kept statistics of the changing lifestyle

trends within the Foreign Service, and that type of thing? There is just no one compiling that data, is that what I understand?

Mrs. RYAN. That seems to be the case.

Mrs. CURRAN. There is an attempt being made now to gather this kind of information, but posts are not always responsive to this kind of a request for information. In this case, it went to individuals and not just the post. The questionnaires went to administrative officers some of whom did reply, but it was not a large number that responded.

In many cases, you are not sure either how that was responded to. In other words, how much information was sought by the administrative officer, or the person who did this work, and filled out the details of the questionnaires, how far this person went to find the information that was actually being requested. You always have to take that into account.

So it is hard to tell, but it is definitely an increasing trend. There is no question about it.

Mrs. SCHROEDER. Let me ask a question. I understand that a lot of the duties were placed on wives prior to 1972. I understand that there is a change.

Does the Foreign Service spouse that does go abroad today, however many that may be, still provide and perform duties for the Federal Government?

Mrs. DORMAN. To a very large extent, I would say they do. I would like to make an extra statement to the last question that you asked.

We have received a letter from one of the Ambassadors in one of the African posts citing the fact that she has no married couples at post, and her concern for this. We published this in our newsletter. The Family Liaison Office probably received the same letter, but if they don't, we keep in constant touch with them, and they would be immediately apprised of this fact.

I just wanted to mention that before we went on to other things.

Mrs. RYAN. One more point about the women not going overseas. I think that it is not overwhelmingly because the women are just saying: "Gosh, I don't particularly want to go to Ouagsdougou," because I don't think that many people do. But it is almost always job related. They have found something in the United States to do. They are usually very educated women, and it is fulfilling. It is more stimulating to them than providing hors d'oeuvres for cocktail parties.

To answer your question, while the work can no longer be required of people, living in a small group with people, people are usually unwilling to say, no, I will not help do this. There is pressure to do things, and then many people enjoy doing it, having parties, and so forth.

Mrs. DORMAN. Mrs. Schroeder, I would like to draw your attention again to the time-use survey,¹ which we mentioned and would like to be put in the record, please. I would also say that I cannot speak across the board on this, but I do know from personal friends who are serving abroad, of which I have many, that every one of them is doing a woman-size, or a man-size job at every post at which she is serving.

I can assure you that I am quite sure that there are very few who don't contribute. There have always been people who haven't and

¹ The time-use survey is contained in appendix 5.

have, but more that have, I can assure you. At this point in time, I would say there are still a lot that are making valuable contributions and donating enormous amounts of time.

Mrs. SCHROEDER. So while there are no longer formal report cards, there is still a very strong implied contractual agreement.

Mrs. DORMAN. A friend of mine came out of Burma recently, and she was working 7 days a week on various pursuits.

Mrs. SCHROEDER. Do you think that employment abroad, in foreign type of position for spouses, if they are able to find that kind of employment, should count toward civil service status upon return? Should that be something that we should consider.

Mrs. CURRAN. You are talking about employment, and not unpaid employment?

Mrs. SCHROEDER. I am talking about the employment where they get paid.

Mrs. CURRAN. Definitely, I think that there should be something worked out which would permit a flexibility in that status rule. I think that it is discriminatory the way it stands for Foreign Service spouses who do work abroad.

Mrs. DORMAN. It might be better, too, if I might suggest, if the pay scale itself was an American based pay scale because at the present time there are only two spouses in these appointments. One is in Bonn, Germany, and one is in Calgary, Canada. Those two positions might be very well paid by local wage scale, but in other parts around the world they might be extremely poorly paid. Therefore, standardization on an American base pay scale, we would suggest, would be fairer.

Mrs. SCHROEDER. Congressman Fascell, do you have any questions?

Mr. FASCELL. How many spouses are identified in the skills bank today?

Mrs. DORMAN. 800 at the present moment.

Mr. FASCELL. How is identification made? Is that a voluntary process?

Mrs. CURRAN. Yes, it is a voluntary process. The forms for the skills bank were sent out. We attempted to send them out to every spouse in the Foreign Service. In some cases, that was difficult because it was hard to get lists. But on the whole, I think that was about 6,000 or 7,000 that went out, and those forms are now coming back. Spouses here in Washington also filled out forms, so this area has been blanketed.

We have advised in the State Department newsletter and in our own newsletter, in the ICA World, which is their production, and in the AID newsletter.

Mr. FASCELL. Are spouses identified in some way in the Department?

Mrs. CURRAN. I am sorry, I don't understand your question.

Mr. FASCELL. How do you know whether somebody is married or unmarried?

Mrs. CURRAN. It is very hard to tell.

Mrs. RYAN. Communication is one of our very big problems.

Mrs. CURRAN. The expert behind me who has worked on this says that there is a computer printout that will identify married employees in the State Department.

Mr. FASCELL. Without identifying the spouse?

Mrs. CURRAN. There is no name for the spouse, that is right.

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Mr. FASCELL. It just says, married, or unmarried?

Mrs. CURRAN. Yes.

Mr. FASCELL. Does that tell us anything, really?

Mrs. CURRAN. It tells us a great deal.

Mr. FASCELL. What is the definition of marriage under that? [Laughter.] I am being serious. You are talking about changing lifestyles, and so on.

Mrs. CURRAN. As far as I know, there is no other way to reach the spouse of a Foreign Service employee, except through the employee.

Mr. FASCELL. Why I asked that is obvious, if we are talking about a legal base in terms of the Department employee being two people instead of one. I am not arguing that one way or the other. But it seems to me that it becomes very important to identify the legal relationship, if any, in terms of marriage. Marriage is the contractual base upon which a claim is made for service, so it is very difficult, at least for me, to generalize.

The other question I have on that is, assume for the moment, because of the sheer dynamics of our changing lifestyles, the Department changes its contractual consideration, and just eliminates the whole question of service as far as the spouse is concerned. There is no requirement at all, and you don't have to do anything. Now where are we?

Mrs. RYAN. I think, in effect, that is what they really did in 1972, which has created this kind of a transition period that we are going through now, where wives had a clearly defined role, even if they did not like it.

Mr. FASCELL. I know, but suppose that they went the other way, and became very definite and said: A spouse is not to have any defined role, period. The relationship is strictly a question of marriage. It is your choice, in other words. Then, where are we?

Mrs. RYAN. That status, unless you choose not to accompany your husband overseas, you are still precluded from any meaningful chance to provide yourself with any employment.

Mr. FASCELL. I recognize that. I am going back to the basics on this thing; just to see where all of them are going to wind up. I always have to start at square 1, for some reason.

Mrs. DORMAN. One thing in theory, I think, Representative Fascell, and another thing in practice, if I may say so. It does not work out in practice; no.

Mrs. THURSTON. I cannot imagine an Ambassador's wife having the Prime Minister of the host country and his wife coming to dinner, and her saying: "Look, I would prefer to finish this novel I have, and I will be in the bedroom," and neither prepare for nor appear at the dinner. They are guests in what is her home, although very often it is more like a hotel.

Mr. FASCELL. Do you mean that it is different overseas than it is here?

Mrs. THURSTON. There is no comparison. It is an entirely different life.

Mr. FASCELL. I did not know.

Mrs. THURSTON. I think that high-ranking officers' wives will continue to put in these 300 hours a month.

Mr. FASCELL. I am sure that is true, but I am just trying to establish a legal base for it.

Mrs. THURSTON. I used to think of a 14-hour day, and a 6-day week. I did not keep a record, but I don't think that it is far off.

Mr. FASCELL. What you are saying is, whether there is a legal base for it or not, the fact is that there is compensation involved, period. That is what you are saying.

Mrs. THURSTON. Whoever does the work should get the reward, regardless of marital status.

Mr. FASCELL. I am not passing judgment on that. I am trying to understand exactly what we are saying here.

You wanted to ask me a question?

Mrs. SCHROEDER. I was wondering what the gentleman was after, whether he was advocating celibacy for Foreign Service officers. [Laughter.]

Mrs. THURSTON. I think that gentleman has the *Marvin* case in mind, and I had included it in my draft.

Mrs. SCHROEDER. I thought that he did, too, Mrs. Thurston.

Mr. FASCELL. I don't have any case in mind. I was very much impressed with your legal analysis, Mrs. Thurston. I am just going back to determine what the policy of the Government ought to be both from a practical standpoint and a legal standpoint.

Mrs. THURSTON. I think that we have to have in this country, in effect, the equivalent of community property law throughout the country. I think that we ought to do it by having the Senate ratify the U.N. covenant on civil and political rights, a treaty which would mandate that the Federal Government pass a community property law or require each of the 43 common law jurisdictions to do so.

In community property law there can be no real community property without a valid marriage, but with the decision in *Marvin* the unmarried relationship becomes more important.

It used to be that in a meretricious relationship, the courts left the parties in the condition in which they found them, propertywise, except for joint tenancy property which was divided equally. Now it is changing because if the relationship is founded on more than just sexual services and the parties have an agreement or an implied agreement to share the accumulations of their partnership, the courts of California, at least, will honor it.

The appeal to the Supreme Court of California in the *Marvin* case was very interesting. In remanding the case the appellate court proposed seven legal grounds on which this case could possibly be tried. If the parties did not have an express contract, they may have had an implied contract. If not an implied contract, perhaps a joint venture, agreement of partnership, or some other tacit understanding between them, the court could look into the principle of the unjust enrichment of one party at the expense of the other, or equitable remedies such as constructive or resulting trust. In the absence of a contract, a legal wife has only the statute governing the division of marital property to rely on.

Mr. FASCELL. What occurs to me, and I asked Mrs. Schroeder, since I was not a party to the Civil Service Reform Act, are we following the same trend in any kind of governmental employment? Is it a dual employment?

Mrs. SCHROEDER. The interesting thing, if we look at social security, is that we have mandated for the private sector a vesting after 10 years

of marriage, which is what we have patterned this bill after. Obviously, social security is not a total pension, but it is a retirement payment.

Mr. FASCELL. I was not just thinking of annuities. I was thinking of the basic relationship.

Mrs. SCHROEDER. There are several different things going on. In Civil Service and in the Armed Services Committees, we have the same legislation. In Civil Service, we got as far as the court order, which is what the ladies addressed in here. We were unable to go as far as we would have liked to in the bill and made it parallel with social security.

Is that what you are asking? Are you asking, is there a community property approach to pensions?

Mr. FASCELL. I was not talking about community property. That is a right that is acquired after the fact. I am talking about the fundamental relationship in terms of employment, at the time of employment.

In other words, I will have to strike the word "marriage" now, in light of recent cases, and say, does the relationship immediately vest employment rights? That is the issue, as I see it.

If we make a special case for Foreign Service, and I think we certainly do, and if the conditions of employment of the employee is changed so that, for example, there are no representational requirements, expressed, implied or otherwise or they are expressly forbidden, I don't know that that changes the basic thrust of what you are saying. That raises a major policy question, I think, that ought not to be ducked.

I am not sure that simply mandating remedial action really deals with the problem. This is the concern I have. I can see how you can compensate for implied, or even expressed requirements of service by virtue of the relationship to the basic employee. I can see that after the fact you would have vested "property rights." That still raises the fundamental issue of the conditions of employment, and the services required of an employee. That raises again the question of, did you hire one person or two?

If the theory is that you hired two, then how do we deal with that fairly and properly? We have another class of employee, how do we treat that?

What we are doing, as I see it, so far, is skirting the issue. That is not intended to be a pun. We seem to be avoiding the issue. The fundamental question is, the condition of employment at the time of employment of the basic employee, and what are the requirements, then, on the other person, whoever that happens to be, and regardless of the relationship of that other person.

If marriage, in the formal sense of a contractual relationship, is not the guiding principle, as it is under current law, because it has nothing to do with service that is rendered, then where are we?

In other words, the marriage contract is not the basic contract which gives rise to these additional problems. It is the relationship to the basic employee, whatever that relationship is.

Mrs. THURSTON. It is the divorce rate that has changed the security that a wife once had.

Mr. FASCELL. The divorce rate is a different problem. You are talking about annuities there. I am going back to square 1.

Mrs. THURSTON. There is more than that. There are other benefits to marriage, such as life insurance.

Mrs. CURRAN. May I speak to that?

Mr. FASCELL. Certainly.

Mrs. CURRAN. I would like to refer back to the employment issue. I think that the conditions of Foreign Service life are such that the spouse, the nonemployee member of that contractual relationship, is deprived of many opportunities to be employed and, therefore, of the normal opportunities to become economically independent.

Mr. FASCELL. But unless we say that we have two employees, you see, and properly provide for them at that time, the dynamics of the situation might be that all you get are single people.

Mrs. CURRAN. That is a problem, yes.

Mr. FASCELL. I know, and that is not even controlled by law that I can see.

Mrs. CURRAN. I think you can control it to some degree. If more opportunities are offered, which is what we are talking about today in terms of permitting people who do want to be married, and who are willing to undergo the hardships that go along with Foreign Service life, but with some limitations. In other words, they would like these hardships to be lessened, if at all possible. They don't want to break up their marriage, and I don't think that they should have to make that choice.

I think that they should be recognized. We recognize the institution of the family and marriage as an important part of our society. Do we want our Foreign Service not to recognize that as an important part of our society? I think that that is a fundamental issue, you are absolutely right.

Mr. FASCELL. You are right. It is a national policy, certainly, accepted by society. Whether we live up to it is a horse of another color. At least, we talk a good game.

Mrs. CURRAN. But things can be done to ameliorate the situation, which is what we are asking for.

Mr. FASCELL. I understand that, and I realize that. I know that you make a case that is distinguishing as far as the Foreign Service is concerned, and I say that I think maybe that is rational. But it still leaves the question of what do you do about the other women, or other spouses in other services of employment.

I find it very hard to distinguish it, for example, from any civil service employment. It does not distinguish it for me to say that it is overseas and it is a hardship post, or that there are representational duties that fall upon a wife, if the theory is that the spouse contributes, in the spouse's lifetime, to whatever it is that the basic employee is doing.

Then, there is a matter of justice and equity. It does not make any difference who that employee is, and who he is working for. That is the point that I am getting at.

If that follows, if there is any logic to it, and I am not saying there is, then we are dealing with a broad policy. I am not sure that we want to set the precedent of distinguishing or separating out, or discriminating, or creating an inequity, no matter how worthy it may seem on the merits, for the Foreign Service spouse. This is the point that I am making.

Mrs. RYAN. I don't think that you are creating an inequity. I think you are righting an inequity.

Mr. FASCELL. But we are going to create one for a lot of other people.

Mrs. RYAN. I think that you are right, these issues are the same for any wife in any circumstances that her contribution as a homemaker should be taken into consideration. We say that, and we said it.

We say also that there are further and greater reasons for taking care of Foreign Service wives. What you decide to do on national policy with other wives, we have no control over. To deny it to women who are disadvantaged in these particular ways, we say it is simply inequity.

A military man may take his family once or twice overseas. They may have to serve overseas. A military wife could conceivably stitch together some kind of social security for herself, working a little here and working a little there in various posts. It is very tough, I don't pretend otherwise. But nobody else in the Government has quite all of the problems.

Mr. FASCELL. I agree with that.

Mrs. RYAN. It is just on that basis, not on something that is owed to all women, which we would probably agree with in any case.

Mrs. SCHROEDER. If the gentleman would yield.

Mr. FASCELL. Certainly.

Mrs. SCHROEDER. I think that what you are driving at has been determined by this body in the private sector, and that, once again, is the social security laws. There we don't have any test. The test is, was the couple married 10 years. If so, there is a vested right, which says that the Federal Government realizes that the wife has contributed something, allowing the other person to go out and provide other services. She, then, has a vested right without a court decree, without anything.

So we have clearly done that for the majority of women in America. The only test being, were you or were you not officially married—Marvin may have a different test, but that has not been tested yet. If you are officially married for 10 years, you do have a vested right in social security. We have never extended that to Federal employees.

So it has been Federal policy for everyone, except Federal employees. So, what you are asking, we have already acted on as a body for everyone else, except for Federal employees.

So we are really not asking for anything special. We are asking for the same kind of treatment for annuity rights that has already been granted to the whole rest of the country in the private sector.

Mr. FASCELL. I don't want to disagree, but what they have been telling me, as far as I am concerned, goes far beyond the annuity. But I don't want to argue that point.

Mrs. THURSTON. It has already happened. The Peace Corps now has husband-wife teams as co-country directors, as a way of solving the spouse-job problem. The spouses are given equal authority in the work, equal responsibility and the paycheck is split.

The Peace Corps explained the development as the result of their losing too many good couples because they could not offer the wife a job and she simply refused to have her husband go off, or to accompany him for nothing. I liked the Foreign Service. It was hard, and there were times when I hated the moves and the too-full schedules. But there was great satisfaction when you got the right people together,

and you knew the food was the very best you knew how to do. You know when it goes well, and there is great satisfaction. But, then, you are geared to it. You start making adjustments very early in your life, if you go in as the wife of a young career officer. But there is one adjustment that you can never make, and that is when you are through with all that work and you have no annuity.

Mr. FASCELL. I have no problem with the establishment of annuity rights, none whatever.

Mrs. THURSTON. My theory is that the Foreign Service wife's right to the survivor annuity has already been established by Federal law in cases of retirement before the amendments effective on October 1, 1976. Two for the price of one has been the story in the Foreign Service, and salaries for Foreign Service dependent wives have been discussed since we went into the Service in 1937. For 32 years I heard it repeatedly. Nothing ever came of it.

Mrs. SCHROEDER. I do want to thank all of you for coming. I really want to compliment you once again for your presentations.

I think that since no one seems to really know whether or not the divorce rate is higher in the Foreign Service than in the community at large—I know there are some Foreign Service representatives here, if there is any way that they could find that out, it would be very helpful to the committee, I think.

Mr. FASCELL. The other thing, Madam Chairwoman, would be to determine the other people who would be affected if there is a retroactive application going back to the beginning. We have to have some idea of what we are talking about in terms of people.

Mrs. SCHROEDER. If there is any way that the Foreign Service people can get that to the committee, it certainly would help us.

Mrs. THURSTON. There is—

Mrs. SCHROEDER. I think that we want that from the Foreign Service representatives.

Mrs. THURSTON. Yes; I would like that.

Mr. FASCELL. I think Mrs. Thurston was going to tell us where we could get the information.

Mrs. THURSTON. There is a residence and dependency report which shows change of dependents. So when a wife dies, or there is a divorce, and there is a new wife put on for travel orders and such things, there is a way of knowing. Then, you can check the Foreign Service Journal, which reports the death of every wife in the Foreign Service, or annuitant's wife, to learn whether the former marriage was dissolved by death or divorce.

Mrs. SCHROEDER. Maybe the representatives from the Foreign Service will be able to utilize that to give us the information.

I thank you again for appearing. With that, we will adjourn the hearing.

[Whereupon, at 11:45 a.m., the subcommittees adjourned, subject to call of the Chair.]

THE FOREIGN SERVICE ACT

THURSDAY, SEPTEMBER 6, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees met at 2:12 p.m., in room 2200, Rayburn House Office Building, Hon. Patricia Schroeder (chairwoman of the Subcommittee on Civil Service) presiding.

Mrs. SCHROEDER. We meet today to continue our hearings on Foreign Service personnel reform legislation. Our witnesses today include Mr. José Armilla, vice president, foreign affairs chapter of the Asian and Pacific Americans Federal Employee Council; Mr. Lannon Walker and Mr. William Harrop, both senior Foreign Service officers and former presidents of AFSA; and Ms. Cynthia Thomas, Foreign Service Reserve officer, who is accompanied by Mr. Philip M. Lindsay, retired Foreign Service officer.

Mr. Armilla, we have your prepared statement so you may proceed.

We will go ahead and proceed if that is all right and I am sure Congressman Fascell will be here shortly.

Mr. Armilla, welcome. We are very glad to have you here.

STATEMENT OF JOSÉ ARMILLA, VICE PRESIDENT, FOREIGN AFFAIRS CHAPTER, ASIAN AND PACIFIC AMERICANS FEDERAL EMPLOYEES COUNCIL

Mr. ARMILLA. Madam Chairwoman, we appreciate and are most gratified to have this opportunity to testify on the proposed Foreign Service Act from the perspective of Asian and Pacific Americans.

My name is José Armilla. I am with USICA. With me are, on the left, Elliott Chan, with the Department of State, and on my right, Cecil Uyehara with AID. However, we are all appearing before you in our personal capacities on behalf of the Foreign Affairs Chapter (FAC) of the Asian and Pacific American Federal Employee Council (APAFEC), which is a national organization of Asian and Pacific Americans in the Federal Service.

FAC's membership comprises Asian and Pacific American employees in the foreign affairs agencies; namely, the Department of State (State), Agency for International Development (AID), and the U.S. International Communication Agency (USICA). Membership is also open to Asian and Pacific American employees in other

Federal agencies engaged in foreign affairs; for example, ACTION, Treasury, Commerce, Agriculture, and the Drug Enforcement Agency.

The Federal Government defines an Asian or Pacific Islander as any person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippines, Guam, and Samoa. Hereafter the term "Asian Americans" will be used for convenience.

In connection with Secretary Vance's testimony on the proposed 1979 Foreign Service Act on June 22, it was reported in the media that Madam Chairwoman noted the poor record of the Department in the employment of blacks, Hispanics, and women. Asian Americans were not mentioned. We were not surprised since we are often overlooked due to the Asian tradition of keeping a low profile. A Chinese proverb says that "a half-full bottle of soy sauce makes noise, but a full bottle remains quiet."

However, we are Americans and, following the American tradition, we do have something to say today about our repressed hopes and competences. We take this opportunity respectfully to draw to the attention of the joint subcommittees the record of the Department of State on the employment of Asian Americans which is far worse than that of other minorities.

We appear today:

First, to present a limited perspective from Asian American employees in the foreign affairs agencies regarding their plight under the 1946 Foreign Service Act due to discrimination and lack of a meaningful role in the formulation and effectuation of U.S. foreign policy;

Second, to seek your support for equitable and equal opportunities for employment and decent treatment for Asian Americans in the foreign affairs agencies on the basis of qualifications, training, ability and merit; and

Third, to solicit your support to amend the proposed 1979 Foreign Service Act through specific language which we are proposing, in order to strengthen and effectuate these foregoing principles and objectives as a matter of justice for all employees including Asian Americans, by making equal opportunity in all aspects of employment in the Foreign Service as a statutory requirement of the 1979 Foreign Service Act.

At the outset, we should like to emphasize that FAC fully supports the Department of State's efforts and dedication to excellence and the merit principle in the conduct and formulation of U.S. foreign policy. At the same time, we are not commenting on the details proposed to the 1979 Foreign Service Act by the American Foreign Service Association (AFSA), the American Federation of Government Employees (AFGE), the Women's Action Organization (WAO), and others.

President Carter on February 24, 1977, in commenting on equal employment opportunities for minorities, noted:

I think, to be perfectly frank, that the State Department is probably the department that needs progress more than any other and I am determined that this will be done.

Secretary Vance, in accepting in June 1977 the report of the Department's Executive Level Task Force and the Equal Opportunity Plan for 1977, stated:

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It is the policy of the Department of State to promote equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to achieve equal opportunity in all personal (sic) operations through a continuing affirmative program.

FAC applauded and supported State's and AID's affirmative action programs and initiated a series of discussions and exchanges of letters with management both in State and AID. FAC had urged the management in State and AID (1) to make a sustained effort to recruit qualified Asian Americans from the outside, and (2) to consider Asian Americans already employed within State and AID for positions from the junior level to the senior levels.

With your permission, in order to convey a more complete picture, we would like to insert for the record selected papers and letters concerning these exchanges.

Mrs. SCHROEDER. Without objection, we will be happy to receive it.¹

Mr. ARMILLA. As you can see in the following table, there was only one Asian American at State's policymaking level 2 years ago. None of the Asian American FSO-2's or GS-15's were appointed or promoted to senior level positions.

[The table referred to follows:]

ASIAN AMERICANS IN STATE, AID AND USICA-MIDDLE- AND UPPER-LEVEL EMPLOYEES

	1977	1979	Net change (gain or loss)
State (1979 work force—12,793):			
Assistant secretaries.....	1	None	1 1
Deputy assistant secretary.....	None	None	None
Ambassadors/DCM's.....	None	None	None
Principal officers.....	None	None	None
Country office directors.....	None	None	None
GS-16-18.....	None	None	None
GS-15.....	(?)	2	(?)
GS-13-14.....		1	
FSO-1-2.....		2	
FSO-3.....		5	
FSO-4-5.....		9	
FSR-1-2.....		1	
FSR-3.....		3	
FSR-4-5.....		11	
AID (1979 work force—4,021):			
Assistant administrator.....	None	None	None
Deputy assistant administrator.....	None	None	None
Mission director.....	None	None	None
Deputy mission director.....	1	None	1 1
FSR 1-2.....	None	None	None
GS/AD-16-18.....	None	None	None
GS-15.....	1	2	1 1
FSR-3.....	6	9	3 3
GS-13-14.....	2	2	(4)
FSR-4-5.....	13	16	3 3
USICA (1979 work force—4,293):			
Senior Washington leadership (1 GS-17).....	1	1	(4)
Country public affairs officer.....	None	None	None
FSIO-1-2.....	None	None	None
FSIO-3.....	4	4	(4)
FSIO-4-5.....	6	8	2 2
GS-16-18.....	(5)	(5)	(5)
GS-15.....	None	None	None
GS-13-14.....	9	9	(4)
FSR-1-2.....	1	None	1 1
FSR-3.....	1	1	(4)
FSR-4-5.....	33	32	1 1

¹ Loss.

² Data not available for 1977, hence net change cannot be determined.

³ Gain.

⁴ No change.

⁵ 1 GS-17 is already counted in the senior leadership.

¹ The materials referred to are contained in appendix G.

Mr. ARMILLA. In AID, the exclusion of Asian Americans from senior positions is much more glaring. No Asian American, except one who is not a supergrade, was appointed to a senior level position despite the fact that among all minority groups Asian Americans have the highest percentage of qualified employees from which selection could have been made. We also have evidence—shown in the appendix—that for almost all grades Asian Americans remain in their grades longer than the average time-in-grade for other employees.

In USICA the story of standing still in the same grade or suffering losses through attrition repeats itself for Asian Americans. The only policy-level Asian American is a Deputy Area Director.

Thus, despite promises of affirmative action, Asian Americans have made no progress whatsoever at the policymaking levels in the foreign affairs agencies in the past 2 years. What little gains Asian Americans have made were a few positions at the middle levels.

Since 1977, in the view of FAC, the situation of Asian Americans in State, AID, and USICA has deteriorated significantly. In State the first Asian American Assistant Secretary is now no longer with the Department. The office directorship of an Asian American—male FSR-2—was abolished in a reorganization and his services are being terminated. An Asian American officer—female FSR-5—recruited under the midlevel affirmative action program, is in the process of leaving because of a perceived lack of opportunity for upward mobility. An Asian American officer—male GS-15—was informed in 1977 that he had been a victim of past discrimination and was deserving of promotion at the earliest opportunity; after 2 years he still has not been promoted.

In AID we strived to achieve a rather modest objective—the appointment of Asian American Mission or Deputy Directors. An Asian American officer—male FSR-2—was hired as Deputy Mission Director but after serving 6 months he was demoted. Asian Americans are the only minority group in AID whose senior level targets have remained essentially unfulfilled. Some Asian Americans have already filed complaints against AID based on race discrimination. An Asian American officer—male GS-15—has filed a grievance complaint. Another Asian American officer—male FSR-5—has also filed a grievance complaint. One Asian American female has filed a complaint because she was denied employment on the grounds of race discrimination.

We would like to state categorically for the record that Asian Americans are not seeking special preferential treatment, lower standards or tokenism. We, the Asian Americans, like other minorities, women and American citizens in general, seek equal opportunities for just, fair, equitable, and decent treatment on the basis of training, qualification, merit, and demonstrated ability. Because of continuing race discrimination, Asian Americans feel that they have the dubious distinction of being a minority within a minority, a “double minority” if we may use the term.

Mrs. SCHROEDER. I am going to have to have a temporary recess while I run over and vote. We will have a temporary recess until the vote is concluded.

Mr. ARMILLA. Certainly, Madam Chairwoman.

[Whereupon, a short recess was taken.]

Mrs. SCHROEDER. You may proceed, Mr. Armilla.

Mr. ARMILLA. Thank you.

Also, for the record, we should like to state that for Asian Americans equal opportunity means that they be judged and rewarded on the basis of merit without regard to factors not relevant to their job performance and potential. Affirmative action, in the view of Asian Americans, means positive measures which will place them like other American citizens in positions equivalent to their skills and potential. It also means positive acts to remedy underrepresentation when presented with a choice between equally qualified candidates. Excellence and merit should determine one's level of success.

We firmly believe that Asian Americans can contribute and should be given the opportunity for service in the Foreign Service and civil service in accordance with the highest professional qualities. Of all American ethnic groups, Asian Americans are the best educated. In 1976, the percent of Asian Americans in their twenties who had completed at least 4 years of college was much higher than the white majority. For example, 52 percent of Chinese Americans, 44 percent of Japanese Americans, and 43 percent of Philippine Americans completed 4 years of college while only 28 percent of the white majority completed at least 4 years of college. The college completion rate for these Asian Americans was 61 percent higher than for the white majority ["Social Indicators of Equality for Minorities and Women," U.S. Commission on Civil Rights, August 1978].

State, AID, and USICA will be made more representative and efficient by employing Asian Americans in ranking positions. Only when a significant number of Asian Americans—and other minorities and women—serve in the Foreign Service and civil service at all levels will we be able to combat effectively the impression throughout the world that Asian Americans have no role in policymaking—an impression which is damaging to U.S. interests.

Domestically, the presence of Asian Americans in the various ranks in the foreign affairs agencies would reflect the values and diversities of American society. Nonuse of available qualified Asian Americans in these agencies is a waste of talent; Asian Americans are an "underutilized national resource." Adequate consideration of Asian Americans for senior level positions would increase the size of the qualified applicant pool, thereby increasing competition for high level policy positions.

Abroad, Asian Americans in policy positions would prove to the world that the system in the foreign affairs agencies is democratic and generally representative of the American people. This would lend added credibility to U.S. policies and concerns for fundamental human rights, political, social, and economic rights and free democratic institutions.

Only when Asian Americans are employed in ranking positions of importance in State, AID, and USICA can there be effective political substantive participation, contribution of foreign policy views, and articulation of this country's core national interests.

As the above testimony shows, the foreign affairs agencies on their own are unable or unwilling to carry out the goals of equal opportunities for employment and upward mobility based on merit. The Office of Equal Employment Opportunity is not mentioned in the proposed 1979 Foreign Service Act. Equal opportunity in all aspects of

employment, including Asian Americans, should be required under the proposed law.

In light of the foregoing, we would like to solicit your support for an amendment to the Foreign Service Act.

We are offering some suggested rewording for a number of sections of the proposed Foreign Service Act which would strengthen, as a statutory mandate, the principle of equal and equitable opportunities for employment without regard to race, color, religion, sex, or national origin. The suggested changes would inhibit the management and personnel people from overt or covert discriminatory practices and direct them to apply and effectively implement the principle of equality of treatment in all phases of employment in the foreign affairs agencies.

More specifically, the proposed amendments are set forth below and I will not go into the details at this time unless you want me to.

Mrs. SCHROEDER. No, that is fine. We are glad to have them for the record.

Mr. ARMILLA. The underscored language represents additions.
[The proposed amendments follow:]

(Chapter 1—General Provisions, Section 101 (b)) as a separate objective: *to create and execute in a vigorous manner a systematic and sustained equal employment opportunity program in order to assure that the Foreign Service is representative of the American people.*

(Chapter 2, Section 205. The Inspector General) Under the direction of the Secretary, the Inspector General shall inspect the work of each Foreign Service post at least every three years, shall inspect periodically the bureaus and offices of the Department of State, *shall examine whether merit and equal opportunity principles have been observed in the management of the Department and Missions abroad*, and shall perform such functions as the Secretary may prescribe.

(Chapter 3, Section 301. (b)) The Secretary shall prescribe appropriate written, oral, physical and other examinations for appointment to the Service (other than as a chief of mission) in accordance with *merit and equal opportunity principles.*

(Chapter 5, Section 511. (a)) The Secretary may assign a member of the Service, in accordance with merit and *equal opportunity principles*, to any position . . .

(Chapter 6, Section 601. (a)) Promotions in the Service shall be based upon *merit and equal opportunity principles.*

Mr. ARMILLA. In conclusion, we thank you again for your patience and valuable time in listening to us. We believe, in view of our experience, that you are our highest resort. We sincerely hope that you will favorably consider the situation of the Asian Americans in the foreign affairs agencies and provide an appropriate and effective remedy.

Mrs. SCHROEDER. Thank you very much. We appreciate your suggestions and your statement.

Do you have any idea whether the record for Asian Americans under the Civil Service system is any better than it has been under the Foreign Service?

Mr. ARMILLA. Yes; we have actually a statement from the U.S. Civil Service Commission which indicates that Asian and Pacific Americans decreased in numbers throughout all major pay systems in the full Federal work force. This is the report on minorities on November 30, 1977. What this means is that there is a decreasing number of Asian Americans who, despite their qualifications, are remaining in the Federal service; they are going someplace else.

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Mrs. SCHROEDER. I think what I heard you say is that the numbers are not that much better in the civil service.

Mr. ARMILLA. That is correct.

Mrs. SCHROEDER. The Foreign Service is bad but so is the civil service.

Mr. ARMILLA. Yes, in terms of absolute numbers. Yes, Madam Chairwoman.

Mrs. SCHROEDER. Why do you think that Asian Americans have fared so poorly in the foreign service agencies?

Mr. ARMILLA. As a general statement, they fared poorly because of the problem of assimilation. The only two groups of Asian Americans that have been here long enough and the best educated, I think, are the Japanese Americans and the Chinese Americans. This means that the second generation are highly qualified to enter and are indeed in the foreign affairs agencies by proportion, but they never serve, with few exceptions, in policy level positions. We are represented in the middle level positions in foreign affairs agencies but not in the senior levels or the policy making level positions.

Mrs. SCHROEDER. I am perplexed. You said you support the merit selection and you didn't want to deal with those issues in the Foreign Service format.

Mr. ARMILLA. Yes.

Mrs. SCHROEDER. You also stated that this is one of the best educated minorities in America, in fact even better educated on the whole than the white population. So then my question becomes: If the merit system is such a good idea that you don't want to comment on it but that people are not making it to the top through that promotion system, what is going on?

Mr. ARMILLA. To be frank with you, the promotion system does not depend solely on merit. I think you have to show also how one adjusts to the system as a whole, especially the hardships and the trials and tribulations of the Foreign Service and on this basis the selection boards would rank the persons, using their best subjective judgment.

Now in my opinion Asian Americans come out poorly because they have not really belonged to the social networks. I mentioned a generational problem. They have to be part of social networks that exist in this country and so many of the Foreign Service officers who would make the selections would probably use for their judgment information on other groups rather than Asian Americans because they have more experience with members of other minority groups or with the white majority.

Mrs. SCHROEDER. I think the other groups have the same complaints that you have; in other words, they are saying that it is really not a merit system, it is an "old boy" network to some extent.

Mr. ARMILLA. Well, I think to go back to the text in my testimony, there is this low-profile tradition of not speaking up all the time. You have to be assertive in the Foreign Service because after all you are interpreting, explaining foreign policy and dealing with foreign peoples. This is a trait that I think the Asian Americans would have to show more forcefully. On substantive issues, I think they do talk, but in general, as I mentioned to you in the social networks that are required in the Foreign Service, you have to talk all the time, interact

with them, in order to be recognized. But because of this low-profile tradition, the Asian Americans are at a disadvantage.

Mrs. SCHROEDER. Could you explain to me about how your amendments are going to help the plight of Asian Americans in the foreign affairs agencies?

Mr. ARMILLA. Yes. Very briefly we are interested in structural change and this means that as a statutory mandate all management and personnel people would have to follow the rules on equal employment opportunity really to the letter.

Mrs. SCHROEDER. But they claim they are doing it now and we have the statistics showing that minorities are not working there in significant numbers. While that is going on, there has also been no real proof that they are in violation of the equal employment provisions.

Mr. ARMILLA. I think we are appealing to the moral sense of the management and personnel people and the law has that force. Without such moral force operating in the statute, people would just disregard statements of policy about this. This is what we are saying in our proposed amendments.

Mrs. SCHROEDER. Do you think that the selection board procedure as it stands right now helps or hinders minority groups?

Mr. ARMILLA. If the Foreign Service would have language similar to what we are proposing, they would be improved. I think it is working in that these are professional and mature people. But there are very few of us on selection boards so we cannot really tell you whether they are working or not.

To answer your question directly, we would say that the selection board system should work better if they are operating under the statutory mandate that we are proposing here because we believe that the language of the law has moral force. The American people would be affected by it.

Mrs. SCHROEDER. Do you know the percentage of Asian Americans in the domestic population?

Mr. ARMILLA. Yes; the 1970 census puts it at 1.1 percent.

Mrs. SCHROEDER. One of the problems that we had in dealing with the Hispanic portion of the population were that people from Spain resented being coupled with people from Latin America who resented being coupled with our people who had been here for 200 years and were labeled Hispanic—they resented people coming in in the last 200 years. They saw themselves as more native than many of the rest of us that were here. Do you have that problem within the Asian American population?

Mr. ARMILLA. Yes, we do. As a matter of fact, some would prefer not to be counted as Asian Americans. I think it is because in order to show a disadvantaged group you have to proclaim your identity and this is what we are doing. We define ourselves as a class, really, as a group with a disadvantage problem. Some people feel that their self-identity is not that of a disadvantaged group.

We actually follow the Federal definition, Madam Chairwoman, of what an Asian American is. But it is a psychological definition we are talking about in connection with Hispanics. It is really a self-definition, self-identity, because that is the only way you can tell what the person's ethnic group is.

Mrs. SCHROEDER. Of the 1.1 percent that the Census Bureau found in 1970, did they do anything on whether or not they were disad-

vantaged in relation to the other minorities that they have been talking about under the Equal Employment Act?

Mr. ARMILLA. Yes.

Mrs. SCHROEDER. Are there statistics on their level of being disadvantaged as compared to the majority community?

Mr. ARMILLA. Yes. As a matter of fact, I would like to mention to you the study of the Census Bureau on income and education. As I mentioned to you, the Asian Americans have a high education completion rate but when you look at their income on the basis of education there is quite a discrepancy. For example, among Chinese Americans, the actual income is about \$4,000 less than what you might expect from his education; among Japanese Americans, about \$2,000 less than what you would expect his income level would be from his education.

Both groups, by the way, are below the majority male income which is about \$15,000; the Japanese Americans, \$14,000; Chinese Americans, \$12,000. So this discrepancy in income to us is an indicator that despite their education they are not making money.

Mrs. SCHROEDER. And those statistics were from the 1970 census again?

Mr. ARMILLA. No; it is a survey that they did in 1976 on income and education. It is a sample survey.

Mrs. SCHROEDER. Well, I thank you all very much for appearing. We appreciate your testimony and are glad to have it in the record as we go through this incredible task of trying to make some sense out of this whole area.

Thank you very much.

Mr. ARMILLA. It was a pleasure, Madam Chairwoman.

Mrs. SCHROEDER. Thank you.

The next panel that we have this morning are Mr. Walker and Mr. Harrop.

Congressman Jim Leach could not be here but he sends a communication complimenting you and your testimony and saying how pleased he was that you could be here today, so I would put that in the record for him.

[The document referred to follows:]

STATEMENT BY HON. JIM LEACH ON TESTIMONY BY LANNON WALKER AND
WILLIAM HARROP

I would like to compliment Messrs. Harrop and Walker for their testimony. The proposals they have presented today clearly reflect a great deal of careful consideration and thought on how to insure that the Senior Foreign Service is made up of the most capable officers recruited into the Foreign Service. These proposals represent the work of an informal group of some of the best senior officers presently in the Foreign Service. Messrs. Harrop and Walker are both Deputy Assistant Secretaries in the Bureau of African Affairs and have served in senior policy positions for some years. Their appearance here today is a bureaucratically courageous act, demonstrating—without in any way being disloyal to the Department of State—the great importance which these senior officers attach to the creation of the very best Foreign Service personnel system as a result of the Foreign Service Act of 1979. Creative dissent and innovative thinking such as displayed by these gentlemen is an essential characteristic of the officer our Foreign Service needs to continue to attract, retain, and advance to the highest level.

Mrs. SCHROEDER. At this point we will be more than happy to have you proceed.

STATEMENT OF WILLIAM C. HARROP, SENIOR FOREIGN SERVICE OFFICER, AND FORMER PRESIDENT OF AMERICAN FOREIGN SERVICE ASSOCIATION

Mr. HARROP. We have asked our colleague, FSO Frank McNeil, to join us at the table here today. We would be glad to answer any questions that you may have after I highlight the statement.

Let me start by saying that the three of us are management officials of the Department of State. We are what is called management officials under legislation. However, we are here to speak for ourselves only. We each have had about a quarter of a century of experience in this business and have concern for the U.S. diplomatic service and for the best possible representation of American interests overseas. We have discussed our views among a group of leaders of the Foreign Service with whom we have been reviewing these questions for some time.

Secretary Vance has worked very hard on this proposed legislation. We agree with him that the time has come for a fundamental reform of the Foreign Service and we support the congressional action in this session on a reform of the Foreign Service.

However, the bill that we are reviewing we feel needs improvement in some key respects. We hope it will be strengthened during the process of congressional consideration. The bureaucratic process under which a bill of this nature develops tends to dilute a lot of the edge of the proposals and we think that has occurred in this case.

The Secretary sought a wide range of views in preparing this bill. He in fact consulted on several occasions with our group and made sure that our concerns received a fair hearing in the process of developing the legislation. He also worked with leaders of other foreign affairs agencies who contributed to the effort.

The result of all this work as reflected in the bill under consideration we think has much to commend it. It includes a rationalization of the Foreign Service personnel categories and salary schedules; a statutory basis for employee-management relations in the Foreign Service; a return to a single legislative authority for the Foreign Service; a clean distinction between Foreign Service and civil service employment; and the establishment of a Senior Foreign Service.

We support each of these initiatives because we believe they will contribute to a stronger and more excellent Foreign Service of the United States. At the same time, we have significant reservations concerning the parts of the bill which deal with the Senior Foreign Service.

To show why we think the proper establishment of the Senior Foreign Service is so important, I would like to briefly review the major goals of reform efforts over the years aimed at the Foreign Service personnel system. As you know, the Foreign Service or diplomacy is really a question of people, it is the only resource that we have so that we are in really a continual process of reviewing our organization and trying to improve and make more excellent our ability to carry out the national interest. The main objectives of these reforms have been:

First, to demonstrate the need for a Foreign Service personnel system separate from the civil service.

Second, to assure that the Foreign Service serves the national interest and not just parochial agency interests of individual agencies; that is to say, a single Foreign Service of the United States.

Third, to demonstrate how the Foreign Service, which has so many individual performers—people well qualified in geographic or functional areas—can produce from this body of experts the required number of across-the-board executive managers. This is the classic debate between generalists and specialists in personnel systems.

Fourth, to assure rational recruitment and promotion opportunities so that the Nation's best talent will choose the Foreign Service as a career. This often comes down to the notion of "up or out"; in other words, by what process will people leave the service so as to make room for others to move up.

A look at today's problems in the Foreign Service I think will show that these historical objects of reform remain the very basis of our problems. We have separate Foreign Service personnel systems running out of each of the foreign affairs agencies. This means that we fail to use the professional talent available because of petty agency rivalries; the authority of the Ambassador is undermined; it is extraordinarily difficult to form executive leaders capable of managing policy and resources across agency lines; and the existence of duplicate systems is costly and inefficient.

In this connection we are particularly concerned by the proposals to transfer important functional areas of commercial and economic work to the Department of Commerce. We think this makes very little sense and would further confuse the ability of people overseas to represent our national interests there. We think that would be a very serious mistake.

We have too many officers in jobs which are not truly senior positions. Too few of our senior officers can lay claim to either profound expertise or to broad executive talent. As a result, the pool from which the key jobs are filled is, in fact, too small—in spite of the surplus of senior officers.

At the same time, the surplus of senior officers has been irreducible due to the lack of a vigorous egress mechanism. As a result, promotion rates have slowed drastically, recruitment efforts have been erratic, career development plans subverted—in brief, the system is in crisis.

The bill under consideration has dealt effectively with the confusion between civil service and Foreign Service by eliminating the "domestic" Foreign Service category—a reform long overdue. But the bill does not deal with the other key objectives of reform in a satisfactory way. In fact, by establishing the Senior Foreign Service in ways which are not clearly enough defined, the bill could actually work against the reform goals. For example:

By not creating a single Senior Foreign Service for all of the agencies authorized to use the Foreign Service personnel system, the proposed bill runs the serious risk of seeing each establish its own criteria, for promotions, career development, training, and recruitment. As a result, we might see one senior executive service but two or three de facto Senior Foreign Services in a much smaller pool of people.

By not clearly defining the difference between the current senior officer corps and the new Senior Foreign Service and by not clearly

distinguishing between senior executives and senior specialists, the bill tends to replicate past confusions which lie at the heart of our current problems in this area.

Finally, by choosing the current mechanism of the time-in-class as a key egress tool, the bill raises the obvious question as to why time-in-class should work in the future when it has not worked in the past.

I would like to look quickly at each of these questions in more detail.

One. Whether the act should establish a single Senior Foreign Service.

The authors of the bill say they agree with us that there should be a single Senior Foreign Service for all foreign affairs agencies but feel that the current draft reflects as much movement toward uniformity among agencies as bureaucratic politics will allow.

We believe that the objections raised by the various agencies can be overcome and that the principle of a single Senior Foreign Service is something the Congress would want to see implanted in the national interest. The single legislative authority for the Foreign Service personnel system will be undermined ab initio if it is not made clear that there is only one Senior Foreign Service operating under uniform rules for the foreign affairs agencies.

The various agencies can use "compatible" systems up to the senior threshold because the existence of a single Senior Foreign Service thereafter will force sufficient congruence over time in career development programs, promotion standards, evaluation procedures, assignment interchanges, and training. Without a single Senior Foreign Service to act as a powerful magnet drawing up the best from all agencies, the various personnel systems will remain—indeed retreat further—behind agency walls.

Two. Whether the act should define the Senior Foreign Service as being composed both of officers who have demonstrated policy and executive leadership abilities and of those who have the kinds of highly developed functional and area expertise required at the top ranks.

While the language of the bill, taking criticism into account, was changed to read that selection boards looking at Senior Foreign Service officers would address executive leadership ability and/or functional or area expertise, the bill does not make clear that executive and specialists must be trained and assigned differently.

The authors of the bill are concerned that such distinctions could lead to invidious comparisons—an "elite" category and a "second class" category—and so break down the consensus that now exists on the idea of a Senior Foreign Service. We do not agree.

We believe that without such clear definition of career patterns the Senior Foreign Service will persist in the confusion which now exists in the top ranks. Precisely because the Service now assumes that the senior officer is both a specialist and an executive leader—by virtue of the fact that he is a senior officer—we have insufficient numbers of both specialists and executives and perhaps too many officers who are neither. We should accept the need—and the hard work required—to evolve separate career development patterns for specialists and for executives.

Three. Whether the act should establish a 3-year limited renewable appointment as the key egress mechanism for the Senior Foreign Service.

The authors of the bill agree with the wisdom of moving to the limited renewable appointment as soon as possible, but want to use time-in-class initially, both for converting current senior officers and for promotions into the Senior Foreign Service. They do not wish to specify the length of time-in-class or the renewable appointment in the bill, preferring to leave this to the Secretary's discretion under subsequent regulation. Lastly, the authors wish to maintain other current egress mechanisms, selection out and mandatory retirement for age—both of which have been found wanting in the past.

We believe strongly that unless the egress mechanism for the Senior Foreign Service is fundamentally reformed we will soon fall back into the mistakes of the past which have resulted in a persistent surplus of senior officers, and consequent blockage of the entire system. We believe that a system of 3-year renewable appointments can provide the fundamental reform the system requires. It must be made clear that the decisions as to how many appointments will be renewed in a given year will be based solely on the requirements for steady flow of talent from bottom to top. Each year a given percentage of appointments of those senior officers ranked at the lower end of the scale by a board of peers would not be renewed in order to make way for recruitment and promotions.

But whatever system is adopted under the authorities provided by a new Foreign Service Act, it must be based on a personnel model which articulates the desired flow. We can no longer afford the luxury of resolving some particular problem—"too few political officers," "let's promote more administrative officers this year to encourage people into the cone," "we must appoint more minority candidates," "we must hire a dozen Farsi speakers," et cetera—without understanding what the implications of such increased appointments would be upon the overall system.

We must have a model which enables us to predict rates of recruitment, promotion and retirement on which to base a rational diplomatic service. We need to know what effect it will have on the overall structure. The lack of a realistic personnel model, which requires computer modeling to deal with the dynamics over time of the many variables, has been at the root of the Department's poor personnel decisions. Before the Congress passes a new act, such a model must be constructed, subjected to informed scrutiny, and made part of the legislative history in order to prevent future managers from ad hoc tinkering with the system.

We have had too much tinkering with the personnel system persistently year after year. New ideas come up, small changes are made, large changes are made and the overall structure becomes very much of a Rube Goldberg model, without the coherent need to carry out our diplomacy properly.

With the intention of making a constructive contribution to resolving this complex problem, we have developed a model of personnel flow in the Foreign Service which the committees will find as an annex to our testimony.

I would be pleased to go into this and other questions in more detail.

Madam Chairman, it has been said that in the implementation of the bill under consideration the concerns we discuss above can and will be met. Under the provisions which call for compatibility among

the agencies, progress could be made toward uniformity and toward recreating a single Foreign Service of the United States. The wording of the bill, it is said, permits the establishment of a Senior Foreign Service made up both of true executives and of highly qualified specialists. And the bill provides for several egress mechanisms, including limited career extensions which could apply to the bulk of the Senior Foreign Service and permit the development of a rational rate of career flow.

We would like to believe that this could happen and our skepticism, which I am sorry does exist, is in no way a lack of confidence in the Secretary or in his senior advisors but we know that the current management will be replaced under our political system and that each generation of leadership will always be observed by policy demands rather than administrative problems.

We cannot expect Secretaries of State or deputies to be able to afford the amount of time that in many ways is required by the management of this personnel system. For that reason we feel strongly that the legislation and the legislative record of that legislation should itself provide a very clear model for future implementation.

The history of the Foreign Service since 1946, and of our experience with reform, teaches us that, unless the law is specific and the Congress keeps close watch, agency managers will succumb to the inevitable pressures to keep people on beyond their time, to proliferate Foreign Service personnel systems and to avoid the hard work of forming both executives and specialists.

Our written testimony gives detailed recommendations aimed at each of these problem areas. In brief, we believe that either the law or the legislative history should make clear that it is the intent of Congress to:

Provide for the establishment of a single Senior Foreign Service, the personnel of which will be characterized by either outstanding senior executive management abilities or outstanding functional or specialized expertise?

Assure that personnel will serve in the Senior Foreign Service only under appointments limited in time and on the basis of sustained high performance.

Clearly see to it that the decision as to how many appointments will be renewed in a given year will be based solely on the requirements for:

A predictable flow of recruitment at the bottom of the Foreign Service;

Regular promotion opportunities;

Career development patterns, which include retirement projections, including honorable retirement for a substantial number of officers at the new class FS-1;

The needs of the Service in terms of executive abilities or functional or area expertise, and the available positions and requirements to get the work done;

Insist that the management of the Foreign Service construct and use a personnel model in order that the required flows of talent and expertise can be identified and maintained;

To establish an Office of Foreign Service Personnel Management, headed by the Director General under the Secretary's authority and

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supervision, whose tasks it would be to manage the Senior Foreign Service of the foreign affairs agencies and to work toward compatibility and consolidation of Foreign Service personnel functions, across agency lines, for personnel in the junior and midcareer ranks as they work upward toward what we feel very strongly should be a single Senior Foreign Service.

In conclusion, Madam Chairman, we would like to congratulate the senior management of the Department of State, AID and ICA for the excellent and constructive work they have done preparing this bill. We believe that there should be a Foreign Service Act of 1979 and we urge the Congress to pass such legislation, taking account of the suggestions we have made to improve the bill.

[The joint prepared statement of Messrs. Harrop and Walker and attachments follow :]

JOINT PREPARED STATEMENT OF WILLIAM C. HARROP AND LANNON WALKER, SENIOR
FOREIGN SERVICE OFFICERS AND FORMER PRESIDENTS OF THE AMERICAN FOREIGN
SERVICE ASSOCIATION

Secretary Vance has devoted an extraordinary amount of time to the proposed Foreign Service Act of 1979. We, like the Secretary, are convinced that the moment for fundamental reform of the Foreign Service is now and that this proposed Foreign Service Act of 1979 is needed to institute these reforms. In certain key respects, the Act doesn't go far enough and, if not strengthened during the process of Congressional consideration, it will fail to achieve its essential goals.

The Secretary has sought a wide range of views, including our own, as he forged what has been called a "careful consensus among divergent interests." So too, the heads of other interested agencies and key managers across the foreign affairs community have devoted remarkable energy to the Executive Branch's first major initiative in Foreign Service personnel reform since the mid-sixties. And the results, as reflected in the bill under consideration, have much to commend them:

- A rationalization of foreign service personnel categories and salary schedules

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- A statutory basis for employee-management relations in the Foreign Service
- A return to a single legislative authority for the Foreign Service
- A clear distinction between Foreign Service and Civil Service employment
- And the establishment of a Senior Foreign Service.

We support each of these initiatives because we believe they will contribute to a stronger and more excellent Foreign Service of the United States. At the same time, we have significant reservations concerning the parts of the bill which deal with the Senior Foreign Service.

To show why we consider the proper establishment of the Senior Foreign Service to be so important, it is necessary to review briefly the major goals of the reform efforts which have been aimed at the Foreign Service personnel system over the years. These have been --

1. To demonstrate the need for a separate Foreign Service personnel system (Foreign Service vs Civil Service)
2. To assure that the Foreign Service serves the national interest and not just parochial agency interests (A single Foreign Service of the United States v. disparate agency services).

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3. To demonstrate how the Foreign Service, which has so many individual performers -- i.e., highly qualified geographic or functional specialists -- can produce from this body of experts the required number of across-the-board executive managers (Generalists v Specialists).
4. To assure rational recruitment and promotion opportunities so that the nation's best talent will choose the Foreign Service as a career (the notion of "up or out" which is made to work, or not work, by the Service's egress mechanism).

We have only to look at today's crises in the Foreign Service to see that these historical objects of reform remain at the heart of our problems:

- Separate Foreign Service personnel systems run out of each of the major foreign affairs agencies means that we fail to use the professional talent available because of petty agency rivalries; the authority of the Ambassador is undermined; it is extraordinarily difficult to form executive leaders capable of managing policy and resources across agency lines; and the existence of duplicate systems is costly and inefficient.

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- We have too many officers in jobs which are not truly senior positions. Too few of our senior officers can lay claim to either profound expertise or to broad executive talent. As a result, the pool from which the key jobs are filled is, in fact, too small -- in spite of the surplus of senior officers.
- At the same time, the surplus of senior officers has been irreducible due to the lack of a vigorous egress mechanism. As a result, promotion rates have slowed drastically, recruitment efforts have been erratic, career development plans subverted -- in brief the system is in crisis.

The bill under consideration has dealt effectively with the confusion between Civil Service and Foreign Service by eliminating the "domestic" Foreign Service category -- a reform long overdue. But the bill does not deal with the other key objects of reform in a satisfactory way. In fact, by establishing the Senior Foreign Service in ways which are not clearly enough defined -- the bill could actually work against the reform goals. For example,

- by not creating a single Senior Foreign Service for all of the agencies authorized to use the Foreign Service personnel system, the proposed bill runs the serious risk of seeing each

establish its own criteria for promotions, career development, training and recruitment. As a result, we might see one Senior Executive Service but two or three de facto Senior Foreign Services.

-- by not clearly defining the difference between the current senior officer corps and the new Senior Foreign Service and by not clearly distinguishing between senior executives and senior specialists the bill tends to replicate past confusions which lie at the heart of our current problems.

-- and by choosing the current mechanism of time-in-class as a key egress tool, the bill raises the obvious question as to why time-in-class should work in the future when it has not worked in the past.

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Let us look at each of these three questions in more detail

1. Whether the Act should establish a Single Senior Foreign Service

The authors of the bill say they agree with us that there should be a single Senior Foreign Service

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for all Foreign Affairs agencies but feel that the current draft reflects as much movement toward uniformity amongst agencies as bureaucratic politics will allow.

We believe that the objections raised by the various agencies can be overcome and that the principle of a single Senior Foreign Service is something the Congress would want to see implemented in the national interest. The single legislative authority for the Foreign Service personnel system will be undermined ab initio if it is not made clear that there is only one Senior Foreign Service operating under uniform rules for the foreign affairs agencies.

The various agencies can use "compatible" systems up to the senior threshold because the existence of a single Senior Foreign Service thereafter will force sufficient congruence over time in career development programs, promotion standards, evaluation procedures, assignment interchanges and training. Without a single Senior Foreign Service to act as a powerful magnet drawing up the best from all agencies, the various personnel systems will remain--indeed retreat further--behind agency walls.

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We believe that without such clear definition of career patterns the Senior Foreign Service will persist in the confusion which now exists in the top ranks. Precisely because the Service now assumes that the senior officer is both a specialist and an executive leader -- by virtue of the fact that he is a senior officer -- we have insufficient numbers of both specialists and executives -- and perhaps too many officers who are neither. We should accept the need -- and the hard work

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required - to evolve separate career development patterns for specialists and for executives. To blur this important difference and to blanket-in to the Senior Foreign Service all current senior officers without regard for their qualifications as either specialists or executives is unfair to the rest of the Service, and indeed to the national interest.

3. Whether the Act should establish a three-year limited renewable appointment as the key egress mechanism for the Senior Foreign Service.

The authors of the bill agree with the wisdom of moving to the limited renewable appointment as soon as possible, but want to use time-in class initially, both for converting current senior officers and for promotions into the Senior Foreign Service. They do not wish to specify the length of time-in-class or the renewable appointment in the bill, preferring to leave this to the Secretary's discretion under subsequent regulation. Lastly, the authors wish to maintain other current egress mechanisms, selection out and mandatory retirement for age--both of which have been found wanting.

We believe strongly that unless the egress mechanism for the Senior Foreign Service is fundamentally reformed we will soon fall back into the mistakes of the past which have resulted in a persistent surplus of senior officers,

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and consequent blockage of the entire system. We believe that a system of three year renewable appointments can provide the fundamental reform the system requires. It must be made clear that the decisions as to how many appointments will be renewed in a given year will be based solely on the requirements for steady flow of talent from bottom to top. Each year a given percentage of appointments of those senior officers ranked at the lower end of the scale by a board of peers would not be renewed in order to make way for recruitment and promotions.

But whatever system is adopted under the authorities provided by a new Foreign Service Act it must be based on a personnel model which articulates the desired flow. We can no longer afford the luxury of resolving some particular problem -- "too few political officers", "let's promote more administrative officers this year to encourage people into the cone." "we must appoint more minority candidates," "we must hire a dozen Farsee speakers", etc. -- without understanding and planning in advance its impact upon our overall personnel flow.

We need predictable rates of recruitment, promotion and retirement on which to base a rational diplomatic service. The lack of a realistic personnel model, which requires computer modeling to deal with the dynamics over time of the many variables, has been at the root

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of the Department's poor personnel decisions. Before the Congress passes a new Act, such a model must be constructed, subjected to informed scrutiny, and made part of the legislative history in order to prevent future managers from ad hoc tinkering with the system.

With the intention of making a constructive contribution to resolving this complex problem, we have developed a model of personnel flow in the Foreign Service which the Committees will find as an annex to our testimony.

We would be pleased to go into each of these questions in more detail.

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We would like to believe, and our skepticism is in no way a lack of confidence in the Secretary or his senior advisors. But we know that the current management will be replaced and that each generation of leadership will be absorbed by policy rather than administrative problems.

The history of the Foreign Service since 1946, and of our experience with reform, teaches us that, unless the law is specific and the Congress keeps close watch, agency managers will succumb to the inevitable pressures to keep people on beyond their time, to proliferate foreign service personnel systems and to avoid the hard work of forming both executives and specialists.

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 - regular promotion opportunities
 - career development patterns, which include retirement projections, including honorable retirement for a substantial number of officers at the new class FS-1
 - the needs of the Service in terms of executive abilities or functional or area expertise
 - and available positions.
- insist that the management of the Foreign Service construct and use a personnel model in order that the required flows of talent and expertise can be identified and maintained.
- and lastly, to establish an Office of Foreign Service Personnel Management, headed by the Director General under the Secretary's authority and supervision, whose tasks it would be to manage the Senior Foreign Service

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of the foreign affairs agencies and to work toward compatibility and consolidation of Foreign Service personnel functions, across agency lines, for personnel in the junior and mid-career ranks.

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THE FOREIGN SERVICE OFFICER SYSTEM

The data shows conclusively that the lack of systematic operation of the Foreign Service Officer Personnel System is at the root of the troubles which have afflicted the system and harmed the Foreign Service's ability to do the work which the nation requires of it. The proposed legislation provides crucial new authorities for operating the system but, like the existing legislation, does not prescribe how to operate it. Whatever the final shape of the Act, if it is to achieve its promise, it should incorporate the requirement for an operating model in the legislation and set forth the parameters of that model in the legislative record.

In the following pages we set forth:

- The dismal historical record, illustrated with tables and roller-coaster graphs of the promotion and junior entry rates.
- A brief list of some ad hoc decisions that led to this sorry state of affairs.
- A basic model of the Foreign Service Officer Personnel System.
- An illustrative notion of how to operate this model to produce a rational system, a task that in the final analysis must involve running the model on a dynamic computer program.

The Historical Record (The Roller Coaster Model)

The record of the past 15 years suggests that for the most part the Foreign Service Officer Personnel System could not have been run worse had our successive sets of transient personnel managers aimed at chaos. They of course did not, but it happened anyway, a result of perennial improvisation and ad hoc decisions. Many decisions were taken for worthy reasons. None were taken with much calculation of their effects on the total system. This paper deals with the Foreign Service Officer system, but the general judgement applies to the operation of the Foreign Service Staff Corps, often the hostage of changing, inconsistent policies.

-- Junior Entry Rates

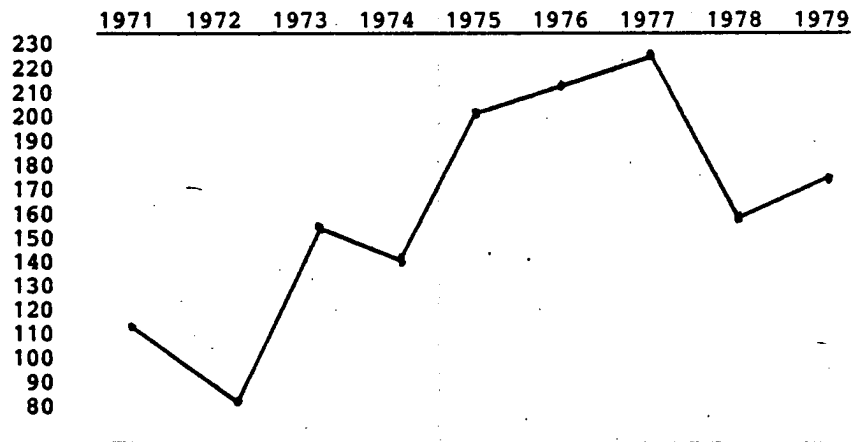
While the recent record of junior entries at the bottom of the career shows nothing so bad as the McCarthy - era lunacy of refusing to hire any junior officers in a particular year, the data available, which covers nine years, is most disturbing. Wide swings deprived us, in the lean years, as Undersecretary Read said, of "excellent and most promising younger persons" from particular college generations.

Junior Level Entry Rates

1971 -	117
1972 -	85
1973 -	152
1974 -	144
1975 -	200
1976 -	214
1977 -	224
1978 -	168
1979 -	180 (projected)

Range	85 - 224
Mean	164.9
Standard Deviation	45.6

Junior Level Entry Graph

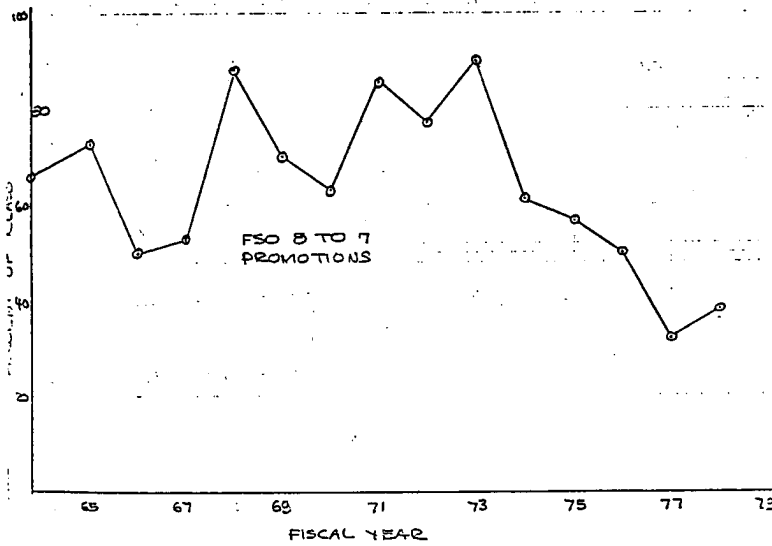
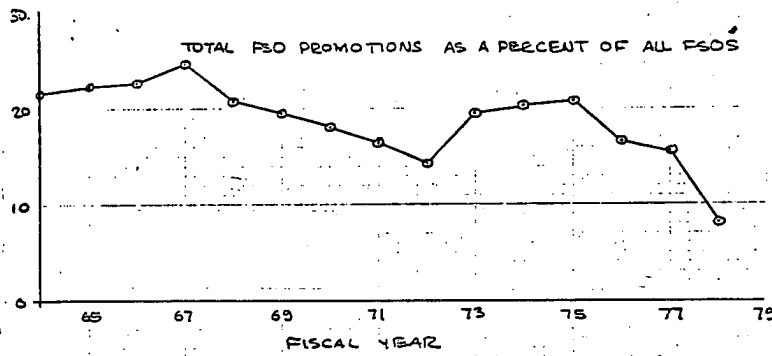


The Promotion Record

The record of the past 15 fiscal years (1964-1978) shows even more sharp swings in the rates.

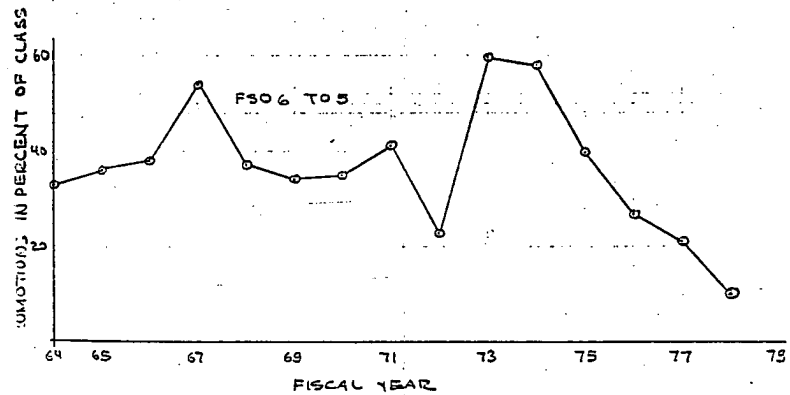
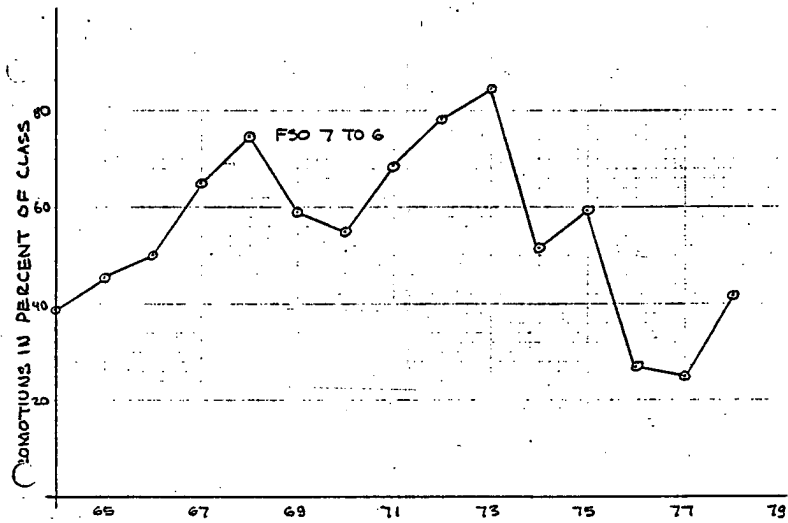
		% of Class Promoted			
		Low	High	Mean	Standard Deviation
FSO	2 to 1	3.2%	17.9%	10.2	4.3
FSO	3 to 2	3.2%	13.5%	9.2	2.7
FSO	4 to 3	3.1%	16.6%	12.6	3.6
FSO	5 to 4	2.2%	31.1%	20.8	6.5
FSO	6 to 5	10%	59.8%	36.4	13.6
FSO	7 to 6	24.6%	84.5%	54.9	17.7
FSO	8 to 7	32%	90%	64.1	17.8

PROMOTION GRAPHS



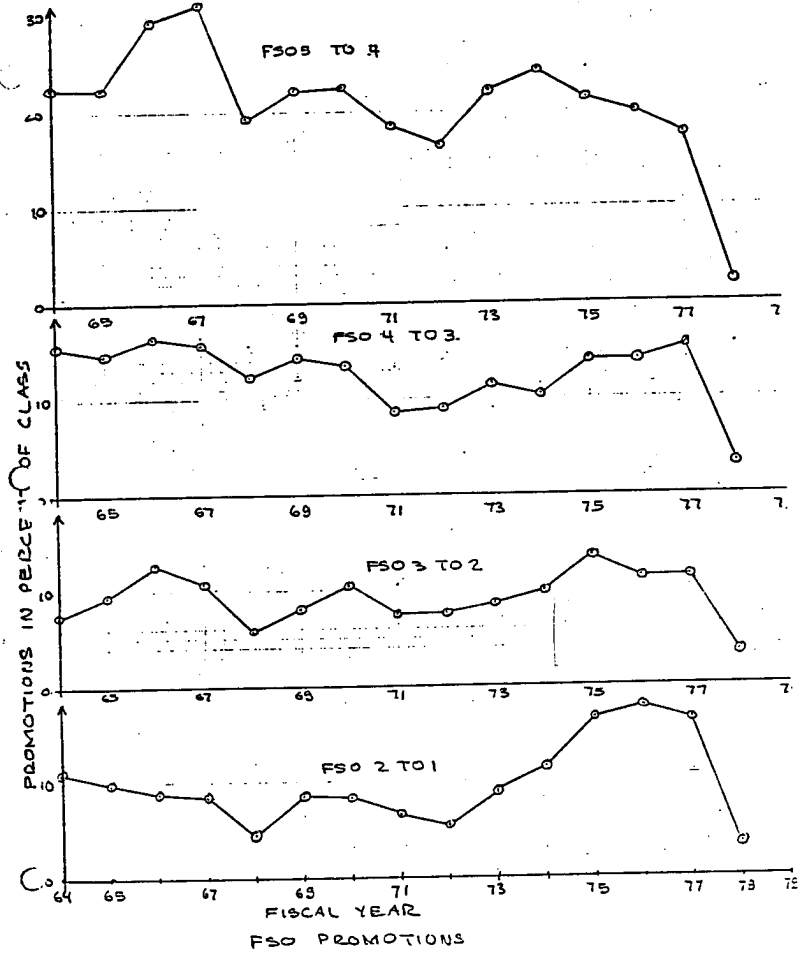
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F50 PROMOTIONS

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The Analysis

The effects are easy to judge. Too low entry rates deprive us of excellent prospects and soon lead to shortages of younger mid-career officers, today particularly evident in the political area and consequently in potential hard language officers. Too high entry rates a few years later clog up the middle ranks and push junior entry rates off the cliff again.

Similarly, wide swings in promotion rates harm the national interest in a steady flow of talent upward through the system and are simply unfair to numbers of fine officers. Since all of this seems altogether too obvious, why did it happen? In essence, personnel decision makers apparently never understood the Foreign Service Officer System resembled an econometric model in which a decision to alter any factor (a "variable" in the jargon) inevitably changes, immediately and over time, the other factors.

The Foreign Service is a competitive, rank-in-man system. At all above the junior officer level (the junior "threshold") the number of promotion opportunities depends directly upon the number of vacancies for the next higher level.

By way of illustration, when ten of our Senior FSO-1 colleagues retire, that creates a "cascade" of 10 promotion opportunities all the way to FSO-6, a total of 50 positions. Similarly, when five officers are brought in from the outside at the FSO-3 level, that breaks the "cascade" and subtracts five opportunities from those that would have been otherwise available at each rank below, diminishing the number of promotions by 15. (Junior officers, who enter the Foreign Service at either FSO-8, 7 or 6, are treated as a group so that the "cascade" does not operate below promotions from FSO-6 to FSO-5.)

There are a number of ways to enter and leave the service, listed in the model set out later in these pages. Some are actuarial (e.g., age 60 retirements) but a number of ingress and egress variables are managerially determined, and a decision on any of them affects the whole system. A full data base is still lacking. And to this date there is no sophisticated computer run model in place that would calculate these effects and permit management to make rational decisions. To the credit of the current managers, they are contracting for such a model, we understand.

An illustrative list of these largely uncalculated decisions, some one time affairs, others almost annual phenomena, follows:

- The annual decisions on junior entry rates, sometimes set by Kentucky windage.
- The perennial unwillingness to use any of the existing authorities (e.g., Section 519) to force out senior officers to make room at the top.
- The decision to extend Senior Officer time-in-class to 22 years, which hung a virtual no vacancy sign at the top ranks.
- The inability to use low ranking to retire or select out officers.
- The yearly ad hoc decisions on the total number of lateral entries at mid-career and senior levels, which limit promotion rates below.

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- The indecision on whether to make the junior threshold a real test.
- The inflexible utilization of the cone system, first conceived as a device to assist career development and professional training, to disadvantage first one cone and then another in promotion rates and prevent rational management of talent flows into and up through the service.
- The patchwork quilt of current FS systems, such as the FSRU category.

No one set of managers was responsible for this state of affairs. But the interaction of their successive decisions has produced a malaise which affects our ability to properly carry on the nation's diplomatic work. This led the Secretary and his personnel managers to the necessary decision to seek wide-ranging reform. The authorities in the Department's proposal, however, do not address the crucial technical issues which can only be addressed by systematic modeling of the personnel system.

A NOTE ON LATERAL ENTRY

We have no yearly statistics on lateral entry, but experience suggests that "outside hires" into the Foreign Service above the junior level have been subject to the same ad hoc decision-making that affects other elements of the personnel system. Consequently, any graph would likely also resemble a roller coaster. Under the current patchwork system of FSO, FSR, FSS, and FSRUs of various kinds, which the new law would correct, the Department regularly hires significant number of specialists above the junior level. These are not particularly at issue, but certain statistics on generalist outside hires for the 1973-78 period are important.

- The Department hired 196 FSRs and FSRUs, an average of 39 per year into generalist administrative, consular, economic, political and program direction positions.
- More than a quarter of these, 54, were hired at the senior (R-1, R-2) level, an average of 11 per year. In the personnel system, these officers are treated as FSOs, and the senior hires alone blocked a "cascade" of 240 promotion opportunities, an average of 48 per year at all ranks.
- 25 of the 51 consular officers were hired at mid-level, despite the "surplus" of mid-level consular officers over jobs and 62 of the 72 political officers hired were at mid or senior levels, despite the surplus of political officers, particularly restricting promotion and bottom-entry opportunities in these two cones.

Some of these generalist hires were made on affirmative action grounds, with which there can be no argument, but most were not.

THE FOREIGN SERVICE PERSONNEL SYSTEM MODEL

The model on the following page describes rather precisely the factors (variables) at play in the system. With the exception of the Limited Career Renewable Extension, all these factors have operated under the current system, with the strange results described earlier. Unless a precise model is consciously and scientifically used to produce rational system-wide plans, it is not likely the new act will produce the results set forth in the findings section of the Bill.

FOREIGN SERVICE OFFICER PERSONNEL SYSTEM MODEL
Basic Factors (Variables)

INGRESS

- SENIOR
1. Career Candidates
 2. Limited Appointments
 3. Other Government Agency (SES)
- MIDDLE (lateral entry)
4. Conversion to FSO from GS
 5. Conversion to FSO from FS Staff
 6. Affirmative Action Career Candidates
 7. Other Career Candidates
- JUNIOR
8. Mustang Conversion
 9. Junior Entry
- SYSTEM WIDE
10. Promotions--Same as Egress #14 (Ingress Into A Class; Can be:
 - "Saved" (Withheld) to smooth out bumps.
 - "Withheld" to make room for stretch assignments.
 - "Withheld" to reduce over complement

All are "key", i.e. managerially determined, variables

EGRESS

- SENIOR
1. Voluntary Requirements & Resignations
 2. Age 60 Retirements
 3. Time-In-Class
 4. Deaths
 5. Low Ranking Retirements
 6. Renewable Career Extension -- New Law: The "add-on" to actuarial factors to make desired senior egress rate
- MIDDLE
7. Voluntary and Age 60 retirements
 8. Time-In-Class
 9. FSO to GS to FS staff conversion
 10. Resignations and Deaths
 11. Low Ranking
- JUNIOR
12. Retirements (negligible)
 13. Resignation and Deaths
 14. Failure to Gain Tenure
- SYSTEM WIDE
15. Promotions - same as Ingress #10 (Egress From A Class)
 16. Separation For Cause (Actuarial, but Statistically Negligible)

The key, managerially determined variables:

3. Senior Time-In-Class
6. Renewable Career Extension
8. Mid-Career Time-In-Class
13. Failure to Gain Junior Tenure

Foreign Service Officer Personnel System
(Flow Model)

The flow model on the next page illustrates the dynamics, at the junior, mid-career and senior levels, of the inter-action among the basic ways of entering and leaving the Foreign Service (the egress and ingress variables shown in the model on the preceding page). Among other things, the flow model shows graphically:

- - Promotions are, at one and the same time, egress and ingress variables, since a promotion into a class creates a promotion opportunity (vacancy) in the class below.
- - A promotion opportunity can be filled in only two ways, by promotion or by lateral entry (outside hire).
- - Lateral entry involves an opportunity cost, the denial of a promotion at each rank below the lateral entry (the "cascade").

The mechanics of the system are value free, except for the requirements that ingress must not exceed egress so long as service size remains constant and that ingress into a class depends on the number of vacancies in positions in that class. Value judgements, conscious or otherwise come when management makes decisions on the key variables, e.g. sets the length of time-in-class for Senior Officers or, under the new authorities, the number of limited appointments for the Senior Foreign Service that will not be renewed.

THE EGRESS MODEL

The final slice of the model that requires analysis before dealing with the issue of how to rationally operate it is that which deals with egress, particularly at the senior ranks. The historical record for 1971-1977 (the years for which the most complete data is available) shows the usual roller-coaster. In 1976, both senior egress and ingress across the system dropped sharply, a tip off that lower promotion and entry rates were ahead.

SENIOR ATTRITION (CM,FSO-1,2)

Year	<u>71</u>	<u>72</u>	<u>73</u>	<u>74</u>	<u>75</u>	<u>76</u>	<u>77</u>
Egress	39	56	83	113	79	59	67

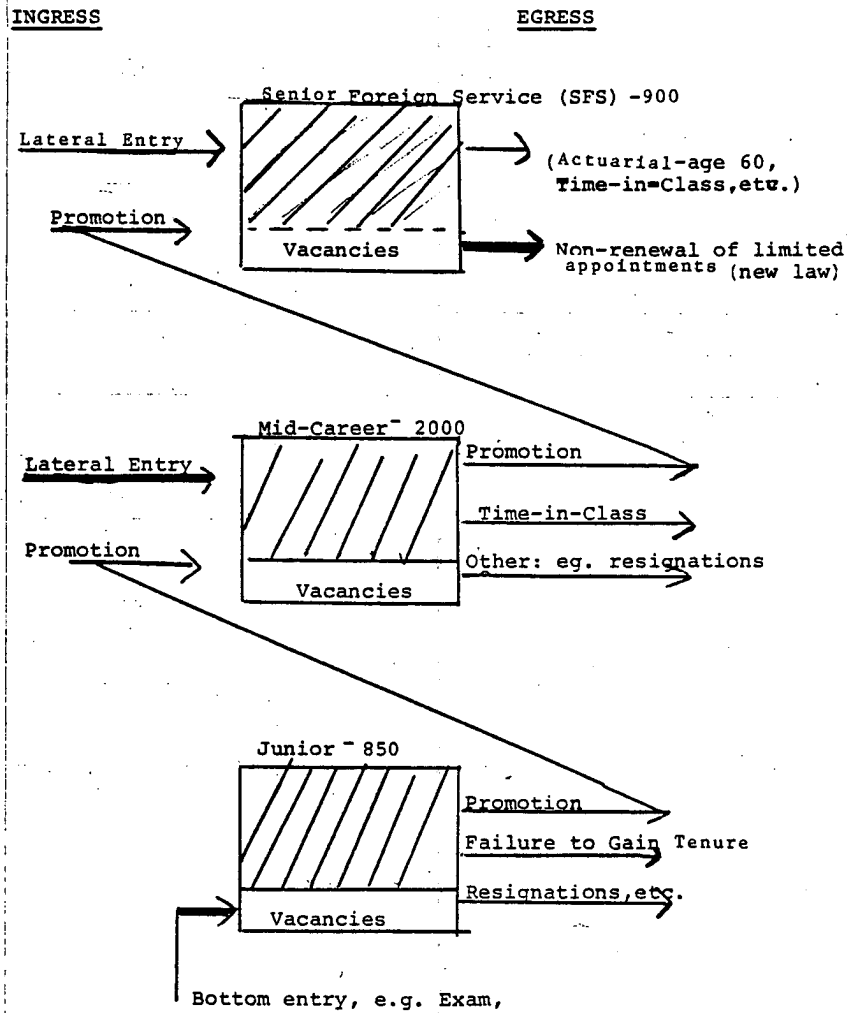
-- Average - 71

SYSTEM ATTRITION

Year	<u>71</u>	<u>72</u>	<u>73</u>	<u>74</u>	<u>75</u>	<u>76</u>	<u>77</u>
	114	136	175	209	189	158	178

-- Average - 166

FLOW MODEL (New Law)
(Total Size: 3750 (?))



Note: The numbers are purely illustrative, drawn from the Department's presentation to the Congress and current work force figures. Over the past 15 years the size of the FSO Corps has varied from a high of 3733 in 1965, to a low of 3037 in 1973, with a mean of 3343. The swing reflects not only Vietnam but management's customary confusion over certain kinds of specialists, sometimes in and sometimes out of the FSO Corps.

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EGRESS PROJECTIONS

The historical record, shown on the preceding page, has not been enough to sustain either decent entry or decent promotion rates. What about the future? Here projections, based on actuarial data under the current law, vary. But even without taking into account some essential caveats, they do not offer much hope that the Foreign Service could stumble into a better system. They suggest a more even, but nonetheless declining attrition rate over the next five to ten years, lower in fact than the unsatisfactory averages of the past.

-- An estimated decline in attrition at the Senior Level from around 100 in FY 80 to around 70 in FY84 and perhaps beyond.

-- An estimated decline across the system from around 170 in FY 80 to around 150 in FY84 and beyond.

Should there be a continuation of the Departments propensity to ad hoc personnel decisions, one can be assured of continued fluctuations in the egress rates. Moreover, individual retirement decisions, which contribute to fluctuations, respond to outside influences; particularly executive pay raises, inflation, and of course any change in the age 60 retirement. Executive pay raises keep senior officers in, while inflation drives them out (sometimes the best ones).

This is not an argument either for inflation or against executive pay raises, but rather for a system that assures constant outflow at the top, regardless of individual retirement decisions.

THE OPERATING MODEL

The data and descriptive models of the personnel system laid out earlier provide unassailable evidence that:

-- Neither the old act nor the new act actually set up a personnel system, only the framework for it. Contrary to the wishes of the framers of the new act, successive sets of transient managers could operate the system just as badly as in the past.

-- The next phase must be to lay out now the operating model of the system on the table, to subject it to informed scrutiny in the course of consideration of this legislation, and to incorporate it in its refined form in the Legislative history in order to inhibit future managers from ad hoc tinkering that subverts the intent of the Administration and Congress.

THE PRINCIPLES OF THE OPERATING MODEL

1. Computer Modeling

A sophisticated computer program would permit dynamic modeling of precisely calculated effects of changes in any variables upon all the other factors, not only for the next year, but over time. For example, what happens to other elements of the system when management tentatively sets a goal of 160 entrants at the bottom of the career ladder? What is needed, in effect, is a rolling five to ten year projection.

2. Consciously Set Priorities and Adhere to Them

The system has to balance, whether you set priorities or let it run by itself, but if left to its own devices it will follow Rube Goldberg. For example, we have seen from past and projected attrition data that not enough senior officers leave soon enough, helping produce arteriosclerotic promotion flows and anemic bottom entry rates. What is needed is to decide that some variables (e.g. entry and promotion rates) are more important than others and that the others (e.g. senior egress and lateral entry) should be controlled to produce the desired rates for the most important factors.

This notion runs counter to the customs of ad hoc decision-making, including the more sophisticated rationale that all factors are important and management must have the flexibility to make continuous adjustments. In fact, the need for continuous adjustment is a characteristic effect of the lack of rational personnel planning.

3. Level Off The Roller Coaster

No system can produce the desired flow of talent into the system, up through it, and out of it, if it continues to produce the sharp up and down rates of the past. What is required, under the rolling projection, is to squirrel away promotions and bottom entries during fat years for use during lean years. In this way, ingress does not exceed egress over time, even though in some years more people enter than leave and in other years more leave than enter. In dealing with the windfall departure after the Supreme Court decision of a number of officers who were over sixty, management very sensibly plans to distribute this windfall over the next five years.

4. Set Explicit Target Ranges for Ingress and Egress

In leveling off the roller coaster, one can then set target ranges for ingress and egress (e.g. a bottom entry rate of no less than 160 junior officers nor no less than 180 per year.) In this way management has sufficient flexibility to make adjustments in a particular year without destroying the rational operation of the system. (The preferred approach here is to start by using the mathematical device of the standard deviation.)

AN ILLUSTRATIVE NOTION OF HOW TO RUN THE MODEL

What follows has no pretensions of scientific accuracy, but does have the virtue of systematic approach to the data. The results, while not precise, are squarely based on the data. If one sets priorities the way we advocate they be set, the actual results of a computer run model might be quite close to these projections.

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Step 1 Decide the size of the Foreign Service Officer Corps

While we use the 3,750 figure, set forth by management's estimate in its presentation about the Foreign Service Act, the final decision depends on the definition given to Specialists and Generalists and upon the number of current FSOs who transfer to Civil Service because, in fact, they are not people who look to a career overseas as well as in Washington. (Even so, since the results of our modeling of promotion ranges are given in percentages, changes in the size of the service should not have much effect.)

Step 2 Set priorities Among the Factors

We give priority (by setting desirable ranges based on the standard deviation of a 14 year promotion average and a 9 year bottom entry record and adjusted slightly upwards where the average rates are obviously too low) to the following three factors:

- bottom entry rates
- promotion rates
- affirmative action lateral entries

The reasons should be obvious. Without a healthy, predictable flow of talent from the bottom up through the system, we cannot produce the kinds of career patterns, specialists, and - as they get to the top - executive and policy talent that the nation requires of its foreign service. In respect of affirmative action, the service is not yet representative and we cannot afford to wait for minority talent to percolate up from the bottom. In the long run, of course, the Service must work its way out of this lateral entry program by bringing in enough minorities and women in at the bottom who work their way up through the ranks.

Step 3 Control the Other Managerially Determined Variables to Make the Meet the Priorities

- Increase Senior Egress by a decision not to renew enough Limited Renewable appointments in the SFS to meet the target rates for promotion into the SFS (Current FSO-3 to 2, new FSO-1 to Career Counselor)
- Severely control non-affirmative action lateral entries to provide more promotion opportunities below.
- Adjust downward, if necessary, mid-career time-in class (from 22 years across current FSO 5, 4, and 3 to, say 20 years).
- Increase slightly junior threshold egress rates from, say, 10% to 12%.

Note: During the transition to the SFS, much of the departure rate will be produced by the actuarial variables, such as age 60 retirement, personal decisions to retire, and time-in-class.

But by the time the SFS is fully operative, the new law's authority for Limited Appointments will become the dominant gene, and eventually most egress from the SFS will take place through non-renewal of limited appointments.

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RESULTS OF THE MODELBottom Entry

160-180 officers a year, including affirmative action

Promotion Rates
(Ranges in Percentages)

<u>Old law</u>	<u>(new law)</u>	<u>ranges</u>
FSO 8-7	(6-5)	60-70%
FSO 7-6	(5-4)	55-65%
FSO 6-5	(4-3)	35-42%
FSO 5-4	(3-2)	20-25%
FSO 4-3	(2-1)	14-19%
FSO 3-2	(1-CC)	9-13%
FSO 2-1	(CC-CCM)	8-12%

Note: For these purposes, the promotion rate from FSO-1 to CM is irrelevant. Probably the ratio of CMs to FSO-1s should be somewhat higher than it is today.

Affirmative Action Mid-level Lateral Entry

Meet the Department's established goals (20 per year)

Effect On the Other Variables

In descending order of probability:

- An egress rate from the SFS of 9-14% a year.
- A decrease in non-affirmative action lateral entries.
- A slight decrease in mid-career time-in-class.
- A slight increase in junior officers leaving the service at or before the threshold.

Note

The upward adjustments from the historical average, always hinged, however, to the standard deviation, occur in the bottom entry rate, and the promotion rates from FSO-4 to 3 and FSO-3 to 2. Fragmentary data indicate that recent average time-in-class from FSO 4 to FSO-3 of those promoted is near to six years. A survey of senior managers reveals a solid consensus that this is too long in terms of preparing the average good officer for the next rank, the optimum should be 4-5 years, with those on the top moving faster and those on the bottom moving slower or not at all. The promotion rate from 3 to 2 into the senior ranks is too low because not enough senior officers retire, requiring the vigorous use of the authority not to renew limited appointments contained in the new Act.

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Conclusion

Whatever the final shape of the authorities in the new Act, and we prefer reliance on a three year renewable appointment for the Senior Foreign Service, the Congress should require the Department:

- To run the Foreign Service Personnel System from a computer based model.
- To place that model, including target parameters, in the legislative history of the Act.

This will deter future sets of managers from subverting the intent of the Secretary and the Congress and introduce predictability and rationality in career development and expectations. The model itself will not provide the mix of talents, training and career development needed, but without it there is no way to plan these needs of American diplomacy for the next decade.

The setting of parameters by target ranges should permit management sufficient flexibility to run the system. But if management finds it necessary to adjust the parameters, then it should consult or confer with the Employee Organization and report any changes to the concerned Congressional committees.

Mrs. SCHROEDER. Thank you very much.

Congressman Buchanan, would you like to start the questioning?

Mr. BUCHANAN. Thank you, Madam Chairman.

I think it might be useful for the record to note that both Mr. Walker and Mr. Harrop are Deputy Assistant Secretaries and each has had a very distinguished career as a Foreign Service officer and, while they testify as individuals here today, they are both former presidents of AFSA and they are both members of an ad hoc group of Senior Foreign Service officers. It is my understanding that while they speak as individuals they do reflect views held by that ad hoc group, is that correct?

Mr. HARROP. Yes, sir, it is. Thank you.

Mr. BUCHANAN. Can you indicate what objection the foreign affairs agencies have raised to a single Senior Foreign Service and give us some guidance as to how you would implement that?

Mr. HARROP. Yes.

Do you want to respond to that, Lannon?

Mr. WALKER.¹ As my colleague, Mr. Harrop, mentioned in the testimony, the bill before you represents the state of the art as far as bureaucratic politics will allow. No one that we talked to in this whole process in the various agencies, the managers involved, quarreled with the concept of a single Senior Foreign Service. In fact, in general we were told that our position was correct, but as a matter of practical fact when you looked at the agency rivalries the fight would not be worth the candle.

In addition, the administration took certain positions in the reorganization bills, in the ICA bill, in the transfer of the cultural affairs function to ICA with regard to moves which in and of themselves detract from the Secretary's authority in foreign affairs.

What we are suggesting here is a single Senior Foreign Service, and, make no mistake about it, it would in fact increase the Secretary's authority in the personnel function. We believe that could be done without detracting in any essential way from the authorities of the various agency directors to run their business. But for the administration to come up here and suggest that would mean really taking another look at the positions they have already taken, and I don't think anyone can really do that nor can we expect them to.

My own feeling, however, is that if the Congress saw the light, as it were, and decided that there indeed should be a single Senior Foreign Service in the national interest, I don't think the Secretary or any other manager would have difficulty in finding out how to implement the concept.

Mr. BUCHANAN. I am not sure I completely understand how we would do it. I think your point was well taken that this would have to come from the Congress given the realities of the situation, but if we do it we have to do it by legislation and I am not sure what the shape of that legislation would be.

Mr. HARROP. We would be glad to discuss that with the staff, Mr. Buchanan. The bill itself as presented to you by the administration speaks repeatedly of compatibility. The importance of a compatible system is a system in which all the elements have the same thrust. I don't think it would require, frankly, very substantial changes

¹ Lannon Walker, Senior Foreign Service officer, who accompanied Mr. Harrop.

in the language of the bill to bring that about and to make explicit that you are expecting the executive to run a coherent single Senior Foreign Service representing all the various interests of all the various agencies of the United States overseas.

Mr. WALKER. If you will permit, Mr. Buchanan, in essence what we would be asking the Congress to do is to put in the act that there shall be a single Senior Foreign Service and that among the exclusive duties of the Secretary would be the management of that Service.

We also ask that Congress make known its intent in the legislative record that you expect the management to work toward career development patterns that will produce better specialists and generalists in all ranks. You don't necessarily have to put that last requisite in the law; that would be difficult to do.

Lastly, sir, on this issue of tinkering, with the personnel system, we think that 3-year contract makes sense, someone else thinks the 5 year time-in-class makes sense. These are extremely complex and difficult issues. We don't pretend that we know what the 3-year contract would give because no one has ever shown what the implications of that kind of a system would be 5 years out on recruitment, on promotion, on all these other things, but neither has management. So what we are asking here is that you require management to come and show what the implications of their system would be—and ours at the same time. We think such an exercise would require a personnel model and probably computer techniques. We owe it to ourselves, and to the Nation really, to be able to show what these very important criteria and decisions will mean 5 years out.

Mr. HARROP. Phrased differently, sir, a number of authorities are being requested in this bill, many of which already exist and are being reconfirmed, but it seems to us crucial that there be an understanding on the part of the Congress and the public as to how they will be utilized in a rational fashion. That is the kind of model that we have in mind that would provide this.

Mrs. SCHROEDER. Well, I don't know how you are going to know from your model any more than we know from the State Department's model or lack thereof unless you tell us how many people you are going to flush out under the 3-year contract procedure. Then if you decide that you are going to flush out 25 percent, then you know how many to recruit and how many you are going to have going up the ladder. I don't understand how your model works any more scientifically than the lack of a model in the State Department unless you put those kinds of quotas in it.

Mr. HARROP. Let me ask Frank McNeil to respond to this, Mrs. Schroeder.

Mr. McNEIL.¹ Our model has a number of assumptions—a Foreign Service of some given size, a number of ways to enter, and a number of ways to leave the Service.

Mrs. SCHROEDER. And you have a number of slots in the Service and you know what those are.

Mr. McNEIL. Yes. For example, the Department's figures are a total size of 3,750 Foreign Service officers and 900 of them in the Senior Foreign Service. The first thing to do obviously is to decide the actual shape of the Service you are going to have. If those are the figures, then you operate on that assumption.

¹ Frank McNeil, Foreign Service Inspector, Department of State.

Mrs. SCHROEDER. Do you have any questions about those figures in your mind versus their mind?

Mr. McNEIL. No. We have taken these figures as given. It is the kind of issue that is worth discussing in the context of preparing this legislation which will set, for better or worse, the course of the Nation's diplomatic service for some years to come. Once you decide on the shape of the positions you need, then you have to begin to calculate the effects and this is what our presentation of the model is to do.

We don't say that the results at the end of the model are the actual results that would come out running it on a computer-based program although in designing this we based it on the historical data and the averages. If you do not do something like this, you are going to continue to get what the data illustrates I think beyond question; that is, the system where in some years we are going to bring in 84 people and some years we are going to bring in 227 people at the bottom. After we bring in 84 people we are not going to have enough young mid-career officers and after we bring in 227 people at the bottom we find out we have too many people at the younger midcareer level leaving because there are no promotion opportunities.

What we need is a rational system. The record of the last 15 years is abysmal. It is not because the people involved in these decisions are necessarily bad people—most of them are very intelligent—but in point of fact none of them realize that every time it would affect immediately and over time the operation of our personnel system.

I think that people have thought because the Foreign Service officer corps is fairly small—it has ranged from 3,000 to 3,700 over the past 15 years—that you could do this sort of thing without worrying about using modern techniques to assess the effects of personnel decisions. You could not do that with the military because you have so many people. I don't hold the military system up as a model of exactly how one should run a personnel system but at least it is done systematically. Without a system there is not much hope. With a system you will still have to make rational decisions. It would still require human judgment but at least you can calculate the effects of specific personnel decisions.

Mr. BUCHANAN. Would you yield just a moment?

Mrs. SCHROEDER. Sure.

Mr. BUCHANAN. There is another variable in here and without challenging what you are saying, there is a variable that is going to add pandemonium in the system or an element of irrationality and that is when personnel ceilings are imposed by the Office of Management and Budget and the Congress gets in a conservative mood and whacks away. So, notwithstanding whatever rationale you have in the system, you are going to have all of a sudden—

Mrs. SCHROEDER. People quitting.

Mr. McNEIL. That is true.

Mr. WALKER. Could I give a quick followup to your question, Mrs. Schroeder?

Mrs. SCHROEDER. Yes.

Mr. WALKER. For example, we could decide that our priority was a steady rate of recruitment into the system.

Second, we could assume that most people would be retiring at the colonel level or the FS-1, and that the given rate of promotion was necessary.

Third, let's say we picked affirmative action for minority groups as another priority.

Really all we are saying is that if you use the techniques of modeling correctly and make sure that all of the variables, the ones that Mr. Buchanan mentioned, and the rest are included the model will tell you, among other things, how many people have to leave at the top of the Foreign Service to attain your goals because that is where they have to leave from to open up the system.

That is the most critical place, at the top, the Senior Foreign Service officers. At that point you have to then ask what is the egress mechanism that will get these people out? In essence we are saying if you are on a 3-year renewable contract then in a regular way you have the opportunity to address the question of egress from the system, you have to get rid of 10 people or whatever.

Mrs. SCHROEDER. But if you are in a class of very good people, you say tough noogies. Next year you have a mediocre group, you are going to preserve all but 10 because that is what the model tells you?

Mr. WALKER. That is the essence of our system. When we talk about "up or out" there is no other way to do it. You are not removed from the system because you have done something bad necessarily. By the time you make the Senior Foreign Service, you are supposed to be good. It is a question of relative performance, and precisely what selection boards do is rank people from the top of their class to the bottom and someone has to leave.

Mrs. SCHROEDER. But you are only going to rank them with the people in that 3-year pool.

Mr. WALKER. No; they are ranked every year.

Mr. HARROP. They are ranked with their colleagues.

Mrs. SCHROEDER. But if they are ranked lower than the rest of the group, you have to push 10 out.

Mr. WALKER. Yes.

Mr. HARROP. They will be ranked only against their colleagues in their own immediate class. So if there are 500 people in class then if enough people did not voluntarily retire for whatever reason then you would simply have to go to the bottom of the ranking of these people and not renew the contracts of 10.

Mrs. SCHROEDER. And you think that is important so you always know how many slots you are going to have?

Mr. HARROP. Otherwise, the problems we have now will continue. We have too many senior officers, so we are not recruiting enough new blood in at the bottom of the system. We don't have room to bring people in. We have people who are retiring or leaving the service voluntarily in the middle grades, very valuable people to the Government and to us. They are leaving because they are discouraged. There are so many senior people that are not leaving that they are allowing no opportunities for promotion.

Mrs. SCHROEDER. They should be more valuable for corporate memory.

Mr. HARROP. It is not going to be getting rid of a large number of people ruthlessly. It is a small number each year to keep the system operating.

Mrs. SCHROEDER. How does your employment model then affect equal employment opportunities?

Mr. McNEIL. We have expressly and explicitly written in several places the requirement that the affirmative action goals be met. We would suggest that you are probably going to have to control lateral entries that are not a result of the affirmative action criteria but we support affirmative action. We in fact have written this into the model as one of the priorities along with inflow at the bottom and predictable promotion flows through the system and out at the top.

Mr. HARROP. You write those objectives in and those objectives, because of the nature of the flow, require you to take certain other actions and you can see the effects if you want to increase your affirmative action entry.

Mr. WALKER. Management has never been able to consider that.

Mr. McNEIL. Consider our personnel system as a bag of jello; if you push in, in one place, it will bulge out in other places. So if you restrict the number of senior officers who stay in forever, which is what we are really asking, then you get rid of more of us faster.

Mrs. SCHROEDER. You want to lower the retirement age?

Mr. McNEIL. No; just put the limited appointment system into effect so it produces an outflow from the senior ranks probably in the 9- to 13- or 14-percent range every year. This would provide for rational promotion rates, we believe, and rational entry rates at the bottom.

Mr. HARROP. Most of those people would be leaving anyway. If there is still an age limit, they would be bumping against that. If there is not, they would be retiring for other reasons. So they are not going to be all mandatorily pushed out, only that residue which is not leaving voluntarily.

Mrs. SCHROEDER. I think we understand the rock and the pool. But there is something that you do not address and that is the whole population. Maybe you are going to have a much larger school age population graduating and you are going to want to recruit from this. So if you want to get really scientific, then you have to almost increase and decrease with the pool that is out there and I am not sure when we get to the point where the machine is running us rather than us running the machine.

Mr. HARROP. We would suggest that probably your value decision, what you want to do, would set a range of, for instance, recruitment; a range between, say, 160 new officers a year and 180 or 200, whatever the decision was. Then you could adjust that with your population changes as they came along. You would make adjustments within that very well.

Mrs. SCHROEDER. I am going to have to excuse us so we can vote on this since we finally got to final passage.

We will have a temporary recess.

[Whereupon, a short recess was taken.]

Mrs. SCHROEDER. Mr. Buchanan, do you have more questions that you would like to ask?

Mr. BUCHANAN. There are several aspects. As to the single Senior Foreign Service, I want to make sure I understand that. Does that mean that every officer will be available for use by whatever foreign affairs agency? Would that be the concept?

Mr. HARROP. That would be the concept, Congressman, that we would bring the best of all of the foreign affairs agencies up into the pool of Senior Foreign Service officers. On the whole they would probably tend to work in their area of expertise. We are not proposing that there be any forcing of people into new molds but we think if you take the best of each and if you have a unified system they will be better able to manage the activities across the board of all three agencies.

Mr. BUCHANAN. Now you indicated that you had made a contrast or difference between specialists and executives. I wonder if we could have a clearer description of these two categories and why they should be mutually exclusive.

Mr. WALKER. I refer to our colleagues in private industry. No one in private industry to my knowledge goes out and recruits for the president of the company, but rather goes out and recruits to get the specific job done—lawyers, accountants, whatever. Then management looks and asks, "Does this fellow in addition to being a competent lawyer seem to have the capacity for a broader and more executive management capability?" If so, let's begin to move him around and give him that experience and let's do that with several of the other specialists that work with us. Let's give them more management experience and then when it comes time to select candidates into top management you have a pool of people who have a track record.

Now we don't do that very effectively in the Foreign Service. We neither put an awful lot of time into assuring that our junior and mid-career officers have profound expertise on the one hand nor do we start moving people and giving them executive management experience. By the time they come across the senior threshold some very difficult and unfair questions are posed.

You look at a fellow who is a political or economic or consular officer and ask, "Is he ready to move into the senior ranks? What is his track record as a manager? Maybe the individual has never had a management job so he does not get promoted, and that is unfair to him. He was never told that he should concentrate on a specialty or that he should start looking at a broader range of executive experience. He did not get either one and he is not promoted and he is out, and that is unfair.

We just assume, as we do so often, that because you are a Senior Foreign Service officer you are going to be a good manager. That does not always follow. Or that you are a profound specialist, and that does not follow either. That explains what my colleague Mr. Harrop said: "We have both a surplus of senior officers and too small a pool to choose from for the top jobs.

Mr. FASCELL. Let me ask you a question if I can interrupt.

If he is not a manager and he is not a profound specialist, whatever that is, what is he?

Mr. WALKER. He is just a Senior Foreign Service officer who has managed to make it that far.

Mr. FASCELL. A Senior Foreign Service officer who has managed to make it that far.

Mr. WALKER. That is right.

Mr. FASCELL. That is a strange category, and that is most of the people.

Mr. WALKER. No. We didn't say that. We said there are too many in that category.

Mr. FASCELL. Well, there can't be many of the other kind. I am serious.

You know, what is the rule of thumb? How many managers do you have for a number of people? Everybody cannot be a manager, right?

Mr. WALKER. Right.

Mr. FASCELL. There is only one profound specialist in the country area that I have heard of in the State Department; they never allow two. The way I see it, how many managers for 1,000 people? Is it on a ratio of 1 to 10 in terms of managership? What is the rule of thumb?

Mr. HARROP. In the Foreign Service, Mr. Chairman, I think there is a larger need for managers than there is in most personnel systems because we have a great number of small posts around the world, each of which has to have a consul, consul general or a Deputy Chief of Mission and Ambassador.

Mr. FASCELL. How many people is that?

Mr. HARROP. 600.

Mr. FASCELL. How many people do you have in the State Department? I don't have any of the figures or the facts before me.

Mr. WALKER. Approximately 900 Senior Foreign Service officers.

Mr. FASCELL. So every consul or officer is classed as a manager and every ambassador is classed as a manager and every division within the embassy is classed as a manager. That is not the case, is it?

Mr. HARROP. No.

Mr. McNEIL. No.

Mr. FASCELL. You know, I run out of managers fast is what I was trying to say. At least that is the way it looked to me.

Mr. HARROP. Well, we need more people who have the kinds of talent to be an executive and to program the foreign affairs operations and get the best out of people and resources.

Mr. FASCELL. Where do you get him?

Mr. HARROP. We have to train him in our system.

Mr. FASCELL. Do you create another cone for him?

Mr. WALKER. That is one way.

Mr. FASCELL. Holy mackerel.

Mr. WALKER. As I mentioned before you came, Mr. Chairman, private industry recruits for what they need to get the job done—lawyers or accountants—and from that pool of specialists they choose people and move them around to broader managerial experience.

One of the unfortunate parts about the way we do our business is that many of our people spend the bulk of their careers without the experience of managing larger numbers of people. In fact they are individual performers but as they move across the senior threshold, by the nature of some of these jobs, by the theory of our profession, they are called upon to do managerial work for which they have not had the experience. We are calling for career development patterns for both specialists and generalists.

Mr. FASCELL. Not necessarily statutory, not necessarily deregulatory, not even directly—just career management policy.

Mr. WALKER. Yes.

Mr. HARROP. We would hope that in the record of the preparation of this act that it be made clear that this is what the intention was, to prepare this kind of quality people because the authorities are there. The authorities are in the bill to do it. What is important is the way it is implemented.

Mr. FASCELL. I didn't mean to make you smile but you were responding to that. I don't know what my reaction to that would be right off the top of my head. I would say just about anything as far as what we think career management policy ought to be, of what personnel development policy ought to be. I don't know that it would do any good. I am not sure we will ever settle the argument.

Mr. WALKER. Well, the bill in front of you is a bill of structural reform and we are perhaps unfairly talking about content but we think it is important given the history of our profession.

Mr. FASCELL. I agree. I think it is perfect.

Mrs. SCHROEDER. I have no further questions.

Mr. BUCHANAN. There may be other questions, Mr. Chairman. Staff will be in touch with you and perhaps if we have other questions we will submit them for the record.

Mr. HARROP. We would be delighted to submit anything else for the record, sir.

Mr. BUCHANAN. I certainly would be supportive of adding as much rationale to the structure and the law. I still think that outside factors will continue to play havoc with any element of rationality that may be written into the system.

Mrs. SCHROEDER. Amen.

Mr. BUCHANAN. Thank you.

Mr. HARROP. Thank you. We appreciate all of your time and attention to the Foreign Service.

Mrs. SCHROEDER. Thank you very much.

Mr. FASCELL. Thank you, gentlemen.

[The questions submitted in writing and their responses follow:]

QUESTIONS SUBMITTED IN WRITING TO MESSRS. HARROP AND WALKER AND
RESPONSES THERETO

Question. What objections have the foreign affairs agencies raised to a single Senior Foreign Service? How would you implement the concept?

Answer. The foreign affairs agencies—indeed any agency authorized to use the Foreign Service Personnel system—resist the concept of a single Senior Foreign Service because they believe, incorrectly, that such a service would undercut management authority within their agencies. In brief, the agencies fear for their turf; they think some outside body, or worse the Secretary of State, will dictate assignments within the various agencies; they fear that a single promotion board would mean disproportionate promotions for State officers.

None of these fears is justified if the single Senior Foreign Service is implemented as we recommend:

1. Under the general authority of the Secretary a new Office of Foreign Service Personnel Management (OFSPM) headed by the Director General and located independently of any agency, would oversee the Foreign Service Personnel system. This office might well be staffed largely by personnel experts not themselves of the career service.

2. The OFSPM would assure uniform standards for executives coming across the senior threshold and uniform precepts for executives in the promotion process within the various agencies.

3. However, threshold criteria and promotion precepts for various agency specialists would be uniform only insofar as the functions performed were or should be compatible across agency lines.

4. OFSPM would assure that each agency did not exceed its allocated number of Senior Foreign Service positions and would, in concert with the various agencies, assure that egress and promotion rates fit with the overall needs for expertise and management abilities.

5. OFSPM would be responsible for senior training and would oversee career development and guidance programs.

6. OFSPM would coordinate the assignment of members of the Senior Foreign Service across agency lines, assisting the agencies to make maximum benefit of the overall pool of experienced executives and specialist talent. However, OFSPM would not be empowered to enforce such assignments against the desire of an agency.

Question. Please explain your concepts of "specialists" and "executives". Why should they be mutually exclusive?

Answer. In one sense the categories of specialists and executives are not mutually exclusive. As in private business, the Foreign Service should recruit for the tasks it must perform—and hence everyone begins as a specialist, or soon becomes one. But as in private business, the executive or across-the-board manager must by and large be chosen from the ranks of the specialists. What we recommend is a system which, on the one hand, begins to form executives at a much earlier stage and, on the other, pays more attention to and rewards highly developed functional and/or area expertise. We also believe that by the time an officer crosses the senior threshold he must have opted for and clearly established his credentials as either an executive or a specialist.

Question. You state the need to avoid recruitments and promotions for the purpose of solving particular problems, such as the sudden need for "a dozen Farsi speakers." But what does the agency do when it encounters a need such as this?

Answer. The thrust of our testimony about the personnel system aims at substituting rational planning for the haphazard approach that has long characterized the Foreign Service. In good measure, the Foreign Service can prevent the need for emergency recruitment of trainees for hard languages by the exercise of foresight. For the most part, our universities do not produce graduates fluent in hard languages such as Russian, Farsi or Japanese. Consequently, we have to train officers through the programs of the Foreign Service Institute for periods of ten months to two years. It is like locking the barn door after the horse is stolen to begin to train language officers only after a crisis occurs. Long term requirements for language-competent officers can and should be built into the personnel model.

What is required is a pool of relatively junior officers from which the trainees come. And this, as a first step, requires a constant flow of junior officers into the bottom of the career, as we advocate in the model. In this way, we can produce a pipeline of language officers, who will give us on-the-ground language capability in key areas.

If an emergency arises, the Foreign Service then can have at least some officers in place who are fluent in the language, and a pool from which to draw additional trainees to augment, over time, necessary language capability. It seems evident that the deterioration of the Foreign Service's hard language capabilities is in part the result of the lack of systematic personnel planning. (Shortsighted cost-cutting devices have also been a factor.)

If we were to run our personnel system along the lines we advocate, the Foreign Service would be in a position to strengthen its foreign language capability, something that is very much in the national interest of this increasingly difficult world.

Question. Please explain your "personnel model."

Answer. There are two principal concerns, the national interest and elemental fairness to the employees. Both have been badly served by our irrational personnel system. It is not correct to argue that because you cannot plan for everything you should plan for nothing. In a way, this attitude is akin to a common criticism of our approach to international affairs in the postwar era: the tendency to reactive diplomacy. Because personnel managers historically have not perceived linkages and flows throughout the system, they have usually found themselves reacting to needs in an ad hoc fashion, with the sorry results set forth in pages one through seven of our paper on the system.

We describe, beginning on page six, how the FSO system actually operates, and technically competent officials concur that the description is quite precise. The key charts (models) are found on pages eight and eleven, showing respectively the ways officers at all levels will enter and leave the system under the authorities of the new act and the way officers flow into, through and out of the system. Some of the ways officers leave the Foreign Service (e.g., the assassination of an FSO, or an individual's voluntary retirement) have nothing to do with management decisions. But management decisions do determine how many people will enter and, in good measure, how many will leave in any given year.

If the system is left to run by itself, as influenced by a stream of ad hoc managerial decisions, the projections for the next ten years, described on page 12, show rather clearly that too few people will leave the Foreign Service particularly at the top, to permit sufficient entry at the bottom and rational promotion rates up through the system.

Consequently, we set forth, beginning on page 13 of our paper, a conceptual framework of how the system might be operated in a rational way, giving priority to stable, healthy entry and promotion rates. (In the recent past, a management decision to extend the time-in-class for senior officers unconsciously gave priority to reducing the retirement rate at the top, thereby sharply lowering promotion rates and entries at the bottom.) The desirable rate of career flow would require a modest increase in retirements from the Senior Foreign Service (using the device of nonrenewable limited appointments) and a restriction in the number of lateral entries for other than affirmative action reasons. The end result would be a four to ten year projection giving target ranges for entry at the junior level, promotion rates at each class, lateral entries, egress from the senior foreign service, and other variables such as retirements for time-in-class at mid-career. All of this is eminently manageable, and while it requires hard, precise work to set it up, would, once in place, ease management's burdens by eliminating—or at least very much reducing—the perennial sense of crisis that pervades our personnel system.

Obviously, unanticipated strains will still be caused by influences outside the control of management, e.g., sharp changes in Congressional budget action or international crisis of one sort or another. But these will be much more manageable if the rational model exists and if at the very least, management can predict the effect of any particular change on all the elements of the personnel system.

Question. How would your "orderly flow" system affect affirmative action requirements which are essentially an expression that past "orderly flows" discriminate against selected groups of people?

Answer. As we emphasized in our written and oral testimony, we are committed to affirmative action. The Foreign Service needs to become more representative of the American people. The model we advocate provides explicitly (pages 13 and 14) that the Foreign Service set priority on affirmative action, along with steady, predictable rates of recruitment and promotion. In order to reach these priorities, we advocate restricting lateral entries on grounds other than affirmative action. It is incorrect to state that orderly flows have discriminated against selected groups of people. The whole problem with the system over the past 15 years, as the data conclusively shows, is that there has been no orderly flow at all. Finally, how can we attract minority candidates and—a question often ignored—keep them, when they confront, along with everyone else, the obscure career development and promotion prospects that have characterized the system to date?

Question. How does the Harrop/Walker proposal differ from the computer model the Department is now using to determine intake and promotion levels?

Answer. We hope the Committee will ask the Department to respond to this question. In essence, management has said in public forums that once they have the law they will figure out how to run the system. Personnel has told us they do not have a computer model, though they are in the process of contracting for one. The Department calculates promotions each year simply by calculating the vacancies above, a process which has produced the roller coaster entry and promotion rates of the past years. It uses computer technology for these calculations, but it is a far cry from the systematic modeling that we advocate.

Question. How can any computerized intake and promotion system take account of such variables as: the need to send hundreds of FSOs to Vietnam in the mid-1960's; the loss of over 200 FSO positions in one month in 1975 with the fall of

Vietnam and Cambodia ; the lower court decision banning mandatory retirement, and its later reversal by the Supreme Court ; and the like?

Answer. We stressed (page 13) that the first step in operating the model was to decide upon the desired size of the Foreign Service and the various ranks which comprise it. Whatever the numbers finally decided upon, over the years there will be some variation in both the size of the service and the numbers of positions at each rank, because of new functions or reclassification of positions upwards or downwards.

The model, because it sets ranges for the number of officers entering at the bottom, for promotion percentages at each rank, for egress from the senior ranks, and for all the other managerially determined ways of entering and leaving the service offers more than enough flexibility to handle a good deal of unforeseen variation, certainly up to 50 and perhaps even 100 officers, if they were distributed fairly evenly. A cataclysmic event on the scale of the fall of Vietnam and Cambodia would of course disrupt any system. But it would be far less disruptive if a working model was available to test alternative approaches to handling the problem. The model would in fact provide the tool for dealing with an unpredicted and major change in the system.

If the ill-advised proposal to take economic and commercial responsibilities from the Foreign Service and put this large and important group of functional experts on the street took place along the lines now being advocated, no personnel system could fully limit the damage to the Foreign Service and the national interest in these functions, much less to the individual people involved. Needless to say, the so called commercial reorganization, as currently conceived, runs directly counter to the purposes of the proposed Foreign Service Act now before the Committees. We reiterate that the use of an operating personnel model would help deal with major changes, and that while no system can plan for all contingencies, it would be well to have a system that can deal with most.

Question. Why should we tie the Department's hands from being able to react to new or unforeseen developments by writing into the law rigid "parameters" on intake and promotion numbers?

Answer. We did not ask that Congress write the parameters themselves into the law ; that would not be sensible. We ask that Congress write into the law a requirement, in whatever language seems most reasonable, that the Foreign Affairs agencies operate their personnel systems on the basis of a systematic multi-year model and, further, that the Department's model, including the parameters for the significant elements of the personnel system's flows, be made a part of the legislative record. If not, the Congress, the public and the Foreign Service itself will be getting a pig in a poke. As a check on future sets of transient managers, we would recommend that Congress require significant changes in the parameters be reported to Congress and be the subject of consultation with the elected employee representatives.

Question. Aren't the personnel system problems you describe more a result of external factors, such as the Vietnam war and the rising consular workload, than of arbitrary "tinkering with the system" by management?

Answer. No. On this question we believe that we and the management of the Department are in accord. Their testimony indicates they have sought this new legislation in order to reform the personnel system, because of serious systemic problems. Our answer to question seven covers much of this issue. We add that the kind of system we advocate would have certainly permitted a more rational approach to the rising consular workload, which after all, occurred over a number of years and not all at once. In respect to the consular function, in particular, it is clear that more fair and more rational career patterns cannot be developed without such a system. In the conversations among Foreign Service personnel about the structure of their career, no theme recurs more often than the desire to see established a predictable, rational system and then stop tinkering with it.

Question. In your testimony, you express concern that there will not, in fact, be one Senior Foreign Service, but several. Do you think that one Senior Foreign Service can be accomplished without amending the legislation, i.e., through regulations or legislative history?

Answer. Given the history of reform efforts and the demonstrated tendency of the various agencies to set up differing standards and systems, it seems to us absolutely necessary that the law itself provide for a single Senior Foreign Service.

Question. Is it your assumption that virtually all Senior Foreign Service officers will be "blanketed-in" as you use the term, into the Senior Foreign Service? If so, doesn't that in effect negate the concept of a senior body of outstanding officers?

Answer. The authors of this bill say that officers currently at the ranks of O-2 and above will be given the option of entering the senior Foreign Service under new time-in-class criteria (ranging from 3 to 4 years) or staying out, in which case the officer would serve out 3 years and then be retired. Who in his right mind would opt to stay out? There seems little question that under the bill as drafted all current senior officers will be blanketed-in to the new Senior Foreign Service. We see two approaches to resolve this problem:

(1) Set up a pre-screening which would assure that all current senior officers qualify under the same criteria which will be applied to subsequent applicants at the senior threshold, or

(2) Put all current officers into the Senior Foreign Service but institute the 3 year contract system immediately, thus forcing a weeding-out process as soon as possible.

We prefer the second alternative, although we could accept the first. Our problem with the first alternative, of course, is that the criteria for crossing the senior threshold are not yet developed.

Question. To your knowledge has the Department utilized a personnel model in formulating the bill before us and if not, why not?

Answer. No, they have not. And this is precisely why we have taken up this issue and why we have prepared our rather detailed paper on the subject in the hope of contributing to their efforts and those of the Congress. We hope the Committee will ask management its views of the approach we have outlined and how they intend to actually run the system, only the framework for which is provided by the bill under construction. We believe it would be better to do this work now, under the spur of Congressional consideration, than wait until after the bill is law.

Question. What is your evaluation of the mandatory retirement requirement? Can and should it be replaced by other requirements such as health?

Answer. As we have stated previously, we believe that the sole egress mechanism at the Senior Foreign Service level should be the limited career appointment of three years. If such a system were in effect, there would be no need for other mechanisms, including mandatory retirement for age. In brief, retention in the Senior Foreign Service would be based solely upon merit and relative performance as determined by rankings by a board of peers. Below the Senior Threshold and in the staff corps we believe that current egress mechanism, including mandatory retirement for age should continue to apply.

Question. Are you satisfied with the grievance procedures provided in this legislation?

Answer. Yes, but we agree with AFSA that the implementation of this legislation should not lead to the exclusion of supervisors from the bargaining unit.

Question. ICA Director Rheinhardt and Acting AID Administrator Nooter, in appearing at these hearings, have testified in support of the establishment of a unified Foreign Service personnel system. However, the point your testimony raises about a single Senior Foreign Service (SFS) has not been sufficiently addressed by the Administration. Please expand on your support for an integrated SFS for all foreign affairs agencies:

What agencies do you have in mind? Are the Peace Corps, ACDA, Agriculture, Treasury, the CIA, and—potentially—Commerce included?

What degree of interchange among agencies of SFS officers would you envisage? Would senior AID officers be named as ambassadors and State SFS officers as AID mission directors?

Would doing this not place too much emphasis on broad executive skills, leaving too little room for senior specialist positions?

Answer. Testimony by the agency heads in support of a unified Foreign Service personnel system is belied by their strong opposition to provisions in the act which have actually required compatibility among the various agency personnel systems.

In fact, it is the negative attitude displayed by all the key management players which leads us to insist that a single Senior Foreign Service be established in the law, rather than relying on regulations or good will.

The Senior Foreign Service should staff most of the senior career positions in State, ICA and AID.

State, ICA and AID are staffed primarily with Foreign Service positions—thus the Senior Foreign Service will apply most particularly to these agencies. However, every agency that uses the Foreign Service personnel system for senior positions would be staffed by the Senior Foreign Service. In most cases, outside of State, ICA and AID, Senior Foreign Service officers would be on interchange assignments or on detail. The ill-planned and confusing proposal for a new Foreign Commercial Service in the Department of Commerce—if the Congress permits this undesirable reorganization—could be limited in its damage to our overseas effectiveness only if the foreign service positions in Commerce were staffed by officers from a unified Senior Foreign Service.

All members of the Senior Foreign Service would be equally eligible for consideration for chief of mission assignments. Indeed, if the single service which we recommend is established the artificial distinction and invidious comparisons among personnel of the various agencies would disappear.

The single Senior Foreign Service, as we propose it, would permit and encourage the development of more and better in each category of executives and specialists.

Question. What specific language changes would you suggest in the proposed legislation to insure the unified SFS you support? Given the serious bureaucratic problems among the respective agencies a single SFS could create, would it not be better for the legislation to require a study of how to make the SFS more compatible among the agencies rather than to try to force uniformity through legislation at this time?

Answer. We have been in touch with the staff concerning suggested changes in the draft bill. A few changes in language will ensure the evolution of coherent, unified American representation overseas. We are convinced that a legislative mandate is required, or we will have a continued proliferation of agency services. Another study on the need for compatibility will not do. The thrust of such studies over 30 years of reform efforts calls for a single Foreign Service of the United States. Let's do it.

Question. Please provide more specifics in your suggestions for differentiating executives and specialists in the SFS. What types of positions would you categorize as SFS specialist positions? How would assignment and training policies differ for the two categories? How would you insure that SFS specialists did not in fact become a "second class" category? How would your differentiation apply to agencies other than State?

Answer. In the question above we have gone into some detail concerning the system of executives and specialists in the senior foreign service. The extremes clearly identify, for example, science officers on the one hand and Deputy Assistant Secretaries on the other. In general, the difference tends to come down to the number of people or operations supervised. The specialist is more an individual performer with deep expertise on a given subject. The executive, who will have begun his career as a specialist, is more the manager who leads and coordinates others to accomplish the agencies' overall goals. From early on training and assignment policies would differ markedly for these two categories; if our system were accepted, each would have more and better training at much earlier stages of his or her career.

By the time officers reached the senior threshold, our approach would in fact produce both a pool of officers with executive experience and the required number of functional and area experts that are needed in the senior ranks. Our system, by emphasizing more and better training for specialists and better-directed career development for them, would in fact move specialists into a first class category rather than the 2nd class they now find themselves in. The system of specialists and executives in the senior ranks would be applicable to the major foreign affairs agencies. For example, in AID those officers who have had broad program responsibilities in their career would tend to move into the executive category while those with expertise in agriculture, health or education would advance in the specialist category. The same kind of differentiation would take place in ICA and in other agencies which use the foreign service personnel system, including Commerce if the Congress permits implementation of the fragmented and inefficient proposed reform of overseas commercial work.

Question. You have taken a strong position opposing passage of the new Act until a computerized personnel model for the Foreign Service is developed, scrutinized and incorporated into the legislative history of the Foreign Service Act. What is your estimate of how soon this can be done? How far along is management in contracting out for such a model? Are there ways of achieving the

personnel structure you advocate without long delays in passage of the legislation?

Answer. It depends on how much effort is applied; we are assured that it is not a particularly difficult project technically; since the variables are not numerous and can be combined to some extent for the purposes of the computer modeling. We don't think that an insistence upon national planning and a demonstration of how the executive would utilize the authorities requested of the Congress should produce long delays in the legislation. We don't know how far along the Department is in contracting for a model and, we trust, in its own thinking. But we hope the Committee will press the Department to move ahead quickly.

Question. Your model only covers FS and SFS officers in the State Department. How would you apply it to AID, ICA and ACDA? How would your model mesh with your support for a single SFS?

Answer. We call for a single Senior Foreign Service which would include all senior Foreign Service Officers regardless of the agency to which they were assigned. It should be clear that the personnel model we advocate must cover all of these officers. And therefore the model would indeed apply to the Senior Foreign Service in AID, ICA, State etc.

Insofar as each agency maintains separate services below the senior threshold each should have comparable models which are geared to the vacancies at the single senior threshold.

Question. Why did you select three years as the period for each extension in the SFS? Are you suggesting that the legislation specify a period of three years? Isn't management already planning a three-year period for SFS appointments after expiration of initial time-in-class provisions?

Answer. We believe that the Senior Foreign Service should go on to a three year renewable appointment system from the very beginning. Time-in-class, after all, is a mechanism which has failed in the past. Secondly, if the three year renewable appointment system were used, as management apparently proposes, to keep on certain officers whose time-in-class has expired, it would become a "saving-mechanism" rather than an egress mechanism.

Question. Your statement made no mention of the transition provisions in the Act between existing senior FSO ranks and the SFS. Do you agree with the conversion "window" concept? Do you generally agree with management's proposals for implementing the transition?

Answer. We have no problem with the "conversion window" concept for officers coming across the threshold. Our problem is that management's proposal for the transition is based upon staggered time-in-class from three to five years; it will delay too long the tough decisions as to who stays and who goes in the new Senior Foreign Service. We recommend moving immediately to a three year limited renewable appointment system whereby those officers who are low ranked would be retired. A central problem historically has been the marked reluctance of managers of the Foreign Service—themselves frequently FSO's—to make and implement the decisions obliging early retirement of senior officers. The law should provide a simple, clear, and inescapable mechanism to see that this is done in both the national interest and the interest of the Foreign Service itself.

Question. If your model (stressing egress from the top within a fixed percentage range each year) were adopted, how would it take into account sudden changes in the size of the Foreign Service. For example, if proposals currently under consideration elsewhere in the Congress concerning trade reorganization are adopted, State stands to lose several hundred commercial officer positions. How would you propose to adjust to such a reduction if State's current commercial officers desire to remain in the Foreign Service? Would you propose egress from the top, thus decimating the senior ranks, or a reduction in force throughout all ranks?

Answer. There is no way to implement the proposal currently envisaged without severe dislocation, not only of the people but of the function. We understand Commerce wishes to have its own foreign service with its own rules, which it plans to produce overnight by absorbing some current Foreign Service officers and converting some domestic Commerce Department people into a new and redundant Foreign Service. How Commerce proposes to give this service instant language, area and commercial expertise has not been explained, much less how the national interest would be served by abolishing the hard won commercial expertise of the present Foreign Service and thus rebuilding it in a separate system less integrated and less responsive to the Ambassador.

At the risk of repetition, we support a Foreign Service of the United States, not of the State Department or of any other Department. We believe that the

creation of a new and separate Commerce Department foreign service is contrary to the national interest and opens the door to separate foreign services for many government agencies. Whatever the final disposition of the commercial function, among competing Washington bureaucracies, a unified Foreign Service should continue to perform the function, providing continuity of expertise and career development patterns that permit interchangeable assignments among commercial and economic officers. Anything else would be extraordinarily wasteful and would set back our export promotion and commercial work many years.

Question. If a gifted young officer is able to enter the SFS at an early age but is unable to obtain sufficient renewable extensions to reach age 50 and qualify for retirement benefits, how would you propose to adjust the retirement provisions so the officer would not be disadvantaged?

Answer. The retirement provisions, both current and proposed, provide for just such a contingency. Any officer FSO-3 or above who is selected out receives the retirement benefits to which he is entitled by salary and length of service. The proposed legislation simply adjusts the language to provide, in respect of the Senior Foreign Service, the same benefits for those whose limited appointments are not renewed. The legislation breaks no new ground in this respect and there is no problem.

Question. Do you have any views to express on the spousal provisions in the spouses' contributions to representational and other official duties?

Answer. We are encouraged that the Congress, the Department and AFSA are beginning to come to grips with what is known as the "spouse issue". We live in a period of rapid social change, placing perhaps greater stress on a highly mobile Foreign Service than on any other single element of our government. We think it is fair to say that we not only lack answers, we have yet to clearly define the questions. This we must do rapidly, because the problem will soon approach crisis proportions. In the interim, we need to ensure that no clause in the new act should be written in a way which could be interpreted as a derogation of any career personnel in favor of a spouse. And the pertinent appropriations should ensure that training and other opportunities are so funded as to provide for full access to career employees and to spouses.

We favor the concept of spouse compensation and regard it as an example of the innovative thinking that will be needed in addressing the many facets of issue. We think the Congress could do the State Department a service by directing that the entire question be examined, in consultation with AFSA, perhaps with the assistance of private consultants.

Question. What are your views on the present cone system? Does it develop appropriate skills for future SFS executives? Do you agree with management's thinking on developing a two-track cone system?

Answer. The cone system has satisfied some of the hopes which were originally pinned on it. However, in other respects it has failed. The rigidity of the cone system, when considered with the promotion system, provides a disincentive to officers to break out of functional strait jackets and develop broader skills. The new thinking of the Department on a two-track system is welcome insofar as it acknowledges that something is amiss. However the essential need—one which we cannot stress too strongly—is to develop a meaningful Senior Threshold. Until we have a clear understanding of the mix of talents needed at the Senior Level and criteria to be met to cross the threshold into the Senior Foreign Service, we question the advisability of making extensive formal structural changes in the cone system.

Question. What are your views on mandatory retirement at age 60? Can some other means be found which would meet the same purpose of requiring the retirement of those no longer competitive for physical or other reasons without appearing to discriminate on the basis of age?

Answer. As we have stated previously, we believe that the sole egress mechanism at the Senior Foreign Service level should be the limited career appointment of three years. If such a system were in effect, there would be no need for other mechanisms, including mandatory retirement for age. In brief, retention in the Senior Foreign Service would be based solely upon merit and relative performance as determined by rankings by a board of peers.

Below the Senior Threshold and in the staff corps we believe that current egress mechanism, including mandatory retirement for age should continue to apply.

Question. Are you satisfied with the restrictions in the legislation on political appointments?

Answer. No. The 5 percent limitation in Section 321 on non-career appointments in the Senior Foreign Service could easily be subverted by interpreting it to mean that once a "career candidate" received status he or she would no longer count as non-career. In a few years, you could have a "career" Senior Foreign Service with over 20 percent of the officers political appointees who had come in under the 5 percent rule, were given career status, and opened up another 5 percent to non-career appointments. The wording of Section 321 should read, "The total number of non-career members of the Senior Foreign Service (officers who did not enter the Senior Foreign Service through the promotion procedure specified in Section 602a) shall not exceed 5 percent of the members of the Senior Foreign Service". Moreover, a minimum probationary period should be specified in Section 322 to ensure that any non-career applicant for career status in the SFS be tested in a variety of circumstances before being entrusted with "tenure" at the top. We suggest four years. Unless such a minimum safeguard is clearly established by the Congress, this mechanism will be repeatedly abused by successive Administrations.

While we would not stipulate a specific numerical limitation on non-career appointments to ambassadorial and equivalent positions, we would strongly urge that the Congress establish an objective, non-partisan advisory board to screen the qualifications of all such aspirants, political and career alike.

Question. Do you have any comments on the pay comparability question? Do you agree with the AFSA proposal for 10 to 12 FS grades, rather than the nine established in the bill?

Answer. The Hay Associates Study, mandated by the Congress, clearly demonstrates that our junior and mid-level officers are paid significantly less than their civil service counterparts with equivalent responsibilities. Since Foreign Service Officers normally spend more years in grade than do their comparably qualified Civil Service counterparts, this disparity is aggravated in yet another dimension. There is no longer a debate, even within the Administration, on the existence of compensation inequities. Rather, the decision which faces us now is which of the options will best ensure equitable treatment for the Foreign Service. We believe that AFSA's proposal takes into account all of the objective criteria and findings of the Hay Associates study on compensation. At all events, we strongly urge the Administration and the Congress to act to remedy these inequities in some fashion as soon as possible. We should also note that removing this inequity will not only help the Department retain the best officers now in the Foreign Service, it will have a significant impact on our ability to recruit at least at the officer level the best possible talent and to achieve a representative Foreign Service.

Mrs. SCHROEDER. The next witness this afternoon is Mrs. Cynthia Thomas, Foreign Service Reserve officer, accompanied by Philip M. Lindsay.

We welcome you. We are delighted to have you with us and thank you for your great patience for sitting through the afternoon.

STATEMENT OF CYNTHIA THOMAS, FOREIGN SERVICE RESERVE OFFICER, BUREAU OF INTELLIGENCE AND RESEARCH, LATIN AMERICAN REPUBLICS, DEPARTMENT OF STATE

Mrs. THOMAS. Thank you very much for allowing me to appear before this committee. I once tried to appear before the committee in 1972 and was not very successful. Mr. Harrop, by the way, did appear before this committee as president of the American Foreign Service Association at that time, defending the Bayh/Cooper grievance legislation.

I would like to state briefly that if things were to evolve in accordance with the testimony of the three gentlemen, there would be a 14 percent annual firing rate. I am afraid you would very much need a grievance mechanism of some nature if that were to happen, but that is something else.

I would like to introduce Mr. Philip Lindsay who is a retired Foreign Service officer. He was the plaintiff in the historic case of *Lindsay* versus *Kissinger* back in 1973 which resulted in the ruling guaranteeing that any officer about to be selected out for low ranking had a right to a hearing. Mr. Lindsay subsequently has helped other officers who have been selected out for time-in-class. They do not have any form of relief in the State Department.

I am sure you are familiar with my testimony. I know your staff is conversant with bills signed in the past in support of due process legislation for the Foreign Service, and specifically the Fascell, Buchanan, Hamilton bills. I did not invent it. It was a joint effort of the Senate and the House and was approved by the Senate four times. It was effectively killed by the former chairman of this committee along with the Board of the American Foreign Service Association in 1975. It is public knowledge, I am not telling any tales.

There is a long history of very good support for a due process system. The current legislation appears to be guaranteeing due process, but it does not set forth an equitable system, and that is why I am here. I do not speak out of an abstract concern but from direct personal experience with many Foreign Service officers who have been hurt deeply by the lack of adequate procedures.

The existing grievance legislation is a sham; it is a disgrace. The grievance staff places so many time bombs and hurdles before Foreign Service officers that it takes a hearty soul to even begin. Two major areas are not grievable subjects, erroneous denial of promotion and improper selection out. I would like this committee to put forward the original bill that Mr. Fascell and Mr. Buchanan sponsored which included those major points. Page 17 of my testimony refers to a major area in the current bill where due process is denied.

It is discouraging to realize how much time has passed while the same problems persist. I have a particular problem with the State Department but I would never put myself through that grievance staff. I think that it is surely a way to get very ill. I have seen what has happened to others.

I would like to include for the record a paragraph from former Senator John Sherman Cooper's statement before this committee in 1972 in addition to one by Congressman Hamilton that appears on the last page of my testimony. Mr. Cooper talked about binding arbitration. He said:

If the grievance board resolves that a grievance is meritorious, in any case it does not relate directly to promotion assignment or selection out of employees, it shall direct the Secretary to grant such relief as the board determines proper, and the resolution and relief granted by the board shall be final and binding upon all parties. In the case of a grievance directly relating to any promotion, assignment or selection out, the board shall certify its resolution to the Secretary of State together with such recommendations for relief as it deems appropriate. The board's recommendations are to be final and binding on all parties except that the Secretary may reject a recommendation "if he determines that the foreign policy or security of the United States shall be adversely affected."

That is genuine due process. What exists are recommendations by the Board. They have facts and figures to support that their recommendations have not been overruled very often, but then their jurisdiction does not include erroneous denial of promotion or improper

selection out. For example, there is the case of Temple Cole, who had two strokes and died while involved in the grievance process. He was absolved by a Special Review Board, but the Department refused to take appropriate remedial action.

I watched this case and I was unable to help him. There has to be a law to protect the rights of individuals. In the case of my husband there was no redress at the State Department. I came to the Congress and only then was relief granted in a private bill which took years of work. I cannot recommend that route to anybody.

Mr. Lindsay, I would like you to talk to him.

Mrs. SCHROEDER. Mr. Lindsay, did you have anything you would like to add?

Mr. LINDSAY.¹ Well, in going over this proposed legislation I have been concerned about the grievance part of it because essentially the grievance board that would be set up by this legislation would be an in-house board just as the interim grievance board was. I believe it would be better if outside civil service referees, examiners, or whatever were to adjudicate these cases rather than members of the foreign affairs agencies themselves who consciously or subconsciously are affected by the superiors in the Department of State, AID, or the ICA.

With the best will in the world I don't believe that these people can give judgments that might be in opposition to the Department policies or the personnel policies or the management policies in the Department. I think this is my main problem with this legislation.

In addition to this, some of the members of the board being former employees of the foreign affairs agencies have been with the board now since it started in 1971. That is about 8 years now. They have made a second career of this. I don't believe that they can act in the manner which might jeopardize what was to them a second career. I know that there are three of them on this board who have been with it since 1971. If we had people from outside agencies who did not have an ax to grind or who would not be unduly influenced by the management personnel people in the Department of State and the other foreign affairs agencies, I believe that the grievance procedures would be a good deal more fair than they have been or are more likely to be under this proposed legislation. That is why I am inclined to agree with Mrs. Thomas that the original Bayh-Cooper legislation so far as the grievance procedure is concerned would be much better than what we have.

That is about all I have to say on this.

Mrs. THOMAS. There seems to be a negative attitude surrounding this. You heard from the previous three people, who reveal thinking typical of the State Department, how the new act is going to get a lot of people out and limit their time in one form or another. Did anyone ever think of keeping good people in and treating Foreign Service officers with equanimity at the same time? Nowhere in the Foreign Service Act can one find Mr. Walker's statement on the principle of up or out. It is the creation of regulations.

I don't think that our Foreign Service is in such disarray. It would have to be to warrant all these reforms. I don't think you need a whole new Foreign Service Act. I think you need a grievance procedure.

¹ Phillip M. Lindsay, retired Foreign Service officer, accompanied Mrs. Thomas.

There is legislative history on this. The Senate debates have been extensive. However, even the best legislation has to be administered properly, and I don't know how that can be guaranteed. I don't know when due process will finally come about, but I believe at some time there will be a due process law in the State Department.

Mrs. SCHROEDER. Could I ask what specifically you would change in the grievance system?

Mrs. THOMAS. The whole system needs changing. The grievance legislation in section 1101 is legislated procedures passed in 1975 and enacted in 1976. They were not in the original bill, they were a sham and deception of the House as well as the Senate. It is not a genuine due process law. It is simply the old interim procedures translated into law. On my pages 11 to 17 of my testimony I describe the differences between what a person can grieve in the existing legislation and H.R. 1034, the original measure.

H.R. 1034 states "a grievance shall mean a complaint against any injustice or unfair treatment of an employee or aspect of his work situation arising from his employment or career status or any action, documents or records which could result in career impairment damage, monetary loss to the employee, deprivation of basic due process. It shall not be limited to selection out or promotion." It can be anything.

They didn't like that down at the State Department and they never would like that because the Lindsay case proved it was wrong to base selection out on low ranking, as being high ranked didn't guarantee promotion either. Charles William Thomas was consistently high ranked and yet he didn't get promoted.

I am asking for the original due process legislation to be reinstated again. There is an awful lot of support for that, by the way, in the Senate and in the House.

[Mrs. Thomas' prepared statement follows:]

PREPARED STATEMENT OF CYNTHIA A. THOMAS, FOREIGN SERVICE RESERVE OFFICER,
BUREAU OF INTELLIGENCE AND RESEARCH, LATIN AMERICAN REPUBLICS, DEPARTMENT OF STATE

Mr. Chairman: I ask that this Committee decline to report favorably on the Foreign Service Act of 1979, H.R. 4674, until and unless a grievance procedure guaranteeing the fullest measures of due process to all employees of the foreign affairs agencies is contained therein.

A grievance procedure is provided under Chapter 11, p. 131, Section 1101, but these procedures were the result of the impasse between the House and Senate Conference Committee in 1975, which legislated essentially the interim grievance procedures the Department of State was forced to implement in the wake of public outcry, court cases, and Congressional inquiries.

The statute tacked onto the Foreign Affairs Authorization Bill, November 29, 1975, was complicated enough, but the grievance system which it delineated was further complicated by the requirements that a grievance be thoroughly considered and resolved administratively within the agency. The Department of State itself held a series of workshops to help supervisors understand their roles in Foreign Service Grievance Procedures. Teams were sent out to the field, special newsletters were published, video tapes relating tales of "four typical grievances" were prepared. The State Department said that at least 900 supervisors were involved in these workshops. They stated in their own newsletter that these workshops were needed to explain that the legislation that the Foreign Service had at that time was the result of the failure of management and the exclusive bargaining agent to resolve their differences.

In October 1976, the Department stated in an article authored by the head of the Grievance Staff, "If we fail in these initial steps, we will be not only failing the employees but inviting even more sweeping legislation and greater embarrassment."

This bandwagon of grievance hoopla actually amounted to a smokescreen to cover the lack of genuine due process. The legislated grievance procedures contained in H.R. 4674 provide a modicum of due process, but a little bit of due process is not enough! I would like to refer to a report prepared by your Committee entitled, "Background Material on Foreign Service Grievance Procedures, July 26, 1972." The frontispiece contains a comparison between the proposed Foreign Service grievance procedures at the time and interim regulations then in effect in the Department of State, AID, and USIA. The bills numbers were H.R. 9188, Representative Hamilton; H.R. 10304, Representatives Hamilton/Buchanan/Fascell and others. On the Senate side, they were known at the time as S. 3526, S. 3722, Senators Bayh/Cooper/Fulbright. The Bill in the House that was identical to the Senate Bill was H.R. 15457 (Biester). There were numerous other identical bills in both Houses. If you want to refer to Appendix A¹ of my testimony, you can see that there are only slight variations between the Senate and House versions. Later versions in both Houses came together in September 24, 1975, in H.R. 9805 and S. 1080.

The "Bayh Bill," as it came to be known in the Senate, was reported out of the Foreign Relations Committee three times and passed by the Full Senate four times. However, on the House side, action was blocked at the Committee level by the former Subcommittee Chairman, former Congressman Wayne Hays, who worked hand-in-glove with management officials of the Department of State on this matter until he departed the Congress.

The reason I call your attention to the comparison of procedures prepared by this committee in 1972 is to illustrate that, though the language is more comprehensive in the current grievance legislation, its limitations are almost as great, and its denial of due process is nearly as keen as they were in the original interim procedures. There is only one respect wherein the proposed law differs from the one that was passed in 1975, and that is to provide a further deterrent to a grievant by awarding the exclusive bargaining agent in the Department of State, the American Foreign Service Association, the power to deny to the individual his right to appeal to the appeal body.

I urge the Subcommittee to replace Chapter 11 of H.R. 4674 by the provisions of the original "Bayh/Cooper/Hamilton/Buchanan/Fascell" proposed legislation which was introduced as H.R. 9805, September 24, 1975, attached at Appendix F in its original form.

Why all this fuss about due process hearings? I believe it is necessary to tell you a little bit about the history of these bills, numbering some twenty. Many of the members of this Committee were not yet members of Congress during the extended debates in the early seventies in this very Committee under the leadership of Mr. Wayne Hays.

The original Bayh/Cooper/Humphrey/Scott Bill was introduced in the Senate in June of 1971, following the tragic death of Charles William Thomas, a Foreign Service Officer. Despite an outstanding record of twenty years of loyal and distinguished service, Mr. Thomas was dismissed for failure to be promoted. As may be seen in the findings of the House Judiciary Committee, published in H.R. 93-1535, Appendix B, Mr. Thomas was unable to appeal his arbitrary selection-out because no appeal body existed.

The Director General was the final appeal authority in the Department of State and no hearing in the Department of State was granted for sixteen years. Despite the fact that there is an appeals procedure now, in reality the final appeal body is still the Director General, or in actual practice, the Assistant Secretary for Personnel. The reference to "the Secretary" in the legislation is in reality a myth since the Secretary himself habitually delegates this authority downward. Though the regulations state that, if the Department's Grievance Staff rejects a grievance, a person can appeal to the Grievance Board, most major areas are not grievable. Thus, due process becomes largely a sham. I have brought along a chart which the Grievance Staff prepared for persons who may be planning a grievance. I would like to ask if you can decipher it? What's missing is hospital stops along the way. (See Appendix C)

I would like this Committee to request from the Grievance Staff information on how many major grievances on selection-out, non-promotions, unfair reprisals, discrimination, and capricious, arbitrary, or other malicious acts arising in the administration of the personnel system or performed by personnel authorities are brought before the Grievance Staff. Obviously, there aren't any. The legislation is careful to exclude grievances based on these acts on the part of the personnel authorities.

¹ All appenzes referred to in this statement are retained in committee files.

Worse yet, the Grievance Staff's major role is to provide an extended delaying and potentially cruel, career-damaging, informal consideration of a grievance by forcing the victim to go to the very people that committed the acts complained of. This provision "legislates" some of the cruelest aspects of the Foreign Service personnel system, by ignoring the human element that a person will risk his entire career by going to a Grievance Board only when he feels that he is in extremis.

Furthermore, the Grievance Staff requires that the grievant submit his case to them in writing for review before he can get to the Grievance Board to request a formal hearing. I refer you to Appendix D, letter of FSO Robert Allen and his accompanying situation. He believes that ample evidence could be gathered to support a class-action suit against the Department for violations by the Grievance Staff of the right to due process.

The legislation co-sponsored by several members of this Committee in prior years provided for a clear and unimpeded path to the Grievance Board for a review of a grievance upon its merits without subjecting the grievant to a series of dangers, humiliations, and possible irreparable damage to his career. If you will take a look at the Foreign Service Grievance Staff chart, Appendix C, you will see the time bombs and hurdles it provides. It is a confusing and an ambiguous maze and looks like a parcheesi board, or a game of chutes and ladders. It should be abolished along with the sham of the Wayne Hays grievance legislation.

It is essential to understand that the reason the House and the Senate were not able to succeed in legislating due process of law for the Foreign Service was, frankly, Mr. Wayne Hays. I do not want to dwell on the power of Mr. Hays, but that power fed on State Department personnel managers and the American Foreign Service Association hierarchy. I have already testified to the Senate Foreign Relations Committee in 1976, the fact that Mr. Lars Hyde, the appointed (not elected) Vice President of the American Foreign Service Association (without allowing a proposed referendum by the membership) deceived the Congress into believing that the 7,000 members supported a compromise on the Bayh/Hamilton/Fascell Bill.

The Department's inside corps of self-serving personnel managers have succeeded in maintaining a large measure of control over who is promoted, who is not promoted; who is selected out, who is not selected out; who receives plum assignments, who does not receive plum assignments. Section 642 of the proposed legislation would bring *all* career employees of the Department under the selection-out system, insofar as relative performance is concerned, rather than just Foreign Service Officers as at present. Career staff and clerical employees have not heretofore been subjected to such procedures, which could greatly overload and complicate the work of selection boards but give even more power to the Department's personnel managers. A due process system for the Foreign Service would change this radically. This kind of incest could no longer flourish in the Department of State.

Personnel types hold many of the key substantial positions in our Embassies around the world. Personnel types do not just stay in personnel, they serve in key positions abroad, and they help each other. They have foisted this sham of due process, and actually believe that they are doing an effective job. The bruising and humiliation of gentle men and women who did not join the Foreign Service to become grievants goes on daily. It makes me angry, but I am still idealistic enough to believe that this Committee could provide a due process system that would shake up the Department of State and allow all competent officers a fair chance to survive. What amazes me is that, in the perpetuation of this lack of due process and these complicated procedures, they have actually thumbed their noses at the Congress of the United States. They don't even believe you will seriously address the matter. With the help of Wayne Hays, they perennially foiled your efforts before.

I would like to read how a grievance was defined in various bills which five people on this Committee either co-sponsored or supported. "Grievance means any complaint against an injustice, unfair treatment of an employee or aspect of his situation or from any action, documents or records, which result in career impairment or damage, monetary loss to the employee, or deprivation of due process. It shall include but not be limited to action in the nature of reprisals and discrimination, actions related to promotions or selection-out; the content of any efficiency report or related records; separation for cause, denial of salary increase within a class, etc."

Now, let me explain how the present law operates.

1. Definitions of grievances were rewritten in so restrictive a manner as to deprive grievants of the opportunity to protest the prevalent general injustices and policies concerning a wide range of items such as promotions, misassignment, discriminatory treatment or favoritism, and selection-out.

2. The present law restricts grievances against selection-out to involuntary retirement caused by violations of law and regulation or to erroneous or falsely prejudicial material in performance files, which is much less likely in the case of selection-out for time-in-class, i.e., failure to be promoted within a specified number of years. Officers selected-out for time-in-class often receive consistently above-average performance reports over a period of years. On the other hand, a mediocre or generally below-average officer may be singled out for the occasional outstanding report. Consequently, the consistently above-average performer is selected-out. The result has been a continuous loss to the Foreign Service of highly talented officers. The system itself is at fault and should be subjected to a complete overhaul. A fair and effective grievance procedure could play a useful role.

3. The choice of grievance board members gives too much of an in-house character to the board by permitting former employees of the foreign affairs agencies to serve on it, including former members of the "interim" grievance board, or of the Department's Office of Personnel. Most of these latter can be expected to perpetuate the evils of the interim grievance procedures which an independent and impartial membership would have eliminated.

Section 1111 should also eliminate from grievance board membership all former officers and employees of the Department or other foreign affairs agencies. While retired Foreign Service employees are theoretically free from pressures exerted by high management personnel and other Department officials, they, in fact, as Foreign Service Reserve appointees, must please those high officials or find themselves removed from a desirable and lucrative position. Some of the Foreign Service Grievance Board members have now been members for about eight years. Board membership has become a highly desirable second career for them, which they might be ill-advised to place in jeopardy through grievance decisions strongly opposed by management.

4. Hearings are essentially closed instead of being entirely open to public scrutiny. An open system would have helped to prevent some instances of Departmental abuse of due process rights.

5. Restrictions on the appearance of witnesses constitute denial of due process to a grievant. The interim board has often been guilty of such restrictions for no evident valid reason.

6. The Department's Grievance Staff has sought to deny access by grievants to relevant documentation. This practice should be explicitly prohibited and penalized in the law.

7. One of the many serious defects of the legislation is the failure to *order* the reinstatement of officers wrongly selected-out, rather than merely to recommend their reinstatement to the agency head. The agency head, despite a clear recommendation by the Board, can refuse to reinstate an officer, no matter how meritorious his claim, on the pretext that the officer no longer meets the "needs of the Service." Worse yet, any such adverse decision on the part of the agency head is specifically excluded from judicial review. Keep in mind, ladies and gentlemen, that it is not, in fact, the "agency head" who actually wields this great power, but, once again, the middle-level bureaucrat in the Department's personnel system.

This is a most regrettable and ironic provision. The original impetus toward legislation providing for a Foreign Service grievance procedure was furnished by the tragic death of Charles W. Thomas eight years ago. Subsequent legislation which provided for the relief of Charles W. Thomas, deceased, gave evidence to the grievous wrong done to him by the Department of State. Furthermore, the President of the United States, Gerald Ford, in a subsequent letter, expressed the hope that legal measures would be enacted to prevent recurrences of the situation which led to this tragedy. Yet, the grievance legislation finally resulting from Mr. Thomas' death did not provide for the rectification of the wrong. In other words, if he were still alive, he would still be unable to bring a grievance under the present system. Moreover, if he could bring a grievance, the Secretary of State (in actual practice, a lower administrative official) could refuse to reinstate him for any reason whatsoever on the pretext that he and his skills were no longer needed by the Foreign Service, and he would specifically be prevented from appealing such an arbitrary decision in the courts.

I have been working in the Department of State eight years. I could relate to you a number of telling cases. But I will talk about just one, FSO Temple Cole.

who died recently. The answer to a question at the noon briefing on July 9, 1979, regarding this officer was the following:

"Q. What is the status of the Temple Cole case?"

"A. In May of this year, several persons requested that the Bureau of Personnel look into the possibility of granting Mr. Cole a retroactive promotion on compassionate grounds. After a careful review of the situation, the Department concluded that it does not have the legal authority to grant retroactive promotions in the absence of a recommendation by an EEO Appeals Examiner or by a Grievance Board or Panel (22 U.S.C. 8993B). Mr. Cole, himself, had not personally requested such a promotion; nor did he have any formal EEO complaint or grievance against the Department pending at the time of his death."

I would like to point out to this committee that the several persons referred to by the Department were: (1) myself; (2) a friend of Mr. Cole's, who was the attorney that argued the *Lindsay v. Kissinger* case before Judge Gesell, resulting in the decision which is a part of the Foreign Service Act now—the right to a hearing for anyone selected out for low ranking;* and (3) the third person was, ironically, an assistant Secretary for Human Rights. But we did not approach the Department on "Compassionate" grounds. We were seeking justice. We believed that due process should be extended to Mr. Cole while he was still alive.

I hope this Committee will investigate thoroughly the legal authority which the Department says it lacks in the matter of Mr. Cole. Perhaps Mr. Cole's case will provide the lever to break through the inhuman system that the State Department has written for itself.

Attached as Appendix E is "Department of State Recommendation 1979, Special Review Board Decision on the Appeal of Temple Cole, FSO-5." This document speaks for itself.

The Department's own findings in this case were thoroughly exposed for their blatant duplicity and subterfuge. The special review board found Department's findings to be shallow and false. But, even though the impartial review board overturned the Department's biased, unbalanced, and patently phony procedures, this valuable and competent officer was nevertheless unable to gain a promotion. He won his appeal and could remain in the service, but in the process he suffered two heart attacks, and he died at the age of 49. The reason the Temple Cole case is important in the process you are addressing is that the initial review of Mr. Cole's case was carried out in a biased fashion with the obvious purpose, not of giving him a balanced hearing, but only to provide some sort of administrative cover to justify removing him from the Service.

If you are able to read the Review Board's report, I feel sure you will see this clearly. I believe that this Committee can and should, through appropriate legislation, encourage and require the Department of State to judge grievants with equanimity. The Department should not be allowed simply to try to get an officer out of the way. Aside from exercising a degree of understanding and concern for the officer, the Department, in seeking the real good of the Service itself, should cease and desist from its current attitude of getting someone out, in order to get someone else in.

I think Congressman Hamilton said it well in hearings held in this Committee in 1972. Unfortunately, these hearings were never published. I do have a portion of one part of those hearings attached at Appendix G.

Mr. Hamilton said: "I think that selection-out is the most important decision that can be made about a man's career, and at this point he certainly ought to have a full right to a hearing." Mr. Hamilton further added that his right to challenge selection-out is a very important one for the efficiency and the morale of the rest of the Foreign Service.

I will be happy to provide this committee with further documentation and any assistance I am able to afford to provide a system of justice for the Department of State.

Mrs. SCHROEDER. Congressman Buchanan, do you have any questions?

Mr. BUCHANAN. I don't believe so.

I do appreciate your testimony, both of you. I do think it is quite appropriate that you take a look at this in this context. I personally

*The case was *Lindsay, Cole, Starbuck, and Foo v. Kissinger*, 367 F. Supp. 949 (DDC 1973).

will review the positions of our earlier legislation over our existing system. I certainly think we ought to look at this whole area of due process in considering this legislation.

Mrs. THOMAS. That is all I ask. Thank you very much.

Mr. FASCELL. Well, I have a thousand questions which I won't ask but let me just say first, Mrs. Thomas, that we appreciate you and Mr. Lindsay appearing here to testify.

As far as that original bill is concerned, I got that bill so we could have a hearing and that is all, period. Because you have been denied for so many years in an effort to try to get something moving, I joined Mr. Hamilton in that bill and ever since then we have been pursuing everybody we can get our hands on to do something with this bill. I am a little bit surprised frankly at this date. No, I am not. I am not surprised at anything.

I hear a flat statement that, no, you don't need this bill and you are probably right. We don't even need any laws, all we need are smart people—reasonable, sensible, intelligent—who administer justly and are human beings. Unfortunately, I never found any of that kind and evidently you have not either so we are going to pass a law of some kind.

I must tell you flat out I have great reservations about putting administrative procedures on the outside of the administration which is proceeding. If you are going to do that, you might just as well go to court.

Mrs. THOMAS. Yes.

Mr. FASCELL. So I have a great problem with that, Mr. Lindsay. I am not saying that I am against it or for it or what, I am just telling you how I think the probability runs. I don't know how you can have administrative procedure with an appeal ultimately to the Secretary and have final and full recourse to all the administrative action and then go to court if you are not going to be within the administrative hierarchy. That changes the whole concept of the Administrative Procedures Act in my judgment. Maybe that is good, I don't know.

Mrs. THOMAS. The court business I think came through on the Senate side basically because there was such trouble with getting any kind of legislation. They were angry, I think.

Mr. FASCELL. I understand. It is just like this committee or any committee of Congress theoretically could hear every employee's case. There is no way we could do that practically in even unusual cases. I agree with you, I would not want to try to push a bill for anybody. I tried once. It was vetoed by the President after I spent 8 years and four sessions of Congress on it so I know what you went through. It is not easy. Anyway, we will take a look at it. We will try to improve it, not make it worse, that is for sure.

Mrs. THOMAS. Well, that is all that is asked because the mind is reasonable and you people would like to be able to understand how things work. Nobody can seem to understand the mechanism for the grievance procedure that exists now. I don't.

Thank you very much.

Mr. FASCELL. Thank you very much.

Mrs. SCHROEDER. Thank you.

Mr. LINDSAY. Thank you.

Mrs. SCHROEDER. With that, we will adjourn.

[Whereupon, at 4:20 p.m., the joint subcommittees adjourned.]

THE FOREIGN SERVICE ACT

FRIDAY, SEPTEMBER 7, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE OF FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees met at 9:30 a.m. in room 2172, Rayburn House Office Building, Hon. Patricia Schroeder (chairwoman, Subcommittee on Civil Service) presiding.

Mrs. SCHROEDER. Good morning.

We welcome everyone to our joint hearings.

Our sole witness this morning is Ambassador Martin Herz, now a professor at Georgetown. During the Ambassador's tenure with the State Department he worked his way up in the Foreign Service from being a junior officer to becoming Ambassador to Bulgaria.

We have your statement, Mr. Ambassador. We really appreciate your taking the time to come and share your views with us. If you would like to go ahead and summarize your comments for us, we would appreciate it very much.

STATEMENT OF HON. MARTIN F. HERZ, FORMER U.S. AMBASSADOR TO BULGARIA

Mr. HERZ. Thank you, Madam Chairwoman.

My statement consists of a few pages, plus some annex material. With your permission, I would request that the annexed material be consigned separately.

Mrs. SCHROEDER. Without objection.

Mr. HERZ. In expressing my appreciation to your committee for allowing me to testify about one aspect of the proposed Foreign Service Act of 1979, I wish to stress that I speak for no one but myself. I do not represent an organization. But the ideas that I shall submit to you coincide with those of a number of senior officers of the Foreign Service who are still on active duty. I myself retired this year after 37 years of Government service, five of them in the Armed Forces and over 32 in the Foreign Service.

I entered the Foreign Service at the bottom, in 1946, by the examination route, and advanced step by step to class 1, which I reached after 21 years. The most important position I attained was that of Senior Deputy Assistant Secretary of State. The most prestigious was that of

Ambassador to Bulgaria. The most unpleasant though not unrewarding to the inner man, was that of Minister-Counselor at the American Embassy in Saigon, after the Tet offensive in 1968. I was not, incidentally, the first choice for that unpleasant position. I was offered it, and accepted, after one or two others had turned it down. I was amazed then, and am even more amazed now, that it should be possible in a disciplined career service to turn down a responsible position just because it is extremely difficult or unpleasant.

Madam Chairman, I have perhaps a longer memory than my younger colleagues in the Foreign Service, and perhaps even than some of the members of this committee. There is no merit in this, for it is entirely a function of age. I happen to have lived through a period in our history when there was a sort of open season against senior Foreign Service officers.

I am concerned that the proposed legislation will not only not guard against a repetition of those dangerous days—dangerous not just to the Foreign Service but to the country—but that it will make it easier for a future Secretary of State to “decapitate” the Foreign Service through mass retirements of its most experienced and most valuable members.

This is not a fantasy of mine. I have been there. I have seen it going on all around me. I have seen friends and colleagues hounded out of the Service. I have seen loyal Foreign Service officers, who had been cleared again and again and again by the most rigorous security procedures, dismissed from the Service because the Secretary of State, and those whom he had brought into the Department with him, did not share their views and their outlook, and because those politically appointed officials were subservient to others who would make the Foreign Service a scapegoat for our misfortunes and failures abroad.

You may say that McCarthy was an isolated phenomenon that is not likely to be repeated. To this, I would reply that it is a misreading of history to associate McCarthyism with only one man. There were a number of Senators and Representatives who shared his attitudes and who outlived him and who continued to do damage to the Service and whose views were given very much weight in the executive branch. It is thus not fanciful for me to look at the proposed legislation from the point of view whether a future Secretary of State would be more, or less, able to root out of the Service people whom he might not like, whose political views—real or imagined—he might not share, or whose presence in the Service might be an embarrassment to him in his relation with powerful Members of the Congress.

I find that there is serious ground for concern because the provision for limited appointments to the Senior Foreign Service is tailor-made for unscrupulous use against senior officers suspected of holding views divergent from those of an incoming new administration.

It should be understood that I am not attributing to this administration—certainly not to the present Secretary of State, also not to the excellent career officers who have worked on this legislation—any intention to open the way to some future inquisition or bloodbath of the senior Foreign Service. These are all honorable men, inspired by the highest motives. What I question is the wisdom of enacting legislation which could be abused in a way that the framers of the legislation had not intended or envisaged. This involves a question of public policy—

whether it is wise, even if some benefits would flow from a certain measure, to open the doors to possible abuse of those measures. I am proceeding in my testimony from the assumption that the wise course of action is to forgo some minor advantages if there is a major danger that the purposes of the legislation could be perverted some time in the future under circumstances that we cannot at present foretell.

At this point, I would like to make a short digression—it is only a seeming digression. You, who have devoted so much time to the Foreign Service and its problems and to this pending legislation, are of course aware of the weaknesses of a career diplomatic service in our political environment. Even when there are no accusations of disloyalty, or even treason, as occurred in the late 1940's and early 1950's, it is fair to say, I think, that the Foreign Service does not enjoy a good press, that there are people, perhaps also in this House, who feel that there is something wrong with it, and that somehow the Service is "unrepresentative" of the United States.

From this attitude, which I submit is quite widespread or at least latent in our society, it is not a very long way to distrust the Foreign Service and associating it with policies that one does not like. It is no secret, I think, that both the Kennedy and the Nixon administrations came into office with a determination to place "their own men" at the top of the Department and into key positions abroad, because they distrusted the views and attitudes and orientation of the professionals.

What one Secretary of State called "positive loyalty," which he demanded from the Foreign Service, others would call conformity. And, I submit, conformity in the Foreign Service is a very dangerous thing because it is from the Foreign Service that the questions come up that need to be asked, that the collective memory of our diplomacy can assert itself, that the inconvenient counterargument needs to originate.

We need, in other words, a free play of ideas in the Department of State and the Foreign Service. Thank God we have it now. We have not always had it, and there is no reason to believe that it is fore-ordained that we shall always have it. We may lose it if we aren't careful. We have lost it before. The proposed legislation does not protect it; on the contrary, it endangers that free flow of ideas, which of course includes ideas of a contrary nature that another administration might not cherish.

I believe that section 602, which makes retention in the Senior Foreign Service a matter of the Secretary's appreciation of the "needs of the Service to plan for the continuing admission of new members," and section 641, which allows the Secretary, by regulation, "to increase or decrease such maximum time for a class . . . as the needs of the Service may require" opens the way to mass dismissals of Senior Foreign Service officers by some new administration that might be convinced that they all "lost China" or "lost Africa" or were "pinks" or "Fascists" or otherwise uncongenial.

What would Mr. Scott McLeod, whom Mr. Dullas brought into the State Department as his head of administration and security, and who was a friend and confidant of Senator McCarthy, have made of such a wide latitude given to a Secretary of State. He would have revelled in it. He would have exploited it to the utmost to get rid of Foreign Service officers who were suspected not of being Communists but of being left-leaning, excessively liberal, woolly-minded do-gooders who didn't understand the reality of the threat.

What might be the future policy in whose name another open season might be declared? Perhaps it might be on the opposite end of the political spectrum. But whatever end of the spectrum it might come from, it would be bad news for the country, for the freedom to express unpopular ideas, and for the principle that a professional career service is in any case the servant and not the master of foreign policy.

Let me make clear what I meant by the last remark. I believe that it is, and was, profoundly mistaken to believe that Foreign Service officers represent political parties or political tendencies. The paranoid attitude, for instance, of Mr. Ehrlichman, who saw the Nixon administration's foreign policy sapped by disloyal career public servants, was not justified. The Foreign Service loyally implemented Mr. Nixon's policies just as it had implemented those of his predecessor and his successors. It is a nonpolitical service. But that is precisely what makes it so suspect in the eyes of some of the political chieftains in the White House.

"Positive loyalty" is not, after all, so very far removed from the performance checks that have recently been ordered in the White House and which require loyalty, once more, to be checked out. It is only a relatively small step from vetting someone's loyalty to evaluating his usefulness according to how much he or she agrees, or enthusiastically supports, certain policies. In other words, the danger is always present. It is only a matter of degree. So, it is not so farfetched to imagine that some future administration might want to make a clean sweep of the Senior Foreign Service because it is associated, in the minds of that new, incoming administration, with failures and idiocies or total benightedness, or worse—sympathy with our enemies, or inveterate blindness toward something that is particularly important to such an administration.

George F. Kennan, in remarks that I request permission to include in the printed version of my testimony,¹ stated the problem of the diplomat in a democratic society in terms that are both insightful and graphic. He noted that—

This diplomat has to recognize that he is himself something of an anomaly within the traditional structure of American Government—something for which there is not, and could not be, any fully natural and accepted place. He is not politically appointed—a circumstance which is sometimes a source of irritation, one suspects, for politicians, who see him as preempting positions and salaries that might otherwise be used to reward political supporters.

Moreover, as Kennan points out, the very qualities that make a diplomat effective in a foreign environment involve features of his appearance and manners and even thinking processes which are perceived as alien by his own society.

To many people in journalistic and political life—

Wrote Kennan,

this *habitude du monde* is particularly disturbing, because it seems to imply on the part of the professional diplomat a certain deliberate self-distancing from those great currents of mass reaction and emotion to which American society is uniquely vulnerable and by which journalists and politicians, above all others, are carried, of which they are the spokesmen, and the reflection of which they find their inner security.

¹ The information referred to follows Ambassador Herz' statement.

In an earlier interview, of which I would also ask your permission to insert longer excerpts into the record,¹ Kennan observed that journalists and legislators frequently—

expect the FSO to be a sort of foreign exhibit of American virtues and mannerisms, as they themselves conceive them. They expect him to cultivate popularity and to use this popularity for the "selling" of American outlooks—rather than policies—to other peoples.

They do not realize that his main tasks normally have to do with other governments rather than with peoples; that his function is really that of an effective and unobtrusive intermediary, assuring the accuracy and usefulness of communication among governments; that he needs sometimes to take on something of the personal coloration, not just linguistically but in manners and way of thinking, of those with whom he has to communicate; that a strident and expansive Americanism is often an impediment in this respect; and that in his quality as an effective intermediary he is bound, if he is to be useful, to acquire a certain inner detachment toward both sides, which does not imply any disloyalty to his own.

I would submit that no one can long pursue the Foreign Service profession without acquiring a certain critical detachment toward the behavior and policies of all governments—including his own—a detachment which respects the prejudices and limitations of vision by which that behavior and those policies are often inspired, but does not necessarily share them.

Congress and the American public must ultimately choose.

Kennan says in this passage of the interview—

either they want effective intermediaries, effective executors of American policies abroad, and effective observers as well, in which case they have to tolerate a certain amount of cosmopolitanism in the personal makeup of these people, or they must be prepared to forego the advantages of a highly effective diplomatic arm.

It will not have escaped you that the desirable characteristics that Kennan saw in a Foreign Service officer, come from "long pursuit" of the career. In other words, I am not at all sure that they are fully developed in the younger and more vigorous and less skeptical and more ambitious officers who so often strike the political leaders as more "with it," as sharing their own ideas more visibly and articulately, as being, in other words, "in step with the times." This is precisely what I am warning against, and I think it is not an excessive extrapolation from the remarks of Kennan that I have just read to you to say that he, too, sees merit in experience, in the acquisition of that skeptical detachment which does not come readily to younger people.

Section 612 of the proposed legislation would make one of the criteria for promotion or retention in the Senior Foreign Service not only the usual performance evaluation reports, commendations, awards, reprimands, et cetera, but also "records of current and prospective assignments." What a strange expression—records of prospective assignments. How can there be a record of a prospective assignment, except a notation that Mr. or Ms. X is in line for a new job, and that Mr. or Ms. Y does not have a job in prospect.

What could not Mr. Scott McLeod, the agent of Senator Joe McCarthy in the State Department, have made with such a provision as it applied to, say, Mr. John Stewart Service or Mr. John Paton Davis who were accused of having "lost China." Lest you believe that no such cases occurred in more recent years, I may recall that there was also a man in the early 1960's who was suspected or accused of having "lost Cuba" and from whom the American Foreign Service Association—of

¹ The interview referred to follows Ambassador Herz' testimony.

which I was then a member of the board of directors—unsuccessfully intervened because the administration did not want to give him any prominent assignment for fear of flak from hostile Senators and Congressmen.

It could have been easily certified for such a man that there was no prospective assignment for him—and out he would go. He, and others in his category, would be on an escalator to the guillotine, but it would not be his value to his country that would decide whether the blade would fall, but a political judgment whether he was “controversial” or an embarrassment.

That, I submit, is coming very close to politicizing the senior ranks of the Foreign Service. Fearlessness at the bottom of the career pyramid is easy. Fearlessness at the top is sometimes also easy, particularly when you approach retirement. But fearlessness near the top, seeing how the heads roll of those who do not know how to make themselves agreeable to a new administration, could be a very dangerous thing to a diplomatic career and is likely to give way to conformity. We need, and will always need, a variety of senior Foreign Service officers, with widely divergent viewpoints. We need people who ask the inconvenient questions, who recall the things that others have forgotten or cannot remember because they haven't experienced them as a senior diplomat has.

Theoretically, by shortening the time in grade at the top and certifying to the nonavailability of onward assignments, by letting terms of able senior officers expire simply because they aren't showing enough “positive loyalty,” it would not take much time for some future Secretary of State, perhaps one who might be well-intentioned but only weak and inclined to yield to pressure from Capitol Hill, or the press, or the White House, to decimate, indeed to decapitate the Senior Foreign Service. This is an abuse that should not be allowed, that should be carefully guarded against in the legislation.

Perhaps I may be permitted to add one final observation. I am myself a member of the American Foreign Service Association. As already remarked, I was a member of its board of directors. At one time I was even its vice chairman. I write frequently for the Foreign Service Association's organ, the Foreign Service Journal. I am in full sympathy with its principal goal, the protection and enhancement of professionalism in our diplomacy. But I do not regard it presently as fully representative of the Foreign Service, if only for demographic reasons: It has more young members than old ones. This is not a criticism, it is a statement of fact.

Older officers, who now almost seem to be ashamed of being older and more experienced, are an endangered species in today's Foreign Service. Their percentage is constantly going down. But it is a fact of life that to the younger officers, there are always too many older ones holding positions of responsibility. I felt the same way when I was young. I am not criticizing it. All I am saying is that the virtues of having a corps, goodly proportion, of seasoned older officers available and on hand to make their input into the policy-formulation process and its executive—the virtues of that are not normally perceived by younger people.

That, I think, is why I have been encouraged by a number of older officers to come forward and make these observations about the pro-

posed legislation which, coming from them, would seem self-serving. My career in the Foreign Service is behind me. It has been a good career. I think today's service is excellent and should be protected against some future ravages by irresponsible politicians. If my testimony has sensitized you to that danger, if I have been able to point out that the danger is not fanciful, then I have, perhaps, rendered a service not only to your subcommittee but also the Foreign Service that I love, including the younger officers who may be inclined to worry about testimony such as mine because it tends to be in favor of lengthening the escalator to the guillotine.

Thank you, Madam Chairman.

[The material referred to follows:]

EXCERPT FROM "FOREIGN POLICY AND THE PROFESSIONAL DIPLOMAT" BY GEORGE F. KENNAN, IN THE WILSON QUARTERLY, WINTER 1977

[Secondly], this diplomat has to recognize that he is himself something of an anomaly within the traditional structure of American government—something for which there is not, and could not be, any fully natural and accepted place. He is not politically appointed—a circumstance which is sometimes a source of irritation, one suspects, for politicians, who see him as preempting positions and salaries that might otherwise be used to reward political supporters. But he is also not, or at least should not be, a member of that great body of lower-level serving personnel known as the civil service, which constitutes the overwhelming majority of those, other than the political appointees, who serve the government. But between these two categories of people who work for the government—the political appointees and the domestic civil servants—there is no third category, familiar to American politicians and to public opinion generally, to which the Foreign Service could be assigned.

With minor exceptions the United States has no tradition at all of a self-administered career service within the civilian (as distinct from the military) sector of government. To the extent, therefore, that the American Foreign Service remains a career service, immune to political appointment and resistant to control by the domestic civil service, it tends to become an object of bewilderment and suspicion in the eyes of Congress, of the political parties, and of much of the press. And yet the legislators and the party politicians, in particular, are precisely the people on whom the Foreign Service is of course dependent for its appropriations, its salaries, and the physical premises and facilities with which it has to work.

Underlying this organizational isolation, and in part explaining and reinforcing it, is an even more widespread and serious Foreign Service burden—namely, a deeply ingrained prejudice against people who give their lives professionally to diplomatic work. This prejudice operates within the political establishment in the first instance but also with much of the press and portions of the public.

The late French ambassador, Jules Cambon, in the celebrated series of lectures he once delivered before the French Academie (published in 1926 under the title of *Le Diplomate*), observed that "democracies will always have ambassadors and ministers; it remains to be seen whether they will have diplomats * * * [Diplomacy] is a profession that requires of those who practice it some cultivation and a certain *habitude du monde* [roughly: sophisticated view of the world]" But, he went on, to find people with these qualities, and to bring them together in a professional service, requires a certain process of selection; and this, he thought, would always be disagreeable to democratic tastes because "democracies have a difficult time tolerating anything that resembles selection."

However true these words might be with respect to other countries, they could not be more true of the United States, particularly at this time. We live, as we all know, in an age when egalitarianism is the prevailing passion, at least in many intellectual and political circles. We seem to stand in the face of a widespread belief that there is no function of public life that could not best be performed by a random assemblage of gray mediocrity. For people who see things this way, the idea of selecting people for any governmental function on the basis of their natural suitability for that sort of work must be rejected; because to admit that

some people might be more suitable than others would be an elitist thought—hence inadmissible.

And not only is selection per se distasteful to many Americans, but the particular qualities that would have to underlie any proper selection for professional diplomacy are especially odious. The very idea of this *habitude du monde* of which Cambon spoke is repugnant to many because the experience essential to its acquisition is one that cannot be obtained within our society; it can be obtained only by residence and work outside it.

To many people in journalistic and political life this *habitude du monde* is particularly disturbing, because it seems to imply on the part of the professional diplomat a certain deliberate self-distancing from those great currents of mass reaction and emotion to which American society is uniquely vulnerable and by which journalists and politicians, above all others, are carried, of which they are the spokesmen, and in the reflection of which they find their inner security. To them, the outlook of the diplomatic professional is a challenge—all the more provoking because it is one they cannot meet on its own ground. And the result of this is that the diplomat comes only too easily to be viewed as a species of snobbish and conceited elitist, *dépaycé*, estranged from his own country and countrymen, giving himself airs, looking down upon his fellow citizens, fancying himself superior to them by virtue of his claim to an esoteric knowledge and expertise and which by the very fact of its foreign origin challenges the soundness and adequacy of their world of thought.

And in this way there emerges, and finds partial acceptance, the familiar stereotype of the American diplomat as a somewhat effeminate, rather Anglicized figure (the British are usually made victims of our inferiority complexes), as a person addicted to the false attractions of an elegant European social life, usually to be found at parties, attired in striped pants, balancing a teacup, and nursing feelings of superiority toward his own country as he attempts to ingratiate himself with the hostesses and the officials of another one. The fact that there is no substance for this stereotype—the fact that what little substance it might once have had passed out of our lives decades ago, the fact that this particular professional dedication involves today a great deal of hard work, much discomfort, much loneliness, a dedication to the service of the nation far beyond what most people at home are ever asked to manifest, and, last but not least, in many instances no small amount of danger—all this is of no avail. The stereotype exists. It persists. It is gratifying to many egos. It will not soon be eradicated.

The multiplicity of critics and detractors of the American Foreign Service would not be so serious, perhaps, if it were balanced by any considerable body of defenders; but this, unhappily, is not the case. The Department of State, which theoretically controls the Service and ought properly to defend it, has neither the ability nor the will to act very effectively in this direction. The ability is lacking because, of all the departments and agencies of the United States, the Department of State is perhaps the only one that has no domestic constituency—no sizable body of the citizenry, that is, which understands its function and is concerned for it, no special interest groups who stand to profit by its activity and are ready to bring pressure to bear on Congress on its behalf. Lacking these things, it has little domestic influence. And the State Department's own will to defend the Service is also often lacking, because the Department is normally headed and administered by people without foreign-service experience—sometimes even by people who share the very prejudices and failures of understanding just referred to.

EXCERPT FROM AN INTERVIEW WITH GEORGE F. KENNAN BY JOHN F. CAMPBELL,
IN FOREIGN SERVICE JOURNAL, AUGUST 1970

QUESTION. When men like the late Senator Joseph McCarthy attack the Foreign Service for "disloyalty," isn't their main objection really that the Service is something of an intellectual elite and its members pick up eccentric and "un-American" habits from spending most of their lives mixing with foreigners and living abroad? Isn't this the real reason many congressmen can't stand the State Department?

Mr. KENNAN. Yes; I think there is, most unfortunately, a conflict between the qualities of character and personality that are most effective in the Foreign Service and those that most commend themselves to some people in Congress and, in general, to the American press.

In part, this arises from a suspicion on the part of congressmen and journalists that people so subtly different from themselves cannot fully respect them and must in some way be looking down on them. But there is also the fact that very few people in our domestic life—almost none, in fact, even among the most experienced journalists and legislators—have any proper understanding of the real function and requirements of the Foreign Service. They expect the FSO to be a sort of foreign exhibit of the American virtues and mannerisms, as they themselves conceive them. They expect him to cultivate popularity and to use this popularity for the “selling” of American outlooks (rather than policies) to other peoples. They do not realize that his main tasks normally have to do with other governments rather than with peoples; that his function is really that of an effective and unobtrusive intermediary, assuring the accuracy and usefulness of communication among governments; that he needs sometimes to take on something of the personal coloration, not just linguistically but in manners and way of thinking, of those with whom he has to communicate; that a strident and expansive Americanism is often an impediment in this respect; and that in his quality of an intermediary he is bound, if he is to be useful, to acquire a certain inner detachment toward both sides, which does not imply any disloyalty to his own. I would submit that no one can long pursue the Foreign Service profession without acquiring a certain critical detachment toward the behavior and policies of all governments—including his own—a detachment which respects the prejudices and limitations of vision by which that behavior and those policies are often inspired, but does not necessarily share them. Congress and the American public must ultimately choose, either they want effective intermediaries, effective executors of American policies abroad, and effective observers as well, in which case they have to tolerate a certain amount of cosmopolitanism in the personal make-up of these people, or they must be prepared to forgo the advantages of a highly effective diplomatic arm.

It is a great pity that this touch of cosmopolitanism (it is generally very slight) is so often taken for effeminacy or lack of affection for one's own country. It is a poor sort of manliness that has to document itself by expansive and boisterous behavior; this latter, in fact, is usually the mark of inner insecurity and uncertainty. And the variety of patriotism which has never known exposure to the challenge of different ways of thought and behavior is not necessarily the strongest form of patriotism. One thinks, here, of Milton's words (from the *Areopagitica*):

“I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and sees her adversary, but slinks out of the race where that immortal garland is to be run for, not without dust and heat.”

I am afraid that before many Americans can hope to have a really effective Foreign Service, they will have to overcome certain forms of narrowness and provincialism in their own attitude toward the tasks and requirements of Foreign Service work.

QUESTION. Franklin Roosevelt seemed to have very little use for the Foreign Service. American diplomats were not consulted about most of the major wartime decisions, and Roosevelt traveled to Casablanca and Yalta without senior State Department advisers. He once wrote in a memorandum that the successful diplomat is “a man who is loyal to the Service, who does not offend people and who does not get intoxicated at public functions.” Was it Roosevelt's personal temperament that made him avoid diplomatic advice, or was it the feeling that a President can never be sure of receiving from professional diplomats the kind of intense loyalty he gets from his political supporters?

Mr. KENNAN. I am not sure of that answer to this question. Sometimes the reluctance to recognize any virtue in the Foreign Service officer's expertise conceals a painful awareness of one's own lack of it. In FDR's case, I think there was something personal, as well. He disliked social prominence and pretension; and he probably associated these things with the Foreign Service. He had little or no understanding for a disciplined, hierarchical organization. He had a highly personal view of diplomacy, imported from his domestic political triumphs, and great confidence in his personal ability to wheedle anybody into anything. His approach to problems of foreign policy was basically histrionic, with the American political public as his audience. Foreign Service officers were of little use to him in this respect. His taste was for the dilettante, and he liked boldness in the people around him. He disliked cautious, experienced men; and it is true that a Foreign Service officer, since he is a professional, has the same kind of caution bred of experience that a good doctor or lawyer has.

Mrs. SCHROEDER. Thank you very much, Ambassador. We really appreciate your viewpoints.

Would it be fair to summarize that what you are saying is you don't like the Senior Foreign Service executive service? Is that what you are saying?

Mr. HERZ. Madam Chairwoman, I see merits in having a Senior Foreign Service. I think they are marginal, but they have real substance.

However, if the price of having a Senior Foreign Service is to give the Secretary of State so much leeway, and so much flexibility that he could be arbitrary in the matter of retention of people in the Senior Foreign Service, then it would be not worth having.

I am not proposing that the idea of a Senior Foreign Service be scrapped. I am proposing that it be rethought, and that it be hedged in by safeguards that would make it very difficult or impossible for a future Secretary of State to abuse that system.

Mrs. SCHROEDER. I would like to know what specifically in the legislation you see as the loophole allowing abuse.

The Senior Foreign Service was specifically put in to parallel what we have in the civil service, which is the Senior Executive Service. SES allows no more than 10 percent to be political appointees, does allow award for merit, but other than that it doesn't allow career civil servants to be thrown out.

The special extra pay in SES comes on the basis of merit. It is a management tool to reward those at the senior levels so they are just not all in the pack together and there is no incentive to do a better job.

We heard the same kind of criticisms that you are making when we were talking about this in reference to the civil service. What power is there that you think is so comprehensive and so sweeping that the Secretary of State is going to have that he can really terrorize the whole Senior Foreign Service.

Obviously everyone who doesn't get a pay increase is going to be mad and think they have been abused. But they are not fired on the other hand, either. So what specific power does he have? Would you deny the 10 percent?

Would you deny the right to grant merit increases to some people who perform better than others? Would you deny the sabbatical? What would you deny in there?

Mr. HERZ. Thank you, Madam Chairwoman.

Mrs. SCHROEDER. I am sorry. It is 5 percent in this bill, excuse me.

Mr. HERZ. I support the 5 percent. I do not address myself to the question of merit increases, which may be a good idea. I have not studied that aspect. I certainly do not oppose the ideas of the sabbatical.

The features of the proposed legislation that I find subject to possible abuse in the future are to be found in the following sections.

Section 602(b). "Decisions by the Secretary on Promotions into and retention in the Senior Foreign Service shall take into account the needs of the service to plan for the continuing admission of new members, and for effective career development and reliable promotional opportunities."

I find that in the absence of a legislative history that explains limitations upon these criteria, these are so vaguely stated as to be subject

to arbitrariness on the part of the management of the State Department at some time in the future.

The needs of the service to plan for the continuing admission of new members is a rubber term. It could be expanded or contracted as the Secretary desires.

Section 612, at the end of paragraph (a), refers to the strange phenomenon that I adverted to in my testimony, in my statement, where it speaks of the Selection Board's taking into account not only the usual records of performance evaluation and commendation, awards, et cetera, but also "records of current and prospective assignments."

I think on this point I can be more categorical. I believe the words "and prospective" should be stricken from the bill because it means that if you don't like Mr. X, who might be an excellent officer, who may have superb credentials, who may have distinguished himself in the Foreign Service, showing good judgment, a good executive, but for some reason he becomes an embarrassment to the new administration, or is perceived as an enemy, or is too softhearted, or too hard-nosed, it could be simply certified that there are no prospective assignments for such a man, and with no prospective assignments for him, there would be no reason to promote him or to retain him because it would have been certified that the man is unemployable.

Now, I think the burden of my earlier statement was——

Mr. PASHAYAN. Excuse me, would you entertain a question at this point.

Mr. HERZ. With pleasure.

Mr. PASHAYAN. Very simply—suppose the person you are describing is inadequate in all respects, rather than being distinguished.

Mr. HERZ. Thank you. I think this enables me to clarify my point.

Section 612 says that the Selection Board should take into account

* * * records of the character, ability, conduct, quality of work, industry, experience, dependability and general performance of members of the service, including reports of Foreign Service inspectors, performance evaluation reports of supervisors, records of commendations, awards, reprimands, and other disciplinary actions, and (with respect to the Senior Foreign Service) records of current and prospective assignments.

So here you have the possibility only in the case of the Senior Foreign Service of not only these other qualifications being taken into account, but specifically the added criterion of whether there is a job available for him.

Mr. PASHAYAN. But that is not my question. You were saying that in the case of a Foreign Service person who is very distinguished, that this factor alone might work to his disadvantage.

My question to you is, suppose that we have a dud. Doesn't this then enable us to weed out a dud? Surely all of your colleagues are not distinguished, as distinguished as yourself.

Mr. HERZ. Congressman Pashayan, I understand your question. Let me try and get at it in perhaps a different way.

I am assuming that if the man is a dud his record will not show that his character, ability, conduct, quality of work, industry, experience, dependability, and general performance have been outstanding.

Mr. PASHAYAN. Well, now, that is not true.

Mr. FASCELL. I was going to say that is a bad assumption.

Mr. PASHAYAN. If anything, the paperwork shields these kinds of things more than reveals them.

Mr. HERZ. We have to create, if we don't have it, for the Foreign Service a system of evaluation that is as objective as we can make it.

Mr. PASHAYAN. Let's take your assumption for a minute. I am willing to do that for the sake of argument.

Let's take your assumption for a moment and suppose that we have somebody who is well qualified. Why would any administration want not to use that man?

Mr. HERZ. Well, perhaps you were not yet present when I made my earlier statement. We have had cases—

Mr. PASHAYAN. Perhaps I was, but perhaps I disagree with it. Go ahead.

Mr. HERZ. We have had cases in the history of our country, in the history of our Foreign Service, where people were treated as unassignable, not because they were duds but because they were a political embarrassment.

Mr. PASHAYAN. Let's take that point for a moment. Are you suggesting that an administration does not have a right to deny assignment to somebody who is an embarrassment to them? Is it good policy to have personnel in positions that are in fact embarrassments to any given administration?

Mr. HERZ. May I answer the question perhaps by rephrasing the question. You say should an administration have the right to get rid of a man who is an embarrassment. I would say it depends upon what kind of embarrassment the man is.

If he is an embarrassment because he is incompetent, that is one thing. If he is an embarrassment because he does not conform, then you can deny him policymaking positions, you can deny him access to the policymaking officials of the Department of State who are politically appointed.

But you cannot deny him, you should not be able to deny him his entire career because there should be a place for such a man in the Foreign Service, a place of responsibility in the field perhaps where he is able to serve honorably and make his abilities available to his country. It depends entirely on how you define the word embarrassment.

Mrs. SCHROEDER. Mr. Pashayan, can we go back to questions? Congressman Fascell, do you have some questions?

Mr. FASCELL. Thank you.

I just want to ask one question. The theory of the Senior Foreign Service is that when you get to level 1, or whatever it is, you have now put in or should have put in a full career, by most standards because by that time you have spent almost 25 or 30 years in the Service.

Now, the theory of the bill, as I understand it, is that, at that moment in time the career officer voluntarily decides whether or not he wants the advantages and the disadvantages of the Senior Foreign Service.

Mr. HERZ. That is correct.

Mr. FASCELL. Do you think that is a valid theory, at that point?

Mr. HERZ. You pay a price for it.

Mr. FASCELL. Agreed. But it is voluntary. Nobody is forcing them to do it.

Mr. HERZ. No. The country is paying a price for this arrangement. My question is—

Mr. FASCELL. Wait a minute. You are entitled to your opinion. I am not being argumentative. There is the other side of that coin. You say the country is paying a price. That is debatable right there. I cannot leave it on the record as an indisputable fact.

Mr. HERZ. May I continue my reply to you, sir?

Mr. FASCELL. Sure.

Mr. HERZ. Because I have not finished. This was intended—

Mr. FASCELL. I didn't mean to interrupt you. I didn't think I had finished my question. But go ahead.

Mr. HERZ. This was intended as an introduction to a longer reply to your question, which is very thoughtful and which I very much appreciate. I understand the point of view that if a Foreign Service officer has put in a career, has been successful at it, and is admitted into the Senior Foreign Service, he gives up certain things. He gains things and he gives them up.

Then you say why should he not then have the risk of having only a limited appointment. Why is this asking so much? Did I understand the question correctly?

Now, my reply to that would be that, of course, the individual is paying a price. I was not concerned so much with the individual.

Those individuals, Mr. Chairman, represent a national asset. We don't have all that many of them. When you have devoted a 20-, 25-, or 30-year span to foreign affairs, you are a repository of experience, of knowledge, you know where the bodies are buried, you know where mistakes have been made before, you know what works and what doesn't work, you have experience with certain countries, and with certain situations, you have lived through crises. You are capable of giving good advice.

If you have gotten that far, I assume you have not gotten that far by just polishing the apple. You have gotten that far in a very competitive system, because you are better than others, and you have more to offer than others.

When you reach that point, what I regret, and what I suspect, and what I would like to warn against, is that the bill would transform such an officer into a politician. He will not be a good politician.

Mr. FASCELL. The best politicians I ever met were the bureaucracy in State.

Mr. HERZ. I would rather have them be nonpartisan, observers, advisers, and executants of policy, than amateur politicians on Capitol Hill.

Mr. FASCELL. Mr. Ambassador, you know, I feel in this colloquy that you and I are wrestling with a shadow.

I ran against Joe McCarthy. That is the way I got into the Congress. A one-man Senate committee, abuses of dignity. So, I am just as concerned as you are about the possibility of abuses to an individual, and the loss to the country of great talent.

I have always seen the other side of the coin, and this is the shadow I am talking about. I am assuming you are going to have an honest

Secretary of State. I am assuming you are going to have a sensible President. I am assuming you are going to have people in the Department who have got the interests of the country at heart.

Now, maybe I am naive, but I don't think I am any more naive than you are in asking for those kinds of qualities that you perceive in Foreign Service officers. We cannot write all of that into legislation, you know that.

Now, the question is how strong a safeguard can we put into this bill to do what you want to do. I am not sure of that. I am willing to explore it.

I understand the point you are making. You don't want a Secretary of State or one of his assistants to run amok, depending on how much political power they have been able to garner either in the White House or in the press.

But, I don't want to close the door either to the problem that we have been facing for years, which is that you have able, dedicated senior diplomats at the top level, who have compacted the State Department for the last 30 years.

I don't necessarily want to clean house. I just think we need to have some kind of an orderly flow. How do you achieve that? I don't know.

Mr. HERZ. I think there are many ways in which that orderly flow can be achieved, short of giving the Secretary of State the kind of powers—

Mr. FASCELL. We will have to examine that. I don't know that we can close the door entirely. We are going to have to give the Secretary some discretion.

Mr. HERZ. Well, Mr. Chairman, I think what you have just said materially satisfies the concerns that I have expressed. It seems to me—I have not come here to ask you to throw out the legislation. I have not come here to accuse the present Secretary of State or anyone else of being irresponsible.

Mr. FASCELL. No; your points are quite clear.

Mr. HERZ. If some safeguards can be added to this bill to take into account these concerns which come from experience, I wish, Mr. Chairman, that you had beaten Senator McCarthy a little earlier than you did.

I can think of a few others in the same category. I can think of some who were in the State Department, not ill-intentioned but weak and bending to the political winds of the time, and thereby very much inclined to do away with valuable public servants, who could have given them good advice, but who were looking for conformity rather than for that good advice.

Mr. FASCELL. I think, speaking philosophically, you put your finger on it. There is a suspicion, the minute you set apart people as a class, and give them prestige, and they speak a different language or have a greater capability, or they all come from Harvard, or they all become independent, they try to become apolitical.

I don't care how you clothe them in terms of the security of the country or their patriotism, there is going to be a healthy skepticism of an elite society within a society.

Mrs. SCHROEDER. Mr. Chairman, I think we are going to have to interrupt this for a minute. We have a vote on the Postal Service Act.

I know some of us are going to have to stay over and work on that, but I thank you for coming.

Mr. FASCELL. I will come back.

Mrs. SCHROEDER. Are there any other questions of the witness?

Mr. FASCELL. If you excuse us, we will come right back.

Mr. HERZ. Thank you very much.

[A brief recess was taken.]

Mr. FASCELL [presiding]. The subcommittee will come to order.

Thank you for waiting. We rushed back as quickly as we could.

Mr. Leach, do you have some questions?

Mr. LEACH. Just a couple. Thank you, Mr. Chairman, I am sorry to bring you back.

Mr. FASCELL. No; that is all right. I am delighted.

Mr. LEACH. I have a couple of questions. Your description of the Foreign Service as becoming younger rather than older perplexes me a little bit.

It is my understanding that entering Foreign Service officers are of older age than they have ever been before and that there has been a genuine lack of egress of senior officers. Statistically can you back up your allegation that it is a younger Foreign Service?

Mr. HERZ. My remarks were addressed to the Foreign Service Association which, as I said, for simply demographic reasons, if you have a career pyramid with more people at the bottom than at the top, it is perfectly normal that the bulk of its membership would be younger rather than older. We have members like myself and other retired officers who make an input into their decisions, but when push comes to shove, I think the association would be more likely to espouse the interests of junior and middle-grade officers.

Insofar as the service itself is concerned. I believe the figures, which I do not have here available, from the Department of State, indicate that there are less senior officers now than there were 2 years ago and that there were less senior officers 2 years ago than there were, say, 5 years ago.

There has been a problem of impaction at the top. I think it has been largely taken care of. I don't see this as a problem at the present time. I may be wrong.

I think the figures should be studied, but I would be leery, Congressman, of accepting the idea that the endemic problem of the Foreign Service has been impaction at the top.

What we have seen is the perfectly normal reaction of younger officers, which we find in organizations of all kinds that there is just not enough room at the top.

They want what they call the dead wood weeded out, and I am certainly in favor of weeding out the dead wood, but an efficiently working selection-out system should be a matter of routine that should go on year in and year out.

I think the selection should not stop at the top. Career ministers should be just as much subject to selection out and relative performance, relative merit, and relative capabilities should certainly play a major role in these decisions.

But I don't think that the main purpose, the main merit of the legislation, is going to do away with this problem. There will always be this dissatisfaction.

Mr. LEACH. George Ball, in a column this morning in the Washington Post, describes the diplomatic service today as adopting 15th century techniques, specifically, the involvement in personal diplomacy of Secretaries of State, Presidents, Vice Presidents, and national security advisers. He argues that this is a departure from the scheme first discovered by the Italian city-states.

He also notes that we have recently seen a new type of personal diplomacy where we have ambassadors with political bases of their own who act against instructions, à la Andrew Young, or who announce publicly that their instructions are nonsense and who desire to act independently of the Secretary of State, à la Robert Strauss.

Would you characterize this administration's diplomacy as non-professional? Do you think there are legislative safeguards against this practice that can be devised or is that a matter beyond the scope of legislation?

Mr. HERZ. This is a very thoughtful question that would be deserving a longer reply than I am able to give you. I read Mr. Ball's article in today's Washington Post. I think that essentially he is correct. Whether it is 15th century diplomacy that we are practicing or just bad diplomacy, I don't know, but, well, I suspect myself of perhaps being a little prejudiced in favor of the career Foreign Service when I agree with Mr. Ball.

[The article referred to follows:]

[From the Washington Post, Friday, Sept. 7, 1979]

SHOWBIZ DIPLOMACY¹

(By George W. Ball)

We have set back diplomacy by 500 years. Prior to the 15th century, kings and princes did business with one another by elaborate personal visits and then by special envoys. But in 1455, an Italian city-state first established a permanent diplomatic mission in a foreign sovereignty and that practice was soon universally adopted. American diplomacy has now reverted to the pre-15th-century pattern.

Consider our current application of these medieval arrangements. We use our embassies as observation posts, while reducing our ambassadors to messenger boys. All important business is transacted by direct visits of the president or the secretary of state or even of that aberrant diplomatic mutation, the national security adviser. Lately we have resorted to highly publicized missions by American personalities primarily known for their prowess in other fields. Accompanying those dignitaries is a restless retinue of press and television reporters to record their between-innings banalities enlivened with the informal indiscretions of an anonymous "official on the plane." All that provides rich fodder for the afternoon news shows, but it seriously impedes the conduct of a coherent foreign policy.

Secretary of State John Foster Dulles was the first to exploit the "do-it-yourself" potential offered by Air Force One and its siblings, while Henry Kissinger seems never to have understood any other method. But, unhappily, the addiction did not stop there. A reversion to an ancient diplomatic procedure that began as an expression of two hypertrophied egos is being perpetuated by a more modest successor, who has even made a pilgrimage to the terrorist leaders of the Zimbabwe Patriotic Front. Meanwhile, restricted by the episodic limitations implicit in this method, our government has repeatedly overlooked deteriorating relations with countries not in the immediate spotlight, while permitting dangerous situations to develop without timely or adequate attention.

The prospects for drift and breakage inherent in these atavistic diplomatic procedures were intensified when Kissinger's impressive theatrical flair transmuted his virtuoso diplomacy into something novel and seductive: Diplomacy as

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Showbiz. During his spectacular season on stage, his attempt to bring two nations into agreement became an enthralling dramatic event, with the secretary of state pitting his skills (and America's pocketbook) against an Israeli and Egyptian bargaining power that was progressively inflated by the process. Thus the world was wonderfully entertained by America's "miracle worker" flying like Superman between Middle Eastern capitals, while press and television breathlessly reported, "He's down; he's up, he's gaining momentum!" and political commentators sounded like sportscasters.

Showbiz diplomacy has notable limitations. It destroys the scope for quiet and subtle maneuver available to a less flamboyant approach, such as that habitually practiced by the most skillful American negotiator of modern times, Ellsworth Bunker, who repeatedly achieved prodigious feats of mediation at almost no expense to the American taxpayer by never letting his own ego become a factor in the bargain. But an even more important defect of the method is that it narrows the goal of the contest to the conclusion of the agreement—almost any agreement—without sufficient regard for its cost or content. Kissinger's most theatrical achievement, Sinai II, was, for example, an unprecedented real-estate transaction in which the United States paid Israel an exorbitant price, both in money and political commitments, for a huge acreage of desert sand and a few oil wells that it then paid the Egyptians to take over.

The Camp David Accords—which might properly be called "The Son of Sinai II" or, more succinctly, "Sinai III"—expanded that transaction to include the balance of the desert with additional huge payments to each side. Of course, that was not all President Carter intended; he had initially set out in great good faith to produce a comprehensive Middle Eastern agreement that would go to the heart of the dispute—the settlement of the Palestinian issue. But, here again, the pressures of a theatrical diplomatic process constricted the focus to the narrow objective of getting both sides to sign something—an objective that became all-important when the president engaged his personal prestige in the effort. The agreement that emerged has, by polarizing the Arab world, prejudiced any ultimate solution of the festering, substantive problems of the Arab-Israeli dispute to the disadvantage of the United States.

Recently we have witnessed a further variant of Diplomacy as Showbiz: the Prima Donna as Diplomat. Those two well-publicized personalities, Ambassadors Andrew Young and Robert Strauss, have both shown their disdain for the accepted rules of diplomacy. Young put the cap to a long career of free-wheeling by talking against instructions to a PLO representative, while Strauss returned from a mission to the Middle East with the announcement—unprecedented in diplomatic history for a serving ambassador—that he had never believed in the mission on which he had been engaged and was unprepared to accept instructions from the secretary of state.

It is not surprising that the chancelleries of the world have reacted to all this with a nervous mix of belly laughter and disbelief. No doubt, if we continue to practice our modern version of medieval diplomacy as showbiz, replete with well-advertised stars addicted to improvisation, while our permanent diplomatic establishment atrophies from desuetude, we can make foreign policy more entertaining. But at what cost to American leadership? Even if it's less fun, shouldn't we once again move boldly forward to the 15th century?

Mr. HERZ. Yet I have seen too many ad hoc appointed ambassadors or political officials in the Department of State going out, wading into the quagmire because they felt that their own visibility was more important at home, the press exposure was something they craved, and then the mess that had to be cleaned up afterward.

I think there is a place for top-level diplomacy. I don't mean to say that our career diplomats or other appointed ambassadors can carry on all the diplomatic business, but I believe the tendency toward summitry, the tendency toward the special emissary, what the Vatican calls the intervenor, the man who was sent out to supersede everybody on the spot, I think this is probably something that would be wise to curb insofar as possible. Yet I think the legislation that we have before us cannot really curb this phenomenon because these are decisions made by the President which he has the right to make, I believe, under

the Constitution. They may be good decisions. They may be bad decisions, but it is very hard to legislatively impose impediments to them.

Obviously as a career officer, I like the idea of a restricted number of noncareer appointments in the Senior Foreign Service.

I have very little confidence that an administration that is bent upon circumventing this provision will not find a means of doing so. Still, I think it is a step in the right direction. We are the only major country which has so many amateurs in top positions in its diplomacy abroad.

I am not questioning that we must have politically appointed, well selected, politically sensitive, hopefully politically experienced people at the top in the State Department and around the President because these are the people who have to pay the price politically for things that go wrong.

I accept this. I think this is part of our system. I think it is right and it is also effective, but when it comes to sending ambassadors abroad, I don't want to mention names, but two of the earliest appointments of this administration were to Mexico and Saudi Arabia and they were both people, honorable people, no doubt, who had no visible experience in foreign affairs and even less experience in the regions of Latin America and the Arab world. Yet these are exceedingly important positions.

So I think the curbing both of the intervenor-type of ambassador and of the amateur is very desirable, and if there were any legislative way of imposing obstacles to them I would certainly support it very strongly.

I would like to make one additional remark on this subject because I don't wish to be misunderstood. Obviously a career officer like myself can be expected, not just expected, but rightfully expected, to have a certain prejudice in favor of the career as against the politically appointed ambassadors and for that reason I wish to pay tribute to three ambassadors with whom I have served who were not career people: Ambassador David Bruce, Ambassador Douglas Dillon, and Ambassador Ellsworth Bunker, were among the finest diplomats our country could possibly have had. So I have no prejudice against politically appointed ambassadors, provided they are well selected and well qualified and have germane backgrounds and have natural skills that commend them for that appointment.

It has not always been so and I am sorry to say that the present administration is not much better, a little better, but not much better than its predecessors in that respect.

Mr. FASCELL. Mr. Ambassador, thank you very much. We are going to have to go answer this rollcall, but I want to express our appreciation to you for your testimony, for answering our questions and pointing out those specific areas where you think this bill could be improved.

Thank you very much.

Mr. HERZ. Thank you, Mr. Chairman.

Mr. FASCELL. The subcommittee stands adjourned.

[Whereupon, at 10:40 a.m., the subcommittees adjourned.]

THE FOREIGN SERVICE ACT

TUESDAY, SEPTEMBER 11, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees met at 11:45 a.m., in room 2200, Rayburn House Office Building, Hon. Dante B. Fascell (chairman of the Subcommittee on International Operations) presiding.

Mr. FASCELL. We meet today to continue our hearings on the proposed Foreign Service Act of 1979. Our witness today is Ms. Janet Lloyd, Director of the Family Liaison Office at the Department of State.

Following that, hopefully, we will get to Mr. Ben Read, the Under Secretary of State for Management.

I want to apologize. We have all got too much to do and all of us are supposed to be in three places at once. We certainly appreciate your patience in waiting on us. We have had to delay this meeting several times already this morning. We are anxious to hear you and I know you have your testimony.

Without objection, we will put it all in the record. You may proceed as you like. If you want to summarize the main points, you certainly may. If you want to read it all, that is all right.

STATEMENT OF JANET LLOYD, DIRECTOR, FAMILY LIAISON OFFICE, DEPARTMENT OF STATE

Ms. LLOYD. Madam Chairman, Mr. Chairman, I will summarize on the basis of our having little time left this morning.

The Family Liaison Office welcomes the opportunity to testify before you today to tell you about our daily operations and our plans for the future. We appreciate the continuing interest and support you have shown us since the opening on March 1, 1978.

I would like briefly to introduce my staff. This is Mette Beecroft. We share everything together. At the end is Joan Scott, who is a Foreign Service secretary. She has served in six posts overseas and has worked for an earlier Director General. Without her, we would never have gotten off the ground.

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Sitting next to her is Susan McClintock, our career counselor, who has set up the skills talent bank. And our newest addition is Bernice Munsey, an educational counselor.

Mr. FASCELL. Let me commend all of you who have participated in this, and also Mr. Read and the Department for the willingness to try this out and make it work.

Ms. LLOYD. Thank you.

I will go very quickly over this, if you want to follow along with me. We do divide our time roughly 50-50 between personal services to individuals and special projects in what we consider policy matters. We receive a tremendous number of inquiries every day, either people coming into the office, by telephone, or by letter.

We figure as best we can, we get an average of 40 inquiries per day. I have listed here the areas in which we get asked questions. We respond to the inquiries.

Mr. FASCELL. I am surprised it is so short. [Laughter.]

Ms. LLOYD. Well, we left a few out. [Laughter.]

We respond to the inquiries we have information on, and we do have a great deal of information in the office. But if it is a question that should go to someone in the Department, we refer the person directly or to a community resource.

We do strongly feel our major responsibility is to the individual seeking help in our office.

On page 3 I have listed three rather typical examples of the kinds of, I guess you would call them, social service activities we get involved in. The first one was a particularly interesting case in that it was a widowed Foreign Service spouse who returned to the United States with three tiny children in a very difficult situation, obviously.

We were able to help her with housing, schooling, money, and all sorts of things in the beginning. And the happy ending to the story is she herself became a Foreign Service officer and is back overseas with her three children serving our Government.

I will skip the other examples here in the interest of time.

The project and policy issues to which we have devoted a great deal of our time this year I have also listed. We now have 58 Family Liaison offices overseas, which is particularly exciting to us because it is a grassroots movement that is needed in the field.

It is, we believe, having a tremendous effect on improving morale overseas. That has obviously taken a good deal of administrative time.

We have set up the skills bank which you had supported from the very beginning. We now have 863 spouses, both male and female, still predominantly female, but we have quite a few male ones also.

Susan McClintock, with the help of the rest of us, has run two very good career counseling workshops for spouses based in the United States, both in terms of finding jobs here in Washington as well as what they can do to help themselves locate employment when they go overseas.

We have assisted with the writing and publication of the A-1 and A-2 nonimmigrant visa applications, which you may or may not know is the procedure we are working on to provide for reciprocity with other nations overseas. They will go into effect on September 21 and there will be a great deal of work subsequently to make them effective. But it is en route, anyway.

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We have worked with personnel in the Foreign Service Institute to write up regulations for the monthly child care grant that was passed last year allowing \$300 for child care so that spouses might pursue language training before being assigned overseas.

We worked recently on a pilot project with the Foreign Service Institute. To train spouses on a space available basis to work as part-time employees overseas in counselor and in budget and financial management work.

These are areas which are often short-handed overseas and trained spouses can help out during peak and vacation periods. So we are training spouses who will be fully trained to take on these responsibilities, probably as "PIT" (part-time intermittent) employees.

When the Iranian evacuation took place, it was the largest and most disruptive evacuation in our history. There seemed to be no method with which to help families deal with the terrible discombobulation. So, under the auspices of our offices, there was an Iranian Evacuation Task Force set up which I believe did a great deal to help individuals through that time.

We in our office have strongly supported additional mental health services for our people overseas. These services are now easily available to the American population at large here in the United States. Therefore, with the great shortage of available mental health services overseas, a great need is felt.

Management has made a decision to establish two new positions for regional psychiatrists. We already have an excellent one, Dr. Rigamer, based in New Delhi. We have one whom I believe has just gone out to Vienna who will serve the people in Europe and will go to Moscow and spend a week, a month in Moscow helping the people there.

We are seeking another one to be based in Monrovia to help work regionally through the African Bureau.

We have published a number of useful documents which are listed here. Certainly, the "Washington Assignment Notebook" has been very well received, and we publish quarterly something called the "Flo Update," which is an effort to get out to—I say families often—but what we find is everyone uses our services, employees as well, to keep people abreast overseas of legislative changes and other changes that might affect them.

We spend a great deal of time addressing different groups. I particularly want to mention the inspection teams. We are a very small office, as you can see, with 58 offices overseas, and they are growing by leaps and bounds. I am rapidly losing my ability to stay in touch with them individually. Consequently, we work very closely with the inspection teams when they go overseas so that they carry information from us.

They talk with families, spouses, and employees and bring information back to us. It works very well as a communication link. I think we are particularly proud of the fact that the Family Liaison Office is a model. There has never been one like it before. We have been sought after by the National Security Agency. Mette has spoken twice and will speak again to their onsite managers.

DIA and CIA have been interested, and I have had a number of meetings with people here and people from diplomatic personnel officers overseas who are undergoing many of the same dif-

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facilities we are and have sought out the Family Liaison Office as a model to see whether they could use it in their countries.

As I mentioned earlier, there are 58 counterpart offices overseas. I have listed what they do in my written statement. Each office has developed a unique personality of its own and is responsive to the needs of that particular post. There are no two of them which are similar, which I think is wonderful.

In conclusion, more or less, we feel a lot has been accomplished in a year and a half but there are a lot of important issues that remain to be solved. The Association of American Foreign Service Women has already testified on the subject of benefits for divorced Foreign Service women and employment issues. These are certainly two of the most important issues facing the Foreign Service spouse at this time.

The pending bill on benefits to divorced spouses, if finally cleared by the OMB, does not go as far as the Association advocates in these or other areas. I would suggest myself a careful consideration of the relative advantages and disadvantages of Mrs. Schroeder's bill and the present proposal with OMB.

I would like to speak briefly about the Foreign Service national American family member plan approved by the Congress last year. As you well know, it has taken quite a long time to implement. There are a number of reasons for that. It began as an experimental program on December 30 and went worldwide on July 3. It is growing quite rapidly now.

Although we still have only three people working in those positions in Kingston, Paris, and Bonn, there are, and it has gone up since I wrote this, now 25 jobs designated to be used in this way.

Perhaps you will be interested in knowing why it is working in certain areas or not later, but I think I will skip over that for the moment.

If this program is to fulfill its purpose of expanding job opportunities for Foreign Service spouses overseas, we have attached special importance to the provision in section 333(a) of the Foreign Service Act which would authorize payment at American Foreign Service schedule rates.

It is not working in areas where the local wages are simply much too low to be interesting to spouses.

I have gone on here to discuss representation a little bit, travel allowances for the children of divorced and separated parents.

We are also interested in seeing the provision of a survivor annuity to all current surviving former spouses of deceased members of the Foreign Service. And there are several health insurance matters that should be looked into.

That is a brief overview, I think, of what we do in the office. Traditionally the Foreign Service has sought to be representative of the best aspects of American life and culture as it pursues the conduct of foreign relations abroad. The Foreign Service family has long been an essential element of our diplomatic presence overseas, but the Foreign Service is not just a career or a job. It is a way of life. It is a way of life that depends not only upon the work and dedication of its employees but also upon the goodwill and sense of community of its family members.

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In recent years, the Foreign Service family, even more than the American family in general, has been deeply affected by the changing roles and aspirations of women, by new and harsher economic realities and other changes in our society which have undermined its authority and severely tested its strength.

The modern, highly educated American family in which both husband and wife work and share in the responsibilities of the home and parenthood does not easily fit into the traditional world of diplomacy. It is becoming increasingly difficult for family members to reconcile the realities of American life with the demands of diplomatic life and culture abroad.

In response to the emerging concerns of the Foreign Service family, the Family Liaison Office was created. I believe the office is and will continue to be an effective agent of change that will help our Foreign Service to better meet the realities and responsibilities of the future.

That concludes my statement.

[Ms. Lloyd's prepared statement follows:]

PREPARED STATEMENT OF JANET W. LLOYD, DIRECTOR, FAMILY LIAISON OFFICE,
DEPARTMENT OF STATE

INTRODUCTION

Madame/Mister Chairmen, members of the committees, the Family Liaison Office welcomes the opportunity to testify before you today—to tell you about our daily operations and our plans for the future. We appreciate the continuing interest and support your committees have given the Family Liaison Office, both before and since its establishment on March 1, 1978.

STAFF

I would like to begin with a quick introduction of the members of the Family Liaison Office staff:

Mette Beecroft is our Deputy Director. We work closely together and share all the various responsibilities of the office.

Joan Scott is a career Foreign Service secretary. She brings us professional experience having served in six countries overseas as well as having worked previously as secretary to a Director General of the Foreign Service.

Susan McClintock is a Career Counselor and has responsibility for the development of the Skills Bank.

Bernice Munsey has recently joined the office as an educational counselor. Previously she was the Director of the Foreign Service Educational and Counseling Center.

Both Susan and Bernice work part-time.

FUNCTIONS

The Family Liaison Office divides its time roughly 50-50 between personal services to individuals and special projects and policy questions. Let me start by explaining what we do for individuals at the counseling and referral level.

COUNSELING AND REFERRAL

People make inquiries of the office either in person, by telephone or by letter. On an average day we respond to approximately 40 requests for information or help. The inquiries we receive are enormously varied and fall generally into the following categories: Spouse employment, schooling, divorce related issues, child care, correspondence courses, mental health referrals, domestic relations lawyers, adoption, car rental, temporary housing, alcoholism, retirement, consumer information for overseas, department procedures such as obtaining a pass or enrolling for a course, allowances, insurance—health, property and transit, shipping, State and Federal taxes, language and functional training for spouses, visa applications

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for foreign born family members, traveling with animals, and nursing home facilities.

We respond to the inquiries that we feel competent to answer and in other cases put the requestor directly in touch with the responsible person either in the State Department or the community. We feel strongly our major responsibility is to the individual who comes to our office with a personal problem.

Let me cite some examples of the social services we have been able to provide.

Recently a young Foreign Service spouse with three small children was widowed in Africa. She returned very abruptly to the United States with no home, no schools for the children and little available cash. We helped her locate these essential resources during a time when she was in emotional crisis. The happy ending to the story is that she subsequently became a Foreign Service officer herself. She is now overseas with her children, working in one of our missions.

We have aided a single parent who returned suddenly to Washington needing heart surgery for her 14-month-old child.

We have been able to intervene on behalf of a family overseas which learned their teenage son had been arrested in the United States for driving a motorcycle while drunk. The family was too far away to arrange for bail from family resources quickly. We were able to get a lawyer and locate funds for his release. Our case load covers all the problems found in any community, including divorce, alcoholism, drug abuse, kidnapping, wife abuse and delinquency. In the Foreign Service, however, these problems often become more intense because assistance is not readily available at post.

SPECIAL PROJECTS AND POLICY ISSUES

The Family Liaison Office has spent much of its time this year in projects and policy issues of great importance to the well being of families and Foreign Service employees generally.

1. We have written guidelines, established policy and procured PIT (Part-time, intermittent and temporary) positions for the establishment of 56 Family Liaison Offices overseas or FLO offices as we call them. Recently we sent to all overseas posts a videotape describing our services.

2. We have set up a computerized Skills Bank, and now have a record of 863 spouses, both male and female. We have run two career counseling workshops per year, as well as several Community Action Workshops designed to train future Coordinators for overseas FLOs.

3. We have assisted with the writing and publication of the A-1 and A-2 Non-immigrant Visa Regulations which will become effective on September 21. These regulations will allow the dependents of foreign diplomats to work in the United States on condition that they grant our spouses similar employment opportunities in their countries. These new regulations stem from Sec. 401 of the 1978 Authorization Act.

4. We have cooperated with Personnel and the Foreign Service Institute on the promulgation of regulations providing for a monthly child care grant of up to \$300.00 for spouses during language study under Section 708 of the 1978 Authorization Act.

5. We have worked with the Foreign Service Institute to set up a pilot project to study the possible benefits to be derived from offering to spouses functional training in Consular and Budget and Financial Management work, so that they will be fully trained to fill in during shortages overseas. This fall, spouses will also be able to enroll in the newly redesigned General Services Officer Course.

6. Under the auspices of the Family Liaison Office the Iranian Evacuation Task Force was set up to help employees and Family members better cope with the many difficulties they encountered after their evacuation to this country.

7. We have supported increased mental health services for our people overseas and are delighted with Management's decision to establish two new positions for regional psychiatrists, one to be based in Vienna and one in Monrovia.

8. We have also written and published a "reentry guide" to the Metropolitan area known as the Washington Assignment Notebook and a Career Job Information Resource packet which was sent to all posts. In addition, we publish the FLO Update on a quarterly basis, providing information to the field on all of these activities.

9. To explain the philosophy and purpose of the Office we regularly address the following groups: General orientation at Foreign Service Institute for new em-

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ployees; administrative and personnel training courses, ambassadorial briefings, advanced consular course, inspection teams, the family workshop, and international development interns for AID.

We have also addressed other Government agencies such as the National Security Agency and are in contact with the CIA and the DEA. Many foreign nations face similar problems in their own diplomatic corps, and have sent members from their embassies and foreign offices to study the Family Liaison Office as a model.

OVERSEAS FAMILY LIAISON OFFICES

Since the opening of the Washington FLO, 56 counterpart offices have opened overseas responding to a grass roots movement supporting this concept. The offices are involved in many different aspects of the mission operation, particularly in the welcoming and orientation of newcomers. Some of the services provided by the overseas FLOs are: Sponsorship and welcoming, housing lists, community activities, teenage clubs, orientation programs, language programs, special workshops with the regional medical officer, maintenance of local skills bank, and job development.

However, each office has developed a unique personality of its own and is responsive to the needs of that particular post.

CONCLUSIONS

We feel that a lot has been accomplished in a year and a half, but there are a number of important issues that remain to be resolved. The Association of American Foreign Service Women has already testified on the subject of benefits for divorced Foreign Service women and the employment issue. These are the two most important issues facing the Foreign Service spouse at this time. Although the pending bill as finally cleared by the OMB does not go as far as the Association advocates in these or other areas, I would like to state my own personal endorsement of the AAFSW's testimony and the need to take certain additional steps by law or regulations to advance family interests in the years ahead.

The Foreign Service National-American Family Member (FSN/AFM) Program approved in the Congress last year has taken a long time to implement. An experimental program was begun on December 30, 1978 and on July 3, 1979 the pilot program was expanded worldwide. At present there are 3 American family members working in Kingston, Paris and Bonn. Twenty-one more jobs have been designated for the program and will be filled shortly. As the program's management advantages become recognized, the program will expand further.

The principal problem with having the program fulfill its purpose of expanding job opportunities for Foreign Service spouses has been the provision that they be paid at local salary rates. For that reason we attach special importance to the provision in Sec. 333(a) of the 1979 Foreign Service Act which would authorize payment at American Foreign Service schedule rates.

Representation expenses.—As I am sure you are aware the spouses who accept the traditional representational role get precious little thanks or recognition for their work. Especially the senior level wives may put in a tremendous amount of work, which rebounds to the benefit of the United States. It would be a small, but symbolic gesture to repay them for at least their out-of-pocket expenses, if not for their time, on those occasions when they entertain to further the interests of the United States.

I would like to offer some personal suggestions.

1. I believe the time is rapidly approaching when we should entertain the notion of a salary or some other compensation for those senior wives whose management and representational services are considered important to the success of Government goals.

2. We need travel allowances for the children of divorced or separated parents so that the children may visit the employee parent who may not have custody. The rising divorce rate is a reality for the Foreign Service, as well as for the nation, and it is unfair to penalize the Foreign Service child by preventing him from visiting one of his parents because of distance and travel costs.

3. I would like to see the provision of a survivor annuity to all current surviving former spouses of deceased members of the Foreign Service provided that the former spouse has been married and in the Foreign Service for 10 years and has spent 6 of those 10 years overseas.

4. I am also anxious to rectify two problems which relate to health insurance. Regulation currently excludes dependent parents or parents-in-law of a Department employee from receiving health benefits even while overseas. On the other hand, these same dependents are eligible for other allowances such as travel. We would like to see the regulations expanded to include dependent parents and parents-in-law while they are overseas.

5. I would also like to see some provision made for continued health coverage for divorced Foreign Service wives calculated on community based rates. Currently, the inability to pay for health insurance is of enormous concern to this group of women.

This concludes a description of the activities and interests of the Family Liaison Office.

Traditionally, the Foreign Service has sought to be representative of the best aspects of American life and culture as it pursues the conduct of foreign relations abroad. The Foreign Service family has long been an essential element of our diplomatic presence overseas. But the Foreign Service is not just a career for a job—it is a way of life. It is a way of life that depends not only upon the work and dedication of its employees, but also upon the good will and sense of community of its family members.

In recent years the Foreign Service family, even more than the American family in general, has been deeply affected by the changing roles and aspirations of women, by new and harsher economic realities and other changes in our society, which have undermined its authority and severely tested its strength. The modern, highly educated American family, in which both husband and wife work and share in the responsibilities of the home and parenthood, does not easily fit into the traditional world of diplomacy. It is becoming increasingly difficult for family members to reconcile the realities of American life with the demands of diplomatic life and culture abroad.

In response to the emerging concerns of the Foreign Service family, the Family Liaison Office was created. I believe the office is and will continue to be an effective agent of change that will help our Foreign Service to better meet the realities and responsibilities of the future.

Mr. FASCELL. Thank you very much, Ms. Lloyd, for that very concise overview with respect to the Family Liaison Office, which in a short time, it seems to me, has done a very commendable job.

Mr. BUCHANAN. Would you yield for a moment, Mr. Chairman?

Mr. FASCELL. Yes.

Mr. BUCHANAN. I would like to join the chairman in commending you for such a fine beginning, and also I would like to especially commend you and Under Secretary Read for what has happened since we went worldwide in July with the Foreign Service national American family member program.

Ms. LLOYD. We are very pleased with that.

Mr. FASCELL. Mrs. Schroeder.

Mrs. SCHROEDER. Obviously, you have sold me totally. [Laughter.]

I mean I would like to change it around and put them in charge of diplomacy. [Laughter.]

No; maybe we aren't ready for that. I want to ask you whether or not you think we should write the Family Liaison Office into the bill. Do you think that would be a good idea, to make sure that it stays around?

Ms. LLOYD. I certainly do. I think it is something which obviously has ongoing importance to the Foreign Service and I think that would be a very good suggestion.

Mrs. SCHROEDER. So, in case we don't have quite as an enlightened a Secretary, we may be able to hold on to the office.

And did I understand, then, that the basic reason that you thought some of the national American family member program services were not working as well in certain areas was solely the wage scale?

Ms. LLOYD. It is the major reason. Most of these jobs are coming from Europe, Canada, New Zealand, and Australia. There are a couple off and on. None from Africa so far. Two from South America, a few from the Middle East. Saudi Arabian wages are also very high. They are coming in and they will continue to come in from the areas in which the salary would be equivalent to an American salary.

Well, I could go on. There are several countries where there have been as many as seven available vacancies, but the spouses do feel that it is simply not worth the work effort at alien wages. It is exploitive, basically.

Mrs. SCHROEDER. But you think the bill will take care of that with the wage provision?

Ms. LLOYD. Well, it gives us the option, at least, yes.

Mrs. SCHROEDER. Well, I thank you very much. I think you have done an excellent job. It sounds like you have more to do than you have people to do it, but good luck. [Laughter.]

Mr. FASCELL. Let me ask you one question. What does it appear is the major family problem?

Mrs. SCHROEDER. The husband. [Laughter.]

Ms. LLOYD. The most disruptive and the longest counseling cases are the divorce cases. I would say second to that, perhaps, are problems with adolescent children.

Mr. FASCELL. Thank you very much.

Mr. READ, when we last stopped, we were on chapter 7, page 53, section 701. And since we have established a format and you know what it is, why don't you just go on and tell us?

Mr. READ. Perhaps you would permit me a few words of introduction, if I may, Mr. Chairman and Mrs. Schroeder.

Mr. FASCELL. By all means.

**STATEMENT OF HON. BEN H. READ, UNDER SECRETARY FOR
MANAGEMENT, DEPARTMENT OF STATE**

Mr. READ. I would like to pay tribute to Janet Lloyd and her colleagues. They have done a spectacular job against very real odds in the last 1½ years. It has been a matter of great pride to the Secretary and all of us that they have been able to accomplish what they have. I think it is outstanding.

I was talking to the Secretary just this morning about the schedule which the committee had kept prerecess and has set out for itself in September, and we really are enormously appreciative of the time which you have carved out of your own schedules to undertake this effort.

It is prodigious. We want to stay with you and are ready at any point if you wish to respond to additional questions or to go back and pick up the points that other witnesses have made.

As you recall, we had completed the first six chapters in the section-by-section discussion, and I am happy to say we are now at the chapters which are largely consolidation and codification—chapters 7, 8, and 9. Chapter 8 is the longest chapter in the bill by quite a number of pages, but it has only two or three new features in it. And hopefully we might possibly be able to cover those chapters today.

On chapter 7, before I turn it over to Jim, I would like to say a word or two about career development, if I may, because it is in the title, and yet it is so largely administrative in nature that it is not visible in the pages of the bill what we are doing or what we are planning to do.

Harry Barnes and I both testified when we were last here before this committee that career development is going to be our top priority, along with the structural legislative reform, and we mean it.

Career development is two things. It is the training features which you see in front of you in the legislation, and it is the assignment process. They are twin parts of how professional development occurs in the Service.

The legislation will provide a marvelous takeoff point for tooling up in new ways, in more modern ways than the Service has been able to do to date in its career development efforts. For instance, the new Senior Foreign Service and the senior threshold will require a whole set of new precepts to be worked out in negotiations with the American Foreign Service Association. Those precepts will begin to set the new and higher requirements that we hope will be met in the Senior Foreign Service of the future.

We cannot put them in overnight. It would be inequitable to require new things without sufficient warning. And yet, it is a fine opportunity for us to set new goals and work toward them.

Our aim is for Foreign Service officers who aspire to the top of the Service to be required increasingly to have experience in either political or economic analysis and reporting as well as administrative or consular work.

Too often, people have gone up one of those areas, as we said before, and then are suddenly expected to be broad generalists managing large missions. And it's simply good luck if you happen to have someone who has the dual skills and sensitivities, but those are going to be required increasingly for those who aspire to go to the top.

We will not force people to do that because others are doing highly important tasks in specialized fields, but where they aspire to the top, we want to make it much clearer than it has been in the past that this will be required. Along with that, of course, will go language and other formal training and opportunities for program direction which are not always a part of the background of people who get to these top levels at the moment.

The training and assignment patterns and the goals of other members of the Service, including FSO's, will tend to follow more specialized paths. Training and work opportunities for Foreign Service members are also an extremely important element in our planning and thinking at this point.

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The administrative modification of the existing FSO cone structure, which is also something we spent time discussing with you earlier this summer, is a key part of this effort. I have just approved proposed plans and schedules in this area for discussion with AFSA that we have been working on for several weeks.

I thought if the committee would be interested, I would like to offer for insertion in the record at this time a memorandum setting forth our thinking on this subject which is now under active discussion with AFSA.

Mr. FASCELL. Without objection, the memorandum will be included in the record.

[The memorandum referred to follows:]

DEPARTMENT OF STATE,
DIRECTOR GENERAL OF THE FOREIGN SERVICE
AND DIRECTOR OF PERSONNEL,
Washington, D.C., August 16, 1979.

MEMORANDUM

To M—Mr. Ben H. Read.
From M/DGP—Nancy V. Rawls, Acting.
Subject: Foreign Service Structure: Modification of the FSO Cone System—
Action memorandum.

SUMMARY

We have previously discussed in general terms the need to establish a more structured approach to professional development for the various categories of Department employees. With the introduction in Congress of the proposed Foreign Service Act of 1979, we believe the time has come to move forward on a proposal on professional development for FSOs which would link training and assignments at mid-career to a more explicit and rigorous Threshold to the select and highly-qualified Senior Foreign Service envisioned in the draft bill. Since the proposal would change assignment and counseling procedures, it requires consultation with AFSA. It would not, however, require greater authority for PER than we now have, as recently confirmed by the Secretary, to make assignment decisions which balance longer-term development interests with immediate Service needs and individual preferences. This memorandum therefore describes modifications of the cone system for assignment, training and counseling (and possibly promotion) for FSOs and requests your approval to raise the proposal with ASFA. Our implementation goals would be to announce our intentions and develop officer awareness during the 1980 assignment cycle, to draw on the improved analysis of functional needs provided by the skill code project in mid-1980, and to proceed with dual-cone designations and assignments in the 1980 assignment cycle.

BACKGROUND

In our earlier papers on professional development, we alluded to the idea of a pattern for FSO careers which would include acquisition of a plurality of skills and experience. This idea grew out of our study of the present cone system, which concluded that, while the present system has served us tolerably well in terms of staffing those broad functional areas, it is no longer adequate to meet either newer and more specialized Service needs or the growing requirements for managerial talent at senior levels.

For example, the emphasis on single-function assignment and promotion competition has tended to discourage officers from entering new fields, such as narcotics affairs or humanitarian affairs, or smaller fields, such as science and technology or labor affairs. Further, in light of the McBer study and our own studies of career development, it seems clear that no single cone provides officers with the full range of skills and knowledge needed in senior executive posi-

NOTE.—Memo given to AFSA for discussion September 4, 1979.

tions. The consular and administrative cones have traditionally provided opportunities for officers to develop managerial and inter-personal skills, while the economic/commercial and political fields have emphasized analytical and reporting skills plus substantive knowledge of foreign affairs. All these skills are, of course, important at the top.

Finally, the proposed structural reforms, particularly the Senior Foreign Service, underlie the importance and urgency of taking steps to improve career development. In order to establish a Threshold for the select and highly-qualified SFS envisioned in the bill, we need to have a systematic and reasonably accessible program under which officers will be aware of the Threshold requirements and have opportunities to meet them. (Realistically, the Threshold requirements will probably have to be applied in stages over several years, in order to avoid inequitable treatment of mid-grade officers, particularly at the FSO-3 level, whose assignment patterns reflect the current emphasis on cones.) As part of our larger effort on implementation of the new Foreign Service structure, we are currently working on proposed criteria for the senior Threshold. These would certainly have to include the requirement for a wider range of skills and experience than is normally provided by the present system and might also include requirements with respect to language qualification, service in hardship posts and a reasonable distribution of geographic experience in addition, of course, to superior performance.

PROPOSAL

What we suggest is modification of the present cone system to permit and encourage a plural approach to career development for FSOs. As each officer completes the Junior Officer Program and enters the mid-career stage, he or she, in consultation with PER, would decide on the main lines of career development thereafter. In the normal case, this would mean continued progression within the tentative cone of entry, supplemented by training and assignments in other cones or subfunctions. (In this process, PER would factor in Service needs as reflected in skill/resource projections and current assignment lags, so that officers would be guided toward areas with reasonable assignment prospects. Our workforce planning would have to keep track of the acquisition of secondary skills, but hiring and promotion up to the Threshold could still be based largely on primary cone designations.) In certain other cases, the decision could call for concentration solely within one cone, in the clear understanding that career prospects would be defined generally by the opportunities within that field. Other cases might involve applications to change the original cone, subject to a needs test. But in all cases, once the basic career direction was established, PER would proceed with training and assignments with such focus up to the Threshold. We will need to know more than we presently know about the number and combination of skills which might be acquired in this process. As a start—to find out how we presently stand—we are pursuing a project to systematically inventory the skills and experience each FSO possesses and the skills and experience required for each FSO position. Future work force planning can then take account of current Service needs at any point based on a more reliable inventory. The system will be operational next spring.¹

In parallel with our efforts to reform structure in a way which increases the compatibility between the Foreign Service and Civil Service systems within the Department, we also intend to look at the whole question of professional development for senior GS employees. In this regard, we need to determine what combination of skills and experience are needed for the Senior Executive Service and the kind of counseling and training which should be provided to that end.

Implementation of this proposal for the Foreign Service—once agreed and approved by AFSA and the Department—could begin with the newly tenured FSO-6 and current O-5 officers during the 1981 assignment cycle. A goodly number of FSO-4 officers could also be included in a later phase. But it may be that many FSO-4's and most FSO-3's are past the point in their careers when development of new functional expertise is possible or desirable. However, such officers could be given a certain degree of protection through the phasing-in of

¹ This linkage is illustrated in the implementation schedule presented on pp. 6-7.

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Senior Threshold requirements, and the limitations of their career patterns would not make them any more difficult to handle under this approach than under the current system.

DISCUSSION

Properly implemented, a plural career development system should give the Department greater control over the flow of officers into different functions while permitting individuals to have a greater variety of experience than at present. A political officer who serves as a GSO or management analyst would acquire a better understanding of the management of people and resources, while a consular officer who gets involved in fishery affairs will get better exposure to policymaking and the conduct of bilateral and multilateral relations. Admin officers should find that the analytical and drafting opportunities in INR were very advantageous, and economic officers could find new challenges in budget work in a regional executive office.

But it is important to note that multi-functional training and assignments would require a strong and effective central PER role in personnel decisions, both to help officers move into appropriate jobs after training in a new function and to insure that posts and offices receive qualified replacements. It would probably be necessary for FSI to add or modify training in certain functions, to provide appropriate bridges for new entrants to those fields.

Two other caveats regarding implementation should be noted. First, in thinking about career development, we have to be aware of the apparent conflict between the need for top flight specialists in a world of increasingly specialized diplomacy, and the evident need to give our prospective senior executives a broader range of experience. To the extent that an officer prefers a specialized career pattern, knowing that it will probably not lead to a senior managerial position, well and good. But for officers aiming to develop a number of specialties in preparation for senior executive jobs, we suggest that the twig be bent fairly early, say at the current Class 4 level, with the second cone experience already obtained normally at class 5. This would leave the later stages of mid-career service for focus on the primary cone, at a rank level which calls for solid credentials to succeed in the bureaucratic arena in Washington.

Second, to provide additional support for the two-track approach, we should also modify the system of awarding midgrade promotions. Under the present cone-based system, many people believe that out-of-cone experience is penalized. We should make sure that officers gaining new skills via training, details or other out-of-cone work are given suitable consideration perhaps via a reasonably large multi-functional promotion pool. (This change seems desirable in any event, but is not required to implement the other changes in the cone system.) To further increase our flexibility and provide suitable inducement for acquiring peripheral skills where we need them, we also want to take a close look at the constraints inherent in the zone merit promotion system and determine whether the advantages in that system are still sufficiently evident to justify its retention.

Finally, the proposed system would facilitate development of rigorous Senior Threshold criteria. The requirement for dual-development should be a criterion for the more managerial generalist component of the SFS, for instance. Its voluntary nature is likewise consistent with our approach to the SFS and with the reality that we could not practically cross-train all officers and the related fact that not all officers aim for senior executive status. Like the effort to improve the skill code system, modification of the cone system increases the body of public wisdom about what is needed to succeed in this business, improves our capacity to counsel and assign personnel and also supports the general thrust of the structural reforms. It is worth noting at this point, however, that counseling will have to be both more "intrusive" and more continuous, i.e., it can no longer focus exclusively on people and jobs coming up during the immediate assignment cycle. It will also become, even more than at present, a two-way dialogue with a fair measure of continuing self-appraisal by the officer.

It also seems clear that a more directed assignments procedure will be necessary as greater priority on development will be perceived in some cases as inconsistent with bureau and officer preferences in particular cases. However,

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this would be quite compatible with the Secretary's recent affirmation of the role and authority of PER.

IMPLEMENTATION

If you approve the general thrust of our thinking, we will proceed with the following steps to lay the foundation for multifunctional assignments and counseling. As noted above, this project must be carefully coordinated with the skill code project, so that our counseling of officers on additional cones will be consistent with our best estimates of needs. The schedule indicates certain major milestones of the skill code project and also takes account of the timing of assignment cycles.

Dual-Cone Project

1. Management proposal discussed with bureaus and presented to AFSA: September.
2. Open Assignments and counseling messages advise officers to consider out-of-cone assignments for career development: throughout the forthcoming cycle.
3. Completion of AFSA consultations and announcement to the field of multifunctional program: December 1.
4. Distribution of new PAR form and instructions for officers to designate primary skills with new codes, plus existing or desired additional skills: March-April.
5. Submission of CDOs of new PARs for verification of skills and entry into data base: May/June.

Skills Codes Project

1. Preliminary discussions with bureaus and consultations with AFSA: completed.
2. Develop new OER form (for position data) and new PAR form (for officer data): September.
3. Acquire OCR equipment and complete skill code listings: October-December.
4. Testing of new OER and PAR forms: January.
5. Distribution of new OER forms and instructions for employees and admin officers to prepare new position designations: March-April.
6. Submission to PER of new OER front pages for review of position data and entry into data base: May/June.

Preparation of new requirements/skills inventories: end of July

6. CDOs begin discussions with tenured O-6s and O-5s on secondary cone designations: August.
7. 1981 Open Assignments cable describes procedures and asks O-4 officers to indicate additional cone interests: September.
8. Additional cone assignments made for O-6 and O-5 officers; secondary cones identified for most O-4 officers: 1981 Assignment Cycle.
7. PER/MGT applies new data to workforce planning: August.

RECOMMENDATIONS

That you approve modification of the cone system to permit and encourage FSOs to develop professional competence in additional functional fields, with implementation based on the schedule noted above.

Mr. READ. Thank you very much. If I may, I will turn it over to Mr. Michel at this point.

Mr. FASCELL. All right. Mr. Michel, let's concentrate on those substantive changes.

Mr. MICHEL. All right, Mr. Chairman.

The first section, section 701, reflects a continuation of the Foreign Service Institute which was established under the 1946 Act. The bill refers to authority to maintain and operate the existing Institute rather than to create a new one, so here is an element of continuity in the way we have drafted it.

A substantive change is the reference of the promotion of career development as an expressed statutory objective of Foreign Service training. That is in section 701 (a). The only other substantive change in section 701 appears in paragraph (2) of subsection (b). The paragraph provides express authorization for functional training for family members in connection with anticipated employment in the Foreign Service abroad.

Mrs. SCHROEDER. Do you have enough slots for family members and staff people, or do you ever have to prioritize? Do you think that will be a problem?

Mr. READ. Happily, it has not been an either/or dilemma so far, Mrs. Schroeder, and I don't anticipate it in the immediate future although we may get to it at some point.

Mr. FASCELL. Excuse me, Mr. Michel. What is the difference between the language in the present law on that specific point, which says:

to members of families of officers and employees of the Government in anticipation of assignment while abroad and functional training for anticipated prospective employment under section 333.

Mr. MICHEL. The reference to functional training, Mr. Chairman, is new.

Mr. FASCELL. Does that have a traditional definition in the state of the art?

Mr. MICHEL. This is, for example, the consular training Mrs. Lloyd referred to.

Mr. READ. Budget, administrative, et cetera.

Mr. MICHEL. This is to enable the family members to step into jobs when openings are there and is in addition to orientation and language training which prepares them for life abroad as members of a family.

Mr. FASCELL. So you are making it clear in the statute that that is part of—

Mr. MICHEL. Part of what is provided to family members as an opportunity for training in job skills for openings abroad.

Mr. FASCELL. Although it is not mandated, it is anticipated that this expanded service will be pursued in the regulatory manner as it is now.

Mr. READ. Exactly.

Mr. FASCELL. OK.

Mr. MICHEL. Section 702 of the bill restates the requirement for foreign language capability by members of the Foreign Service who serve abroad and directs the Secretary of State to arrange for appropriate language training. This is based on section 578 of the 1946 act which appears on page 38 of the side-by-side comparison.

Section 703 updates existing provisions in the 1946 act relating to the training authorities and the functioning of the Foreign Service Institute. In this bill we have vested the authorities in the Secretary of State, leaving for the Secretary to delegate them to the Director of the Foreign Service Institute. The 1946 act specified certain authorities to be performed by the Director.

That change conforms to the 1949 statute which took authorities vested in subordinate officers and moved them to the Secretary of State.

Mr. FASCELL. Is that theory generally followed throughout the bill wherever that occurs?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. In other words, all authority is vested in the Secretary of State with authority to delegate?

Mr. MICHEL. That is correct. The function of managing the Foreign Service Institute is an exclusive function of the Secretary of State. The reference to the Secretary in that context does not include the heads of other foreign affairs agencies. We mean for there to be one Foreign Service Institute, not four or five.

We have eliminated a provision from the 1946 act on page 56, former section 706.

Mr. FASCELL. All of page 55, then, is a restatement of existing law.

Mr. MICHEL. Yes, sir. We have simply reorganized it in a more coherent form.

Mr. FASCELL. All right.

Mr. MICHEL. We have eliminated section 706 of the 1946 act as being unnecessary. The authority of the Secretary to accept gifts for the Department of State quite clearly includes the Foreign Service Institute.

Mr. FASCELL. So you don't need a special statutory authorization.

Mr. MICHEL. No, we don't need to repeat it.

Section 704 on training and orientation grants is the same as section 708 of the 1946 act, with one technical exception. With respect to the cost of language training for family members, the 1946 act, as amended, provides that the Secretary may partially compensate the family member.

That seemed a little bit rigid because a family member who goes to an inexpensive course, can be reimbursed only part of the cost. And if they go to an expensive course, they can be reimbursed only part of the cost. It seemed more rational to have a system in which we can designate an amount of money that the State Department will provide toward language training. If that covers all of the costs, that is fine; and if it covers only a part of the costs, then the individual would make up the difference.

So we have authorized the Secretary to pay all or part of the costs, as appropriate. I think it makes for a more rational administration of the program.

Section 705 on career counseling is a consolidation of section 639 of the 1946 act and section 413, the first dealing with the Foreign Service personnel and the second with family members. The only substantive change we have made is to provide explicitly that the career counseling for personnel may include former members of the Service.

This means that an individual who is in the process of leaving does not necessarily, on the last day of duty, stop getting whatever career

counseling was in process on that date. We don't have to keep an individual on the rolls to complete the counseling process.

Mr. READ. I would like to add that career counseling has been a useful supplement to our authority. This was granted, as you know, by the committee 1½ years ago, and 222 people as of September 1 received help under it.

We are also devising, as recent correspondence with you suggested, something between the highly intensive course and the seminars, so that it is not an either/or situation where you have a highly intensive, expensive program or only seminars to choose from.

Mr. FASCELL. How about using the Family Liaison Office for individuals leaving the Service?

Mr. READ. I am not aware that that has come up as a specific proposal so far.

Ms. LLOYD. We do counsel spouses, but that is all.

Mr. READ. This is a different form of counseling. This is training employees for alternative career employment.

Mr. FASCELL. But if you are going to expand this, it will not include family members?

Mr. READ. At the moment, we have an intensive counseling service which averages something like \$6,000 per person. It is a contract service, as you know. We also have seminars which cost in the neighborhood of \$150 or \$200 cost per person. And there is a need for something in between. That is what we are in the process of setting up at this point.

Mr. FASCELL. As long as you two don't see any overlap, I have no problem. So career counseling of spouses of former employees is not a problem insofar as Family Liaison is concerned. It is clearly separated and is a function of the career counseling service. Fine.

Mr. MICHEL. That concludes chapter 7, which, as Under Secretary Read indicated, is primarily a codification.

Mr. FASCELL. Let's move right along.

Mrs. SCHROEDER. Could I just ask what all of that costs?

Mr. READ. Yes. The cost to date, and this is a new career counseling program, has been \$190,000 for the 222 persons who have gone through it to date.

Mr. MICHEL. The Foreign Service retirement and disability system established in 1924 would be continued by this bill without significant change. Indeed, for the most part we have duplicated the section numbers in the 1946 act and have confined the drafting to technical matters. We have made sure we have masculine and feminine pronouns. We have subdivided long, hard to read sentences into numbered clauses, not necessarily easy to read, but a little better organized, we think.

I would like to just touch upon the changes, then, that have been made which are of a substantive character and which are highlights of this codification.

Mr. FASCELL. All right. What is the first one?

Mr. MICHEL. The first one is in section 821 (b) (2), on page 66. This modifies the right of the married participant to elect in writing to waive or reduce a survivor annuity for a spouse. This is a subject in which the law has made different provisions from time to time.

At one time there was no survivor annuity unless an affirmative election was made by the employee. That was changed and the law

provided that there would automatically be a reduction in annuity of a married participant to provide the survivor annuity for the spouse.

At present, the law provides that there will be an automatic reduction in the member's annuity in order to provide a survivor annuity for a spouse unless the member waives the survivor annuity. The bill provides that the waiver may be made only with the consent of the spouse in the case of a spouse who has maintained a residence with the member for a period of 10 years or more, including accompanying the member on assignments abroad.

This is a matter that we discussed at some length with representatives of the American Association of Foreign Service Women. There was a concern on their part that the spouse, by serving abroad in these circumstances, really was deprived of opportunities for independence and self-sufficiency and had earned the survivor annuity and should have a say in whether that survivor annuity is to be granted or not.

We accepted that point and wrote that right of the spouse into the bill.

Mr. FASCELL. Mrs. Schroeder.

Mrs. SCHROEDER. I have no problem with that. That makes sense.

Mr. READ. I am very hopeful that language may be useful in State court proceedings as well because it does attempt to state the premise of—

Mr. FASCELL. Yes; you give them a statutory right.

Mr. MICHEL. And this would be, in effect, a finding by the Congress that a Foreign Service spouse does incur disadvantages and sacrifices by serving abroad, which we think courts would take some notice of.

Mr. READ. And career disruptions.

Mr. MICHEL. The next departure from the existing title VIII of the 1946 act is a structural one which appears at page 80. We have placed the provisions on voluntary and mandatory retirement and retirement of former Presidential appointees in this chapter as sections 835, 836, and 837 simply because logical organization suggested that was the more appropriate place for them.

There are no substantive changes from the corresponding sections in the 1946 act with respect to voluntary and mandatory retirement.

Section 837 at the top of page 81, on retirement of former Presidential employees, is broadened from the 1946 act. Section 519 of the present law provides for the retirement of a chief of mission who is not reassigned on completion of service as a chief of mission.

We have provided the same rule for assistant secretaries and other Presidential appointees simply on the ground that there was, to our way of thinking, no rational distinction to be made between the individual Foreign Service officer who serves in an Assistant Secretary position and the individual Foreign Service officer who serves in a chief of mission position, completes that assignment and is not reassigned.

Mr. FASCELL. In other words, you preserve his rights notwithstanding the Presidential appointment.

Mr. MICHEL. This would provide an immediate retirement for those who are not reassigned following that service as a Presidential appointee.

Mr. FASCELL. Have you any problems with that?

Mrs. SCHROEDER. [Nods negatively.]

Mr. FASCELL. OK.

Mr. MICHEL. The next change is in section 851(h), on page 87, at the bottom. We provide as a technical amendment that a participant in the Foreign Service retirement system who goes on leave without pay to serve as an employee of a Member or office of the Congress—and office would include a committee—will continue to contribute to the Foreign Service retirement fund during that period, and the employing office would make the matching 7-percent-employer's contribution.

This would provide a continuity of employment coverage under one system for these individuals and would avoid the inequity of a period of free service for anyone who could otherwise serve months without making contributions and still have the coverage.

Mr. FASCELL. We had better stop right there. We must go vote on a bill and then we will come right back.

[Brief recess.]

Mr. FASCELL. Where were we, pages 87 and 88?

Mr. MICHEL. It is page 89. But before we start with chapter 9, Mr. Chairman, I wonder if it would be agreeable with you if I put into the record at this point a short statement of the need, as the Department sees it, for the continuation of the mandatory retirement provision of the law in its present form.

Mr. FASCELL. Yes; you may put it in the record, but there is going to be a little dispute on that.

Mr. READ. I would like, if I may, to insert into the record the letter which Secretary Vance wrote to you last April on this same subject, and a copy of the Supreme Court's opinion, if that would be agreeable.

Mr. FASCELL. Without objection, those items will be included in the record at this point. Let's put it right with the section. That is—

Mr. READ. 836.

[The material referred to follows:]

THE NEED FOR CONTINUATION OF MANDATORY RETIREMENT IN THE FOREIGN SERVICE
OF THE UNITED STATES

THE FOREIGN SERVICE

To manage and execute U.S. foreign policy, the Nation needs a highly capable, mobile corps of dedicated personnel able and willing to assume a wide range of demanding duties sometimes under difficult and dangerous conditions, often at short notice, anywhere in the world.

MANDATORY RETIREMENT

The Congress has determined that normally Foreign Service personnel should retire no later than age 60. This reflected the fact that the Foreign Service, with the special nature of its mission and its unusual conditions of service, is much more analagous to the military services than to other civilian services of the Government. The state of readiness for any kind of service worldwide, expected of members of the Foreign Service, corresponds closely to what is expected from members of the Armed Forces. In fact, it was the military model from which the Congress drew the provision for retirement in the Foreign Service.

As the Supreme Court noted in its 8-1 decision in the *Vance v. Bradley* case, the Congress not only has held this view since 1924 but has expanded its application subsequently: "Congress not only retained the lower retirement age for Foreign Service officers when it reorganized the Foreign Service in 1946, but it also lowered the age to 60. In expanding the coverage of the Foreign Service retirement system to reach others than Foreign Service officers, Congress obviously reaffirmed its own judgment that the system should provide a lower retirement

age than in the civil service system, just as it did in 1978 when it repealed the mandatory retirement of civil service employees but left intact the rule for those under the Foreign Service system."

CONDITIONS OF SERVICE

Approximately 60 percent of the Foreign Service is serving abroad at any one time in contrast to about 5 percent in the civil service where foreign duty is generally a volunteer matter.

Foreign Service personnel are assigned and reassigned regularly and spend a substantial portion of their careers overseas.

The conditions of service in the Foreign Service are unusually demanding. For example, 95 percent of Foreign Service personnel aged 21 to 29 are medically able to serve anywhere in the world, but only 68 percent of personnel aged 50 to 59 are able to do so. (There is a similar trend among spouses) :

PERCENTAGE OF STATE FOREIGN SERVICE PERSONNEL WITH A CURRENT MEDICAL EVALUATION MAKING THEM UNAVAILABLE FOR ASSIGNMENT TO ALL POSTS AS OF FEB. 28, 1979

	Employee	Spouse
Officer age group:		
21 to 29	5	2
30 to 39	8	6
40 to 49	18	11
50 to 59	32	19

This situation is now manageable. However, if mandatory retirement were to be eliminated or the age raised significantly, the ability of the Secretary to assign personnel to otherwise appropriate posts would be reduced to the point that it would become excessively difficult for him to meet his worldwide responsibilities.

And as the Supreme Court stated in its decision, it would appear sensible "that the Government would take steps to assure itself that not just some but all members of the Service have the capability of rendering superior performance and satisfying all of the conditions of the Service."

EXCEPTIONS

The Congress did, however, provide for two exceptions to the existing mandatory retirement rule. These exceptions permit the retention of extraordinarily capable officers past the time of mandatory retirement.

(A) *The Secretary's waiver.*—The Secretary may make an exception to the retirement when it is in the national interest to do so.

(B) *Presidential appointees.*—Career personnel serving in positions to which they have been appointed by the President (as Ambassador or Assistant Secretaries) are exempted from the retirement while serving in such positions. There are 95 career persons currently holding such appointments of whom 4 are 60 or older.

CONCLUSION

Under these circumstances, we recommend that mandatory retirement be retained as a general rule and that the Secretary and the President continue to be authorized to make exceptions as seems appropriate.

THE SECRETARY OF STATE,
Washington, D.C., April 24, 1979.

HON. DANTE B. FASCELL,
Chairman, Subcommittee on International Operations, Committee on Foreign Affairs, House of Representatives.

DEAR MR. CHAIRMAN: I have heard that during floor debate on H.R. 3363, the Department of State authorization bill, some Members might propose amendments to repeal or revise upward the Foreign Service mandatory retirement age provision, a provision which, as you know, was upheld by an 8-1 decision of the Supreme Court this past February.

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Mandatory retirement at age 60 is an integral part of the personnel policies of the Service designed to foster a steady upward movement with increasing responsibilities, and thus spur morale and superior performance in the ranks. The suspension of mandatory retirement in 1977, pursuant to the District Court ruling, demonstrates the importance of the provision. In the first promotion cycle following the suspension, due to sharply reduced attrition, promotions to classes 1 through 5 were down 74 percent from the average number granted each year in the previous decade. In the most recent promotion cycle, using a revised method of calculating promotion opportunities, promotions were down by 24 percent.

Moreover, there must be mobility in the Service. Our personnel must be able to serve in difficult areas far from medical facilities, under constant stress, including high crime rates, terrorism, and harassment by host governments. Their state of readiness more nearly resembles that of the military, which continues subject to mandatory retirement, than that of the civil service.

Our statistics show a rise in the percentage of Foreign Service personnel in successive age groups with medical conditions that prevent assignment to difficult posts. The elimination or raising of the mandatory retirement age would severely hamper my flexibility to make assignments and place inequitable and greater burdens on younger officers to staff the more difficult posts.

In summary, I believe that retirement at age 60 in the Foreign Service is necessary and reasonable. It is necessary in order to assure an orderly career progression in the Service and to enhance competition, which is the spur to achievement. It is reasonable and fair because it is a long-standing, well-known provision accepted by employees when they joined the Foreign Service.

With warm regards,
Sincerely,

CYRUS VANCE.

Mrs. SCHROEDER. Is there anything else we could use in lieu of mandatory retirement that would do the same thing? We may get into a real bind on this and you may want to think about that and come up with it later.

Mr. READ. We have reviewed this with great care, both in the drafting to the appeal to the Supreme Court last year and again in the legislative draft, Mrs. Schroeder. And we are of the view that the early retirement provision, section 835, and the mandatory retirement provision 836, are essentially parts of a coherent personnel planning process for the Foreign Service.

It can be stated in many forms and has. I don't want to go into these briefs unless you desire to do so. But first and foremost it boils down to the fact that the primary purpose of the Foreign Service is to serve in foreign countries, and we are increasingly worried about our ability to staff our 250 posts in 148 other countries.

We are worried about it because the Secretary must have a mobile Foreign Service corps which is obligated, willing, and able to serve anywhere in the world on very short notice. Sixty percent of them are serving abroad at any one time.

There are three reasons for our concerns if I may just extend my remarks for a few moments.

The Secretary in his opening remarks on June 21 alluded to the deteriorating conditions of life in many of these posts abroad. We don't mean to be melodramatic to note that there are really remarkably few pleasure posts in the world at this point. It is not all maximum danger, but there are deprivations.

There are financial hardships. There are lack of amenities in services and there are an extreme number of unhealthful and increasingly dangerous places. And the death role in the Department's diplomatic

lobby is a grim reminder of the fact that we have lost many members of the Service just in the last few years.

Second and contributing are the social factors which Janet Lloyd referred to very sensitively in her statement. Families are often no longer willing to go abroad again after four or five tours. It is an increasing hardship for them because of the conditions there, because of increasing educational requirements for children; because of a range of career options that are open to spouses in the United States that were not open before.

Third, is the medical evidence. At any one time a large proportion of persons in their fifties are not available for service at all posts abroad. At the moment, 32 percent of the employees in their fifties are not available and an additional 19 percent of their families are not available to serve worldwide. Now, that means that more than half of all officers in their fifties cannot be assigned abroad.

So obviously, there is already a very large strain on our ability to staff posts abroad. We do have the two provisions which are in existing law and which we are proposing to continue in this bill, to permit those under Presidential appointments to continue to serve, and to permit the Secretary to extend to age 65 those officers where it is in the public interest to do so.

But it is not exaggeration to say that we foresee a time in the next 5 to 10 years, if mandatory retirement is repealed, when it may be extremely difficult to staff our posts abroad.

Mrs. SCHROEDER. I guess I am only saying the things I hear you responding to are things that I would think would take care of themselves if the Secretary had the authority to say to people, either you move to the XYZ post or you have no position, and you are then voluntarily out, rather than you are portraying the idea that if we don't have a younger service, then you will have all of these people staying in Washington and refusing to go out and man posts.

I cannot quite believe that is happening and I think we are probably off the track here. But I am just saying as we have to deal with this mandatory 60 age retirement, we are going to be confronted with that. That is what the devil's advocate is going to say to us if we say to them what you have just said.

Mr. READ. I am very much aware and I don't wish to have anything I say deprecate the service that older officers have performed and will continue to perform. But on the averages, and we are not talking sociology here, if we take that lid off, you simply will not have a Foreign Service able to serve in foreign countries. When an average—

Mr. FASCELL. Excuse me for interrupting. Why is it you cannot terminate an individual over 60 because he won't take an assignment or his family cannot go, or his blood pressure is high, his feet are flat, or whatever the problem is?

Mr. READ. You can. As you know, we have many features we are suggesting in this bill that would relate retention and service very closely to continuing performance capability.

Mr. FASCELL. Excuse me, but let me get over to the legal problem. It ought not to be a defensible act anywhere. If that is going to be required by law, then we will have to do it by law. You can't have your cake and eat it, too. If you are going to require worldwide service, then you have to have a way of terminating without appeal, with-

out going to the court, without seeing a psychiatrist, and without talking to the Surgeon General or coming to the Congress and having a committee meeting about it.

We are going to have to have one or the other. Now, how do we do the other?

Mr. MICHEL. Mr. Chairman, there are provisions in the bill which make clear that service abroad will be a condition of employment for the Foreign Service.

Mr. FASCELL. Yes, but will that hold up?

Mr. MICHEL. I think that it will hold up.

Mr. FASCELL. Does the statute specifically say that it terminates all rights without this, that or the other?

Mr. MICHEL. No. There is a provision for termination for cause, and there is a right to appeal to the Foreign Service Grievance Board before that decision becomes final. I think it would be very difficult as a constitutional matter to take that right to be heard away from the individual.

Mr. FASCELL. If it is a condition of employment?

Mr. MICHEL. Well, you would have to prove—

Mr. FASCELL. Prove what?

Mr. MICHEL [continuing]. That the individual did not take an assignment for which the individual was available. It is not a matter of edict, that you can just say you do not come back tomorrow. There are individual rights that have to be protected.

I think that the legal right is there. You can bring an involuntary disability retirement and prove that someone is not medically fit to serve. You can bring a separation for cause action and, in effect, prosecute the individual—

Mr. FASCELL. Which is a direct refusal.

Mr. MICHEL [continuing]. Prosecute the individual for insubordination, refusal to take an assignment. I think that is a very sorry and inadequate alternative if you take individuals and fire them rather than have an honorable retirement age.

Mr. FASCELL. Yes, but the individual has a choice.

Mr. READ. So often, Mr. Chairman, cases have come to me just in these 2 years back in the Department that fall in a gray area. A family member has a problem. It is physical, mental. It may be temporary, it may be longer. And you are just reaching for a hard and fast conclusion.

Mr. FASCELL. If you have a hearing procedure and throw in all the equity factors, you will never get anyone fired. You don't think that is true? Someone back there is shaking his head that he doesn't think that is true.

Mr. MICHEL. It doesn't make for a very—

Mr. FASCELL. Let me put it this way, then. Have we got some statistics on the number of people who have been separated for cause recently?

Mr. MICHEL. Not very many. It is not a very efficient management tool for operating a system in which we have an objective of predictability, up or out, performance.

Mr. FASCELL. I don't see how you can do it either when the whole purpose of the statute is to protect the employment rights of the individual. That is the whole purpose of this thing, that and civil service. It beats me.

Mr. READ. The other factor, of course, is that everyone serving today signed up in a period when this was a known feature of the law.

Mr. FASCELL. Yes, but I don't know, Ben. I haven't practiced law in a long time but I have a funny feeling that none of that holds up. There is something about consideration or special consideration that has to go with waiving your rights, or something. I remember that somewhere in basic contracts or whatever it was.

I think you could write it any way you wanted to here in terms of involuntary separation, but I don't think you could make it stick.

Mrs. SCHROEDER. I think there was a problem, as you were mentioning, with family members, but don't you find as they get older, there are fewer problems with the family? Isn't it the people in the 40's who are having the most trouble?

Mr. FASCELL. It depends upon how long your kids remain teens. I have seen some teens that were 5. [Laughter.]

Mr. MICHEL. Shall we proceed?

Mr. FASCELL. I didn't mean to interrupt the questioning there.

Mrs. SCHROEDER. That is fine. You know what is going to happen. We are going to have people come in here and say the mandatory 60 years of age is ridiculous. We have just seen the airline pilots go through with it, and if we have trouble with them, you can imagine what we are going to have with Foreign Service.

So thinking about that, you might think about: Does the bill do enough in regard to your ability to man those posts and have management rights or does it not? I don't know. Maybe I am wrong, but I doubt very seriously that we can hold the 60 years age of retirement on the floor.

Mr. FASCELL. I am not even sure if we can do it in the committees. It is a very real factor.

Mr. READ. I know this presents an extremely difficult issue for you, and yet our best recommendation is it is a fundamental cornerstone to a sound Service. The new features of the bill, which will obviously help, are not court-tested yet. We do not know if they will hold. We certainly expect them to but they are not in being and not tested.

Mrs. SCHROEDER. Would you do more if you thought we were not going to be able to hold the 60-year-old retirement?

Mr. MICHEL. You get back to the problem we were just discussing of individual rights. I don't think you can short-circuit the process of involuntary separation. We are trying to maintain and improve a system which will be more predictable in its intake of people, in promotion rates, and it is necessary, in order to achieve that, to have the predictability of when people are going out, or you have these bulges.

Mr. FASCELL. The objective is laudable. The question is how to get there.

Mr. MICHEL. You can't do it by firing people.

Mr. FASCELL. You can't do it as a condition of employment that doesn't imply a special consideration, whether you will have other equitable rights intervene. And there is no way anyone can waive that even by statute, in my judgment. And it is just a guess, not a legal opinion. And even if you got it in writing, under oath, and there was a special consideration, I don't know if it would hold up then.

Mr. MICHEL. You would have questions of fact in each case, and the facts would have to be analyzed. There would be a hearing process. It

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is very difficult to conceive of any good alternative to mandatory retirement if we are going to have a system that works.

Mr. FASCELL. And the process we are talking about, that is, due process, is one which would take several years in each case.

Mr. MICHEL. It could.

Mr. READ. There are just two factors that occur to me. We are, happily, increasing in the interchangeability between the civil service and the Foreign Service here. And I would hope with time that people simply, for individual preferences that coincide with the needs of the institution, will move at a certain point to the domestic side of the house.

But, we cannot anticipate that happening in any reliable way, and in the recent past, we have had this dreadful period in which the mandatory provision was suspended and everybody was staying. There were more than 100 officers. And what that did to our intake and promotions was severe. We lost some very promising people.

Another side effect was that younger and midlevel persons were having to man the tough hardship posts.

Mr. FASCELL. The response to that is the older you get the wiser you get, and all of the older people should be running everything.

Mr. READ. I tend to think that as I am getting into my midfifties.

Mrs. SCHROEDER. Do you have any data on worldwide service of the people who stayed in during this period it was suspended?

Mr. READ. I am sure we can develop it.

Mrs. SCHROEDER. Anything you have like that, we may need.

Mr. FASCELL. Yes, we are going to need everything. About statistics on refusals to serve, or cases where people did not go overseas for one reason or another. Do you have statistics?

Mr. READ. I think this little brief we have submitted, Mr. Chairman—

Mr. FASCELL. Has that in it? Age statistics?

Mr. READ. Yes.

Mr. FASCELL. Is there a rationale for saying that younger people are more willing to serve overseas and older people are not?

Mr. READ. I think in practice that is true. We will try to develop what data we can for you on that.

Mr. FASCELL. I know, but you know, what you think is going to be countered by what someone else thinks. We need hard data.

Mr. READ. Yes; we need hard data.

Mr. MICHEL. Ultimately it is a question of the system working as against the rights of an individual and the obligations of this system to the individual. The data will show that statistically there is a correlation between age and medical clearance, an ability to serve in many posts abroad.

And ultimately there is a question of whether that kind of data warrants the maintenance of a mandatory retirement age in the interests of an effective Foreign Service, or do the rights of the individual outweigh that so that you have to go on a case-by-case basis, which means the hearings and the elaborate procedures which are necessary.

Mr. FASCELL. You are going to have to broaden your legal section, set up your own court system, and go one by one.

Mr. MICHEL. That won't make for a very effective Foreign Service.

Mr. FASCELL. Well, you can hire more lawyers. [Laughter.]

Mrs. SCHROEDER. How often do you give these physicals? For each post there is a different physical requirement? Is that it?

Mr. READ. It is usually when people come back from abroad or when they go out for a new posting. But there are also periodic ones.

Mrs. SCHROEDER. And they are kind of attuned to the post?

Mr. READ. Yes; very much so.

Mr. MICHEL. The only other noteworthy change in chapter 8 appears on page 89 at the bottom. We have incorporated an authority that was extended to the civil service last year. Such authorities by law, can be made applicable to the Foreign Service through Executive order, and, this has been done.

Section 864(b) provides for a recognition of court awards which divide the earnings of an annuitant so that a portion of the annuity can be awarded by the court to the divorced spouse and the Department of State will recognize that court decree and permit an assignment for that purpose.

Mrs. SCHROEDER. You originally were willing to go with more. This is what the OMB compromise was. Is that correct?

Mr. MICHEL. No, this is a provision that deals with assignment of the annuity being paid to the former employee. There remains an open issue with OMB about the right of a divorced spouse to a survivor benefit, which we don't deal with in the bill at this time. We hope to have an administration position soon.

Mrs. SCHROEDER. So do we.

Mr. FASCELL. All right, let's move on.

Mr. MICHEL. Chapter 9 begins on page 98. This chapter is also a codification of title IX of the 1946 act, and, if I may, I would like to continue highlighting the changes.

First of all, section 901 enumerates different kinds of travel expenses that may be reimbursed. We have eliminated from this enumeration the travel expenses involved in reassignment because of a change in the seat of government in a foreign country. It seemed that if an individual was assigned to Karachi and is reassigned to Islamabad because the capital of Pakistan has changed, that he is physically moving and we can pay the cost of that movement like any other reassignment and there was no real need to put that in the law.

It seems that we ought to be able to handle that by regulation. I just wanted to make a record that we were eliminating that on the theory that it is unnecessary, not that we didn't want people to move to the new seat of government.

There is a new provision for medical travel on page 99 in paragraph (5) (b) of the new section 901. This has to do primarily with the situation where you have a parent at the post with a small child. The parent is medically evacuated. There is nothing wrong with the small child other than that the small child is incapable of caring for himself or herself. This would allow that child to be evacuated with the parent. That is something we have not had until now.

Another change is in paragraph (6), which authorizes rest and recuperation travel on a periodic basis to individual members and their families at designated posts. The present law permits this R. & R. travel not more frequently than once during a 2-year tour or twice during a 3-year tour.

We have written into subparagraph (B) an authority for the Secretary of State to specify additional R. & R. travel in extraordinary cir-

cumstances. This is in recognition of the fact that there are a few posts where there is extraordinary isolation and difficulty of living and the individual has to get out once in a while in the interest of their physical and mental well-being.

Mrs. SCHROEDER. Do you take that into account, especially in countries, say, such as Saudi Arabia where I know some of the wives have special difficulty mingling in society? Is that the type of thing you are thinking about?

Mr. READ. It would be. We obviously will have to put together regulations to make this come to life. That would certainly be a type of situation which should be considered. Peking is another example where it is just extremely difficult to stay there for a prolonged period of time without getting out into a little different environment.

Mr. MICHEL. I would also note in paragraphs (7) and (8) on page 100 we previously—I think it is just a matter of the drafting occurring in different years—had one set of criteria for the evacuation of family members and a different set of criteria for family visitation by the employee who remained behind. We conformed those so that if the criteria are met for evacuation and the family is evacuated, then those same criteria will warrant family visitation during periods of prolonged family separation.

On page 101 in paragraph (12) of section 901, we have eliminated an explicit limitation which seemed self-evident, on combined storage of effects and shipment of effects. The law says you cannot ship and store in combination more than you could have shipped. That seems self-evident and we propose to deal with that kind of detail in regulations.

The only other notable changes, I believe, are in the medical travel and health care provisions. We have eliminated, in the authority for medical travel, section 901, paragraph (5) on page 99, and also in medical care, on page 104, section 921, the exclusion of travel or treatment for persons whose medical condition is the result of vicious habits, intemperance or misconduct. That seemed an arbitrary limitation which tested the ability of the doctors and lawyers to distinguish cases and find that people were not excluded from travel or treatment by virtue of those exclusions. [Laughter.]

Mr. FASCELL. Could you just explain that to me again in English? If I have a martini and fall on my head and it requires medical attention and psychiatric treatment—

Mr. MICHEL. The law used to suggest that you couldn't get it.

Mr. FASCELL. In other words, if my illness is due to my own negligence, the law suggests I am not entitled to travel benefits?

Mr. MICHEL. The 1946 act has these exclusions.

Mr. FASCELL. Why should the test not be the criteria of negligence?

Mr. MICHEL. Well, it is more like a workman's compensation theory here, that we send the individual abroad, put them in the situation where they—

Mr. FASCELL. Shoot themselves in the foot?

Mr. MICHEL. Where they may have an accident befall them. They may have an automobile accident in which they were at fault. Do we say that was due to intemperance and we will not evacuate or pay for medical costs? That seems harsh. It is not the reality and it seemed inappropriate to continue that exclusion in the statute.

Mr. FASCELL. What happens in the worst case scenario? The one you gave me is not a worst case scenario. What do you do in a worst case scenario? Do you take care of them anyway?

Mr. MICHEL. Yes.

Mr. FASCELL. All right. You have a chronic alcoholic who takes nine bottles of Valium and has to get to the States to get dried out and get his head screwed back on. Is the Government going to pay for that?

Mr. MICHEL. We would do that. We retain these exceptions—

Mr. FASCELL. Why would you send that person back to work to start with? You bring him back, but why would you send him back? You have lost me somewhere. I want to be good too, but how good can I be? Some spouse decides to hit the other spouse with a club, OK? It requires immediate hospitalization. Are you going to evacuate the spouse at Government expense?

Mr. MICHEL. Yes.

Mr. FASCELL. Well, that is enough worst case scenarios. I am not sure we will live through that one. [Laughter.]

Mr. MICHEL. Whether you would reassign that individual or whether you would bring some disciplinary action against him or her is another issue.

Mr. FASCELL. Or charge them for the cost of the medical treatment or the evacuation? I don't know.

Mr. MICHEL. It gets into some pretty refined judgments.

Mr. FASCELL. I don't want to start a whole new line of lawsuits.

Mrs. SCHROEDER. Don't you have a tremendous problem in that a lot of people go in and profess that they were driven to this by their assignment?

Mr. FASCELL. Then you ought to fire them.

Mr. MICHEL. Well.

Mr. FASCELL. But you can't?

Mr. MICHEL. Yes; we can.

Mrs. SCHROEDER. Two years later.

Mr. MICHEL. We can, but do you evacuate someone who needs medical care, or don't you?

Mr. FASCELL. The answer to that, of course, is that you do, and you worry about whose fault it was later.

Mr. MICHEL. That is what we thought, and we can provide in regulation limitations on care.

Mr. FASCELL. You can provide your criteria for limitations on reimbursement or deduction.

Mr. MICHEL. Yes; we have taken that out of the law.

Mr. FASCELL. Put into your regulations that you could consider the right to take it out of the annuity of both spouses. That will solve a lot of the family arguments. [Laughter.]

I am not sure I am convinced, but it sounds good.

Mr. MICHEL. The only other significant change is that at the top of page 105 in section 921 (e), we have now provided that medical care for a family member will not automatically terminate upon dissolution of the marriage. The law has provided that in the event the employee dies and the family member is in the hospital, you don't have to stop the medical benefits.

We have provided that the same humanitarian rule would apply if a divorce occurs while the family member is in the middle of getting treatment.

Mr. FASCELL. How is all of this care provided now? Under what system? Is it direct, contractual, insurance, guarantees? What is it, a combination of all of them?

Mr. MICHEL. It is a combination. The Foreign Service members participate in the Government employees health insurance program, so there is some insurance reimbursement.

Mr. FASCELL. What do you mean some? It is 100 percent, isn't it?

Mr. MICHEL. No.

Mr. FASCELL. Why not?

Mr. MICHEL. In part it is because the Foreign Service medical program will pay for the costs of certain kinds of care for illnesses occasioned by overseas duty, and the insurance policy sometimes then provides exclusions.

Mr. FASCELL. Let me see. Is that a contributory health plan?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. It is. Does it have a high option and a low option?

Mr. MICHEL. There are a lot of options.

Mr. FASCELL. Is there an option that starts from day one? There is.

Mr. MICHEL. I am sure there is.

Mr. FASCELL. It starts from day one and it covers 100 percent.

Mr. MICHEL. I am sure that is generally true.

Mr. READ. There are deductibles.

Mr. MICHEL. Not everyone has to have it, and there are a variety of plans.

Mr. FASCELL. I understand that, but it is an elective, is it not?

Mr. MICHEL. That is right. Some people have insurance coverage that picks up some or all.

Mr. FASCELL. That is different. That is a horse of another color. We are not talking about private insurance.

Mr. MICHEL. Under the Government employees health insurance plan, that pays part of it. We have a medical unit in the Department of State and we have medical units in Foreign Service posts abroad that provide a certain level of first aid and minor care, and we pay directly to hospitals and physicians.

Mr. FASCELL. How about military facilities? Is that on a reimbursable basis?

Mr. MICHEL. We use military facilities, yes, sir. It is reimbursable. The Department of Defense hospital in Frankfurt, for example, is used by Foreign Service personnel.

Mr. READ. But our doctors have a responsibility for 60,000 people abroad, U.S. Government employees and their families.

Mr. FASCELL. And some posts have medical units within the post.

Mr. MICHEL. Yes, sir.

Mr. FASCELL. London has one.

Mr. MICHEL. A Navy facility.

Mr. FASCELL. Yes. They use a Navy facility.

All right.

Mr. MICHEL. That concludes chapter 9.

Mr. READ. This might be a good breaking point, Mr. Chairman, if you choose, or we could go on. It is a new big subject in chapter 10.

Mr. MICHEL. Labor-management.

Mr. FASCELL. Let's at least start on labor-management, anyway, since I am fortunate enough to have an expert on my right.

Mrs. SCHROEDER. Are you sure you want to do that?

Mr. FASCELL. I am not sure. What page does it begin on?

Mr. MICHEL. It begins on page 105.

Mr. FASCELL. How about just giving us the conceptual framework of this first, just to refresh at least my mind. The conceptual framework, the general theory—and then we will get into the specifics.

Mr. MICHEL. Formal labor-management relations in the service really began in 1971, which was late in the day as compared to other segments of the Government employee population. The emergence of an interest on the part of the Foreign Service in a formal labor-management system caused a lot of thinking and debate at that time. There were problems in trying to fit existing classical labor-management notions to a population the bulk of which is serving in posts abroad and, for that matter, primarily in small posts abroad.

If you break down the Foreign Service population abroad, only a small percentage are at the big posts with more than 200 people. Most of them are at little posts with 20 people or less. The same population is moving every 2 years.

Mr. FASCELL. So you don't have the immediate availability of the bargaining unit.

Mr. MICHEL. That is right. The bargaining unit is a problem. Second, the Foreign Service, by comparison with most Government offices, let's say, has an extraordinarily high percentage of people who would fall into the category of supervisors. You have very junior people supervising local employees, for example, at these small Foreign Service posts. To exclude the supervisors from the bargaining unit, in the traditional model, would exclude something like 40 percent of the people who would otherwise participate.

You would probably wind up with a bargaining unit that represented essentially a certain level within the Foreign Service, with a big gap of people then who were unrepresented people who were not participating in the management of the personnel system, and who had common interests with the people who were in the bargaining unit and were represented.

They would be concerned about grievance procedures. They would be concerned about assignment procedures. They would be concerned about selection precepts for the selection boards. So in 1971, after a lot of debate and discussion, there was promulgated an Executive order which set up a separate labor-management system for the Foreign Service designed to meet the need for representation under terms and conditions that were compatible with Foreign Service working conditions.

In 1978, the Civil Service Reform Act included a title VII, which established the first statutory labor-management program for Government employees, and that program excludes the Foreign Service.

We have tried in this bill to borrow from the Executive order for the Foreign Service and the experience we have gained in trying to implement that Executive order and in living with it over the past 8 years, and we have also drawn on title VII in the Civil Service Reform Act to a considerable extent.

Mrs. SCHROEDER. Not a whole lot.

Mr. MICHEL. To a considerable extent.

Mrs. SCHROEDER. I am not sure I agree with you there.

Mr. MICHEL. We have tried to avoid unnecessary disparities between labor-management in the Foreign Service and labor-management in the civil service, while at the same time recognizing, confronting, and providing in a different way where we thought this was necessary to meet the needs of the Service.

Basically, there is a single, agencywide unit for each of the foreign affairs agencies. We do not have separate units for different embassies and consulates or different bureaus and offices within the Department of State. The agencywide unit is where the community of interest lies because people are moving all the time and there are common concerns.

We include supervisors in the bargaining unit. We draw the line at what the bill defines as a management official. Management officials are excluded from the unit. That is somebody at the deputy assistant secretary level or above.

The election procedures are similar to those for electing an exclusive representative in the civil service. You have the added complication that you have to have a worldwide election, which is necessarily a mail ballot. We have provided, in the event there are more than two choices to be made on that ballot, you can do that in one go-around.

If you have two competing unions who wish to be the exclusive representative, you have the possibility of a runoff, which would be another mail ballot and another month or two to circulate all this paper. So we have provided for preferential balloting in that event.

Once a representative is elected, then that representative becomes the exclusive agent of the employees in the agencywide unit to bargain with management on terms and conditions of employment. The objective of these negotiations, this bargaining, is to arrive at agreements.

We would have a panel, which we have now, which would consider the case where management and the labor representative could not agree. And they would decide the case subject to review by the Secretary of State. There is a charter of employee rights, which I think is very similar to what is in the Civil Service Reform Act, assuring individuals the right to form, join, and assist in work with labor organizations and protecting them against reprisals in the event that they do.

There is a relationship between labor-management relations and the grievance system in that a grievance may be brought by a labor organization against management, as well as a grievance by an individual against management.

To get into the specific details from the current Executive order or how it differs from the statute and so on would get us into the section by section.

Mr. READ. Just on another point of basic general approach, the Secretary wanted to do this. This was not dragged from him at all. He thought it was right, proper, and timely to do this in terms of putting it in statutory form.

Second, we decided that we would not attempt to reshape the scope of bargaining between management and employee representative units at this point in time, so every effort was made not to deal with what has emerged as what is negotiable and what is not, or alter that in this

process. It just seemed to all of us that it should be a collective-bargaining process that would be picked up as much as possible in toto and placed into sound statutory form; ergo the minimum number of changes of any sort in the actual scope of bargaining.

I think we have been faithful to that objective. There are a number of suggestions that have been made for improvements in this chapter and I am sure you will want to get into them in detail at a later point.

Mrs. SCHROEDER. I am sure we will.

Mr. FASCELL. Well, let's start.

Mrs. SCHROEDER. As I say, I understand you want to preserve it as you knew and loved it from before. But I think there is something to be said for having all Government service come under title VII or be similar to title VII if for no other reason than the court interpretation of the language and so on and so forth.

I have always felt, too, that your grievance procedure and your unit problems are really incredible because how you can have the supervisors and the staff in the same unit—

Mr. MICHEL. That seems to be the least of our problems, though, in practice.

Mr. READ. In practice.

Mrs. SCHROEDER. It may be, although it may be that with times changing, it is not in the long run. Maybe it was because you were late getting into the field and people have not become that comfortable with the process and so forth. But I really have a lot of questions about where you deviate from title VII of the Civil Service Reform Act. I don't know if I really want to go through all of that at this hour of the afternoon.

Mr. FASCELL. Why don't we just pick that up right there and get into the specifics? You know what Mrs. Schroeder wants now and what we are looking for. So we will just take it point by point.

Mr. MICHEL. Yes, sir.

Mr. FASCELL. And we might as well face it. Each change might as well be identified both from the title and the Executive order, and explain it and see where we are. I don't know any other way to go at it.

Next Tuesday, 9:30.

The subcommittee stands adjourned.

[Whereupon, at 1:35 p.m., the subcommittees adjourned.]

THE FOREIGN SERVICE ACT

WEDNESDAY, SEPTEMBER 19, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees met in joint session at 2 p.m. in room 2172, Rayburn House Office Building, Hon. Dante B. Fascell and Hon. Patricia Schroeder (joint chairpersons) presiding.

Mr. FASCELL. The subcommittees will come to order.

We meet today to continue our consideration of the Foreign Service Act of 1979. Our distinguished witness today is Dr. Henry Kissinger whose past and present accomplishments need no embellishments. We are delighted to see you back this year. We have spent much time together profitably.

I would like to extend a warm welcome to you and express my appreciation on behalf of the committee for your taking the time to be with us on a matter that is of great importance to a lot of people. Although the issue seems rather bureaucratic and a bit technical, it is important because it has such a direct impact on the well-being of those who are charged with responsibility for the formulation and the implementation of the foreign policy of the United States.

Therefore it serves us all well to look at these matters very carefully with a great deal of concern and compassion and intelligence because the outcome of our deliberations is important to the success of our future foreign policy. We have to pay our respects to those people who labor long and hard to carry out the directives of the Secretary because that is a difficult job at best, regardless of who is the Secretary.

Mrs. SCHROEDER. Thank you, Mr. Chairman.

I join in welcoming you here. My opening statement is posed in the form of a question because even though I did not get to deal with you on the Foreign Affairs Committee, having been a student of yours I learned you ask the first question before he asks one of us. So as you give your prepared statement, one of the things I think that I have been the most worried about, and these hearings have had a bearing on, has been a series of articles that has appeared and probably the one most recently was September 6 in the Washington Post which I will put in the record, dealing with our relationship with Mexico. They deal with some of the blunders and faux pas we have had in dealings on natural gas or illegal immigration.

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There seems to be in the tone of those articles a feeling that somehow we are able to zero in and do the most abrasive thing. It is often much more a question of style than substance but we have not been able to do that very well. It ties into these hearings because we have heard a lot of comments about the lack of minorities in policymaking decisions in our professional diplomatic corps. We had many minority groups testifying here about that. There is a severe lack of Hispanics and Chicanos in the Foreign Service. It appears to be almost a cloning of white males from the eastern establishment.

Mr. FASCELL. Harvard, you can say.

Mrs. SCHROEDER. If you looked good in a turtleneck you have 10 more points. So one of the things, as you are directing your thoughts in this area. I would appreciate some of your analysis as to whether or not this would help us substantially. Are we getting in trouble because of our professional diplomats who are not reflecting our society or is it political appointees getting us in trouble or do we just have a wonderful propensity to stay in trouble? Can we do anything to deal with those things and I think our neighbor, Mexico, has been the one most in focus.

I thank you and apologize for asking the first question but I learned that long ago from you at Harvard.

I was disturbed to read, in the Washington Post of September 6, 1979, an article by Marlise Simons on the deteriorating relations between the United States and Mexico. I ask that the article be included in our hearing record.

[The article referred to follows:]

[From the Washington Post, Sept. 6, 1979]

IMPASSE ON GAS DIMS PROSPECT OF CARTER-LOPEZ ACCORDS¹

(By Marlise Simons)

MEXICO CITY, Sept. 5—The breakdown of U.S.-Mexican talks on natural gas sales last week appears to assure that no major accords will be reached when Mexican President Jose Lopez Portillo goes to Washington later this month for talks with President Carter.

The hope here that an important agreement could be initialed by the two presidents ended when high-level negotiators for the two sides once again failed to settle on a price for Mexican natural gas sales to the United States.

With no new gas negotiations scheduled before the Sept. 28-29 visit, the two presidents will have little else to discuss except for the equally thorny issues of commerce and illegal alien workers, on which they are no nearer agreement.

Nearly six months have passed since President Carter visited Mexico, attempting both to clear the air after the U.S. government's blocking of a gas deal and to make a high-level commitment to seek to resolve several other important differences.

The lack of significant progress on the issues stems not only from their complexities or from lack of sufficient political will. It also reflects the difficulty of harmonizing the interests of two countries gripped by change: The United States trying to adjust to its new vulnerability in energy and Mexico sorting out its new energy wealth. This has opened up entirely new areas of friction.

The latest deadlock in the gas talks, allowing the most intense negotiating round so far, has once again produced less comments on the "badly strained nations" and "a new low between the neighbors."

Diplomats of both countries dismiss these assessments and say that the main problem with the elusive gas deal is that the decision to hold government-to-government talks was heralded as the most significant result of Carters February visit here.

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"Unfortunately, gas has now become the gauge of U.S.-Mexican relations," said a U.S. official, adding that last week's U.S. mission, headed by Deputy Secretary of State Warren Christopher, had come here with instructions to do the utmost to close the deal before the presidents meet. When they failed, Mexican officials briefly considered calling off Lopez Portillo's visit to Washington.

Diplomats on both sides now dismiss the deadlock as just one of the many commercial arrangements that fall through every day.

Yet the gas saga is symptomatic of U.S.-Mexican relations because of the misunderstanding and posturing on both sides that has accompanied it for the last two years.

Part of the posturing is that both sides claim they do not need the deal at all. Americans say there is a natural gas glut in the United States and the "high" Mexican asking price is unrealistic and unappealing.

A key Mexican official recently said here that "the president believes he's doing Carter a favor by offering to sell gas to the U.S." Moreover, since the fall of 1977 when then-energy secretary James Schlesinger vetoed the first gas contract, Mexico decided to keep most of the surplus gas at home.

A vast pipeline network is ready and Mexican industry is switching from oil to gas as the prime energy source. The national electricity and oil companies, it was announced recently, use 60 percent of Mexico's gas production. The surplus available for the United States, it is said here, has therefore fallen from 2 billion cubic feet a day to 300 million.

"And if necessary we will keep burning it off," a Mexican official said.

There is also a simmering distrust that stems from the vastly differing national interests, negotiating style and value systems of the two neighbors. This accounts for the frequent misunderstandings.

A few weeks ago, for example, when U.S. Ambassador Patrick Lucey, in a call on the Mexican president, talked about gas prices, Lopez Portillo reportedly said his problem was not with prices but with principles.

The result of the talk reportedly was that Lucey believed Mexico had agreed to the U.S. price offer. American negotiators were hastily summoned. As they arrived in Mexico, however, they found no such agreement. Angered U.S. officials then reportedly told U.S. reporters that Mexico had reneged on the deal. This in turn infuriated the Mexicans.

Last week the talks stalemated as the two sides appeared closer than ever to a settlement. Mexico had asked \$3.75 per thousand cubic feet of gas, and the United States had offered \$3.50. Mexico proposed to split the difference and settle on \$3.625. Both sides reportedly agreed. Then, according to a Mexican official, the United States tried to change the already agreed delivery date from November to next April. Apprised of this, the Mexican president reportedly told an aide, "That's enough."

The U.S. mission, which had postponed its departure to reach a happy end, returned to Washington.

The next day Mexican Foreign Minister Jorge Castaneda curtly told a news conference that no new gas talks were expected.

"Perhaps later, when circumstances have changed," Castaneda said. "And next year we'll have to negotiate on the basis of new prices."

At times the Mexicans and Americans seem to enjoy sparring and muscle flexing instead of trying to avoid it. Last week's flap over the U.S. requests that Mexico pay the cleanup costs of the oil spill in the Gulf of Mexico is a case in point.

The Mexican reaction was nothing less than nationwide outburst of nationalism. First Lopez Portillo condemned the U.S. publication of the request and then said flatly "no" as a matter of principle.

Then all seven political parties announced they were "rallying around" the president while newspapers and magazines printed anti-U.S. headlines, cartoons and paid advertisements.

As the dust settled, a U.S. official commented coolly. "The fuss was only about a few million dollars. But frankly, we didn't have a very good case."

Mrs. SCHROEDER. Our policy toward Mexico seems to be one of bluster. On issue after issue, our Government takes actions which almost seem calculated to raise the ire of the Mexicans. I am not just speaking of our ill-fated effort to purchase much-needed natural gas from energy-rich Mexico. I am also speaking about our Government's

basic inability to come to grips with the issue of illegal immigration, and about our Government's protectionist attitude when it comes to purchasing agricultural commodities from Mexico, and about our Government's abrasive manner in demanding that cleanup costs for the recent Gulf oil spill be paid by Mexico. In all these instances, the failure of our diplomatic effort appears to be due as much to style as to substance.

The Washington Post article relates a history of misunderstanding and posturing leading to mistrust and suspicion. It talks about vastly different negotiating styles and misread signals. I am concerned by this very sad diplomatic showing. I would have hoped that the professional diplomats in the State Department could have avoided this situation. I do not know whether our diplomats or our political appointees are to blame. I do note that our former colleague who was recently appointed to be a special ambassador for Mexican-American relations cannot speak Spanish.

One cause of this problem is clear. The Foreign Service has been and continues to be an overwhelmingly white and male institution. Despite the fact that the United States has a significant number of Hispanics who are highly qualified to perform diplomatic assignments, there are no major decisionmakers in Mexican-American relations who are Hispanic.

Denver, my hometown, and the entire Western part of the country have many, many individuals of Mexican descent who are familiar with the Mexican way of doing business. These people are highly competent, completely loyal to the United States, and willing to work in the State Department. The State Department has, however, turned a cold shoulder on these people. It has a Foreign Service Entrance Exam which discriminates against all minorities. It has a promotion and tenure system which appears, at times, to be little more than an old boy's network. It has not recruited minorities and it has not made them feel welcome.

I believe that if we had a few Chicanos working on Mexican-American relations, some of these seemingly intractable problems could be worked out. A few Hispanics in the State Department might keep our Government from making the awful blunders which have characterized our recent relations with Mexico. Problems like natural gas, illegal immigration, and trade might be cut down to size if the United States utilized one of its most valuable resources, American citizens of Mexican descent.

Mr. FASCELL. Thank you.

Dr. Kissinger, I know you have a prepared statement so why don't you proceed as you will.

**STATEMENT OF FORMER SECRETARY OF STATE
HENRY A. KISSINGER**

Mr. KISSINGER. Mr. Chairman, ladies and gentlemen of the committee, I would like to say first of all what a pleasure it is for me to appear here. I've testified here in this room frequently, and I have very warm recollections of my encounters in this room.

Before I read my prepared statement, I would like to make two or three informal remarks. First I would like to stress that I volunteered

for this testimony. I was not asked by the Department of State to do it, and I volunteered because of the importance I attached to this legislation.

I cannot be said to have been one of the greatest admirers of the Foreign Service when I was serving in the White House as a National Security Advisor. But when I had to work with the Foreign Service as Secretary of State I became convinced that it is one of the most dedicated and one of the ablest and one of the most indispensable groups of men and women in our Government.

In our system with its frequent alternation in high office, it is indispensable to have a professional corps that represents the continuity of our foreign policy, that operates professionally, that looks at foreign policy from the point of view of the general interest and while of course there are exceptions in any large organization, in my experience I have never worked with as able a group and as dedicated a group. As I read this proposal, this proposed legislation, it is an attempt to strengthen the professionalism.

It seeks to insure a recognition of measure and it attempts to open up the career ladder to the most promising men and women.

So with your permission I will now read my formal statement and I don't know how you would like me to deal with Mrs. Schroeder's question. Should I do that in the question period or how do you propose to handle that, Mr. Chairman?

Mr. FASCELL. Dr. Kissinger, I would assume, knowing you, that it is already covered in your statement but you go ahead.

Mr. KISSINGER. I must say she achieved her purpose, she did catch me on something that is not in my statement.

Mr. FASCELL. When you conclude your formal statement, you may address yourself to that.

Mr. KISSINGER. I will finish my statement and then address myself to that question.

This country and its leaders are fortunate to have a diplomatic service second to none in its professional competence and dedication to the public interest. For 8 years, first as National Security Adviser and then as Secretary of State, I was privileged to work with the Foreign Service both in Washington and at our posts abroad.

From that dual experience, I can attest to the heavy reliance of our political leadership on the expertise of our career diplomats for the successful conduct of foreign affairs. With the complexity and multiplicity of our international interests in the world today, there is no substitute for a strong Foreign Service. Presidents who fail to use fully the institutional strengths and loyalties of the Service do so at risk.

The Congress was wise to exempt the Foreign Service from the operative provisions of the Civil Service Reform Act last year. The case for maintaining a strong, separate Foreign Service is clear. The conduct of foreign relations differs in substance and form from other Federal services. Given the importance of the issues involved, members of the Foreign Service must be of highest quality and professionalism, heavily aware of our own interests as well as foreign languages and cultures. They must be willing to accept obligations different in nature and more extensive by those in other civilian services.

For example, they must be willing and able to serve in a wide variety of posts abroad, to undertake a dozen different assignments during a typical career, and often to live for long periods with deprivation of amenities, hardship, crisis, stress, and sometimes physical danger. In short, they must be truly dedicated to the service of their country.

But the Foreign Service has had to live under a charter which has grown increasingly obsolete and cumbersome in recent years. Again the Congress was wise to call on the executive branch in 1976 to submit a "comprehensive plan" to improve and simplify the personnel systems of the Department of State and the Foreign Service. Time prevented us from filing more than an interim report in response to that request during my tenure as Secretary.

I applaud Secretary Vance on completing that process and sending forward a bill which would accomplish long overdue reforms. I strongly support that bill.

Although I do not claim familiarity with some of the detailed personnel provisions of the bill, I am satisfied that it would effect the three changes most needed to strengthen the Foreign Service and to enable it to meet more effectively the challenges ahead.

First, the bill recognizes the clear distinction between the Foreign Service and the civil service. As recognized in the interim report filed in January of 1977 by then Deputy Under Secretary Larry Eagleburger at my direction, earlier efforts to induce into the Foreign Service persons whose skills and services are needed only in domestic assignments were ineffective and unrealistic.

The Foreign Service should be limited to those obligated and needed to serve on a worldwide basis, and the presence in the Service of several hundred persons who have never and will never serve abroad should not continue. The conversion features of the bill appear to protect fully the rights of individuals concerned.

Second, the administration proposal would consolidate and codify the personnel system and laws of the Foreign Service—as also suggested in the 1977 interim report. The present multiple array of personnel categories and subcategories deters good management and makes individual inequities hard to avoid. The hundreds of amendments passed to the Foreign Service Act of 1946 and the many personnel laws which affect Service personnel need restatement and updating.

The pending bill provides a contemporary reaffirmation of the role of the Foreign Service, which should provide an excellent charter for many years to come.

Finally, and most importantly, the pending measure would provide needed closer linkage between granting career status, advancement, compensation, and retention in the Foreign Service and continuing high performance requirements. I am frank to say that although this was the intent of the 1946 act, it has not always been reflected in practice. The intended "up or out" principle has been breached too often. Officers at the top career ambassador and career minister ranks have been immune from performance evaluations and selection out, and sometimes stay on long past their prime periods of service.

Presidents and Secretaries have often had to dip well down into the ranks to find prime candidates for ambassadorial and other key assignments. When legal challenges or legislative deferrals of pay raises have blocked mandatory and voluntary retirements, it has proven impossible

to advance and reward the most promising, younger, and middle-grade officers at a satisfactory rate, and has made it impossible to retain some of the best in recent years.

A number of constructive and creative features of the bill help overcome these structural defects after a transition period. I would commend several such provisions in particular;

Annual selection-out procedures for all career members of the Service, from the most senior to the most junior;

Retention in service at the most senior ranks will require the positive act of extension of renewable 3-year appointments after expiration of brief time-in-class limits; and

Entry into the Senior Foreign Service would require promotion of a rigorous new senior threshold which is well designed to help assure that only the most capable reach the top ranks; and performance pay, and added in-step pay increases for outstanding and meritorious service, would provide new incentives.

All of these provisions and others will be administered and safeguarded against abuse by selection board procedures.

In summary, I would urge your support for the proposed new Foreign Service Act. It will preserve and strengthen the best traditions of the Service, and make it possible for its members to better perform their essential role and missions now and in the future.

Mr. FASCELL. Thank you very much for that very concise and clear statement of the objectives of the Department's proposal for a Foreign Service Act of 1979. Now if you would like to address yourself to the other question, you may do so.

Mr. KISSINGER. Chairwoman Schroeder has preempted me with her question by getting it in first. She has given me 5 minutes to think about an answer, which might be unwise, but at any rate, it seems to me that two questions were raised. One, the relationship, our relationship, to Mexico; and, second, the impact of the type of personnel that is serving us abroad on that relationship, and specifically whether the shortcomings in that relationship are due to the inadequate representation of minorities in a broader spectrum of American life in the Foreign Service.

I believe that our relations with Mexico are of extraordinary importance. Within a measurable period of time we will for the first time in our history have as our neighbor a country which will by the turn of the century approach major status. It is already in the upper group of the developing nations. How we manage such a relationship is of very great consequence, not only in North America but in our relationship to other developing nations, and developed nations for that matter.

The immediate urgency is that Mexico as a result of the discovery of large resources of energy, will have to make some fundamental decisions about its own development as it develops its energy resources. It has observed that economic development by itself can bring major political problems both internally and foreign policy problems in the sense that whatever choices it makes, can either bring it into conflict with the United States or into a new cooperative relationship with the United States.

It seems to me that the energy problem with Mexico can only be dealt with in a larger context in which both Mexican national aspirations and our longer term purposes can be recognized.

Now I believe that we have not always approached Mexico on that philosophical ladder. We have had too much of a tendency to deal with Mexico in terms of the issues that arise, immigrants, competition from particular Mexican manufacturers or agricultural products, narcotics, all of which are immediate irritants but which are not germane entirely to the fundamental decisions that Mexico has to take.

In addition, we are dealing here with a proud country of a complex history and great ambivalence toward the United States partly as a result of its history. I would think that a new approach to Mexico is essential, and indeed if it is not taken and if we permit the day-to-day affairs to fester, they may become insoluble, and I also do not believe that Mexico can be approached only on the basis of energy. We have to place energy into a context that is also relevant to Mexico's purposes and not use it to our own.

Now to what extent has the composition of our Foreign Service affected our failure so far to address Mexico in the right manner. Incidentally, I am not making this a partisan issue. I am speaking here of a general relationship. To what extent has that been affected by the composition of the Foreign Service? I would think on the whole that the Foreign Service is not the culprit in that relationship. On the whole, it has been national orientation toward looking at the world in terms of East-West rather than in terms of North-South, and we have not addressed as a nation creatively the problem of organizing a sense of community in the Northern Hemisphere to the same degree as we have addressed ourselves to Atlantic relationships and South Pacific relationships as with Japan. Yet, in terms of our long-term future I believe Mexico will be as important to us if not more so than some of our traditional close allies.

So I think that the major shortcomings have been at the policy-making level. At the same time I believe that it is important to open up the Foreign Service to more representative approaches and more representative attitudes of the American people primarily in order to bring that perspective to the attention of policymakers.

I do not like to think of Foreign Service officers serving their countries as ethnic representatives. They are Foreign Service officers of the United States and not of any particular constituency, but it would certainly help the policymaking projects and the prospectives that are brought to bear if a wider representation of various groups in our society and of other educational institutions than those that have predominated could be achieved.

But I believe this legislation will be an important step in that direction, and I think that certainly during the administrations with which I was familiar, as well as in this administration, a conscious effort has been made in the direction that you have suggested.

Mrs. SCHROEDER. If I could ask you then a followup question. I totally agree with what you are saying: You do not want them to be ethnic representatives. They still represent the United States. I am pleased with what you are saying because I think it can help synthesize all of us in the policymaking area.

The other very sticky issue we have had to deal with here is the issue of the age 60 mandatory retirement for all people in the Foreign Service.

As you know, in the Congress there has been an awful lot of pressure to do away with all mandatory retirement. You may not have thought about this issue yet, and you may want to submit your answer for the record. But that is going to be a very difficult issue for these two committees to deal with.

You know, there has been a lawsuit and many people were allowed to stay in. I only ask you that question because I think a lot of your statement related to the problems of not having upward slots to move people into that were very talented.

Mr. KISSINGER. This is an issue that I have thought about, but I would appreciate if I could, on reflection to this or other questions, send in written amplifications.

Mr. FASCELL. We will be delighted to have any additional comments you care to make in writing, Mr. Secretary.

Mr. KISSINGER. Thank you, Mr. Chairman. I think it is very important that the careers of the Foreign Service officers be relatively homogeneous; that is to say, all of them be available to serve abroad and rotate back home on roughly the same pattern and according to the needs of the Service.

It is the experience, on which I am sure the Department can supply you the relevant statistics, that with each—as you go up in the age groups, the ability and willingness to serve abroad diminishes and, therefore, if there is no mandatory retirement age, you run the risk of a group of individuals whose contribution to the Service is bound to be of a different nature than that of their colleagues and are, therefore, in a special category by reason of age.

Also, as I understand this legislation, it provides the discretion to the Secretary of State to extend individuals beyond the retirement age if there is a special need for their service.

So, I feel that this mandatory retirement age is especially necessary in the case of a Service in which ability to serve abroad is an important criterion in addition to the fact that there must be more rapid movement upward than has been the case recently.

Mr. FASCELL. Mr. Derwinski.

Mr. DERWINSKI. Thank you, Mr. Chairman.

Mr. Secretary, I would like to pick up a point in your testimony where you spoke of the difficulty under existing law of applying what you refer to as the intended up-or-out principle. In other words, you found it difficult to pursue this, and I presume your predecessor did. In this bill we are trying to give the Secretary more administrative flexibility in that direction.

This seems, if I interpret your total statement correctly, a key to keeping, as well as the proper placement of, aggressive, effective young diplomats. Is that a misstatement on my part?

Mr. KISSINGER. That is correct. What this legislation would do is, first, reinforce the congressional intent that the up-and-out principle be strictly carried out; and by establishing uniform procedures and uniform categories of personnel, it would make it easier to accomplish it.

Second, with the establishment of the Senior Foreign Service, there is the provision that the appointment be on a 3-year renewable

basis so that in addition to the annual up-and-out review of the selection board, there is a 3-year review in which the appointment cannot be renewed, which has a possibility of not renewing the appointment in the Service unless it is judged to be in the interest of the country and Service to extend it.

So there is an additional hurdle that permits honorable retirement in which there is slightly less invidious selection board reluctance to select out no matter how many criteria you give them, particularly when you get into the upper end. But not to renew an appointment, I think, is psychologically easier than to select out at the end of 1 year.

At any rate, it establishes another hurdle and another way of accomplishing an honorable retirement.

Mr. DERWINSKI. On an entirely different subject, the bill before us contains a limit of 5 percent of noncareer personnel to assist the Secretary and President in carrying out foreign policy for that given administration. When we reformed the Federal civil service a year ago, the figure established for noncareer personnel was 10 percent. In other words, twice the number that we are allocating for the noncareer personnel in Foreign Service. Do you have any comment on that percentage or the entire practice of noncareer personnel?

Mr. KISSINGER. I have not really thought through which percentage is the right one. There is some advantage in having some noncareer personnel in for relieving purposes. When I was in office, I made it a practice to appoint to key positions mostly Foreign Service personnel. I think almost all of the Assistant Secretaries when I was in office were career because it seemed to me that if this is the Service that has to carry out a foreign policy, it must also be given the responsibility for the high office. So, offhand, I would like to think about whether 5 percent is too restrictive. I would not have found it too restrictive, but I would like to think about that a little more and perhaps submit a written answer.

Mr. DERWINSKI. Thank you.

Thank you, Mr. Chairman.

Mr. FASCELL. Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman. I have no questions.

Mr. FASCELL. Mr. Buchanan.

Mr. BUCHANAN. I appreciate very much your introductory remarks, as well as your statement, Dr. Kissinger. As someone who was around at the time, it seemed to me you went through this process of gaining appreciation from the Department of State and the Foreign Service personnel through the experience of serving as Secretary of State.

Mr. KISSINGER. Absolutely. I am a convert and perhaps therefore more fanatical than the true believers.

Mr. BUCHANAN. But as you are aware, perceptions can be as important as realities, in particular in the democratic form of government, and I do think there are so many people here in the Congress and around the country who have not yet gone through that conversion experience, whose perceptions of the Department of State and Foreign Service officers is much less favorable than the reality of what I too believe to be a very fine Foreign Service.

So I think you render us some significant service in throwing your weight and your enormous prestige so clearly on their side and speaking in their behalf.

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Mr. KISSINGER. I think as our foreign policy becomes more and more complicated it will become impossible for our political leadership to handle it adequately unless there is a reservoir of people who represent continuity and a perception of our national interest that is essentially nonpartisan and that has matured over long periods of service.

I know what some of the standard objections are and there are organizational problems in the Department of State that have nothing to do with personnel, that sometimes slow down procedures. But in terms of personnel, I believe that it is a truly outstanding group and that would be further strengthened by the passage of this act.

Mr. BUCHANAN. Thank you, Mr. Chairman.

Mr. FASCELL. Thank you, Mr. Leach.

Mr. LEACH. Mr. Secretary, I would like to say as someone who used to work for you in the bowels of State, that I welcome you particularly to this committee. I am wondering if you would comment as someone who has held a unique position, on one hand having been head of the NSC and the other, head of the Department of State, whether you feel that in retrospect there is a conflict between these two positions and is there anything institutionally or legislatively that ought to be considered about enhancing either the power of NSC or the Secretary of State in the field of foreign affairs.

I must say I am biased to think the Secretary of State should be the primary position because constitutionally he is more responsible to the Congress itself. Would you care to comment in that direction?

Mr. KISSINGER. You know that when I was security advisor I did not always support the prerogatives of either the Secretary of State or of the Department.

Mr. LEACH. Or the President himself.

Mr. KISSINGER. I think it is true in any event, a President will substantially condition foreign policy according to a style with which he is comfortable. There is no point in our reviewing how the position of the security advisor came to be administered as it was during the period of the Nixon Presidency. I would not basically favor some legislation that would prescribe how to do it, but as a general proposition, I would say this.

The principal foreign policy advisor of the President should be the Secretary of State. The principal manager of our foreign policy should be the Secretary of State. I do not think it is a good practice even though I participated in a system that violated the principle that I am now putting forward, I do not think it is a good practice to try to control the Department of State or the Secretary of State through a personal adviser of the President.

It is an invitation to institutional irresponsibility because you have a large department which, when it is cut out of the policymaking process, is bound to do something and what it then does is likely to tilt the policymaking process in a direction that may not be desired by the President simply through the way of bureaucratic inertia and through ignorance.

Therefore, I think if the President has not full confidence in his Secretary of State, he should replace him and get somebody in whom he does have full confidence. The security advisor's principal role should be to make sure that the major options which are interdepartmental in

nature get to the President, and to act as a traffic cop and as a sort of a substantive conscience in the development of the options but not as an alternative center of policy, and not as somebody that foreign governments perceive as a rival source of influence.

I say this with all regard for the President incumbent and it is not aimed at the preincumbent. Having operated the system from both ends, it is a view that I have developed.

Mr. LEACH. To take that a step forward, would you hold the same view on the relationship with the Secretary of State to any ambassador at large position? For example, should the area of foreign affairs, any area of foreign affairs, be carved out to any specific individual in a responsible sense outside the confines of the Secretary of State?

Mr. KISSINGER. You are now going to get me into major trouble with a dear friend whom I respect enormously, but I believe as a general proposition, ambassadors at large ought to report through the Secretary of State and under the general direction of the Secretary of State.

Of course, every ambassador is an ambassador of the President, not of the Secretary of State, and no one can prevent a President from asking whoever's advice he chooses in policy formulation. But I think as a general proposition negotiators should be under the general direction of the Secretary of State.

Mr. LEACH. There has been a good deal of discussion in recent years, in recent months particularly, that there may have been some intelligence breakdowns. Do you believe that ambassadors in the field have sufficient authority vis-a-vis their station chiefs and also in Washington; do you believe there are adequate institutional mechanisms to assure that the Department of State has sufficient influence over intelligence decisions which impact on foreign policy?

Mr. KISSINGER. There have been such major changes in the organization and control of intelligence, even since I was in office, that my information may not be fully up to date. You have two conflicting problems. One is—I am doing this as viewed from the perspective of the President—one is that it may be that the ambassador does not always have full control, even though he has theoretical control, over intelligence operations.

The other one is that the intelligence community and the Department of State, knowing they have to get along with each other, may make some bureaucratic arrangement with each other that may prevent alternatives from coming up for Presidential consideration and I can think of two or three instances during my period in office of either tendencies where the ambassador, though in theoretical control, did not fully understand what the intelligence community was doing, and in other cases where some bureaucratic nonaggression treaty was made which prevented alternatives from being accomplished up to the President in time.

Mr. LEACH. In recent years we seem to be seeing a steady erosion of the functions for which the Department of State is responsible. For example, early in this administration we saw the Bureau of Education and Cultural Affairs being transformed to ICA. We have a serious consideration currently being given to putting commerce functions with INS and there are proposals within Congress to move certain commercial work to the Department of Commerce or elsewhere.

If this trend continues, one can visualize the CIA playing a greater role in the political arena or maybe even GAO coming into the administrative function.

I wonder if you would care to comment on what is a partial break-up of the Department of State that is occurring, with some further challenges in the future on whether foreign affairs is primarily political, or the economic political aspects as well as the intelligence aspects must be more closely defined, and whether there is a potential problem developing where the Secretary of State will have a lower level of jurisdiction. And is this proper or should it be the power of State to consolidate in these areas rather than elsewhere?

Mr. KISSINGER. Before I answer this question, I would like to expand on the previous answer, the one about whether ambassadors should report through the Secretary of State. I maintain that is a position I favor but I want to make very clear that insofar as it may be applied to the Middle East negotiations that I have the highest regard for Ambassador Strauss, that I was simply talking about the general organization in principle and not about personalities here.

Now, as to your question, I believe that the biggest foreign policy problem the United States States confronts is to get an overall strategic or geopolitical national view of our purposes in the world and of our interest.

Second, I believe the difference between successful and mediocre policy is in a series of nuances across a broad spectrum of decisions and, therefore, I am uneasy about the increasing fragmentation of our foreign policy and the difficulty of creating either procedures or periods of time for reflection which will permit this general approach.

Now, I have to say that part of the reason for that fragmentation is not just organizational decisions by the White House; it is also Congressional decisions in which particular constituencies believe they can gain greater influence by fragmenting off some part of the decision-making process.

I also believe even though when I was in office I had no opportunity to change it and I have not fully thought through how to change it, I think the internal organization of the Department of State is too fragmented and does not lend itself ideally to this overall approach to foreign policy but, as a general proposition, I would believe that there must be some focal point below the President where the various considerations come together so that when they get to the President he has a range of choices that are rather carefully articulated rather than a series of tactical decisions.

Mr. LEACH. Thank you.

Mr. FASCELL. Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

It is a pleasure having the former Secretary with us once again. It seems natural to have you here before us, Mr. Secretary. We miss seeing you here.

With relation to some of the aspects of this new proposal, I did have a great deal of reservation about our whole Civil Service reform and I am concerned that we may be taking the merit out of the merit system. I hope we are not taking the service out of the Foreign Service by some of these proposals.

I am concerned about the up and out principle. I am wondering whether there is sufficient protection built into this new procedure to protect those who rise rapidly and as a result may be forced out of the Foreign Service. My concern is about those cases where their rise is primarily due to their good qualifications and good service.

There is a limitation of time, I believe 5 years, and at a maximum grade. If the Secretary is not disposed to extend that time, then he may be forced out of the Service. I would welcome your thoughts about whether there should be some protection built into the system to protect those who rise rapidly through the Foreign Service.

Mr. KISSINGER. Of course, it seems to me there are two problems with respect to those who rise rapidly. One is that some people are extremely good at lower levels but then reach their ceiling and you cannot always be sure that high performance at a lower level guarantees high performance beyond a certain level of performance, so, therefore, it is quite possible for somebody to be promoted rapidly and then to be selected out on merit.

The second issue is the one you raised, where somebody has performed outstandingly at all levels, including the high level, but then because of the selection out procedures and because he is relatively younger than the other he finds himself in a position where he is forced out because there are not sufficient vacancies or because he comes up against the abstract provisions of a law.

Again, as I told the chairman before we entered this room, I cannot pretend that I have studied all the provisions or the alternative provisions of this bill. My temptation, my quick temptation would be to say that I would have confidence in whoever the incumbent Secretary of State is to retain in the Service those that he considers essential for his mission because his own performance depends on it.

If he has any sense of responsibility to the Foreign Service, as every Secretary of State that I know has either had or developed, he will try to make sure that no person is selected out simply on a routine basis.

But since I do not know what protection could be built in, I, in reading this bill, was not bothered by this problem but that is not necessary. If you would let me know what specific protection you would have in mind, I could comment perhaps more lucidly.

Mr. GILMAN. I welcome that opportunity and I will pass on something to you.

[Mr. Kissinger's additional comments, as requested, follow:]

THE "UP OR OUT" PRINCIPLE AND SAFEGUARDS

The "up or out" principle is one of the long-standing and distinguishing features of the Foreign Service which has helped to maintain its high standards. This principle is strengthened in the proposed Foreign Service Act of 1979 by Section 641 (b) which provides that once a member of the Senior Foreign Service has been in grade without promotion beyond a limited period of time, he or she shall be retired unless the annual promotion boards recommend that his or her appointment be extended.

This renewable career appointment extension procedure safeguards the individual, because it assures that his or her continuation in the Service is considered on its merits by an independent selection board. At the same time it also serves the interests of the Department and the Service because it encourages the advancement and retention of the ablest persons. Those who advance most rapidly to the top would not be forced out arbitrarily because of the extension feature of the bill.

MANDATORY RETIREMENT

I would like to reemphasize my unequivocal support for retention of the mandatory retirement provisions of this bill. A basic premise of the bill is that only those able and willing to accept assignments anywhere in the world be retained in the Foreign Service. As a person ages, there is an increased likelihood that either the person or his or her spouse or family may develop health or other problems that restrict the person's availability. This is especially true for those who spend their careers under the stresses encountered in the Foreign Service.

The Secretary of State could not staff our overseas posts or maintain a viable career Foreign Service if every person who developed a health problem were retired. But there are limits to the number of persons with assignment limitations who can be accommodated. I believe the present system provides a reasonable balance in this area and should be retained.

As I noted in my testimony, the Secretary is now and would continue to be authorized to make exceptions to this general rule. Furthermore, it does not now nor would it in the proposed bill apply to Presidential appointees to statutory positions. These two exceptions temper this rule so that it is at once affecting assignments of outstanding members of the Service.

CAREER AND NONCAREER MEMBERS OF THE SENIOR FOREIGN SERVICE

On further investigation, I am satisfied that the 5 percent limit on noncareer SFS appointments is appropriate. It would not impose an undue restriction on any administration's ability to carry out the nation's foreign policy in that it does not apply to those serving in domestic positions only or as Presidential appointees in statutory positions. On the other hand, for the first time the bill would provide an explicit limitation on noncareer appointments which is very important in ensuring that the career service, which is a unique repository of expertise and experience, is not cut off from senior responsibilities.

Mr. GILMAN. With regard to a mandatory retirement age. I think the bill provides for mandatory retirement at age 60. As you know, we have had a great deal of debate in Congress about eliminating many of the mandatory retirement agencies, and we feel men and women beyond age 60 are certainly highly capable of serving our Nation.

What are your thoughts about the 60 retirement age?

Mr. KISSINGER. I think the Foreign Service is a very particular position here in that respect, more than the civil service. Given the necessity of serving abroad and given the special demands that are made on the Foreign Service officers, experience shows with every decade the percentage of those who cannot or will not serve abroad increases. So, I would think that in view of the special nature of the Service, mandatory retirement age of 60 is appropriate, though as I am approaching it myself, I may develop second thoughts about it.

Mr. GILMAN. In speaking of second thoughts—and I will divert from the bill—there was a great deal of debate, as you may recall, about your shuttle diplomacy in the Middle East. Some of us thought it was very effective and it probably brought us closer to peace.

As you look back now and compare shuttle diplomacy to other methods of diplomacy, do you still advocate that as an effective vehicle for a Secretary?

Mr. KISSINGER. It is very difficult to prescribe a particular method of diplomacy because it depends so much on the circumstances and on the personality. The shuttle diplomacy was initiated during a period in which a critical domestic situation coincided with a very dramatic foreign policy development.

That is to say, we had Watergate at home. We had a Middle East crisis abroad, an oil embargo against all of the industrial democracies,

the danger of massive economic recession, and it was important to have a dramatic assertion that with all our travail, the United States could remain purposeful and could discharge its responsibilities to the rest of the world.

For that reason it was in that period important to have a demonstration of a rapid capacity to settle problems, but not all problems lend themselves to rapid solution. I would say that as a general proposition, high officials should not travel unless they are pretty sure of their outcome because if they fail, it depreciates their prestige. So I would list shuttle diplomacy as one of the methods that can be used. It is a rather risky one because you are staking the prestige of your office and your country, and if you fail at it, you have produced a major setback.

So, I would not recommend it as the only method. In the circumstances that I faced, I think still in retrospect it was the best way to move things to a constructive solution.

Mr. GILMAN. Thank you, Mr. Secretary. We hope you will be back again.

Mr. FASCELL. Mr. Pitchard.

Mr. PRITCHARD. Thank you, Mr. Chairman.

Mr. Secretary, I, too, am very pleased to see you back on the Hill, although I know you come back with some regularity. I was very glad to hear what you said about the structure of the organization of our foreign policy.

It seems each time we have a new administration, the President finds it more convenient, even though he generally agrees with the overall policy, he finds it more convenient to go around the system because he wants to do things quicker.

Now, doesn't the same thing hold true when we get to the country and the Ambassador there? I see we have eight programs. We have a CIA; we have all these things operating in a country. Doesn't the Ambassador have to call the shots if you are going to have an effective program in a country?

Mr. KISSINGER. I think that the Ambassador should be responsible for all American activities in the country to which he is accredited; otherwise, he is in a very difficult position.

Mr. PRITCHARD. We do this, don't we?

Mr. KISSINGER. On the national level there is a propensity of Presidents—you see it now in Presidents of such different personality—to the physical proximity that seems to make a great deal of difference and even the 5-minute car ride from the Department of State to the White House seems to create a psychological barrier.

Second, I must say with all my affection for the Department of State, it is capable of producing papers whose precision of thought leaves something to be desired, so a President who wants to do something and sends it over and then asks for a recommendation, can find himself frustrated by waffling papers.

On the other hand, if he bounces them back two or three times, I think the only way to make a department responsible is to give it responsibility. In the field I think there has been tremendous improvement over the last 10 years in strengthening the responsibility of the Ambassador for the operations, and it depends partly on the energy level of the Ambassador whether he really wants to exercise the authority, and those Ambassadors who are abroad because they like the

good life will then have a tendency not to exercise their responsibility and to ride along with the bureaucratic tide.

It is an unwise way of proceeding. The best Ambassadors, good Ambassadors, do not do that.

Mr. PRITCHARD. But each time you sort of go around it because you feel the situation calls for going around it, why you just weaken that situation, and really the only way you do it is by hauling these people up and either getting rid of them or making them toe the mark.

Mr. KISSINGER. Absolutely. I have to say in my experience I had all the preconceptions about the waffling character of the State Department. On the other hand, if you insist on performance, it is one of the most impressive instruments that exist, and with strong leadership, it is second to none in the world.

Mr. PRITCHARD. If the Secretary of State or the administration relies on the State Department, and that message clearly goes down to the organization, it seems to me it functions better when it knows what it is doing will really be it.

Mr. KISSINGER. And if you don't, you have 10,000 disaffected, irresponsible people around who have to do something in the course of the day, and they will then push foreign policy in a very erratic direction, so you don't really have that much choice.

I want to stress, as you all know, that I honored this principle when I was in the White House. There were special circumstances while I was there, but I think institutionally the foreign policy has to be conducted through the Secretary of State and through the Department of State if it is to have coherence.

Mr. PRITCHARD. I would agree. We talk about the mandatory 60-year old age limit. I know we used to have it in business. In most cases it seemed to me it was an easier thing to do, instead of having to face up and fire people.

It took some of the onus off unloading someone or moving them into a less responsible spot. On the other hand, don't you think we have to have some flexibility because, you know, there are people who have experience and connections.

Mr. KISSINGER. As I understand the provisions of this bill, the Secretary of State does have the authority to extend appointments above age 60 if he considers this in the national interest. I think that this protects those cases where individuals are essential.

Mr. PRITCHARD. I am getting closer to 60 so—

Mr. KISSINGER. There are a few people in this room who are going the other way.

Mr. PRITCHARD. Finally, on protection for the individual employee, if you give complete protection it seems to me that you lose quite a bit in flexibility of management, and I think in the case of the State Department it would seem to me—maybe you don't agree—that, because it is such an essential service and so important on the cutting edge of this country's problems, that we have to allow the management of the Department flexibility and maybe hold the protection based on the ability of the people in there essentially.

Mr. KISSINGER. That would be my instinct. My instincts would be to maintain administrative flexibility.

Mr. PRITCHARD. You know we are going to run counter to all of the groups or the associations or whatever they have in every one of these organizations.

Mr. KISSINGER. But I think the Foreign Service is a very special institution that requires a particular treatment because of the complexity of its job, because of the hardship that is involved and in some of the service and because of the crucial nature of the decisions in which they are involved. I think general principles of retirement that apply in other fields of endeavor should not be applied.

Mr. PRITCHARD. How about a little tradeoff on paying them a little more money for a little less protection?

Mr. KISSINGER. I am in principle in favor of paying them more money. There is, of course, the merit provisions in this bill, which I think are very favorable. I think as a practical matter you, the members of this committee, are in a better position to judge it than I.

As a practical matter, to take the Foreign Service out of this general pay scale of the civil service, this would be a form of discrimination that would be hard to put through. So, failing the ability to do this, I am satisfied with the merit provisions of this act.

Mrs. SCHROEDER. Mr. Gray.

Mr. GRAY. Thank you, Mr. Chairman.

Mr. Secretary, you state in your testimony, on page 3, "The Administration's proposal would consolidate and codify the personnel system in all foreign service as also suggested in the 1977 interim report. The present multiple array of personnel categories and subcategories deters good management and makes individual inequities hard to avoid."

In your opinion, how does a new act provide for the free flow and better utilization of women and minorities in the Foreign Service, and what safeguards do you see there, against the continuation of a sort of closed service, as in the past?

Mr. KISSINGER. What this comment refers to is the various categories that have grown up either by administrative practice or by law; it does not refer to whatever categories may exist in the minds of those who are administering the general provisions.

By establishing one single, homogenous Foreign Service by abolishing various different categories, it makes it possible to administer the personnel practices in a uniform manner.

I would have thought that the intent of the Congress and the consensus, our national consensus, has been that greater attention should be paid to minorities, to women, and generally to groups that have heretofore been disadvantaged, it would be reflected in the administration's procedures; it would be also reflected in the administration of the promotion system. But I must say that this statement was not addressed to that question that you have raised.

Mr. GRAY. Do you see anything in the act that will try to correct those inequities of the past?

Mr. KISSINGER. I cannot immediately identify it, but I know the people who are administering this act in this administration. I would like to think also in the previous administration, but certainly the people who would be administering this act, seem to me to be very conscious of these inequities; and I would not object to some congressional expression that called particular attention to this and established it as a criteria to which one should pay attention in admission and in promotion.

Mr. GRAY. You mean, should not the administration procedures, or do those administration procedures, from your point of view at this

time, or as proposed in the act, provide those particular groups, women, minorities, who have not been in the Foreign Service, have that opportunity to get into the Foreign Service? Or are you saying perhaps there needs to be something stronger in terms of a statement in the Foreign Service Act?

Mr. KISSINGER. When I was Secretary, the Deputy Under Secretary for Management, Larry Eagleburger, started procedures which brought about a dramatic increase both in applications and in admissions into the Foreign Service. We took special care both with respect to women and with respect to minorities, to make sure the promotion system operated, keeping in mind past inequities.

I have the impression that these efforts, which were begun when I was Secretary, have been strengthened in the present administration, but I think so far this has been a matter of administrative decision.

I am told that affirmative action and equal opportunity are now merit principles to which attention is paid, and that this act would strengthen the already-existing provisions in favor of the broadest representation.

Mr. GRAY. My concern is that I really wanted to get to your feeling about whether or not some strong statement or language ought to be in the act itself, rather than depending on the good wishes of the Administrator, whoever the Administrator might be, or the Secretary at that moment.

Mr. KISSINGER. Again, I have not thought about this problem, but offhand I would think a strong statement in the act, a statement of purpose, would seem to me to be very appropriate.

[Mr. Kissinger's additional comments follow:]

EEO AND AFFIRMATIVE ACTION

As I understand it, existing equal employment provisions of law such as those in the Civil Service Reform Act of 1979 and in the Civil Rights statutes apply to the Department of State and the Foreign Service as well as to the Civil Service. The proposed bill would make no change in that situation, but incorporates equal opportunity goals in section 101(b)(2) and in the repeated references to "merit principles" of the 1979 Act elsewhere in the bill. Under the circumstances, no additional language on this subject seems necessary. However, if the Congress should want to expand further on the language now in the proposal which refers to that legislation to give it added emphasis, I certainly would support it.

Mr. GRAY. Thank you, Mr. Chairman.

Mr. FASCELL. Mr. Secretary, we have been talking about some myths that are hard to put to rest. One is the whole problem of elitism and perceptions concerning elite groups in our society, whether that elitism is achieved validly through specialized training and rigorous requirements or is perceived to exist for no good reason.

That has happened in the State Department with the charge that the Foreign Service is nothing but a "bunch of pin-striped cookie pushers" who are graduated from Harvard and Yale. But it seems to me that on the level of discussion that you just had with Mr. Gray, it is quite clear that for some time the Department has been responding to the necessity for broader representation of American society in the Foreign Service. While one could criticize the State Department and the Foreign Service—as we can criticize any agency or group in government—I don't believe any thinking person could question the

caliber and dedication of the Foreign Service. It has a way to go, however, before it truly reflects the best in American society, regardless of race, creed, color, sex, national origin—or school.

Mr. KISSINGER. You have to remember that most of the Foreign Service believes that the incumbent Secretary of State could never have made it into the Foreign Service if he had not been appointed by the President to his office.

Mr. FASCELL. I might add, as an example of perspective, that there are a lot of myths surrounding Congressmen, but I don't want to get into that right now.

Mr. KISSINGER. I don't mean this Secretary of State, incidentally. They think that about every Secretary of State.

Mr. FASCELL. The other myth that has surrounded the Department and refuses to die has been this question that it is just loaded with deadwood. We hear that about every department of Government and the Congress, but it has seemed to stick with particular regularity to the Department of State.

Now, you addressed the whole question of up and out, the importance of admissions, and it seems to me that a genuine effort has been made to deal with that problem.

Mr. KISSINGER. I think a genuine effort has been made, Mr. Chairman. I think the popular image is substantially incorrect. Of course, it applies to a few individuals and they will be the ones that stick in the people's minds.

I found that the tougher the crisis was, the better the Foreign Service responded. I have not seen any statistical breakdown of its composition. I would be surprised if the old image of the Ivy League predominance is still correct, but a systematic effort has been made to broaden its base to make it more representative and, after all, the primary incentive to be in the Foreign Service is in the word, "Service."

Most of the people could earn more money elsewhere, and they do it because they believe in their country and they want to serve their country, and that is their reward and that is why they work long hours with great dedication, and I really think the public image is substantially incorrect.

Any bureaucracy develops procedures which can be maddening but they can be overcome and they do not reflect the quality of the personnel.

Mr. FASCELL. Mr. Secretary, I personally agree with you. I have been in Congress 25 years and I have had an opportunity to observe the State Department at very close range from the vantage point of my congressional responsibilities. My own conclusion is that, by and large, the Foreign Service is composed of a tremendous number of dedicated people with the highest of motivations and a genuine desire to serve our country. It is unfortunate that the few cases that lend credence to the myths refuse to be forgotten.

There is another myth I've heard, to the effect that the average American businessman just cannot get any help from American embassies anywhere in the world and that, if he really wants to get the kind of pragmatic help that he ought to have, he needs to go to the British embassy.

Myths like this have given rise to responses such as the current move to augment the powers of the Special Trade Representative or move

trade policy to Commerce or a combination of both so that East-West trade and commodities issues which have a tremendous impact on our foreign policy would no longer be the responsibility of State.

A few years ago, similar action was taken to set up agricultural attaches operating out of the Agricultural Department, apart from the State Department. What is your comment on all of this?

Mr. KISSINGER. I have always been opposed to this. First, on the general comment that embassies don't give adequate assistance to commercial interests, my experience has been that the fault is much more frequently on the side of the business community. They generally do not come to the Government until they are in such a desperate situation and they are already in so much trouble that it is almost impossible to do anything for them.

Contrary to other countries, where there is some sort of a commercial strategy, our people do not come to the Government at a time when you can do something and they come to the Government when they are in desperate straits and then they expect some miracle at the last moment. That was my experience with respect to our business community and the Secretary of State.

There is no reason in the world why ambassadors of the United States cannot and should not and do not represent our economic interests, but it is very wrong to create special constituencies which then can go back to different departments with narrow interests, not related to our present foreign policy and then in the Congress to special committees that again are not primarily responsible for our foreign policy in terms of our foreign representation abroad.

I opposed it with respect to commerce attachés, I think it is unwise with respect to agricultural attachés, and I would say there what I said about the Secretary of State. If our ambassador cannot represent our economic interest, it was a poor appointment, because economics is such a vital factor of our relationship to the rest of the world today.

Mr. FASCELL. Let me discuss one more problem and then I will conclude. One of the more troublesome problems has been one that involves the American public generally and the problem of consular services. People who are in trouble expect the Marines to be called out or some other dramatic response when they have a particular personal problem in a foreign country, regardless whether the State Department has the authority or the resources to handle the problem. As a result, the suggestion has at times been made to separate the consular service from the Department, or that the training of consular officers should be changed so that they are not forced to compete with other Foreign Service officers, but develop skills similar to social workers and follow a different career development pattern.

The Department has been faced with this problem for some time. I think it is a matter of rising expectations from a larger and more diverse traveling American public and declining or static resources in the Department, which makes it difficult or impossible for our Foreign Service officers abroad to carry out their mission, thereby discrediting the Department of State generally in carrying out its foreign mission.

Mr. KISSINGER. There are a number of problems. First, there are so many Americans traveling abroad right now and so relatively few consular offices in relation to the numbers of Americans abroad that, as most parts of the Foreign Service, they are overworked.

Second, usually the case arises when there is some legal or technical obstacle and it depends then very much on the legislation of the country which they are in. Whatever influence an American representative has abroad depends on the foreign policy relationship we have with that country and on the price that that country is willing to pay for generally good relations with the United States.

Therefore, the impact of the consular office depends importantly on the foreign policy impact of the United States overall, and to separate the consular offices from that would be to give them an assignment that is almost impossible to carry out.

Mr. FASCELL. The Congress has not helped due to budgetary constraints, we have been very, very tight about the budget in terms of real growth, and so we bear part of the responsibility to the inability of the Department to respond to these needs.

But one of the major purposes of this legislation is to improve the morale of consular officers, though we can't accomplish this legislatively. The idea is that, through proper management—I agree with you that you have to rely on the Secretary of State—people in the consular service would be given a greater opportunity for career development in the Foreign Service. But this is essentially a function of management.

Mr. KISSINGER. That would be my view.

Mr. FASCELL. Dr. Kissinger, thank you very much.

Mrs. Schroeder.

Mrs. SCHROEDER. Mr. Secretary, as the co-Chair, I would like to just make one plea. I want to lobby you a bit and hope we can engage you in a little shuttle diplomacy, and that is on behalf of the spouses in the Foreign Service. We have a chance here to do something about their condition, and we have some people that I think you have heard of down in OMB who are not quite agreeing with the State Department position on this.

All I hope is that you look at the different arguments that have been made, and I hope we can persuade you because you are always very eloquent, and I think it would be nice to have you on our side.

I don't think there is anything more pressing as the condition of many of the spouses in the Foreign Service. As you know, the divorce rate, I think, is higher because of conditions they have been subjected to. We have degraded spouses; we have made them do all sorts of things. We have moved them all over the world. They could never have a pension in their own name unless they found a magic pension that they could invest in wherever they are stationed. And if they are divorced, we tell them, "You had lots of honor," which is hard to eat and hard to wear, and it doesn't keep you warm.

As you know, under community-property States and under the pension programs in most foreign services in almost every other country in the free world, there is a vesting of a certain part of someone's pension after so many years of marriage that is automatic. We are trying to get that in rather than forcing everyone to go to court and honor it. It is causing a little difficulty with OMB.

I would be more than happy to try to persuade you and put you back to work shuttling back and forth down there and see if you can help us in this battle as we deal with this bill.

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Mr. KISSINGER. Let me look at this and I will write you a letter with my views. I have not had a chance to look into this.

[Mr. Kissinger's additional comments follow:]

FAMILY MEMBERS

I share the Committee's view that the Foreign Service must accommodate the rights and concerns of family members. The bill would strengthen the Department's ongoing program in areas of employment and training opportunities for family members. I support retention and strengthening of these provisions.

You asked especially about divorced spouses. I support the concept of the existing law, retained in this bill, that the courts review the circumstances of each case and establish the share of an officer's annuity to be paid to a former spouse. However, I would like to see the Committee expand the bill to provide survivor annuities for former spouses who have served abroad with members of the Foreign Service for minimum prescribed periods.

Mr. FASCELL. Dr. Kissinger, thank you very much.

We will continue now with the review of the bill, word by word, line by line, page by page, orchestrated by Secretary Read with basso profundo accompaniment by Harry Barnes and with further accompaniment by Mr. James Michel, who will tell us whether we are picking up the proper beat on this score.

Mr. Secretary, we were at page 105. We are about to start on chapter 10. This is a new section, as I recall it, with an effort to codify labor-management relations. Do you want to pick it up from there?

Mr. READ.¹ Thank you, Mr. Chairman.

We had made some preliminary remarks last time as you recall and we will go right into section by section unless you would prefer otherwise.

Mr. FASCELL. Go right ahead.

Mr. MICHEL.² Mr. Chairman, if it is convenient for the members of the committees we could proceed with the four column print, rather than the three column print, which we had prepared for this chapter alone.

Mr. FASCELL. So chapter 10 is in a separate four-column print and we are now at page 1. Is everybody with us?

Mr. MICHEL. We kept the numbering corresponding to the other print for cross-reference.

Mr. FASCELL. Page 1 of the second print, chapter 10.

Mr. MICHEL. The third column in this document sets out the relevant provisions of the Civil Service Reform Act and the labor-management relations system provided by law for the civil service for purposes of comparison.

Mr. FASCELL. Which column?

Mr. MICHEL. Third column. We have in the left column Executive Order 11636, the present basis for the Foreign Service, the second column is the bill; the third column is the civil service law; and the fourth column is a sectional analysis of the bill.

Mr. FASCELL. Thank you. Go ahead.

Mr. MICHEL. We begin with section 1001, the statement of findings and purpose. This section is drawn from the Civil Service Reform Act and distinguished only by the addition of a paragraph appearing on

¹ Hon. Ben H. Read, Under Secretary for Management, Department of State.

² James Michel, Deputy Legal Adviser, Department of State.

page 106, paragraph 3, which states that the unique conditions of Foreign Service employment require a distinct framework for labor-management. That paragraph is drawn from the existing Executive order. It recognizes the history of Foreign Service labor relations outside the Civil Service System and the express exemption of the Foreign Service from civil service law.

Mr. FASCELL. Paragraphs 1 and 2 come out of the Civil Service Act, paragraph 3 comes out of Executive orders and there are no substantive changes as far as the findings made by Congress on the matters of policy.

Mr. MICHEL. That is correct.

Mr. FASCELL. Section 1002.

Mr. MICHEL. Section 1002 contains the definitions used uniquely in this chapter of the bill. There are some terms used in this chapter and elsewhere in the bill which are governed by the definitions at the beginning in chapter 1, but there are some special terms relating to labor-management that we have defined specially for this chapter. These are first, the term "Board" which is used as shorthand for the Foreign Service Labor Relations Board.

Mrs. SCHROEDER. Can I ask a question right there. May I ask why we need a separate board? Why can't we use FLRA?

Mr. MICHEL. We can address that as we go through definitions or we can address that when we get to the substantive provisions. Would you like to deal with that right now?

Mrs. SCHROEDER. All I am saying is I would define board as FLRA.

Mr. MICHEL. We have been discussing for many weeks the characteristics of the Foreign Service and the distinguishing features of the Foreign Service which make it different from the civil service. The Foreign Service is governed by a separate body of personnel law and has been since the 19th century.

Mrs. SCHROEDER. I agree with that. Where my problem comes is I still believe the FLRA is able to administer two laws instead of creating two boards.

Mr. MICHEL. If I may address that. The pattern in labor—management has been that where you are dealing with different systems you generally do not give an administrative body the additional responsibility for dealing with additional systems. We have the National Labor Relations Board in the private sector. Why shouldn't the National Labor Relations Board deal with Federal employees?

The answer is because there are special conditions for the civil service that warranted the establishment of a Federal Labor Relations Authority. There are also special terms of employment in the transportation industry, and because of this there is a National Mediation Board that deals with railroads and airlines.

We think that the special conditions in the Foreign Service necessitate a familiarity with the facts of foreign service life that will permit the organization administering the labor-management program to deal expeditiously and fairly and correctly with the issues that are presented to it. We have 8 years of experience in dealing with the labor management system apart from the civil service and it has worked.

We get pretty fast turnaround from the existing machinery. We would expect that to continue under the system that we have proposed in this bill.

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We have tried to maintain compatibility and if you read the two provisions side by side you will see there is a similarity of functions. We don't think identity of personnel, where you have a body that is full-time dealing 99 percent of the time with the Civil Service and 1 percent of the time with the Foreign Service, is going to provide the same quality of administration that we will get with a separate Foreign Service Labor Relations Board.

I might add one other point on this and that is that we have some experience with a grievance board for the Foreign Service which was created by the Congress and serves as the Foreign Service Grievance Board, not a governmentwide grievance board. We have been able to attract and retain outstanding experts in the field of labor relations, arbitrators who have been willing to serve on that Board and make it the premier grievance system in the Federal service.

We think this same quality can be achieved through the system we have proposed for the Foreign Service Labor Relations Board and that it will simply be a better system than it would be if we relied on a body which is concerned 99 percent of the time with a whole different set of personnel laws. That body would have the civil service orientation that rank is in the position, not in the person, that an individual has a relationship to the position to which assigned rather than to a system where he or she is subject to assignment throughout the world. It would not be familiar with all the other special characteristics we have been discussing in the first 110 pages of this bill.

Mrs. SCHROEDER. But you have different limits on the Foreign Service Labor Board. In other words, the FLRA has broader authority I think. I understand why you need a different group in the private sector versus public sector but I don't think the public sector is that different. I guess we are not going to agree on that. I just wanted to flag that and tell you I think we will have problems with that. I can list a whole different group of reasons why I don't think that is the way to go. I am not sure how independent it is being in-house.

Mr. MICHEL. It is not in-house and is independent and we do think the Foreign Service is, as Dr. Kissinger said earlier today a special institution.

Mrs. SCHROEDER. Everybody thinks they are a special institution but there is also some reason for having uniformity. We have just gone through extensive hearings in the Civil Service Committee trying to set up things to make sure we don't have overlaps and conflict of interest. I don't see the same kind of protection and the same scope of authority here. Let me flag it and say I think we may have a problem and we will get with it later I guess.

Mr. LEACH. Will the gentleman yield? Maybe there is some model in the GAO legislation and you can tie the two together.

Mr. FASCELL. Go ahead.

Mr. MICHEL. The other definitions are similar to the Civil Service Reform Act. There are a couple of differences of language which I might point out. Paragraph 3, "collective bargaining agreement," refers to a signed agreement and refers to the fact that it may be of a comprehensive and long term nature. Now those are unnecessary things to say in the civil service context where you have a pattern of bargaining which involves signed agreements of a comprehensive and long-term nature. That has not been the pattern of labor-management negotiations in the Foreign Service.

There have been agreements reached through clearances of regulations in advance and a variety of other mechanisms and so we are putting in language that emphasizes somewhat greater compatibility with the civil service.

Conditions of employment is defined as including practices, policy matters within the discretion of the Secretary of State. The substance is the same for the civil service. We made it explicit in the bill for the Foreign Service.

There are excluded from the definition of conditions of employment matters relating to governmentwide or multiagency responsibilities of the Secretary of State affecting agencies outside the foreign affairs community. This makes explicit what title VII of the Civil Service Reform Act implies. You cannot bargain with an agency about things that exceed agency jurisdiction and go to governmentwide responsibilities of a particular head of an agency.

There is a difference in that we have national consultation rights under the Civil Service Reform Act for unions representing significant segments of the Federal service on subjects which are governmentwide responsibilities of particular agencies.

In our case the overseas standardized regulations on allowances and differentials would be a subject on which there might be an obligation to grant national consultation rights. It would not be a subject of collective bargaining because it is a governmentwide responsibility of the Secretary of State. We provide similarly for consultation on these kinds of subjects for the Foreign Service unions.

We have a difference in the definition of confidential employee in that we apply the definition of confidential employee to management officials generally, except for those who are serving in a clerical capacity outside the personnel area. This reflects the difference in the scope of the bargaining unit.

We exclude management officials and confidential employees from the bargaining unit. The Civil Service excludes all employees down through the rank of supervisor from the bargaining unit. We can address that in the definition of employee perhaps.

The employee definition, paragraph 7 excludes as you will note, a confidential employee, a management official and a consular agent. You don't find reference to a consular agent in the Civil Service Reform Act because they don't have consular agents in the civil service.

We do not exempt supervisors because that would take about half the Foreign Service out of the bargaining unit. This is a considerably higher percentage than are excluded in the civil service. It simply is a fact that we have a Foreign Service population widely dispersed around the globe, most of them serving in small and medium sized posts, and they have responsibilities for effectively recommending matters which would cause them to be supervisors in the Civil Service definitions to a much greater extent than is true of the Civil Service work force.

Even Foreign Service officers who supervise foreign national employees would be excluded from the bargaining unit as we understand the Civil Service definition and some decisions of the former Federal Labor Relations Council on this subject.

The definition of exclusive representative, paragraph 8, is the same except we don't deal with the presently recognized exclusive representative in this chapter. There is a grandfathering provision in the Civil Service Reform Act. We simply put that into title II of the bill because it did not seem appropriate in a codification which should be a permanent body of law.

The substantive effect is the same.

Our definition of labor organization is essentially the same as the Civil Service. We insert the adjective "primary," in our bill saying that a labor organization is an organization composed of employees which has a primary purpose of dealing with the Department on grievances and conditions of employment. All this does is to provide some protection against complaints if there is a meeting between management and a group.

For example, we have a number of groups of minority employees who have particular concerns that they wish to express. Their primary purpose is not to deal with management as a labor organization and we think it is reasonable to meet with those groups, with the exclusive representative given the right to be present at the meeting.

Mrs. SCHROEDER. The primary purpose would not be dealing with the Department of State. It would be a labor organization that was broader than just representing the Department of State? For example, AFG, how would they fall into that definition?

Mr. MICHEL. That is "a" primary purpose, not "the" primary purpose.

Mrs. SCHROEDER. You would still see them as meeting this test?

Mr. MICHEL. By all means. It is the quality of the organization rather than what agency they deal with that we are talking about here. What is the nature of the organization.

Management official is a term which is defined differently in this bill from the definition in the Civil Service Reform Act. A management official under the civil service law is an individual who among other things has duties and responsibilities which authorize that individual to influence the policy of the agency. Now I think most Foreign Service officers believe that they have a duty and a responsibility to seek to influence the policy of the Department of State. That seems unnecessarily vague language in the context of the Foreign Service. We have a more specific definition of a management official drawn from the existing Executive order, under which we have operated for the past 8 years, and that bears a relationship to chapter 2 of this bill which identifies the management of the Department of Foreign Service.

We define as "management officials" chiefs of mission, assistant secretaries, persons serving in comparable positions and their deputies as well as Foreign Service inspectors and personnel officials.

Mr. FASCELL. Let me take you back if you are finished with that. Do you want to explain to me what the difference is between an organization which has as a purpose dealing with an agency and an organization which has a primary purpose dealing with the agency?

Mr. MICHEL. The only difference that we had in mind here is that—

Mr. FASCELL. We are talking about an employee organization. It is going to deal at arm's length with an agency for purposes of grievances

and conditions of employment but with a whole list of exceptions. In both cases that is the purpose. What difference does it make if it is a purpose or the primary purpose?

Mr. MICHEL. The difference is we do not want to consider a group of minority employees who want to talk to the Secretary of State about the conditions of minority employees in the State Department to be a labor organization so that we will be subject to an unfair labor practice for talking to them or listening to them.

Mr. FASCELL. But if such a group of people got together and decided they wanted to try to represent the employees, they still have that right.

Mr. MICHEL. But then they would be a labor organization and then they would come under the rules.

Mr. FASCELL. I understand that, but isn't one of the purposes of defining a labor organization that a labor organization would have to have the authority to represent the employees, not the purpose?

Mr. MICHEL. Well, you are speaking of authority and capacity, and that could be a way to define it.

Mr. FASCELL. I don't know.

Mr. MICHEL. We stuck with purpose because that is what we had in the Executive order and that is what we have in the Civil Service Reform Act.

Mr. FASCELL. I am still not clear on the distinction. I don't see it frankly because the definition does not take care of the problem you raised, I don't believe. If a group of people got together, whether they called themselves a labor organization or not, and they stated that their purpose was primarily to deal with the agency on matters of grievances and conditions of employment, and insisted on seeing the Secretary of State concerning what they conceive to be grievances dealing with minorities, then what status or authority would they have?

Mr. MICHEL. We would have to say we deal with the exclusive representative of those employees.

Mr. FASCELL. Then it does not seem to me the definition of purpose does anything. What determines the relationship of the labor organization to management is whether or not it represents the employees.

Mr. MICHEL. But there are organizations which do not purport to represent employees.

Mr. FASCELL. Then they shouldn't come within the provisions of this act, period.

Mr. MICHEL. That is what the word "primary purposes" does, keep them out of the act.

Mr. FASCELL. I would say it a lot more explicitly than that because I don't think saying "primary purpose" does it myself, unless you think that covering it under the definition of exclusive representation gives you that coverage. If that is what you are saying, then I am going to respect your legal opinion.

Mr. MICHEL. We are saying there are organizations which do not have a primary purpose of representing employees, and those organizations have members and those members sometimes want to talk to the Secretary of State.

Mr. FASCELL. That is different.

Mr. MICHEL. That is all that is about.

Mr. FASCELL. That is different. If I decide tomorrow that I want to start an organization and I call it a labor organization and I put in my charter that the primary purpose is grievances and conditions of employment, and then I don't have the authority to represent all of the employees, but only the employees in that group, you could have 99 labor organizations.

Mr. MICHEL. Then you have to petition for exclusive representation, go through election.

Mr. FASCELL. Of all employees.

Mr. MICHEL. That is right.

Mr. FASCELL. I just wanted to be sure.

Mr. MICHEL. Section 1003 preserves two exceptions from the general application of this chapter. The first is the authority of the President to exempt a subdivision of the Department that is primarily an intelligence, investigative, security operation. That is parallel to what is in the Civil Service Reform Act. The second is the authority of the Secretary of State to suspend temporarily any provision of the chapter with respect to a post abroad or an office in the United States in an emergency.

Mr. FASCELL. What happens to all this other language on page 110A in the Civil Service Act?

Mr. MICHEL. Those are some definitions we have not picked up. That is a grievance. We deal with grievances in a separate chapter as far as individuals are concerned, because we retained the present statutory grievance system.

Mr. FASCELL. Their particular point is not applicable. They have either been left out or treated in some other section?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. Would you simply identify the grievances you already covered?

Mr. MICHEL. Grievances are dealt with in chapter 11 and in section 1024 of this bill.

Mr. FASCELL. Subparagraph 10 on page 110A is what?

Mr. MICHEL. The definition of supervisor simply is not used in our system.

Mr. FASCELL. How about 15?

Mr. MICHEL. We do not have a special category of professional employees to be treated differently from nonprofessional. "United States" is defined elsewhere in the bill.

Mr. FASCELL. Section 1004?

Mr. MICHEL. Section 1004 is a statement of employee rights which is substantively identical to section 7102 in the Civil Service Reform Act and is also compatible with the Executive order under which we now operate.

There are editorial changes but no changes of substance.

Mr. FASCELL. Section 1005?

Mr. MICHEL. Section 1005, on management rights, is organized somewhat differently from the Civil Service Act, basically on differences in the two personnel systems.

The Civil Service Act in paragraph (2) (A) has a reference to reduction in grade or pay. We don't have that procedure in the Foreign Service.

Paragraph (C) in the Civil Service Reform Act refers to filling positions from among properly ranked and certified candidates for promotion. We don't fill positions by promotion; we fill positions by assignment, and promotion is a separate process in the Foreign Service, so we refer to promotion in a different paragraph.

There is one unique management right that we have referred to in the bill, and that is in paragraph a(5) of section 1005. Under the Civil Service Act, if management decides there is a need for uniform personnel policies or practices, management has to demonstrate that right to the Federal Labor Relations Authority. That can be litigated by the union, and if the Federal Labor Relations Authority upholds management's contention that there is a compelling need for uniformity, then there is no bargaining; management issues the regulations.

What we have done is to provide that management of the foreign affairs agencies may agree on the need for uniformity. For example, they might agree they need uniform separation for cause procedures for Foreign Service officers and Foreign Service information officers in ICA. As a consequence of that decision by management, then there will be bargaining on a joint basis and ICA's employee representative and State's employee representative will sit down with management of the two agencies and they will hammer out a joint regulation that will preserve compatibility between the two agencies.

We think that gives the employees, in a way, a better deal than in the civil service, and it preserves in a better way the objective of compatibility among the foreign affairs agencies using the Foreign Service system.

There are no other significant differences in management rights between civil service and Foreign Service legislation.

Mr. FASCELL. Excuse me.

Mr. MICHEL. That is the only significant difference in the management rights section.

Mr. FASCELL. Let's go to the next one.

Mr. MICHEL. Section 1011 establishes the Foreign Service Labor Relations Board. We have addressed already the reason why we believe that a separate Board is necessary for the Foreign Service.

The Board that we would establish would be chaired by the Chairman of the Federal Labor Relations Authority. This would assure a compatibility with what is going on in the civil service. The same person who is looking at civil service is looking at the Foreign Service and knows what precedents there are on the civil service side. The two systems are not operating completely separately.

But we would have two members appointed by the Secretary from nominees appointed by the foreign affairs agencies, with the concurrence of the exclusive representative of employees in each agency.

Mr. FASCELL. It seems to me that what you have done, in effect, is to create a separate panel for the management of two systems under the same authority. With special rules laid down for the separate panel, because of the special conditions of employment.

I don't find that incompatible with the concept of a single system. Maybe it would have been better to write all this in the other law and set up a separate panel under the same head, with all the same provisions, but that occasion did not arise; the matter wasn't before us at that time. Perhaps this is a way of dealing with this. That does not

seem inconsistent with the objection that Mrs. Schroeder has, the concept of another board, another agency, and another set of rules.

Mr. MICHEL. It could be looked at that way.

Mr. FASCELL. I notice a lot of courts that operate that way and very seldom ever get to the parent organization. It is possible. I don't say that is ideal or that that would be satisfactory; I say it is a possible concept.

Mr. MICHEL. However it is characterized, we think that the inter-relationship between the Federal Labor Relations Authority and the Board—

Mr. FASCELL. It boils down to a question of semantics. I would be willing to do whatever it takes in terms of semantics, even in terms of legislation, to do whatever we have to do.

I would not object too much to that. I would like you to think about that possibility. Anyway, go ahead.

Mr. MICHEL. We provide that the chairperson would be, as I said, Chairman of the Federal Labor Relations Authority, who would serve ex officio, so we don't prescribe a term of office for the Chair. We provide a 3-year term for the other members. There is less detail; the only significant feature, I think, is that we don't provide expressly for a General Counsel to be appointed by the President, with the specific responsibility of investigating charges of unfair labor practices. We instead provide more generally in paragraph (f) on page 114 of the print that within the limits of appropriated funds, the Board may appoint and fix the compensation of employees.

There is a provision later on giving the Board an independent right to have its counsel represent the Board in court, and so it does contemplate that there would be independent legal staff for the Board.

We don't create a special statutory office for that.

Section 1012.

Ms. SCHLUNDT. Mr. Michel, as I understand it, all administrative support for the FSLRB comes from the Department. Why not make it independent, allow it to hire its own staff? Is there any rationale for this?

Mr. MICHEL. That is provided for in the bill. The Board has the authority to appoint and fix the compensation of its employees as the Board considers necessary to carry out its functions. That is the last sentence in paragraph (f).

Alternatively, the Board may obtain facilities, services and supplies through the general administrative service of the Department of State. They don't have to go out and rent an office if we have a vacant office in the building.

Mr. FASCELL. Where are you reading?

Mr. MICHEL. Paragraph (f) at the bottom of page 114.

Mr. FASCELL. Section 1012.

Mr. MICHEL. The functions of the Board are basically similar to those of the Federal Labor Relations Authority under the Civil Service Act. The organizational structure of this section is slightly different, but the substance of it is the same. We don't include all of the provisions that are in the civil service law which contemplate regional offices and so on, because we don't have that big a system. We don't provide that there will be an official seal. Apart from these details, the functions are essentially the same.

Mr. FASCELL. Section 1013.

Mr. MICHEL. Section 1013 provides for judicial review and enforcement of the Board's actions on essentially the same basis as there is provision for judicial review in the Civil Service Reform Act.

We provide for appeal to the U.S. Court of Appeals for the District of Columbia simply because that is where this Board will be; the Civil Service Act contemplates cases being brought in other circuits, because you will have regional offices of the Board, and you will have Government installations spread around the United States where you will have separate units, and we don't have that.

The exclusions from judicial review in the Civil Service Reform Act involve the institutional grievances. We have similarly excluded those grievance awards from judicial review when it is a grievance of the union.

Also, in the civil service law, unit determinations are not subject to judicial review. We have only one unit, so we don't have any need for that exception.

Section 1014 establishes an additional administrative body, the Foreign Service Impasse Disputes Panel. This is a continuation of an administrative authority that was created under Executive Order 11636, known simply as the Disputes Panel. The function of this panel is to attempt to mediate impasses that occur in the course of negotiations and, if mediation efforts fail, to conduct hearings and to impose solutions on the parties who are unable to agree.

Our experience with this body has been good; it includes in its membership two members of the Foreign Service, and these members may not be management officials or confidential employees, and they may not be labor organization officials. So they will have an expertise that is useful in achieving a knowledgeable and quick resolution of these disputes that may arise in negotiation.

I might add that since the Disputes Panel was created by Executive order, it has handled only 23 cases, all but four of these in the first 2 years while we were getting used to collective bargaining in the Foreign Service.

In 1978 there were no disputes that required the assistance of the panel, and in 1979 there was one.

Mr. FASCELL. In other words, it was clear there that the dynamics of the bargaining process was taken over satisfactorily?

Mr. MICHEL. We all have a better idea of what we have to bargain about and what it takes to reach agreement. This was brandnew to the Department of State and the Foreign Service in 1971 and 1972 when this system was being set up and there were some bumps getting started, but that is right, the dynamics now are to resolve these things at the negotiating table, not through litigation.

We provide something that is not in the Civil Service Reform Act with respect to the conclusions of the Disputes Panel, and that is, the Secretary of State may override a finding of the Panel if he concludes that the finding is contrary to the best interests of the Service. This means that the onus is on the Secretary. The Disputes Panel's finding is final unless the Secretary takes action to say "no."

We think this is a warranted departure because of, one, the broad scope of bargaining with the worldwide unit. We have a broad range

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of collective bargaining. Also, it is warranted because the Department operates under distinct and disciplined conditions that we think make it inappropriate for a party to impose with finality a condition of employment without the agreement of the Secretary.

Mr. FASCELL. That raises some questions in my mind: one is the burden of action; two, time required; three, the assertiveness of administrative rights, final determination. Tell me about those three things under that statement.

Mr. MICHEL. The burden of action is on the Secretary of State to upset an otherwise final decision of the Panel.

Mr. FASCELL. Is it final?

Mr. MICHEL. I think you pointed out there ought to be a time limit.

Mr. FASCELL. I don't know; it certainly seems to me you can't close the door unless there is a finality in the administrative process.

Mr. MICHEL. Yes; well, without a time limit, I guess you don't know whether it is final or not.

Mr. FASCELL. As long as you have that clause in there?

Mr. MICHEL. We need a time limit.

Mr. FASCELL. Why don't you think about that and come back to us?

Mr. FEINSTEIN. Mr. Michel, would you please explain what the term "contrary to the best interests of the Service means"?

Mr. MICHEL. That is obviously a subjective term. You can't define the "best interests of the Service" in a paragraph and plug it into this law; it means the judgment of the Secretary of State as to whether the proposal that is directed by the Panel, a proposal to which the parties have not agreed, is going to be harmful to the Foreign Service of the United States.

Now, I just don't know how to put any words or adjectives around that that would limit that discretion any in any effective way.

It seems to me that the Secretary of State is responsible to the members of the Foreign Service for acting responsibly. It seems to me it is a pretty heavy burden to participate in the process, and that the Secretary is not going to invoke that authority lightly.

We have had no disputes panel recommendation overruled in over 8 years of collective bargaining history in the Foreign Service. We think, as a matter of principle, that is an appropriate distinction between the Civil Service and the Foreign Service, to retain that right for the Secretary of State.

Mr. FASCELL. Following up on what Mr. Feinstein just pointed out, I think it is a good question. You are saying the Secretary has this authority now under present law?

Mr. MICHEL. That is right.

Mr. FASCELL. And that is by Executive order?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. And this language codifies that present authority?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. You had no case on the matter?

Mr. MICHEL. No; we had 23 cases in 8 years, and none has been overruled.

Mr. FASCELL. How do the people get onto this Impasse Panel?

Mr. MICHEL. The Panel is appointed by the Chairman of the Foreign Service Labor Relations Board.

Mr. FASCELL. The chairperson is the Chairman of the——

Mr. MICHEL. The Federal Labor Relations Authority, and——

Mr. FASCELL. There is a mandatory requirement for Foreign Service representation.

Mr. MICHEL. Two Foreign Service, one Department of Labor, one Federal Service Impasse Panel, and one public member who is not in the Government.

Mr. FASCELL. So, in addition to the Secretary having considered the question of overturning the panel decision, he would have to take on the Chairman of the Foreign Service Labor Relations Board who appointed him in the first place?

Mr. MICHEL. Excuse me?

Mr. FASCELL. The Secretary would not only have to overrule the Panel, but he would also have to take on the authority that appointed him in the first instance?

Mr. MICHEL. That is right.

Mr. FASCELL. If it was a case of irresponsible or arbitrary action of the Secretary, the matter would not stop there. If the appointing authority of the panel thought otherwise, the administrative process would not be dead, because it seems to me that you have previous routes. Although the right to take him to the President is not a statutory right as far as the employees are concerned, but it is an inherent right of any appointed official?

Mr. MICHEL. It is a policy difference.

Mr. FASCELL. So if you have a policy difference and the panelists were upset with the Secretary's action, they could go back to their appointing authority and say, "We think this man acted unwisely and contrary to our own findings" and take it to the President if necessary, but at the very least you would have a conflict of policy that would have to be resolved, and it would be another inhibiting factor on the Secretary.

Mr. FEINSTEIN. Later in this you provide that the Secretary may refuse to sign the collective bargaining agreement.

Mr. FASCELL. Where are you quoting from?

Mr. FEINSTEIN. Section 1023. He may disapprove an agreement if it is inconsistent with the requirements of national security or foreign policy. This Impasse Panel situation seems to be a similar sort of situation. It is a condition of employment set after an impasse. Why is that latter standard unacceptable here?

Mr. MICHEL. There is one basic difference: In the one case the Secretary of State is signing an agreement that the State Department management has agreed to at the bargaining table. In the other case, he is asked to accept the resolution of an impasse to which State Department management has refused to agree.

I don't think the same standard should apply to those two quite different functions.

Mr. FEINSTEIN. Civil service law provides both parties can agree to go into compulsory arbitration on the issue. You have no similar provision.

Mr. MICHEL. The Impasse Panel provides the equivalent, with these differences that we have described. The idea is to have a mechanism for resolving the dispute rather than having it drag on and on, and

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we do that with the Impasse Panel. The civil service does it with a compulsory arbitration procedure.

Mr. FASCELL. Section 1021.

Mr. MICHEL. Section 1021 on exclusive recognition again has some editorial differences, but is essentially the same as the civil service law, with one exception: This section describes procedures to be followed by labor organizations in seeking exclusive recognition and describes the procedures for an election to determine whether there shall be an exclusive representative, and if so, which organization that shall be.

In the Foreign Service, with our worldwide voting population spread out in a couple of hundred posts, we were concerned that if we ever had to do a runoff ballot, because there were two competing organizations and three choices on the ballot, that we would lose 6 months and spend many thousands of dollars doing it.

So we made provision for preferential ballot. The voters would say if there are three choices on the ballot, what is their No. 1 choice and what is their No. 2 choice; and in that way you avoid the expense of a runoff by allocating second choices among the top two choices in the runoff.

This is in paragraph 2 on page 120.

Aside from that procedural difference, you get to be an exclusive representative for the Foreign Service, basically the same way you do for the civil service.

Mr. FASCELL. Let me ask you a simple operational question with respect to this, since I, personally, have not had any experience with that.

Obviously, any group of people can start out with the idea—or any one individual can start with the idea—that he or they would like to represent the employees in the organization?

Mr. MICHEL. Yes.

Mr. FASCELL. There is a requirement for a number of people within a unit who would have to be—that number is 30 percent—

Mr. MICHEL. Thirty percent.

Mr. FASCELL [continuing]. Within a unit?

Mr. MICHEL. That is right.

Mr. FASCELL. What is a unit?

Mr. MICHEL. For the Foreign Service it is an agencywide unit.

Mr. FASCELL. So that is fixed by definition in the law?

Mr. MICHEL. That is right.

Mr. FASCELL. Now, it is conceivable that three different units could have 30 percent. That is the case you are talking about; is that right? Am I correct?

Mr. MICHEL. Well, one unit could have.

Mr. FASCELL. But three different units could have 30 percent each?

Mr. MICHEL. You could have a petitioner with 30 percent. You could have a current representative who intervenes and the nonunion choice which must be on each ballot, so you can get there without 30 plus 30. If there is an existing—

Mr. FASCELL. You have an existing bargaining representative.

Mr. MICHEL. Yes; so you have competition between a current representative and new one.

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Mr. FASCELL. The point I am making, notwithstanding the fact that you have a current representative, is that you could still wind up with three petitioners each having 30 percent; that gives you four.

Mr. MICHEL. That is right. You could have that; not likely but possible.

Mr. FASCELL. It is a worst-case scenario, but it is theoretically possible under the law?

Mr. MICHEL. That is right.

Mr. FASCELL. Who pays for all this?

Mr. MICHEL. For the election?

Mr. FASCELL. No; just to get where they are going in the petition process.

Mr. MICHEL. The union pays.

Mr. FASCELL. Not the union. Me, I am an organizer; I am a troublemaker, or whatever. I have a grievance; I go out and solicit 30 percent of the unit to join me in whatever it is I am trying to do, because I am a great salesman.

Mr. MICHEL. And you say, "We are going to organize. The first thing, we will have a meeting and everybody should give me a dollar."

Mr. FASCELL. Who bears the cost to do that? Do I?

Mr. MICHEL. That is right, and those people you get to support you.

Mr. FASCELL. In other words, for me to circularize the worldwide unit, it is my cost, not reimbursable. I am not being argumentative; I am just trying to understand. I don't want to be paying for that.

Mr. MICHEL. There is a provision on dues allotment.

Mr. FASCELL. I want to be sure some person is not going to be flying all over the world trying to organize people to become their representative in an organizational unit and spend a lot of other money in hotels and lobbying and what not, and then come back and say, "I have a nice big fat bill for \$50,000."

If a person wants to exercise his right under the law, God bless him. All I want is to be sure who is paying for it.

Mr. MICHEL. The organizers pay for it and those individuals or organizations who support them.

Mr. FASCELL. There is nothing in this law giving them the right to try to get representation that would in any way incur any cost?

Mr. MICHEL. There is one administrative cost.

Mr. FASCELL. I wish you had not said that. What is that?

Mr. MICHEL. It is the cost of providing for an allotment of union dues to a petitioner who is a labor organization alleging 10 percent of the employees have membership in the organization; and that the union is seeking representation going through this rather elaborate process. You can have a separate agreement with that petitioning union for the allotment of dues out of the salaries of the union members, so that it is withheld from the members' pay, and you pay the one check to the union. We would absorb the administrative costs of programming the computer to do that.

Mr. FASCELL. Let me get to another worst case scenario: I am a member of the worldwide unit. I am now represented by the present exclusive representative. I also signed three other petitions and became part of three other bargaining units. Now what happens?

Mr. MICHEL. You don't become part of any other unit.

Mr. FASCELL. I become part of some other organization seeking representation?

Mr. MICHEL. That is all right. You can belong to a lot of organizations; only one of them can be the exclusive representative. You can pay dues to all of them.

Mr. FASCELL. You will allot my dues?

Mr. MICHEL. Yes.

Mr. FASCELL. To whom?

Mr. MICHEL. When there is an exclusive representative, then the allotment goes to the exclusive representative.

Mr. FASCELL. That is different. Can't it go to a new petitioner?

Mr. MICHEL. If there is no exclusive representative, then the petitioner with 10 percent can get this dues allotment.

Mr. FASCELL. Let's get another worst case scenario. There is no ongoing exclusive representative, and you have three petitioners. How does the allotment work?

Mr. MICHEL. Any one of them can get the allotment by making that showing of 10 percent.

Mr. FASCELL. Now we have overlapping signatories at 10 percent. That 10 percent is on all three petitions; then what?

Mr. MICHEL. You are asking, can we withhold from your salaries the dues you have signed up to pay the two organizations?

Mr. FASCELL. I would then direct you to tell me to which petitioner—

Mr. MICHEL. I think we will duck and pay to both. If you want to be a member of both and pay to both, we will pay for you; but you have to tell us to do that.

Mr. FASCELL. Nothing automatic about it?

Mr. MICHEL. No; what the organization gets is what the employee tells us to pay from his or her salary.

Mr. FASCELL. If I want to pay three dues or four dues as an employee, that is my business?

Mr. MICHEL. Yes.

Mr. FASCELL. Let's go to the next section.

Mr. MICHEL. At the very end of 1021, I might mention that, because we don't have the history of long-term collective bargaining agreements, we have provided a somewhat different period of insulation of an incumbent from challenge. The civil service law, 12 months after an election, permits a challenger to come in only at the expiration of the current collective bargaining agreement.

While we may not have a collective bargaining agreement in the traditional model, we provide a 2-year period of insulation and then the challenger can come in at any time.

Mr. FASCELL. What is the so-called competitive model?

Mr. MICHEL. The traditional pattern in labor-management relations in the private sector and in the civil service for the union and for the head of the unit, whether it is office director or Cabinet officer, to sit down and negotiate a single collective bargaining agreement of a year's duration, or 2 years' or 3 years' duration, covering the rights and obligations of the union and the agency or office during that period. That is it.

Mr. FASCELL. And not subject to challenge during that period?

Mr. MICHEL. You mean, can you come back and say, "I want to renegotiate"?

Mr. FASCELL. No; challenged by somebody else seeking representation.

Mr. MICHEL. During that period, you can't have somebody else coming in; the rationale is that it would be disruptive.

Mr. FASCELL. I understand that. Why codify it? Why isn't that a bargaining principle? Why won't you negotiate at arm's length and say this is a competitive contract? It is going to run for 3 years, and part of this contract is that there will be no challengers.

Mr. MICHEL. I think this is something the Congress has—we are talking about the civil service law, not this bill, but I think this is something that the Congress has done there and with respect to the private sector as well because it is you and I negotiating about a third party's rights.

Mr. FASCELL. Agreed, but we are doing that anyway by law in the whole concept of collective bargaining. I find it amazing as a nonlabor lawyer to see that we would be concerned about it. But it is interesting. Just a philosophical quirk at 5 o'clock in the afternoon. It is not unusual. You will find that all through labor law.

Mr. MICHEL. Section 1022, on employees represented, is where we get to the single and separate worldwide bargaining unit, including all employees—other than management officials, confidential employees, employees engaged in personnel work and the security and criminal and auditing investigators.

I should say a word about this worldwide unit. We have a very centralized personnel system. We have a widely dispersed population which is moving all of the time. We have 20 people in an embassy this year, 2 years from now we may still have 20 people there but they won't be the same ones.

There is a community of interests throughout the Foreign Service population, and the motivation for collective bargaining in the Foreign Service, the ground swell that led to our establishing a formal system, was not issues of parking spaces at an Embassy; it was issues of selection out, assignment, bread-and-butter, basic issues that are decided by the centralized personnel system and that all employees have an interest in wherever they are serving.

We have established a history of 8 years working with this system and we think it works. We have a bill that seeks to minimize differences among Foreign Service personnel categories. This has been mentioned and we think the single bargaining unit is consistent with that objective.

If we were not to have a legislated single bargaining unit for each agency, then, I guess, we would litigate. I don't know if we would get it or not but I think we might well.

To have units smaller than the agency means that you would have negotiations between the union representing the employees within that subunit and the head of that subunit on things within the authority of that office director, or Assistant Secretary, or Ambassador, or whatever they might be. You would not reach the issues of central concern

to the members of the Foreign Service that you reach with the centralized negotiation with top management on the basis of a worldwide unit.

Mr. FASCELL. It seems to me the employees in the Department would insist on worldwide bargaining.

Mr. MICHEL. The exclusive representative certainly does.

Mr. FASCELL. All right.

Mr. FEINSTEIN. There are standards for determination of bargaining units under title VII of the Civil Service Act. Do you think that a valid argument could be made under those standards for a single worldwide bargaining unit in the State Department?

Mr. MICHEL. I think a valid argument could be made. I don't think that there is any need or desirability for deciding that issue over and over again. We propose to preserve what one of the factors would be the history of bargaining in the field. The history of bargaining in this field is a single unit. If this is what the employees want, if this is what works with our unique system of personnel, why not say so?

We do think the agencywide unit meets the criteria of clear and identifiable community of interests among the employees, effective dealings and efficiency of operations.

Section 1023, on representation rights and duties, describes the responsibilities of the labor organization that has been accorded exclusive recognition. That is a right and a duty to act in the interests of all employees in the unit without regard to whether they are members of the union or not.

They have a right to be present at discussions with employees in the unit or their representatives on conditions of employment, and this is essentially the same as what is in the Civil Service Reform Act for representation rights and duties in the civil service.

Ms. SCHLUNDT. Does the employee at all times have the right to decide whether or not an exclusive representative is going to be at any given hearing or judicial proceedings, or administrative proceeding, or are there cases in this bill where the exclusive representative can attend a proceeding even if the employee does not want that person to be there?

Mr. MICHEL. Sure. We have this situation that we described earlier. Let us say you have a group of employees in the Department, not a labor organization but a group having a common interest, who want to talk about general conditions of employment. The exclusive representative has the right to be present at that meeting whether or not those employees are members of the union. They would be members of the unit; whether they are members of the organization or not is immaterial.

The purpose of that is protect the rights of the exclusive representatives so management does not go around through the back door and talk to others in derogation of the exclusive rights of the elected representative.

Ms. SCHLUNDT. I am thinking more of the situation where the issue involves an individual employee's interest.

Mr. MICHEL. You will have that in chapter 11 when we get to grievances, where the right to go to the grievance board is the right of the

union, as we tried to parallel this with the right of the union to go to arbitration under negotiated agreements procedures. That is chapter II.

Mr. FASCELL. I don't know on what the issue is raised, but if the issue is raised on the right of the individual to do what he wants, and the right of the organization after he once decides to become part of that organization, it seems to me the matter is settled unless there is some specific exception made either in the law or in the collective bargaining contract. You can't have your cake and eat it too.

Mr. FEINSTEIN. Mr. Michel, section 1023(b)(1)(A) at the end, there is a phrase starting with "Unless specific application."

Mr. MICHEL. Where?

Mr. FEINSTEIN. 1023(b)(1)(A). That language started with "unless" appears here. It does not appear in civil service reform.

Mr. FASCELL. What page are you on?

Ms. SCHLUNDT. Page 122.

Mr. MICHEL. 1022. That is an exception to the right of the union to be present at the meeting described where you are talking about the specific application of working conditions to specific individuals. That is not in the Civil Service Reform Act.

Mr. FEINSTEIN. What is the rationale for it?

Mr. MICHEL. It is a judgment. How exclusive is exclusive? And where it is general conditions of employment, it seems right that the exclusive representative should have an opportunity to be present because his rights could be affected.

Where it is an individual or group of individuals talking about personal application to them of particular conditions of employment, that it was not necessary to protect the union's rights to give the union a right to be present, it is policy judgment.

Mr. FEINSTEIN. Who would decide that?

Mr. MICHEL. Management would decide it at its peril. If it was wrong it is an unfair labor practice.

Mr. FASCELL. Let me go over that slowly. Just start out by reading it to me on that section right there beginning with "exclusive."

Mr. MICHEL. Exclusive representatives shall be given the opportunity to be represented at—

Mr. FASCELL. Stop there. The law says he shall be given the opportunity to be represented. Who would keep him out?

Mr. MICHEL. I don't understand that.

Mr. FASCELL. The law is "providing that an exclusive representative shall be given the opportunity to be represented at certain things." Who is going to keep him out?

Mr. MICHEL. It is a duty to inform him and let him know it is going on.

Mr. FASCELL. So it is not a question of keeping him out or letting him in?

Mr. MICHEL. It is the opportunity to be represented which means informing him and saying we are going to have a meeting.

Mr. FASCELL. I am trying to make a record. You are not talking about locking the door and keeping the man out. It is simply informing him that something is about to transpire.

Mr. MICHEL. There is a meeting and you have a right to be there if you want to be.

Mr. FASCELL. But there is no authority in this section or in chapter 10 which would keep that individual out if he has a bargaining contract and is the exclusive representative?

Mr. MICHEL. That is right.

Mr. FASCELL. I want to be sure because my colleagues over here got me confused a little bit.

Now he should be given the opportunity to be represented at what?

Mr. MICHEL. At a formal discussion.

Mr. FASCELL. What is a formal discussion? Is that a term of art? I am not being argumentative.

Mr. MICHEL. It is a term of art, I am told, that is used in the labor sector, that formal discussion is talking about general conditions of employment. There is apparent redundancy.

Mr. FASCELL. I am going to draw a scenario. Three guys are walking down the hall coming back from the men's room and decide to stop in somebody's office. I would not consider that a formal discussion when they stop in. If they have some kind of ad hoc meeting to say we are going to get together and go down and talk to Assistant Secretary so and so or whatever it is, I would gather that is more formal but that is a question of fact.

Mr. MICHEL. I think it contemplates putting the two together. If you are going to give somebody notice and an opportunity, it contemplates some kind of formality to a scheduled meeting.

Mr. FASCELL. This law presumes that the individual who has the burden of notifying the exclusive representative knows that the meeting is going to take place. It can't make sense otherwise.

Mr. MICHEL. There is a body of case law on what constitutes formal discussion and I don't know enough about it to discuss it.

Mr. FASCELL. I don't either. I am trying to get the thing fleshed out on the record.

What is the meaning of the clause that was questioned here—"unless the specific application of those conditions to the particular employees is the sole issue"?

Mr. MICHEL. I think that is the difference between saying "communicators don't get proper consideration in promotions" and the employee or several employees coming and saying we should have been promoted.

Mr. FASCELL. That is not considered a general complaint which puts a burden on whoever is holding the meeting to let the exclusive representative know it.

Mr. MICHEL. That is right.

Mr. FASCELL. Let me ask another question and turn it around. Why shouldn't the burden be upon the employees equally with the individual who is being contacted, I presume, in management, although that is not clear here? Why shouldn't the burden be on both sides to advise the exclusive representative that formal discussions are about to take place? Why is that a burden of management?

Mr. MICHEL. I think here again you have to look to the parties, to the contractual relationship, Mr. Chairman.

Mr. FASCELL. I know, but there is only one exclusive representative for a single unit. We don't have to be a member of the organization.

Mr. MICHEL. But the responsibility of the individual employee to the exclusive representative is a matter of internal discipline. It would seem to me, it would be unusual.

Mr. FASCELL. So, an individual employee represented by the exclusive representative, who is not a member of the organization and does not want to be a member of the organization and pays no dues to it, is not required to pay any dues to it and therefore does not have to worry about giving anybody any notice about anybody he talks to about anything?

Mr. MICHEL. He does not have any contractual relationship with that outfit at all, so what are we going to do, impose disciplinary action on him if he does not?

Mr. FASCELL. That is the reason I asked. Now you have 10 employees who are in the same category and they decide they want a formal discussion about general conditions of employment. This provision requires management to notify the exclusive representative that something is about to take place and there is no burden on those employees who are not members of the organization as such.

Mr. MICHEL. That is right.

Mr. FASCELL. Unless the matters to be discussed apply only to those particular individuals. Then in that case there is no requirement on the management to notify the sole representative that a discussion is about to take place.

Mr. MICHEL. That is right.

Mr. FASCELL. I just want to be sure. Let us go on. I tell you what, let us not go on.

Are we about through with that section?

Mr. MICHEL. The section goes on and on. There is not much else that is in there.

Mr. FASCELL. You mean in terms of change?

Mr. MICHEL. In terms of changes.

Mr. FASCELL. Let us finish with that section then and in 1032 to see what other matters are in there. On page 122, is there anything else in subparagraph B-1(b) down to the bottom of that page?

Mr. MICHEL. No; there are only a couple of things that are on page 124 that I think are noteworthy.

Mr. FASCELL. Page 123 is a restatement.

Mr. MICHEL. Yes.

Mr. FASCELL. You say there are a couple of things on page 124?

Mr. MICHEL. Paragraph (5) at the top refers to a process I described earlier. This is the other half of the equation. I mentioned earlier management has the right to decide what joint policies there should be. This provides that there will be joint negotiations of those uniform policies among the foreign affairs agencies.

Then paragraph (f) at the bottom provides something that parallels national consultation rights under the Civil Service Reform Act so that the union will have an opportunity to present its views on things that deal, not just with the one agency or with one unit, but rather with Government-wide responsibilities of those secretaries, like overseas differentials and allowances would be an example.

Mr. FASCELL. All right.

Mr. MICHEL. That is all in that section.

Mr. FASCELL. All of the blank pages that start with section 7117 on page 124-A.

Mr. MICHEL. There you get the national consultation rights provision in the Civil Service Act, which is parallel to what is at the bottom

of page 124. And you have this compelling need for uniform procedures, which is the civil service way of dealing with the problem of joint regulation, uniform regulations.

Mr. FASCELL. What is the nonapplicability of section 7117 starting on page 124-A, since that is not—

Mr. MICHEL. As I said, the principal thing in that material—which we have in our bill—is a duty to bargain in good faith. That is in there. What we do not have is this notion that if the management thinks there is a compelling need to take something out of collective bargaining, that the management proves it to the satisfaction of the FLRA and then does not bargain. Instead, we provide that we have the right to decide on a compelling need for uniformity and then bargain jointly.

Mr. FASCELL. Thank you. Where does that take us?

Mr. MICHEL. Section 1024, resolution of implementation disputes. This is something new that we have not had in our present labor-management system. As you know, the Executive order provided for negotiated grievance procedures as part of the labor-management system.

Mr. FASCELL. Since you are going into something new and it is already 5 o'clock, I think we better hold it right there. I don't think we can finish this whole chapter anyway.

Mr. MICHEL. This is probably the most complicated chapter in the bill.

Mr. FASCELL. So since this is something that is not in the Executive order and not in the Civil Service Act, let us stop right there and pick up from there at the earliest opportunity and give you fellows a chance to go back and see if you can clear off your desks.

Mine is impossible.

Mr. READ. Happily we get back to codification in the next chapter, Mr. Chairman.

Mr. FASCELL. It has been very helpful, I am glad you pulled it out and did it this way.

The subcommittee will stand adjourned, subject to the call of the Chair tomorrow morning at 9:30.

Thank you very much.

[Whereupon, at 5:05 p.m. the meeting of the subcommittees was adjourned, to reconvene at 9:30 a.m., Thursday, September 20, 1979.]

THE FOREIGN SERVICE ACT

THURSDAY, SEPTEMBER 20, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The joint subcommittees met at 9:40 a.m. in room 2172, Rayburn House Office Building, Hon. Pat Schroeder and Hon. Dante Fascell (chairpersons of the subcommittees) presiding.

Mr. FASCELL. Today we continue our joint hearings on the Foreign Service Act of 1979.

Congresswoman Schroeder is currently testifying before the Senate.

Our first witness today is a friend and a distinguished American, the Honorable George Ball, former Under Secretary of State who has a distinguished career in public and private service and knows a great deal about the Department. I am sure he will make a very important contribution to our considerations here this morning.

We also have Mr. Richard Bloch, who is chairman of the Foreign Service Grievance Board, and Mr. James Washington, who is president of the Thursday Luncheon Group.

Mr. Ball, we are delighted to welcome you again and have you in this committee room where you spent so many enjoyable days educating Members of Congress.

STATEMENT OF HON. GEORGE BALL, FORMER UNDER SECRETARY OF STATE

Mr. BALL. Mr. Chairman, I always did enjoy it. I found this was one of the committees in Congress where there was a serious attempt to get at the truth and to the extent those of us in the bureaucracy could assist, it seemed a challenging and interesting assignment.

I have enjoyed coming before this committee.

I am here this morning, Mr. Chairman, to reflect on the proposed legislation with regard to the Foreign Service and with no suggestion on that I am expert on this particular piece of or proposed legislation.

I have read it quickly a couple of times, and I hope I may be able, in the light of fairly long experience, to suggest the value of what is sought to be done here.

The country's foreign policy is no wiser or more effective than the men and women who shape and administer it. The qualities required for diplomacy are many and varied.

Certain of them are obvious. One, is a familiarity with the languages and customs of a country to which the diplomat is accredited. Two, a gift for observing and interpreting what he or she observes. Three, a talent for comprehending the often opaque statements of foreign leaders. Four, a willingness to assert his or her country's interests in the face of antagonism and even the threat and the courage to accept unpopularity. Five, a resistance to flattery and the facile persuasiveness of foreign representatives. Six, the discipline to carry out policies with which he or she may not personally agree and, finally, a willingness to live in often uncomfortable surroundings and to move on command from one post to another without regard either to his or her own predilections or those of his or her family.

Mr. Chairman, those are not easy requirements to satisfy and they cannot in my view be met by on-the-job training of men and women without a proper background of study and experience.

Fortunately in our career Foreign Service we have an invaluable national resource of highly trained and dedicated men and women. Like any career service it can maintain its effectiveness and its quality only if it offers adequate opportunities for those who join it.

How does one maintain an elan in a service which is as frequently calumniated and misunderstood as our Foreign Service? How does one maintain a reservoir of ambitious effective Foreign Service officers if promotions are slow and merit not always fully rewarded?

The Foreign Service Act of 1979 which this committee is now considering should enhance the effectiveness of the Foreign Service while at the same time preserving the interests of the civil service employees who perform invaluable roles in the Department of State.

The Department desperately needs its civil service employees. It needs the quality of personnel which it has had in the past and I think should be able to have in the future if enough attention is paid to it.

A civil servant in this situation is a man or woman who is not prepared to accept assignments abroad for any number of reasons. In most cases he or she is technically trained. He may be an economist. He may bring some other discipline to the work he is doing.

I have the highest regard for the civil servants as well as the foreign servants with whom I worked for 6 years. I often found them people who nobody paid much attention to but who could provide a great insight when the opportunity came for them to bring it to bear.

Although I do not profess a mastery of the details of the proposed legislation, it seems to me to achieve several essential purposes.

The first is that it would make a clear distinction between the Foreign Service and the Civil Service and provide for transferring out of the Foreign Service the purely domestic employees who are not prepared to commit themselves to overseas assignments. I think that is a useful move. It would give the Foreign Service greater homogeneity with a consequent improvement in the spirit of the Corps.

The members of the Foreign Service have important shared values and qualities—not merely training and experience in the shaping and administration of foreign policy but a familiarity with the difficulties, satisfactions, peculiar hardships, and special advantages of service overseas.

I do not mean to suggest that the Foreign Service is or should be regarded as though it were an exclusive club although one based on achievement.

It is essential to any career service that it have its own identity and that there exist a camaraderie and sense of common purpose among its members, a revered tradition, pride in their professionalism and a respect for the achievements of their most distinguished colleagues.

That esprit has for a variety of reasons been considerably depleted within the last decade. Among other things it has suffered from a growing, and I think, unfortunate tendency to proliferate the leadership of our foreign policy so that it is not always clear just who is in command and what the role of the State Department may be.

Our Foreign Service has suffered also from the deplorable practice in this age of jet planes and instant communications of dealing with all important problems directly from Washington. More often than not our Embassies overseas find themselves brushed aside whenever a problem of significance comes along, while someone who may know little about the customs of the area or even the history of a particular development arrives to take over the negotiations.

In addition, an Embassy officer or even an ambassador may learn from the Foreign Ministry of a country to which he is accredited of telephone conversations that they have had directly with Washington, conversations of which he has not been informed by his own government.

I can assure you, Mr. Chairman, there is nothing more humiliating or more harmful to morale than an experience of that kind, and it is repeated very often.

The failure to make proper use of our diplomatic establishment is a serious error, since there is a great reservoir of knowledge and wisdom in our Foreign Service. I hope that sooner or later we shall return to a less flamboyant diplomacy, in which established diplomatic channels and the talents of our career officers are more effectively employed.

A second provision of the proposed legislation which could serve also to encourage the Foreign Service and increase its attractiveness to potential entrants is the proposed creation of a Senior Foreign Service which would provide not only greater rewards but also more vigorous performance standards for our older diplomats. Coupled with the other provisions of the proposed legislation, this would facilitate the absolutely indispensable process of selection out—the clearing out of deadwood which invariably accumulates in any career service.

Essential to the dynamic operation of any institution is the availability of promotion to those who belong to that institution. If the top positions are held too long by any generation of officers regardless of their past qualifications, movement up the ladder can be blocked by congestion at the top. I emphasize this point particularly because in my years in the State Department I was constantly impressed with the quality of many of the younger officers.

I was always dismayed when I saw them disappear into private life or elsewhere in the Government because they did not feel they could achieve the fulfillment of their ambitions within the Service.

It is absolutely necessary to the vitality of the Foreign Service that the system permit them to demonstrate their full potential by maintaining the momentum of promotion. That is possible only if there are adequate provisions for a weeding out of those who have been long in the Service but who either lack imagination or competence, or have become so tired or jaded that they no longer bring to their work imagination and a sense of excitement.

There are many other provisions of this legislation which should, I am sure, be commended. It is in a sense a measure of tidying up. It would codify the personnel system and laws of the Foreign Service and would simplify and reduce the number of personnel categories.

I have not had either the time or occasion to study these measures in detail, but I did want to bring to this committee my sense that at least in its broad thrust this is a very useful and indeed necessary piece of legislation if we are to maintain the integrity and the spirit and the effectiveness of our Foreign Service.

Thank you, Mr. Chairman.

Mr. FASCELL. Thank you very much, Mr. Ball, for bringing us the benefit of your years of experience and the conclusions and opinions you have arrived at with respect to the thrust of this legislation.

I want to yield to Mr. Leach now and let him pursue a line of questioning he had yesterday which you dwelt on in your testimony, and I am sure he is anxious to pursue it.

Mr. Leach.

Mr. LEACH. I appreciate that introduction, sir, but I am not sure which exact line of questioning you are referring to. I will proceed in any respect.

Mr. Ball, you recently wrote a column in the Washington Post, which I thought was extremely thoughtful contrasting what you described as the show biz diplomacy of Mr. Young and to some degree Mr. Kissinger and possibly Mr. Strauss, with the applied diplomacy of a professional diplomat like Ellsworth Bunker.¹

Is there anything in your judgment that should be learned from the experiences of the last half dozen years in American diplomacy on which you would advise an American President as to how to proceed in the future and how to utilize the Department of State?

I might go one step further. Beyond the concept of roving ambassadors is the issue of where responsibility for foreign affairs is positioned. Should the Secretary of State be clearly predominant, or is it simply up to the will of the President and how he uses the NSC or any other level of Government?

Mr. BALL. Let me address myself to the second comment first and then I will get to the other.

I think it is absolutely essential that the Secretary of State be recognized, as was originally intended, as the President's principal adviser on foreign policy and as the man responsible for the execution of policies through the Department of State.

Within the past years, beginning actually in 1961 with President Kennedy, there has been a tendency to have almost a second Secre-

¹ The column referred to may be found on p. 408.

tary of State in the person of the President's National Security Adviser. This makes for ghastly confusion. It makes for a fuzziness of policy because any man who is assertive and has views in that role is going to make them known if he is permitted to do so. That confuses foreigners and it leaves us with a policy line which is articulated by too many people.

This is particularly so when the National Security Adviser appears on television and makes speeches and calls in ambassadors and makes visits abroad on diplomatic missions and so on.

It raises the question: Who is running the store? Who is in charge of our foreign policy?

If there is an articulation by the National Security Adviser which differs in any nuance from the articulation by the Secretary of State, which one governs in this case? Will not a foreign power play one off against the other, as indeed has happened?

When the National Security Council was created, it was never intended that this would be the case. No matter how much experience is represented in this room, I would doubt that there is a single person who could remember the national security assistant of President Eisenhower. He was an anonymous man. He collated the papers from the various departments, and he saw things were brought together so there could be a decision. He did not preside over the National Security Council. He did not himself inject his personality into our foreign policy.

That is, in my judgment, the way things should be run, and they were run that way after Mr. Kissinger stopped being the National Security Adviser and became the Secretary of State. You may recall he insisted on having both hats. That is a very good solution.

I think if the Secretary of State were also the National Security Adviser and presided over the National Security Council, it would be very sensible. It would avoid an enormous lot of confusion.

We now have almost two State Departments. We have the Office of the National Security Adviser, which has been subject to the same kind of hypertrophy that often happens in bureaucracy, and we have the Department of State. They do not always see eye to eye, and there is very often an effort made by the National Security Council staff to run off with a problem and not tell the Department of State what they are doing.

This is a very strong feeling I have. We have gone even further. We have Mr. Strauss with some kind of an undefined role as far as the Middle East is concerned. He says he does not report to the Secretary of State but that he is a partner of the Secretary of State whatever that ambiguous word may mean.

I think this is a terrible way to run foreign policy, quite frankly.

On the second question of the degree to which there can be a movement back toward the effective use of the foreign policy establishment we have created some bad habits in other governments. We have gotten very small countries in the habit of insisting that they will not talk to anybody but the U.S. Secretary of State. We have to break these habits. It is going to take a firm determination on the part of some President who will say, "I am not going to have this. We are going to move back toward a quiet more traditional diplomacy in which we can do our busi-

ness and avoid a lot of the flamboyance and the insistence on being in the center of the spotlight which exists today."

Unless we do this we are going to turn diplomacy into more and more of a sideshow. Obviously such a change is going to require a certain discipline. Other countries are going to have to understand that our ambassador is the President's representative in that country. They will have to receive him on that basis. We are going to have to be a little tough about this.

Mr. LEACH. To follow up briefly, we seem to be seeing also an erosion of the State Department's basic responsibilities. For example, there is talk of the visa function being shifted to the INS, and a proposal that the commercial function be shifted to the Department of Commerce is before the Congress.

Would you provide us your opinion on whether in this modern world the Department of State should be bolstered in its areas of responsibility or is it possible that some functions would be more successfully carried out with other departments having jurisdiction?

Mr. BALL. I do not want to suggest analogies which are not really analogies. I could tell you no major business in the United States would ever conduct its affairs the way we conduct foreign policy with a lot of bits and pieces assigned to different people to do with resultant confusion.

It is not true of the foreign officers of other major countries where there is a great deal more concentration and a coherent line of direction.

For example, proposed legislation which I understand is coming up would take the commercial officers out of the embassies and give them to the Department of Commerce and take the administration of countervailing duties out of the Treasury and give it to the Department of Commerce. I think that is terrible.

For example, with regard to countervailing duties it would mean assigning one of the most sensitive instruments the Government has to the agency of the Government which is the most vulnerable to the lobbies that have an interest in protectionism.

I think it would be a great mistake. If you have to assign it somewhere why not put it in the Office of Trade Negotiators?

Mr. LEACH. Shifting to a somewhat different subject, as a former junior and minor midlevel Foreign Service officer, I was in the Department at the time pronounced change was made by the introduction of what was called the cone system.

It always struck me that the cone system was rigid and foolish. This was especially so in relying on the cone approach in the selection of new officers for a given number of administrative, consular, or other positions which would be selected and defined before recruitment. Beyond that there were rigidities that occurred once one had entered the Foreign Service and was expected to pick a single career track.

From your experience would you comment on your appraisal of the cone approach? Do you think it has been helpful or harmful to the Foreign Service in general?

Mr. BALL. I have a hard time having an informed opinion on this because I was never involved in the details of it. I did have a feeling that the rigidities were considerable. I really could not helpfully give you such comment.

Mr. LEACH. Shifting to one other subject, all of us from time to time have been very concerned with ambassadorial appointments. We have seen some exceptional ones and we have seen some less exceptional ones. Certainly it is a matter of Presidential discretion to a degree.

How does one institutionally go about safeguarding merit in the selection process? Would you have any device? Would it be appropriate to set up legislatively a selection board which would consider merit as the primary qualification whether it be career or noncareer goal in selection of ambassadors?

Mr. BALL. Obviously you cannot take that function away from the President. It is a question of what instruments he has to advise him. I think there might be some merit in a Board with the understanding it would have advisory functions. The President himself has to make the final decision.

Mr. LEACH. It might add a little bit of pressure if the Board did not give a high mark to an individual.

Mr. BALL. It might avoid some appointments that are patently made for motives other than the improvement of the diplomacy of the United States.

Mr. LEACH. I agree with that. I thank you.

I might say, Mr. Chairman, in giving up the questioning, that clearly anyone who has followed the institution of the Department of State over the last three or four decades picks out two or three people such as George Kennan and George Ball as the preeminent philosophers of our Government as well as executors of policy. We are honored you are here before us today, Mr. Ball.

Mr. BALL. Thank you.

Mr. FASCELL. Mr. Leach as I anticipated has asked all the right questions. I just want to ask one more.

You placed considerable emphasis on the need for mobility within a department for promotion and to eliminate stagnation at the top. The Senior Foreign Service concept is one way of reaching that. The other, which is very important, is mandatory retirement.

Mr. BALL. That is right.

Mr. FASCELL. We have a political problem confronting us since the Congress has eliminated mandatory retirement and court decisions are fast going that way also.

The bill does provide for mandatory retirement. I just wondered, based on your experience within a small department that is highly specialized, how you see the value or the necessity for mandatory retirement?

Mr. BALL. I think there is great virtue in it for the simple reason that it enables the senior members of the Foreign Service to begin to make their future plans and to know at what point they are going to have to leave the department.

It avoids the kinds of pressures of people who may be very popular but not necessarily very competent to stay on more or less indefinitely.

I am very much in favor of it. There are obviously situations where you need a man beyond the age of 60 and there has to be some room for extension which, as I understand it, this bill provides.

Mr. FASCELL. It does.

Mr. BALL. If the President wants to designate him as an ambassador as I understand it he is exempt from the age 60 retirement rule. I think that is good enough. That takes care of keeping the people who are needed.

If you take away the mandatory requirement provision altogether the pressures to keep people on into their dotage are going to be very considerable. I am almost 70 years old so I can say this.

Mr. FASCELL. I must say you look very well to be almost 70 years old. I hope I do as well and continue to be as able.

We thank you very much, Mr. Ball. I think we have explored all of the difficult questions and we appreciate your taking the time to testify and answer our inquiries.

Mr. BALL. Thank you very much, Mr. Chairman. Coming before this committee is a nostalgic experience but it is as pleasant as always.

Mr. FASCELL. We hope to see you again soon.

The subcommittees are going to take a short recess while we go answer a rollcall. We will come right back.

[The subcommittees recessed for a rollcall at 10:07 a.m.]

AFTER RECESS

Mrs. SCHROEDER. I am going to assert the prerogative of the co-Chair and reconvene. I am sorry we missed part of the morning. It is not one of the more sane days around here although we are getting fewer and fewer sane days.

I thank you, Mr. Bloch, for being here. I guess I will let you introduce the people who are with you. We have their names. It is delightful to have you. We will be interested in hearing your testimony.

**STATEMENT OF RICHARD I. BLOCH, CHAIRMAN, FOREIGN SERVICE
GRIEVANCE BOARD**

Mr. BLOCH. Thank you very much, Madam Chairwoman.

With me is Pratt Byrd who is executive secretary of the Grievance Board. Also with me is David Silberman who is one of our counsel and Phil Dorman who is the deputy chairman of the Board. They are graciously assisting me this morning.

Mrs. SCHROEDER. We are very happy to have all of you. If you want to summarize your testimony we will put it in the record as is written and you can do whatever you would like.

Mr. BLOCH. I would be glad to summarize, whatever will expedite the process.

I indicate in my written statement which I will reiterate that we are delighted to have been invited. It is most unusual for arbitrators to be involved in this sort of a construction or modification process of the grievance system. In the private sector the neutral is normally called in well after the fact.

We are normally called in to interpret or apply a collective bargaining agreement or a system that has long been decided upon. We find this a very unique experience.

The Foreign Service itself is a unique world as everyone agrees and perhaps particularly so to those of us coming in from the outside. As arbitrators we find no analog whatsoever in the private sector.

You may be aware of some of the background of our present system and I will not burden the record with that.

I myself came in some time after the initiation of the present legislation. I came in 1976. I joined a Board that now consists of 15 members; 8 of them like myself are professional labor arbitrators; 7 are retired employees of the Foreign Affairs agencies.

As I indicated in my statement we think this is a superb group of people. The arbitrator members are all members of the National Academy of Arbitrators and of that group we have the current secretary-treasurer, three past presidents and a president-elect.

The staff who do a remarkable job for us are supplied by the respective Foreign Affairs agencies. They guide each of the cases through the original filing. They marshal the necessary paperwork. They talk to witnesses if necessary. They in essence get the record ready for final disposition by the Board whether that is through a hearing process, full hearing in the nature of any administrative or quasi-legal hearing or the section 906 cases which are those we hear solely on the basis of the written briefs and written records.

The staff also prepares summaries of the decisions and I use the word "sanitizing" advisedly but we prepare the final opinions for distribution hopefully abiding by the Privacy Act requirements. In essence, we are trying to build a body of common law precedent for the parties to follow and hopefully reduce the actual litigation before us in years to come. That is an enormous task.

Thus far we have some 70 decisions that have been prepared and are just now being circulated to the parties. The decisions are in their entirety with the exception of the various names and identifying places.

I have some statistics in my statement. Overall the Board has issued since 1976 including some 40 or 50 cases which carried over from the previous interim Board about 229 decisions. In 1978 we issued 38 decisions. As my statement indicates these were split between the full hearings and the section 906 cases.

I would like to devote a few comments to the proposed legislation and of course turn myself over to you for any questions you may have.

I serve as the umpire and arbitrator for a number of Federal agencies including the Internal Revenue Service, the Labor Department, the Treasury Department, Community Services Administration, Justice Department, and a number of others. I am familiar in general with arbitration systems both in and out of the Federal sector.

My judgment and it is a unanimous one, I might add, is that this system we have now even on the basis of the old legislation is the single best Federal sector system we know. We think the act is well structured and for the most part adequately responsive to the needs of the parties.

I have been impressed with both the quality of the presentations of the parties and the responses of our Board.

The draft legislation has a number of changes. Some are of great interest to the parties and perhaps of academic interest to us since we really are in the role of playing a judicial role and not a legislative or an advocacy role but some reflect directly upon our functions. I wanted to just mention a few of them.

I indicate and I would reiterate that we do not see any particular problems in accommodating some of the new functions which have

been assigned the Board such as taking the termination for cause cases and the various disputes which may arise among the parties. We think certainly structurally we are prepared to handle that.

By virtue of its size and the other inherent institutional impediments I think it is unrealistic for this committee and for us to expect this particular grievance system to function as efficiently as some do in the private sector. Indeed it would be a mistake not to recognize the peculiar and the particular nature of the Foreign Service and of the demands of its employees. These are highly skilled people who are far removed from any sort of a production line concept or even a trade concept that we may see in the private sector.

But there are modifications which would go a long way toward strengthening the potential of this system.

I note an interpretative problem in my written statement which we think may no longer be a problem and I hope it is not. In a decision issued several years ago, we found that the agency had erred in its interpretation of a regulation that resulted in depriving the grievant of a shipping allowance. We ordered the agency to reimburse the person. The Comptroller of the agency refused contending that the payment would have been illegal and therefore the Comptroller would have been vulnerable to personal liability as a result of GAO regulations and statute.

The agency desired to seek an opinion from the General Accounting Office. That created a substantial dilemma.

The Foreign Service Act as it now exists reads as if the proper recourse in appealing any Board decision is to a Federal district court. The Foreign Service Grievance Board was not created, we think, to serve as a trial forum for the GAO, yet one can certainly understand the agency's reticence to move, faced as it was with these conflicting legal mandates.

I said in my statement that clarification is in order. In reading the proposed draft I believe the clarification has been accomplished. I am referring to section 1113(c) where it says that the "only" appeal from a Board order will be to a Federal district court.

I read, as an arbitrator, the word "only" as being very significant. I guess what we are asking is that the committee in its report reflect the fact that this change was made for that purpose. It would be immensely helpful to us and to the parties.

As you know the act provides that in certain respects our decisions are binding and in other areas we issue only recommendations. My own personal belief is that parties settle their own disputes more readily when the final step of a process is binding. Nevertheless I am not particularly troubled by the existence of recommendations in this act inasmuch as the scope of the area subject to recommendations is reasonably narrow and the legislation does require that when an agency wishes to reject one of our recommendations it must do so with great specificity.

They must note three grounds and those include if the recommendation is contrary to law, if it is somehow an infringement on national security and the third is if it somehow impinges upon the efficiency of the Service.

It is that third category which bothers me. The first two are not particularly troublesome. Surely you can understand a rejection if it is a problem with law or national security. The third one concerns us.

The experience from our standpoint has been that the agency wishing to support the grievance system will accept our recommendations if at all possible in any context. The agency wishing to undermine the system to suppress grievances by employees will reject recommendations whenever possible citing this "efficiency of the Service," which is sometimes set forth as morale of the employees or impossibility for one reason or another. These generalities translate into "we are doing it because we want to." We are saying that we would not like to see the same rationale applied to a rejection of our recommendation as employed by the agency in originally rejecting the grievance. That is not the idea of the grievance system.

I conclude that the system should be designed to inform agency heads that a rejection in this context may not be founded on the mere premise that it would somehow disturb the business as usual routine. I recommend that portion of the act be deleted. I am referring to that third portion.

A significant problem also exists with those sections of the act which refer to former officers and their rights to grieve, among other things, denials of allowances, or financial benefits, or circumstances that are somehow illegal or improper with their involuntary retirement.

The problem is a very basic one. We are not entirely sure of who a former officer is. We do not know, although we think we know, but we do not know for sure what Congress intended in terms of the rights accorded a former officer.

Is someone who is off the rolls for any reason a former officer? Should we interpret this to mean, for example, that someone who was summarily discharged now may not bring their termination case before us because they are a former officer?

We do not think that was intended by the Congress but the problem still exists in the present draft and we suggest some clarification would be helpful.

The other problem as I indicate in my written statement concerns this financial benefit. As it now stands a former officer may grieve in essence anything which deals with money as opposed to for example the correction of an OER or termination question.

It is not clear to me that is what Congress intended that a person who is off the rolls should now be able to come in and raise any sort of a money question. Arguably that provision was put in there to allow the former officer to bring financial questions which still affect him or her as a former officer such as pensions and continuing allowances.

The act seems to suggest a far broader scope and all we are asking for is some clarification as to which way to go on that. We do not have any particular feelings. Obviously we are ready to proceed with whatever the congressional intent would have been.

In plenary sessions the Board has discussed these questions at substantial length. We have reached our own conclusions in the interest of unanimity among the Board. We will take these positions absent further expression of congressional intent. But we are not in the business of legislating and that is why we seek your assistance.

A final request, which we have relayed to Ms. Schlundt who has been very helpful to us, is: we are confounded on a number of occasions by a substantial dearth of any legislative history with respect to this act and it would be helpful if this committee after its endeavors would

simply set forth those changes which are intended as merely clarifying in nature as opposed to those which are intended to effect substantive changes.

That concludes my written remarks. I am certainly available to respond to any questions you may have about our operations or anything else relevant to the Board.

[Mr. Bloch's prepared statement follows:]

PREPARED STATEMENT OF RICHARD I. BLOCH, CHAIRMAN OF THE FOREIGN SERVICE GRIEVANCE BOARD

THE FOREIGN SERVICE ACT OF 1979

It is a privilege to have been invited to appear before these two Committees and testify about grievance procedures, the Foreign Service Grievance Board and that part of the legislation you are now considering relative to the Grievance Board. I hope my information will be useful. I shall be pleased to attempt to answer questions you might have.

It is unusual for an arbitrator such as myself to be involved in the construction or modification of a grievance system. In private industry, where I am active on a full-time basis as an arbitrator, the neutral is called into the act after the parties—management and union—have sat down together and decided upon the role of the arbitrator and the limits of his or her power and authority. To be invited to contribute in any context to the rules of the game is a unique experience.

The grievance system for the Foreign Service is itself unique, as indicated by its genesis. While management (the State Department) and labor (the American Foreign Service Association) were in consultation and, to a certain extent, in agreement, Congress became involved as a third party and ultimately put its legislative stamp on this grievance system. Similar machinery in industry and the private sector is based exclusively on agreement between the parties, often enshrined in the work contract, without the benefit (or handicap) of legislative endorsement.

You may be aware of some of the background of our present system and earlier Congressional interest in the establishment of a grievance system for Foreign Service employees of the three Foreign Service Agencies. I did not come on the scene until 1976, after the legislation was enacted, when I was invited to become a member of the Board. Sandy Porter was Chairman at that time and played a substantial role in dealing with the groundwork on our present regulations.

The Board presently consists of fifteen members, eight of whom, myself included, are professional labor arbitrators, and seven of whom are retired employees of the Foreign Affairs Agencies. The range of experience and arbitration expertise on the Board is extremely broad. All arbitrators are members of the National Academy of Arbitrators and the Board includes, of the eight arbitrators, the current Secretary-Treasurer, three Past-Presidents and a President-Elect of the Academy.

The staff of the Grievance Board currently consists of eight employees supplied by the respective Agencies. Our staff serves an impressive range of functions. In addition to guiding each case from original filing through final hearing, and marshalling all necessary paperwork and records, they become intimately involved with "sanitizing" all Opinions to conform with Privacy Act demands, so that the Opinions may be distributed to all parties. This function is performed in the interest of building a body of common law case precedent for the parties. They also prepare Summaries of each Decision, to be released on an expedited basis to the various agency house organs. Administrative support for the board—quarters, compensation for Board members, supplies, travel costs, etc.—is supplied by the Department of State. Unlike the private sector counterparts, then, the grievance machinery is cost free to the grievants.

At any time there are approximately thirty to forty cases at the Board at various stages. In Calendar Year 1978, thirty-eight decisions were issued, twenty-three involved hearings and fifteen were decided solely on written stipulations of the parties. In several other cases, the parties were receptive to our overtures as mediators, wherein we sought to arrive at a mutually-acceptable solution, rather than issuing, judge-like, our decisions as arbitrators.

Turning to the Grievance Chapter of the proposed legislation, some overall comments are in order. I serve as the Umpire and arbitrator for a number of federal agencies, including the Internal Revenue Service, Labor Department, Treasury Department, Community Services Administration, Justice Department, and a number of others. I am also familiar, in general, with arbitration systems in and out of the federal sector. My judgment, supported by my arbitrator colleagues on the Board, is that this is the single best federal sector system we have seen. For the most part, the Act is well-structured and adequately responsive to the needs of the parties. And, I have been most impressed both with the quality of the presentations by the parties, as well as the responses by the Board.

Now to the draft legislation before you. In the main, the draft represents reorganization of present legislation. Some new functions are assigned the Board—the hearing of cases relative to selection out for cause, resolution of certain disputes between management and the employee organizations, for example. I contemplate no significant problems in accommodating these new matters, although the demands on the time of the arbitrators and, perhaps, more significantly, on the staff, must always be monitored.

By virtue of its size and other inherent institutional impediments I think it unrealistic to expect a governmental system in general, and this bargaining relationship in particular, composed as it is of five individual participants, to function with the ease and efficiency of a private sector relationship. But there are modifications which would go a long way toward strengthening the potential of this internal dispute resolution system.

Let me bring an interpretative problem to your attention. In a decision issued some two years ago, we concluded that the Agency had erred in its interpretation of a regulation which had resulted in depriving the grievant of a shipping allowance. We ordered the Agency to reimburse the person. The Comptroller of the Agency refused, contending the payment would have been illegal and would, therefore have resulted in personal liability to that Comptroller. The Agency desired to seek an opinion from the General Accounting Office. That created a substantial dilemma. The Foreign Service Act reads as if the proper recourse in appealing a Board decision is to a Federal District Court. And, this Board was not created to serve as a trial forum for the GAO. At the same time, one can understand the Agency's reticence to move, faced as it was with conflicting mandates. Clarification here is in order.

As you know, the Act provides that, in certain respects, our decisions are binding. In other areas, we issue only recommendations. While I personally believe that parties settle their own disputes more readily when the final step is binding, I am not particularly troubled by the existence of recommendations, inasmuch as the scope of that area subject to recommendations is reasonably narrow, dealing, for the most part, with retroactive promotions. Moreover, the legislation does require that when a recommendation is rejected, the Agency's reason for so rejecting will be stated in writing. There are three grounds. One can surely justify rejection of a recommendation based on national security reasons or if it is contrary to law. But the third category refers to substantially impairing the "Efficiency of the Service." If it is the Congressional intent to confine management's discretion in these areas to cases of real and substantial conflicts presented by a Board decision—and the overall structure of the Act suggests this—then this third category is, at the least, insufficiently precise. Our experience has been that the Agency wishing to support the grievance system will accept our recommendations if at all possible. But the Agency wishing to undercut the system and to suppress grievances by employees will reject recommendations whenever possible, citing this "Efficiency of the Service," sometimes represented as "Morale of the Employees," or similar generalities which translate into, "We're doing it because we want to." The system should be designed to inform Agency heads that a rejection in this context may not be founded on the mere premise that it would somehow disturb the business-as-usual routine. I recommend deletion of this portion of the Act in its entirety.

A significant problem also exists with respect to Sections 692(1)(C) and (D) of the present Act, giving "Former Officers" the right to grieve (1) denials of allowances or financial benefits or (2) circumstances allegedly illegal or improper in connection with certain employees' involuntary retirement. The provision is troublesome. Who is a "Former Officer"? Is it someone who is off the rolls under any circumstances? Part D—the involuntary retirement provision—refers only to employees separated six years before the passage of the Act. Does this mean a current employee who is terminated may not file a grievance be-

cause he or she is off the rolls? Reasonably, one would reject this interpretation. The Agency should not be able to defend on the basis of an employee's standing when the challenge is to the very action creating that standing. But what is reasonable in our view may not necessarily square with legislative intent.

An earlier draft of these changes appeared to have resolved the "Former Officer" problem, much to my delight. I see, however, that the change has not survived in the present draft, much to my disappointment. I would commend it to your attention and urge a modification. It is a change which I cannot help but believe would be welcomed by all parties concerned.

The other portion of this provision is also troublesome. What is a "financial benefit"? Did Congress really intend a former officer to be able to grieve denial of any money claim? Or was this intended to apply only to those continuing federal benefits, such as pensions, for example, which would clearly have a continuing impact on a former officer's life? If this was the intent, and I suspect it was, the Act should be amended to say so.

Mrs. SCHROEDER. Thank you very much. We appreciate the time you have taken. Let me ask whether or not you think you have sufficient independence from the Secretary of State?

Does he not control your budget and support personnel?

Mr. BLOCH. Yes, to the question of whether he controls the budget. He does indeed. Arguably there could be a further influence exercised by holding those financial reins.

Our answer thus far is we are entirely satisfied with the relationship. We have been troubled by appearances of conflict at times. This has arisen in the question of the freedom of information. We are not satisfied with the conclusion that the State Department will make all decisions relevant to our Freedom of Information Act requests or dealings because they are a party to these proceedings.

In terms of the finances and our relationship with them on a money basis there has been no infringement whatsoever. We are deeply appreciative of having been given full independence and we have never had any problem in any context where there have been requests for moneys or authorization for certain projects and so forth.

I hope that is due in some part to our internal responsibility and watching that this thing does not run away in terms of budget.

We are wholly satisfied that there is no untoward influence in that regard.

Mrs. SCHROEDER. I think you said you are satisfied there has not been undue influence. Is that right?

Mr. BLOCH. That is correct.

Mrs. SCHROEDER. Would you also testify you think under the circumstances there is no way there could be undue influence exerted?

Mr. BLOCH. Surely not. I think any time a financial structure exists where one party or one side is paying the tab you have to be constantly aware of the potential conflict.

Mrs. SCHROEDER. I think there is something about paying the fiddler and calling the tune.

Mr. BLOCH. It is obviously a potential problem. We have had meetings with the Secretary and have been given continuing assurances of a hands off policy. Those assurances we would obviously monitor on a case by case basis and on a daily basis.

We are convinced we are a totally independent group.

Mrs. SCHROEDER. Can the Grievance Board order a disciplinary action against a Foreign Service official for doing prohibited personnel acts?

Mr. BLOCH. Was your question do we have the authority to order?

Mrs. SCHROEDER. Do you have the authority to do that type of thing if you find a Foreign Service officer doing something which has been prohibited under personnel laws. What can you do about him or her?

Mr. BLOCH. This act is unique. It is the only time I have ever seen in my experience as an arbitrator authority for the arbitration forum to discipline. We do have that authority. It has not been exercised.

If you think of the realities of a given case it would be highly unlikely that the situation would arise in anything other than the following context; a grievant who came in and said "I was improperly handled. Somebody wrote this comment in my OER or somebody did this. I want the comment out. I want to be reimbursed for losses and I also want the supervisor taken to task by you in one way or another."

We have had such requests. We have declined them at this point because No. 1 we feel the proper remedy in such a case is to give the person the relief they have requested assuming that is within our aegis and second to keep our hands off of internal agency dealings with the normal assumption in labor-management relations that the future dealings of the parties are up to the parties.

We have not responded to such requests thus far and I must say I personally would be hard pressed to ever think of a situation where realistically we would do that. I do not rule it out but I say it would be unique.

Mrs. SCHROEDER. I only relate that case because of some incidents we saw in the Postal Service which have been very difficult. Often the supervisors then got promoted even though the grievance had been filed and won. You begin to wonder what was going on.

Mr. BLOCH. I might say we too have seen that in private industry. The only thing we can say to them informally is that just does not make a lot of sense and you are hurting yourself terribly.

Mrs. SCHROEDER. What about the budget of the grievance system? What is your cost per case and how does it relate to the other Federal and private sector grievance procedures which you have been involved in?

Mr. BLOCH. I do not have the basis of comparing between this system and others because this is the only system that I know the costs except for my own fees which I would submit on a case by case basis.

My impression is in terms of a comparison, the representation costs are somewhat similar. The representatives here are probably in a given case paid considerably less than the high power attorney brought in from a major law firm in some private sector case. Throughout the Federal sector it is probably relatively equal.

The fees charged by the arbitrators are approximately one-half of what the going rate is in any of the agencies I have mentioned in my written testimony. These arbitrators are paid on a GS-18 basis prorated out on a daily level. That comes to about one-half of the normal fee charged elsewhere in the Government.

Let me clarify that. There are systems which specify a rate. For example some areas of the Treasury Department have a fee schedule. Most of the Federal agencies do not and they are simply whatever the arbitrator's charges are.

In terms of the overhead we have a nine-person staff. That is a significant cost. The salaries range from about \$15,000 to \$16,000 to the upper levels of in the \$40,000 range for the executive secretary of our Board. That cost is hard to translate. I do not know of an analogy elsewhere in the Federal sector.

The Board and that staff is doing an enormous job including the preparation of these opinions for distribution on a systematic basis and the preparation of summaries for publication in the various agency newspapers and in fact serving to shepherd each of these cases through the whole grievance process.

In that context that portion of the overhead I would think is somewhat higher than other Federal sector agencies.

Mrs. SCHROEDER. Let me just say from a purist standpoint I am a bit troubled by statutory grievance systems versus negotiated grievance systems. I understand what you are saying. You have to realize it would be very shocking to have people involved in the current process come in and say we have been doing all of this but we do not really like the way we are doing it and we think it should all change.

I think you have made some very good points about changes that are valid but traditionally that has been left for the employees, the people who are going to use it to negotiate. I feel we are just a bit arrogant sitting up here writing it down for people who are not at the table.

I just wondered what your feeling was.

Mr. BLOCH. I do not disagree with any of that. I think the system that makes the best sense is where the parties get together and say here is what we want. The qualifications that are applicable to this system are several.

That was tried for many years. Much to the dismay of all the parties it simply was unsuccessful at which point Senator Bayh and his committee stepped in and started the ball rolling to the point where it was finally legislatively mandated.

I do not suggest that a legislative solution is the best. I think along your lines that the internal negotiations are best. I would indicate that you have five parties here. That is an enormous problem because to get agreement between two is hard enough and to get any five people to agree on anything is a task.

In that context the legislation I think was necessary and is working well.

In the revised bill you will note some of the labor relations will be accommodated through a contractual relationship. Others will be funneled in the current setup through the statutory foundation.

I think it would be a mistake to ignore the fact that this Board has one enormous job which is not seen in the private sector and that is to interpret and imply not only a collective-bargaining agreement but for example the U.S. Constitution and any relevant laws that might appear in a given case. That is not the sort of thing which lends itself readily to a negotiated labor agreement.

While I agree with you that would be the optimum I think practically this system is the only realistic answer.

Mrs. SCHROEDER. Should the individual be able to control whether or not the exclusive representative is present at the grievance hearing?

Mr. BLOCH. Let me start by saying we do not think that is our business. We will answer anybody's questions. We will take all comers. I recognize from a personal level this question of exclusive representation that has existed.

I might say that the present draft I think handles it poorly. It talks about exclusive representation when in fact there is not any.

As a general matter if the question is should an individual have access to the grievance procedure and, of course, to final and binding arbitration or final and sometimes binding as we have here, I guess it would be nice to say yes, surely from a purely democratic viewpoint you could hardly answer otherwise.

I speak now from my own viewpoint. It seems to me while that system in the abstract would be ideal, you have to recognize the plight of the agencies dealing with hundreds and hundreds of people all of whom are going to have varying and very important grievances certainly at least in their minds.

The advantage of a so-called exclusive representation system is that the union has at least the right to control the final access to the Board and let me emphasize that distinction. There is no control by the unions as to whether a grievance is filed. The question is does it get appealed all the way.

The tradeoff there is the ability of this dispute potentially to be settled at the lower stages more readily. That is, the agency may talk to a union and say one of your people has brought this, let's talk about it. It is easier to do that on a continuing basis with the same faces than it is with varying personalities.

One final point. I hope you recognize my remarks so far are intended to be purely comments on pragmatism. We are concerned at the Board with an effective internal dispute resolution system. If we have to answer the question, of course, we will and we will do it the best way we can. We do not think that is the best way.

In line with what you said in terms of constructing the system, the best way is for the parties to answer their problems. I think the efficient way in terms of what we have just been talking about is to have representatives of these people doing the negotiating.

One final pragmatic point. I do not think in reality it is going to make any difference because under the present draft as I read it you have what in essence is a cosponsorship type thing. The grievance that is brought to the particular union or brought through that union to the extent they are upset with it or in some way unsupportive they have the clear option to simply turn and say go ahead, we will not stop you but we are going to help you, we will sit with you but go ahead and get your own person.

I suspect that is exactly what is going to happen.

One final comment. Again with reference to this unique system we are facing a situation where part of the problems which come before us arise from the classic labor relations mold and indeed, under the new statute, the even more traditional labor relations agreement. The other part of it deals with these legal constitutional and inherent rights and perhaps in that context a union should not be able in any context to cut off the person's access to this Grievance Board. It might be worth-

while for the committee to consider whether you wish a bifurcated system in some of these legal or personal rights areas whereas more control would be exercised over the traditional areas.

Mrs. SCHROEDER. Thank you very much.

Congressman Fascell?

Mr. FASCELL. Mr. Bloch, I read your testimony and I have been listening to you very carefully. As a person who knows absolutely nothing about labor law and grievance processes I have the tendency to be overwhelmed.

Are you for or against this grievance system?

Mr. BLOCH. Are you asking me as an arbitrator?

Mr. FASCELL. I am just asking you your personal opinion based on years of experience and your expertise. Is this a good system or a bad system?

Mr. BLOCH. This is a good system.

Mr. FASCELL. You said it was unique and you said it was the best you ever came across in the Federal sector or anyplace else.

You like the private system better if the parties get together and develop their own grievance system but that is not practical. Therefore you are willing to live with the legislative grievance system.

Mr. BLOCH. I think that is accurate, Mr. Chairman.

Mr. FASCELL. Fundamentally it is a good system and it is the best in the Federal service and you are for it?

Mr. BLOCH. I support it unequivocally.

Mr. FASCELL. I just did not want to be confused.

I gather there is some question about who does what as a grievant. I went back to read this law. We have not gotten that far in the bill yet with the line by line explanation of it.

It says a grievant "who is a member of the bargaining unit represented by an exclusive representative shall be represented at every stage of the proceedings only if represented by that exclusive representative."

It also says that such grievant has a right to present a grievance on his or her own behalf. However, the exclusive representative shall have the right to be present during the grievance proceedings.

That is both ends of the stick. I have been amused frankly about this whole process concerning collective bargaining and the rights of the individual being preserved at the same time that you bargain away your individual rights and then try to protect your individual rights by statute. It is a little bit unusual for me.

I do not want to argue about it because I think maybe it has a good principle.

What is wrong with that language?

Mr. BLOCH. From the Grievance Board's side of the table there is nothing wrong at all. We take all comers. The dispute that arises does arise in the context of whether the individual should be able to plow his or her grievance through to a final and binding conclusion or whether instead there should be any control, however limited, executed by their collective bargaining representative.

Mr. FASCELL. I agree. If I am an individual and I pay my dues and I voted to let that exclusive representative be my representative and now I want to argue about my contract with that representative, is that not an internal matter between me and my agent?

Mr. BLOCH. Mr. Chairman, if I understand your question the answer is yes.

Mr. FASCELL. I am not a member of the organization and therefore I do not pay my dues and I did not trade anything off so to speak, yet that organization becomes my exclusive agent. The statute says notwithstanding that, since I am not a member of the organization, I can go ahead. That is the way I read it. It says any grievant who is not a member of such a bargaining unit has the right at every stage of the proceedings to representation of the grievant's own choosing.

It seems to me the statute has given the best of both worlds to everybody.

Mr. BLOCH. It may have. I read this as follows and I hope this is responsive to your question. The way I read the statute is when they talk about being a member of a bargaining unit, I read that as saying being a member of a group of people who are represented by this union and not necessarily, sir, being a member of the union.

Mr. FASCELL. I agree with you. I think that is quite clear. I do not think there is any argument about that.

Mr. BLOCH. If you are saying does not an individual trade away some rights when they become members, some individual rights, the answer is yes.

Mr. FASCELL. Right. I did not mean to raise that question. That was a philosophical aside that I engage in sometimes when I am dealing.

You do not have any problem with that and you do not see any reason to make any principal change or substantive change in this language?

Mr. BLOCH. From the standpoint of the arbitrators we have no problem whatsoever with that.

Mr. FASCELL. Let's go to the next question: What is a former member of the Foreign Service? I am not sure I understand yet what is a member.

Mr. BLOCH. I think we are with you on that, sir.

Mr. FASCELL. What is a former member within the time limitations? You raised the question what is a former member. Why do you not tell me what a former member is and maybe we will redefine it?

Mr. BLOCH. The problem we have with the statute is it gives former officers certain rights to grieve.

Mr. FASCELL. Is a member and officer the same thing?

Mr. BLOCH. Yes. I cannot think of any distinction. I am looking at section 1102. It says within certain time limits a former member of the Service and I define that as former officer may present certain grievances. It says with respect to allegations described in paragraph 7 of 1101(a).

Paragraph 7 talks about the alleged denial of an allowance or a premium pay or other financial benefit. That is the incorporated reference there. It does not say for example that the former officer may grieve his or her termination or his or her selection out if you will.

The horror case that I would give you just for your consideration with full recognition that this—

Mr. FASCELL. Before you get to the worst case scenario, what you are saying is that under the regular language covering a member who has been or will be selected out, he has no right to pursue the matter once

he has been selected out because he then becomes a former member and as a former member his grievance is limited?

Mr. BLOCH. Yes.

Mr. FASCELL. I don't know where the principal language of the procedure is in this bill.

Mr. BLOCH. If that is a gap it ought not to be a gap obviously.

Mr. FASCELL. It would certainly be unintended because obviously the protection of the individual in terms of questioning his rights as to his termination would be totally finessed.

Mr. BLOCH. Yes, sir.

Mr. FASCELL. I am not sure it ought to be in the former member category. I am not ready to say to that person who is still in the administrative process on the determination of his status that he is really a former member. I do not know at what point that transpires. I will have to be very careful to go back and determine at what point a legal distinction will be made.

I am perfectly willing to say I would give consideration to the limitation of grievances to a former member as laid out in 1102 without raising the other question. I would rather go back in the main section and take care of that distinction so as not to finess out a member whose current case is being considered.

Mr. BLOCH. Just to indicate one of the precise natures of the problem, this statute gives a 3-year time period within which grievances may be filed. If you read the language that we have been talking about strictly, an officer certainly could grieve the agency's decision to separate him or her but it would have to be while he or she were still on the rolls.

We do not think Congress intended in the other act and we hope it does not intend in this one to give that sort of a person 30 days assuming they get 30 days' notice or whatever while giving someone else 3 years to grieve a \$5 allowance that they have been gypped out of.

That is one of the areas of concern. We think it deserves consideration.

Mr. FASCELL. Thank you very much for clarifying that for me.

Mrs. SCHROEDER. Congressman Gray.

Mr. GRAY. Thank you very much.

Mr. Bloch, in your opinion does the proposed legislation adequately provide for entrance and mobility and full utilization of women and minorities?

Mr. BLOCH. Congressman, I think I am going to have to plead no contest on the question. I do not know the answer to it. In terms of the grievance system per se we have been proscribed from handling matters for which there is another statutory path such as EEO type matters.

We have nevertheless considered grievances that have raised those awful aspects under other names such as I am not claiming that you discriminated against me because I am black but you discriminated against me because you did not like me for whatever reason. All of a sudden they have access to our system.

Responding solely with respect to the grievance system my answer is we feel it is a satisfactory one in terms of the traditional labor-management function. Beyond that I do not know.

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Mr. GRAY. Do you often get a lot of grievances or what number of grievances can you tell us about that are based upon discrimination because of ethnicity or because of sex?

Mr. BLOCH. I do not know if we have a number. I can give you a guess. It is difficult to give you an exact answer. I am going to guess that 5 to 10 percent of our cases have such a claim that surfaces but recognizing it may well be a case where a person has been poorly treated and who says I am not sure why I was poorly treated but I note that I am a woman or black or whatever and it comes up there.

It is beyond our jurisdiction to handle a case which is purely of an EEO matter and for which other statutory avenues exist.

Mr. GRAY. The proposed act does not mention EEO nor affirmative action. The Grievance Board is mentioned rather specifically.

Do you believe there is no need for an EEO operation and is your Board able and willing to assume the responsibilities of administering EEO?

Mr. BLOCH. Let me respond in two ways. The first is from the personnel on the Board and there is no question that our Board is capable of handling those types of grievances. They arise normally in the private sector certainly. It is something we confront every day either because nondiscrimination clauses have been expressly written into the collective bargaining agreements that we are empowered to interpret and administer or because the contracts have a savings clause which says anything illegal is also violative of the contract.

I have no qualms about that from the personnel standpoint.

Similarly I have no qualms in the ability of our grievance machinery to accommodate and I am going to say most of what one would term an EEO related matter. My only qualification would come if some of these EEO matters, which do surface occasionally in the private sector, all of a sudden came before the Board such as very intricate and extended questions of testing; for example, where there is long and difficult expert testimony necessary.

As to that I have no doubts that we could accommodate that sort of a dispute but I have some doubts as to whether the parties are ready to present that sort of a case in the normal course of business. I cannot tell you that that sort of a case would be handled as well as the parties now handle their normal chain of disputes. I also think that would be a highly unique situation.

Mr. GRAY. Your Grievance Board does not act at this current time in any way in an EEO capacity but you are saying they do have the capability?

Mr. BLOCH. Yes. Technically we are currently proscribed from doing so but there is no reason from a structural standpoint why we could not either from the staff or the arbitrators.

Mr. GRAY. Thank you, Madam Chairwoman.

Mrs. SCHROEDER. Thank you. We thank you for being with us this morning. We appreciate the help you have been to the committee. Thank you very much.

Mr. BLOCH. Thank you, Madam Chairwoman.

Mrs. SCHROEDER. The next witness is Mr. Jim Washington who is the president of the Thursday Luncheon Group.

We welcome you. Mr. Washington, if you would like to come up to the front table we are very happy to have you with us.

STATEMENT OF JAMES R. WASHINGTON, PRESIDENT, THURSDAY LUNCHEON GROUP

Mr. WASHINGTON. Madam Chairwoman, I wonder since I am not familiar with the proceedings, how much time do we have?

Mrs. SCHROEDER. We are in real trouble this morning for time as you can tell. The briefer your opening statement is, the sooner we can get to questions.

If you would like to introduce the people with you that will be fine.

Mr. WASHINGTON. On my left is Dr. James Singletary, Foreign Service officer, from AID. On my right is Elizabeth McKune who is a Foreign Service officer from the State Department. and on my far right is Dave Smith who is vice president of TLG and FSO from ICA. In the interest of time I will attempt to summarize our testimony and will leave with you a copy of our complete text, with appendixes, to be recorded in its entirety.¹

May I extend on behalf of the Thursday Luncheon Group to this committee our appreciation for affording us the opportunity to testify on the proposed Foreign Service Act of 1979.

The Thursday Luncheon Group's desire to make its voice heard before this committee relates directly to the very purpose of the group which was founded in 1973 as an informal gathering of blacks in the Foreign Affairs community.

We welcome this opportunity from a point of view of wanting to relate to this committee some of our concerns relative to the bill and in that connection we welcome this opportunity to talk to and testify before the Foreign Affairs Committee on the Act of 1979.

We view with grave reservations this proposed Foreign Service Act as presently worded because of our concerns regarding racial discrimination and what we believe to be serious shortcomings and omissions in the bill that, if passed, could potentially be injurious to the recruitment and advancement opportunities of minorities in the Foreign Affairs agencies and in effect distract from the overall purpose of the bill which is to develop and strengthen the Foreign Service representative of the United States and enable it to effectively serve the interests of the country.

We have presented some statistics covering the overall number of blacks within the three Foreign Affairs agencies. We also presented a breakout of the three agencies relative to the total blacks in connection with the total population of the three agencies.

We talked about some breakout of the relative positions of blacks in three different groups in order to give a picture of how we fare relative to group 1 and group 3 with group 1 being the high echelon of grade and salary within the agencies.

The statistics on minorities in the Foreign Service on Foreign Service Reserve, Foreign Reserve Unlimited, Foreign Service Staff and Civil Service reflect equally absence of minorities in all levels of employment in the Department of State, AID, and ICA.

¹ The appendixes referred to are retained in committee files.

Most importantly they reveal a lack of advancement opportunity for minority career officers already in the Service. These statistics reveal the past failure of the Foreign Affairs agencies to pursue vigorous affirmative action programs.

Not only does this bill not provide teeth for the EEO on existing laws and regulations nor stipulate punishment for violation of the laws, but it does not even mention affirmative action.

Under the bill the Foreign Affairs agencies' offices cannot establish a program for compliance consistent with title VII of the Civil Rights Act of 1964 as amended.

One of the basic reasons for the failure of affirmative action in the Foreign Affairs agencies today is the absence of penalties for the violation of EEO principles. Without enforcement there is little reason for those who practice racial discrimination to take seriously the existing EEO program in the Department of State, ICA, and AID.

An enforcement program should also provide incentives of recognition to those demonstrating superior accomplishment in equal employment opportunity. Unless appropriate legislation is adopted in this bill to specifically address racial discrimination at its source within the Department of State, ICA, and AID, discrimination will continue unabated and no affirmative action program will ever succeed.

We presented as appendices copies of two reports commissioned by the State Department. We believe these reports will bear out our assertion that there is widespread discrimination within the Department. The report leaves little doubt there is widespread opposition to equal opportunity among the majority of State Department employees. This opposition to EEO ranges from attitudes expressing the belief that special programs would bring about unfair advantages to minorities and women.

It goes on to a more subtle approach to discrimination in the system in the assignment and preparation of performance rating reports for minorities.

We ask that the findings of these reports be closely examined by this committee before acting on this bill.

May I state here that some of these recommendations have already been adopted by the Department and we recognize the wholehearted commitment of Secretary Vance to affirmative action. However, as this bill will have a tremendous impact on minorities for decades to come, we seek congressional support to strengthen the language of the bill to assure the Department's commitment to EEO is made explicit in its basic authority.

We believe that the absence of a statutory basis in this bill for EEO and provisions for compliance will almost surely guarantee the continued underrepresentation of minorities in the Department of State, ICA, and AID.

In our desire to strengthen this bill we draw the committee's attention to two sections.

Section 101(b)(2). We believe this section would be of crucial importance to the future of minorities in the Foreign Affairs agencies because it is the basic authority for which the Department will formulate policies and procedures for its affirmative action programs.

We believe that the present language in section 101(b) (2) is wholly inadequate to carry out the spirit and intent of existing Federal laws, Executive orders, court decisions, and, in particular, title VI of the Civil Rights Act of 1964 regarding affirmative action programs.

We ask the committee how this section of the proposed Foreign Service Act, in its present language, can achieve equal opportunity goals if it becomes the basic authority of the Department of State when the Department although required by specific laws has demonstrated dismal performance in establishing, maintaining, and carrying out continuing affirmative action programs designed to promote equal opportunity?

In addition to our proposal that section 101(b) (2) be strengthened we further propose that 206 be rewritten so the Board of the Foreign Service include a representative of the Equal Employment Opportunity Commission to insure that matters relating to affirmative action programs of the three agencies and other agencies affected by this act adhere to the letter and spirit of EEO laws and regulations.

In addition we propose that the membership of the Board of Foreign Service examiners require membership of an EEO officer. We believe that the establishment of these EEO functions would enable equal opportunity offices to assert greater influence in helping the Department establish a vigorous and effective program of affirmative actions to eliminate racial discrimination.

One need only recall over the last decade the growing opposition to the United States in the United Nations and other international fora to understand the country's increasing estrangement from countries which constitute three-fourths of the nations of the world.

Within another generation, shortly after we pass the threshold of the 21st century, the world's population will have doubled. Four-fifths of this rapid growth, demographers tell us, will appear among the dark-skinned people of the equatorial countries of this Earth.

We, in the Thursday Luncheon Group, seek a proper emphasis on affirmative action in the Foreign Service Act of 1979 for more than our personal or private advancement and for more than just a sense of justice overdue.

Perhaps our most important reason stems from our conviction that black Americans coming out of an American heritage of nearly 500 years of social and economic oppression have a special or a unique contribution to make to the formulation and conduct and support of U.S. foreign policy.

We know we have the capacity and we insist on having the opportunity to serve as the bridge between our great Nation and the developing parts of the world from which we lately find ourselves so frequently estranged. It is tragic for our country to go on dissipating this considerable human resource for reasons of perceived elitism.

Ambassador Young during his brief period of service at the United Nations not only understood the underlying reasons for the growing hostility toward the United States but was able by identifying with the aspirations of developing nations to open a new and much more productive chapter in America's relations with the Third World.

Given the history of racial discrimination within the Foreign Affairs agencies it is hardly surprising that the Foreign Affairs agencies' efforts in behalf of equal advancement opportunity continue to lag behind those of other Federal agencies and indeed behind the Foreign Affairs agencies' objectives.

The social, economic, and sometimes political problems which result from having about 4 percent black employment at the highest levels within the Foreign Affairs agencies and nearly 32 percent at the lowest levels are worsening instead of improving.

Strong support for affirmative action is urgently required to engender black confidence in the capacities of the Foreign Affairs agencies to assure equal employment and fair and equitable treatment for blacks and other minorities within the Foreign Affairs community.

I appreciate the time and patience of the committee today to consider our views on the black employment situation within the Foreign Affairs community. We hope the committee will consider favorably our views, particularly those concerning sections 101(b)(2) and section 206.

We stand ready to cooperate with members of your staff to further develop the language for these sections.

[Mr. Washington's prepared statement follows:]

PREPARED STATEMENT OF JAMES R. WASHINGTON, PRESIDENT OF THE
THURSDAY LUNCHEON GROUP (STATE, AID, ICA)

Chairs and Members of the Committee, may I extend the appreciation of the Thursday Luncheon Group (TLG) to these Committees for affording us the opportunity to testify on the proposed Foreign Service Act of 1979. The Thursday Luncheon Group's desire to make its voice heard before these Committees relates directly to the very purpose of this group, which was founded in 1973 as an informal gathering of Black employees in the Foreign Affairs community.

Since its inception in 1973, the Thursday Luncheon Group (TLG) has gradually broadened its efforts to promote the interests of Blacks within the principal foreign affairs agencies of the U.S. Government. Such efforts now include the monitoring of employment, promotions, counseling, assignments, training, and other personnel matters in State, AID and ICA and the presentation of policy recommendations to agency heads on issues of special concern to TLG members. In that connection TLG welcomes this opportunity to testify before this hearing on the Foreign Service Act of 1979.

We view with grave reservations this proposed Foreign Service Act as presently worded because of our concern regarding racial discrimination and what we believe to be serious shortcomings and omissions in this bill that, if passed in its present language, can be potentially injurious to the recruitment and advancement opportunities of minorities in the Foreign Affairs Agencies (FAAs) and in effect, distract from the overall purpose of the bill which is to develop and strengthen a Foreign Service representative of the United States and to enable it to effectively serve the interests of the country.

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Let us briefly examine the Foreign Affairs Agencies' Profiles:

Agency	Foreign Service			General schedule	
	Total black	Number	Percent	Number	Percent
State.....	1,709	430	25	1,279	75
AID.....	754	142	19	612	81
ICA.....	726	158	22	568	78
Total: AID/State/ICA.....	3,189	730	23	2,459	77

	Group 1		Group 2		Group 3		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
State employees (GS and FS), distribution by grade groups (February 1979): ¹								
Total employees.....	3,802		3,678		5,313		12,793	
Total black employees.....	120	3.2	451	12.3	1,138	21.4	1,709	13.4
AID employees (GS and FS), distribution by grade groups (Dec. 16, 1978): ¹								
Total employees.....	1,962		770		955		3,687	
Total black employees.....	107	5.45	192	24.9	455	47.6	754	20.5
ICA employees (GS and FS), distribution by grade groups (Mar. 31, 1979): ¹								
Total employees.....	1,566		1,294		1,025		3,885	
Total black employees.....	64	4.1	173	13.4	489	47.7	726	18.7

¹ Grade groups include the following:

- Group 1 (GS-13 through 18, FSO/R/L/IO 1 through 4, FSS-01 and 02).
- Group 2 (GS-9 through 12, FSO/R/L/IO 05 and 06, FSS-03 through 05).
- Group 3 (GS-01 through 08, FSO/R/L/IO 07 through 08, FSS-06 through 10).

NOTES

State:

1. Of the total population in the Department of State, approximately 5 percent of the Foreign Service employees are black and more than 35 percent of the general schedule employees are blacks.
2. Of the general schedule and Foreign Service employees in grade group 1 only 3.2 percent are black.
3. Of the general schedule employees, approximately 31 percent of those in group 3 are blacks as opposed to only 8 percent in group 1.

AID:

1. Of the total number of blacks in AID, there is a disproportionate percentage concentrated in the lower ranks of the general schedule employees (group 2, 25 percent and group 3, 48 percent).
2. Blacks only comprise approximately 5 percent of the total number of employees in group 1 while blacks represent approximately 20 percent of AID employees.
3. Of the total number of Foreign Service employees, only 5 percent are black (4 percent black men and 1 percent black women).

ICA:

1. Within ICA, only 4 percent of the blacks fall into grade group 1 and 48 percent of the employees in grade group 3 are black.
2. Blacks comprise approximately 5 percent of the total Foreign Service population and 35 percent of the general schedule employees. However, blacks represent only 3 percent of the general schedule employees in grade group 1 and 45 percent of those in grade group 3.
3. Black women comprise less than 1 percent of those in grade group 1 and black men only represent slightly over 2 percent in this group.

The statistics on minorities in the Foreign Service Reserve, Foreign Service Reserve Unlimited, Foreign Service Staff and Civil Service reflect equally the absence of minorities in all levels of employment in the Department of State, ICA and AID. (Appendix A—State, Appendix B—AID, and Appendix C—ICA—Statistics on Minority Employees detailing low-level minority representation in the foreign affairs agencies, are retained in the subcommittee files.)

Most importantly, they reveal the lack of advancement opportunity for minority career officers already in the service. These statistics reveal the past failure of the FAAs to pursue a vigorous affirmative action program. They provide little encouragement to minority employees. The proposed Foreign Service Act of 1979, which does not even refer to affirmative action, will not change conditions within the FAAs for Blacks.

Not only does this present bill not provide teeth for existing EEO laws and regulations, nor stipulate punishment for violation of the law, it does not even mention affirmative action. Under the bill the FAAs EEO offices cannot establish a program for compliance consistent with Title VII of the Civil Rights Act of 1964, as amended.

One of the basic reasons for the failure of affirmative action in the FAAs today is the absence of penalties for the violation of EEO principles. Without enforcement there is little reason for those who practice racial discrimination to take seriously the existing EEO program in the Department of State, ICA and AID. An enforcement program should also provide incentives of recognition to those demonstrating superior accomplishment in equal employment opportunity. Unless appropriate legislation is adopted in this bill to specifically address racial discrimination at its source within the Department of State, ICA and AID, discrimination will continue unabated and no affirmative action program will ever succeed.

We believe that a recent study commissioned by the Department of State evaluating equal opportunity (See Appendix D, Evaluation of the EEO Program, U.S. Department of State, June 1977) substantiates this assertion. An examination of that report clearly reveals the dire need for a statutory basis in the basic authority of the Department of State, and spelled out in the legislative history of the bill, to assist the Department in its efforts to achieve the goal of a broadly representative Foreign Service truly representative of the diversity of the American people.

The report indicates, for one thing, that the majority of employees interviewed—at all levels of the organization—perceive equal opportunity as practiced in the Department of State as being practiced for the image it creates or because the law allows no option * * * that equal opportunity has little or no influence on the issues important to equal opportunity, such as recruitment, hiring, counseling, training, assignment, and promotions * * * EEO at posts abroad is relatively unimportant. If practiced it is because particular individuals who manage a post simply practice good management.

The report also levels little doubt that there is widespread opposition to equal opportunity among the majority of State Department employees. This opposition to EEO ranges from attitudes expressing the belief that special programs would bring unfair advantages to minorities and women, to the subtle discrimination of the "system" in assignments and the preparation of performance rating reports for minorities.

As indicated in a similar report commissioned by the Department of State on minority Junior Officers (See Appendix E—Minority Junior Officers Hiring Program of the Department of State, February 1977) the majority of minorities who enter the service under the affirmative action program are assigned to administrative and consular duties as opposed to economic or political duties. According to the report, a considerable number of minority employees consider race to be relevant in the preparation of their performance evaluations in a negative way.

We ask that the findings of these reports be closely examined by this committee before acting on this bill. May I here state that some of their recommendations have already been adopted by the Department of State and we recognize the wholehearted commitment of Secretary Vance to affirmative action. However, as this bill will have a tremendous impact on minorities for decades to come, we seek Congressional support to strengthen the language of the Bill to assure that the Department's commitment to EEO is made explicit in its basic authority. We believe that absence of a statutory basis in this bill for EEO and provisions for compliance will almost surely guarantee the continued underrepresentation of minorities in the Department, ICA and AID.

In our desire to strengthen this bill we draw the committee's attention to:

1. Section 101(b)(2). We believe that this section will be of crucial importance to the future of minorities in the Foreign Service because it is the basic authority from which the Department of State will formulate policies and procedures for its Affirmative Action program. We believe that in its present language Section 101(b)(2) is wholly inadequate to carry out the spirit and intent of existing Federal Laws, Executive Orders, and court decisions, and in particular Title VII of the Civil Rights Act of 1964, as amended regarding affirmative action programs. We believe that the absence of specific reference to affirmative action in this section, and its present discretionary language merely "to foster" equal opportunity, will not ensure that the Department of State will vigorously pursue an affirmative action program and adopt enforceable policies to eliminate pervasive and systematic discrimination wherever it is found to exist within the Department of State, ICA and AID.

We ask the committee how this section of the proposed Foreign Service Act, in its present language, can achieve equal opportunity goals if it becomes the basic authority of the Department of State, when the Department of State, though required by explicit existing law, has demonstrated a dismal performance in establishing, maintaining, and carrying out a continuing affirmative action program designed to promote equal opportunity in every aspect of agency personnel policy and practice in the employment, development, advancement and treatment of employees.

2. In addition to our proposal that Section 101(b)(2) be strengthened to establish a statutory basis for EEO, we further propose that Section 206 be rewritten so that the Board of the Foreign Service include a representative of the Equal Employment Opportunity Commission (EEOC) to ensure that matters relating to affirmative action programs of the Department of State, ICA, AID and other agencies affected by this Act adhere to the letter and spirit of EEO laws and regulations.

3. In addition, we propose that membership of the Board of Foreign Service Examiners require membership of an EEOC Officer. We believe that the establishment of these EEO functions would enable Equal Opportunity offices to assert greater influence in helping the Department establish a vigorous and effective program of affirmative action to eliminate racial discrimination.

We of the Thursday Luncheon Group believe that the elimination of discrimination by strengthening this bill will have an impact far beyond improving the status of minorities. Those individual employees who practice racial discrimination at home undoubtedly take these prejudicial attitudes to our embassies abroad, to countries that are highly sensitive to racial discrimination. Can we seriously doubt that part of the antipathy of other countries toward the United States and its interests can be traced directly or in part to those Foreign Service officials who indulge their racial prejudices while serving abroad in the interests of the United States? Are we to believe that those who indulge in racial discrimination can conceal their racial attitudes when they are dealing with an African diplomat instead of an American employee of African descent, or a Mexican diplomat instead of an American colleague of Mexican descent?

No.

Racial discrimination within the Department and the Foreign Service is a luxury that our government and nation can ill afford as we attempt to promote the interests and influence of the United States in an increasingly hostile world * * * a world with which the United States must come to grips.

One need only to recall over the last decade the growing opposition to the United States in the United Nations and other international fora to understand our country's increasing estrangement from countries which constitute three fourths of the nations of the world. Within another generation, shortly after we pass the threshold of the 21st Century, the world's population will have doubled. Four fifths of this rapid growth, demographers tell us, will appear among the dark-skinned people of the equatorial countries of this earth.

We, in the Thursday Luncheon Group, seek a proper emphasis on affirmative action in the Foreign Service Act of 1979 for more than our personal or private advancement, and for more than just a sense of justice overdue. Perhaps our most important reason stems from our conviction that Black Americans, coming out of an American heritage of nearly five hundred years of social and economic oppression, have a special—a unique—contribution to make to the formulation, promulgation, conduct and support of U.S. foreign policy. We know we have the capacity, and we insist on having the opportunity, to serve as the bridge between our great Nation and the developing parts of the world from which we lately find ourselves so frequently estranged. It is tragic for our country to go on dissipating this considerable human resource for reasons of perceived elitism.

Former Ambassador Young, during his brief period of service at the United Nations, not only understood the underlying reasons for the growing hostility toward the United States, but was able, by identifying with the aspirations of developing nations, to open a new and much more productive chapter in America's relations with the Third World.

SUMMARY

Given the history of racial discrimination within the FAAs it is hardly surprising that the FAA's efforts in behalf of equal advancement opportunity continue to lag behind those of other Federal agencies and indeed behind the FAA's

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own objectives. The social, economic and sometimes political problems which result from having about 4.3 percent Black employment at the highest levels within the FAAs and nearly 32.2 percent at the lowest levels are worsening. Strong support for affirmative action is urgently required to engender Black confidence in the capacities of the FAAs to assure equal employment and fair and equitable treatment for Blacks and other minorities within the foreign affairs community.

CONCLUSION

I appreciate the time and patience of the Committees today to consider our views on the Black employment situation within the foreign affairs community. We hope that the Committees will consider favorably our views particularly those concerning sections 101(b)(2) and 206. We stand ready to cooperate with your staffs to further develop appropriate language for these sections. In conclusion, I thank you once again.

Mrs. SCHROEDER. Mr. Washington, that is well timed. We are going to have to adjourn for a vote. I commend you on all the statistics you have. We will vote and I will try to get back as soon as I can. Mr. Gray will be back and will have a lot of questions.

I think you have a very sympathetic audience. One of the things we would like you to think about while we are gone is the selection boards and how they affect black and minority promotions. I think that has been a real problem also along with the other comments you have made.

We will return as soon as we can.

[The subcommittees recessed for a vote on the floor at 11:55 a.m.]

AFTER RECESS

Mr. FASCELL. The subcommittee will resume.

I apologize to the panel for being absent but I was before the Rules Committee. I got back as soon as I could.

Mr. Gray.

Mr. GRAY. Thank you, Mr. Chairman.

Mr. Washington, what is the Thursday Luncheon Group? Could you explain what it is and how it came to be?

Mr. WASHINGTON. The Thursday Luncheon Group consists of members of blacks within the three Foreign Affairs agencies as direct members. We have affiliate membership in other Government agencies involved with international activities or international relations.

The three agencies where our direct membership lies are in the State Department, AID, and ICA. Our affiliates are certain members of the Treasury Department; ACTION, Peace Corps and other agencies such as HEW that have international involvements.

We are comprised of approximately 3,000 potential members in the principal Foreign Affairs agencies. Our active membership runs pretty much around 300 to 325 given a particular year.

Our main purpose as indicated earlier is to foster improvement of blacks in positions and improvement of our inputs into our Foreign Affairs activities including employment, promotions, counseling, assignments, training, and other personnel matters.

We, also, from time to time make presentations of policy recommendations to heads of agencies on issues of special interest to blacks within the Foreign Affairs agencies.

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Mr. GRAY. In your testimony I think you make it very clear that you are not very satisfied with the proposed reform, particularly as it applies to minorities and also women. You talk about changing sections 101(b)(2) and 206.

How would you implement that? Do you have at this time some specific suggestions on how to give that a strong thrust of affirmative action?

Mr. WASHINGTON. Without providing the specific language we made three suggestions; one of which deals with incorporating appropriate language contained in Federal laws, Executive orders and court decisions and particularly the language couched in title VII of the Civil Rights Act regarding affirmative action.

A problem with that section is it does not even mention affirmative action. We would like to see that language pertaining to affirmative action be placed in section 101(b)(2). We are asking that section 206 include provision for a member of the EEOC to be placed on the Board of Foreign Service and that the Board of Examiners insure that the activities of these Boards reflect the intent of EEO laws.

Mr. GRAY. Do you have those specific requirements in writing with you today?

Mr. WASHINGTON. No, we do not.

Mr. GRAY. I would appreciate it if you could get that to me for further examination.

You state in your testimony that discrimination does take place. What form does that take and how does it apply to minorities and women to avoid entrance and mobility within the Service and the Department? Can you give me any specific examples or kinds of illustrations as to how there is the discrimination you mentioned?

Mr. WASHINGTON. Yes; I have with me today other members of the Thursday Luncheon Group. Dave Smith is on the Board of Examiners. He is very much involved with the selection process in the assessment area. I would defer to Dave to comment very briefly on what we mean by discrimination and how discrimination impacts on minorities' advancement within the Foreign Affairs agencies.

Mr. GRAY. Mr. Smith?

STATEMENT OF DAVID SMITH, VICE PRESIDENT, THURSDAY LUNCHEON GROUP

Mr. SMITH. Thank you very much, Congressman Gray.

The Foreign Service of the United States is extremely hierarchical or pyramidal kind of group. What happens at the top because of that I think has unusual impact on what happens below. The story of discrimination in the Foreign Service it seems to me is one of too few particularly at the top peaks of these pyramids.

For example, and this ties in with the question raised about selection boards, there are a number of kinds of selection boards in the Foreign Service. There are promotion panels which are the normal reference people have in mind when they talk about selection boards. There are commissioning and tenure boards which pass on junior officers before they move from reserve status to career officers. There is the Board of Examiners.

In each of these cases people are passed upon by their seniors. Insofar as blacks and other minorities are woefully underrepresented at

these apexes they do not assert a proportionate influence upon the outcome of these various panels I have suggested.

To put it differently there are two few grade 1, grade 2, and grade 3 officers. Therefore minority officers who are bunched at the bottom are not subjected to as sympathetic an ear as they should have. This lack of representation at the middle and upper ranks of the Foreign Service inhibits the kinds of assignments and the kinds of overseas postings, special assignments, special training opportunities which come to blacks.

This is why we say discrimination is almost built into the system and cannot be righted in our opinion of the Thursday Luncheon Group until there is increased representation particularly at the middle and upper levels of the Foreign Service.

Mr. GRAY. Often the argument is used that the reason why there is not the increased representation at the top is that it takes time to work one's way up the ladder to gain the experience necessary and there is always the admission requirements and the various testing.

Do you find as a result of past admission procedures and also about the present admission procedures at the lowest rung that this presents a problem for minorities and women and not just blacks but Hispanics and native Americans and Asian Americans reaching that top?

Mr. SMITH. Let me address the question first about being prepared to move ahead. Throughout this act there is emphasis given to the value of having a young, vibrant, vigorous Foreign Service Corps. The Foreign Service, I think, is structured to permit that.

There are no stipulations requiring a minimum time in grade. There are stipulations requiring a maximum time in grade beyond which one is subject to being selected out of the Service.

Young officers can be moved in the Service as rapidly as senior officers see fit to move them. Our point is senior officers hardly ever see fit. They certainly do not see fit as often as they should to move young black officers or young minority officers to positions of responsibility early enough in their careers.

Mr. GRAY. Are they guided by any criteria or are you simply saying it is a totally arbitrary, subjective decision made by a Board and based on what you are saying minorities and women are not represented on that Board adequately enough and therefore there are no guidelines on how that Board decides who gets promoted or simply a subjective arbitrary thing?

Mr. SMITH. It is not entirely arbitrary although there is room for that and I think some of that happens.

To take the selection panels for an example, there are very few minorities in the positions to serve on boards that will select who will be promoted.

We think that can be gotten around by making use of minority officers who have retired from the Foreign Service and understand the system and how it works and having them serve on the selection panels and by making broader use of minorities from outside the Foreign Service to serve on such panels.

I suggested to you that it is not entirely arbitrary because indeed the promotion panels have precepts set for them by an agreement basis between the management of the Department and the exclusive bargain-

ing agent. We find again little opportunity to have a voice in what the precepts are.

Once people are selected and one moves to the area of counseling and assignment there is indeed a good deal of room for play. The Department has very few, and when I say the Department I mean it is generally true of the Foreign Affairs agencies, that they have very few minorities in positions of counseling positions or with the authority to make assignment decisions.

Very few are at the upper ranks to select people whom they identify as, although young, being capable of taking on greatly increased responsibility.

I want to say a word about the examination process for junior officers which as you may know is undergoing at the present time another in a whole series of reexamination and reevaluations as to its efficacy and as to its impact on minorities.

The Department and other elements have affirmative action programs for employment. We know that the examination process as presently constituted simply does not produce the numbers of minorities to adequately fill the goals that have been set, the numerical objectives of the Department.

Part of that has to do with what I think are the ill organized minority recruitment efforts and a part of it has to do with various elements in the examination process, some of which in my opinion are clearly predisposed against minorities.

To take one example, it has been recently reported and I think generally now believed that preparation for written examinations and preparation courses for written examinations such as the one given for the Foreign Service and produced incidently by the same organization, the Educational Testing Service in Princeton which produces the SAT and other such exams, that test preparation can and does have an impact on success in those examinations.

Clearly people who are economically underprivileged are going to be disadvantaged in taking such a test as opposed to those whose economic circumstances allow them to better prepare for it. That is just one element which I suggest works against a successful improvement in minority proportions in the Foreign Service.

Mr. GRAY. I noticed in earlier testimony here before the committee when we were looking at the admission procedures and also the testing that a great deal of weight was given to that written examination.

You are saying there are also some economic considerations that make it very difficult for minorities to do well on that. Are you also saying there are just some basic cultural factors that have been used to criticize the standardized testing program out of Princeton for college boards as well?

Mr. SMITH. Absolutely. I work on some of the test questions from time to time at least from a review point of view. They are predispositioned against minorities.

Mr. GRAY. Do you feel those questions have a significant amount of relevance to the actual performance of a person once they are in the Foreign Service?

Mr. SMITH. I do not think the written examination questions have particularly. I think other parts of the examination process are more relevant.

Mr. GRAY. Such as?

Mr. SMITH. The oral examination both in the assessment center form, the form that is being used now and what we call the old form, the three on one examination where there is more exploration for the characteristics which at least the psychologist tells us are typical of a successful Foreign Service officer.

Mr. GRAY. Mr. Washington or a member of the group, why do you think the proposed legislation calls for a separate statutory labor relations law? Do you have any comment?

Mr. WASHINGTON. Yes; let me comment very briefly.

We did not comment in our testimony on that particular section of the bill. We do have some problem with certain of the items in that section but we choose not to bring it to this body. We think some of the things we would like to change in that section would have to do with our relationship with the exclusive representative as opposed to legislation.

Personally, I think we have sufficient coverage under title VII Federal Labor Relations Authority and ordinarily one would assume that this statute should cover all Federal employees. However, with the uniqueness of the Foreign Service there may be an argument for a separate labor law, but I do not think the law should be written precisely as it is in the draft form.

One of the sections that gives us the most problem is the one that suggests that the exclusive representative would have a right to represent and/or be present with all unit employees in the grievance process. There was quite a discussion earlier on this, having to do with the individual employee's right to seek outside representation or representing his or herself.

Ordinarily, such provision would not cause us any problem providing we had a positive history of interaction and relationship with the now existing exclusive representative. However, based on past history we have experienced problems with the exclusive representative under the current Executive Order 11636.

Hopefully, now we know that there is a new leadership in that organization our relationship will improve as we go forward.

Mr. GRAY. Thank you, Mr. Washington.

I would like to note that during these hearings and, unfortunately, I have not been able to attend all of them, but for the ones I have attended there have been no blacks present to testify nor did I see any Hispanics or other minorities as part of the testifying group from the Foreign Service or State Department other than this one or for that matter, any women as well.

I also find very interesting the statistics you have presented in your testimony which clearly show a preponderance of minority persons at the lowest grade level which seems to reflect very clearly a lack of mobility.

I want to thank you for coming and giving this testimony. Mr. Chairman, that is all the questions I have.

Mr. FASCELL. Are you suggesting in your testimony that any kind of written examination be dispensed with?

Mr. SMITH. No; the written examination is a screen. It is meant to be.

Mr. FASCELL. You are simply suggesting that it could be improved?

Mr. SMITH. Absolutely.

Mr. FASCELL. Factors which would affect blacks should be given proper consideration and weight and that the written exam not be relied on unnecessarily or arbitrarily or given too much weight?

Mr. SMITH. That is my point.

Mr. FASCELL. There is an additional method and, perhaps, a better method, to find out more about an individual through careful oral examination?

Mr. SMITH. I would suggest further that a strong affirmative action program can itself extend beyond the written examination to help those who are clearly disadvantaged. I am told Health, Education, and Welfare, has allocated something like \$3 million to help people prepare to come in and do certain professional jobs for which they find they have deficient minority representation.

Mr. FASCELL. Where the individual had no opportunity for preparation to start with so you have to make a conscious effort for total preparation of that individual and not simply leave it up to the classification system.

Mr. SMITH. Yes, sir.

Mr. FASCELL. I understand. I am glad to get that clarified on the record. I think that is very important, otherwise they might not have a fair shot at any of these jobs.

Mr. Singletary?

**STATEMENT OF JAMES SINGLETARY, FOREIGN SERVICE OFFICER,
AID**

Mr. SINGLETARY. Regarding the point of the examination, I think there are times when the content of the examination might come into question. For example, we have studies that indicate that many items require specific pieces of factual knowledge regarding a wide range of fairly esoteric areas. Although increasing numbers among members of minority groups have developed some expertise relevant to Agency needs, in many cases these skills and competencies may be hard-brought. The effort needed to develop such skills may, for many, be incompatible with devoting a great deal of time and energy to learning about some of the more esoteric areas tapped by the examination.

Our position is that the examination should relate more directly to the job to be done as well as to the level of expertise required. In education, we know, for example, that straight A students in teachers colleges may not make the best teachers. They may be excellent for researchers, but may not be the best teachers. In like manner, it is suggested that more attention should be given to relate the examinations to the job to be done.

Serious consideration should be given to revising the examinations in order to reduce cultural bias. This may include the need to revamp Agency thinking underlying the tests and placement procedures. Focus should be on the kinds of items that would give a clear indication of probable success, over time.

Increasing the pool of successful minority applicants will have to begin with increasing the pool of minority applicants. Some potential applicants may be dissuaded from even taking the exam after exposure to the sample test questions. The Agency may want to take a different tack if they revise their examinations. Rather than test specific pieces

of knowledge that might be useful, they may want to identify critical skills—for example, English expression, interpersonal skills, cultural sensitivity, and problem-solving ability—which they regard as important and test for these. Following this, successful applicants could be trained in the specific knowledge needed. Individuals who already have such knowledge could be exempted from the training by performing well on some type of exemption test—as is currently done in developing foreign language skills.

We ought to spend more time in career development counseling and training. This is particularly true for current employees as well as persons who are entering the Agency. They, both, need increased opportunities to strengthen their expertise in areas where they can make increased contributions to the effectiveness of the Agency.

Mr. FASCELL. As part of an affirmative action program and following up on what Mr. Smith said?

Mr. SINGLETARY. Yes.

Mr. FASCELL. That is interesting to have that comment because tests which would seek to evaluate certain traits and characteristics or abilities of an individual change constantly with technology and broader knowledge as we get to know mankind better and hopefully more intelligently.

I do not know how often the written tests are reviewed or what the makeup is of the people around the country who go into the thinking process of certain questions to elicit some particular objective. I agree with you. I have looked at some of those. I not only cannot answer them, but I do not have the slightest notion what they are for.

I am sure the person who thought up the question has an answer, but I would like to sit down and eyeball him and talk about it a little bit. If we had that kind of process at least in the formulation of the tests then we would have a little better shot in an affirmative action program. To go in there absolutely blind without knowing who the formulator was and what his purpose was is to make the test almost meaningless. I quite agree with you on that.

Once you get into the mainstream I think there is a legitimate reason and necessity for some kind of program to help people. I am not quite sure how we do that in the Department. I think the point you made about the boards is a very real point.

Yet we both agree there is probably no way to legislate that. This is a question of internal dynamics in which the blacks and other minorities would have an opportunity to exercise their impact through the actual operations of the system with them as individuals in it. It seems we can help that in some way but I do not know exactly how yet. I have not formulated that.

Mr. WASHINGTON. Along that line, Mr. Chairman, that is the primary reason why we are so concerned about making our presentation here today. We know you cannot legislate concerns and fairness but, on the other hand, the kinds of regulations and operational guidelines within the Department and the other agencies will take their impetus from the content of this statute for years to come.

We think we have the mechanisms to work with the formulations of agencies' regulations but we need the basic fairness in this act. We are fearful that if this act should pass without the very firm commitment to affirmative action upon which we can build and develop

the kinds of guidelines and regulations to implement affirmative action, we are going to find ourselves in much worse condition than we are now.

Mr. FASCELL. I would hope your fears would not be that strong by the time we get through. Mr. Gray and others have worked very diligently in the consideration of this bill to build a record of the kind you are talking about.

Your testimony here today and the questions and answers we have here will further buttress that.

I know both subcommittees will be very much interested in reviewing the actual language which is in the bill. We are going to follow your suggestion, I can assure you, about an adequate record. We will include any necessary language in the report to follow up the language that is in the bill.

There should not be any doubt or misunderstanding on anybody's part concerning congressional intent. I do not think there will be any question about that.

The next thing is how do you fit in on the regulatory part of it? That is kind of a partnership arrangement. The Thursday Luncheon Group is already ahead of everybody and they have an idea about what they are going to do and how they are going to do it.

I think it is very important and, while the exclusive agent will also be involved in that in some way, it does not necessarily have to be the exclusive representative who has all of the discussions with respect to implementing regulations.

I think that could be made quite clear.

The committees of the Congress will be overseeing those regulations and we will expect to hear from you if you see problems developing. We do not want to get locked into regulations that we cannot live with.

I think there will be enough safeguards. The point is you have alerted us and your testimony is very clear. I do not think anybody could misunderstand what you are saying.

Mr. Smith.

Mr. SMITH. I would like to make one observation to stress something that causes us exceeding anxiety and that is lack of representation at the top ranks of the Foreign Service. I am excluding in this discussion politically appointed ambassadors and the like.

If you look around the world and consider black ambassadors and black career ministers of whom we have only one throughout the Service, most of them are from my generation and beyond. They are about to move off the stage for one reason or another.

They are not backed at the middle and upper levels these days by an adequate number of successors. I suggest to us that the picture in the near- and maybe the middle-range future will be anything but dismal.

We have Ms. Barbara Watson, Assistant Secretary of State. We have Vernon Johnson who is Deputy Assistant for Africa. We have George Dawley and John Burroughs. That is all at the upper and middle level.

When we lose ambassadors we lose people of the level of Ambassador Bohlen and I am talking about over a period of time and also Rudy Aggrey, people who have been around. I am not talking about

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them in personal terms. I am talking about what is behind them and what we have in the pipeline. That is not evident at all these days. That scares us.

Mr. FASCELL. You think some special consideration has to be given either by lateral entry or some way to deal with that problem?

Mr. SMITH. Absolutely.

Mr. FASCELL. I want to thank you very much for the specific suggestions you have made not only in your testimony but in the answers to questions. I would like to join Mr. Gray in urging you, if you have some specific language, to get it to the subcommittee so we can look at it.

We would be able to write something based on your general concerns and the concepts you have laid out in your testimony but it would be a lot better if you have the capability of getting the specifics to us. We would then take it up with the legislative counsel and put it in the right legislative form. Do not worry about whether or not it is legislatively accurate. Just be sure you have expressed accurately the concept you are supporting.

If you have legal advisors go ahead and get them to look at it also and then turn it over to us and give us a chance to work with it.

Thank you very much.

[The information requested by the committees follows:]

Suggested amendments and comments to strengthen equal employment opportunity and due process in the selection, retention, training, assignment, promotion, and advancement of employees (H.R. 4674).

An effective analysis of H.R. 4674 requires a side by side comparison to a) the Foreign Service Act of 1924, b) the Foreign Service Act of 1946, c) the Civil Service Reform Act of 1978 and the proposed Bill. The Committee may wish to authorize such an analysis.

SUGGESTED AMENDMENTS AND COMMENTS

TITLE I—THE FOREIGN SERVICE ACT OF 1979

CHAPTER 1—GENERAL PROVISIONS

Sec. 101. Findings and Objectives

Amend 101(b)(2) to 101(b)(2)(A).

Add "101(b)(2)(B) Entry level employees in the Foreign Service shall be comprised of fifty percent (50 percent) minorities and fifty percent (50 percent) women until such time that minorities and women are represented in the senior ranks of the Foreign Service in such numbers as they are represented in the U.S. population."

Add 101(b)(2)(C) "Statutory and regulatory requirements governing employee selection processes in the competitive service to implement affirmative action and promote equal employment opportunity are applicable to the Foreign Service."

Sec. 102. Definitions

Amend 102(7) "merit principles" to read 102(7) "merit principles" means the principles set out in section(s) 2301 and 2302 of title 5, United States Code;

Comment.—Sec. 2302 lists the "prohibited personnel practices" from the Civil Service Reform Act of 1978.

CHAPTER 2—MANAGEMENT OF THE SERVICE

Sec. 204. The Director General

Amend line 23 to read "The Director General shall assist the Secretary in the management of the service and the implementation of affirmative action goals and objectives and shall perform other functions, including those under Chapter 12, for the Service as the Secretary may prescribe."

Sec. 205. The Inspector General (a)

Amend to read "Under the direction of the Secretary, the Inspector General shall independently inspect the work of each Foreign Service post at least every three years, shall inspect periodically the bureaus and offices of the Department of State, and determine compliance with affirmative action goals and objectives, and shall perform such functions as the Secretary may prescribe."

Sec. 206. The Board of the Foreign Service

Amend line 2 to include after Service " , subject to the provisions of the Government in Sunshine Act 5 USC 552b,"

Amend line 12 read after "Cooperation Agency, Equal Employment Opportunity Commission, the Office of Personnel Management"

CHAPTER 10—LABOR MANAGEMENT RELATIONS

Sec. 1021. Exclusive Recognition

Amend subsection (f) to include paragraph "(4) if the Board determines that the organization is not in support of affirmative action and equal employment opportunity principles.

Sec. 1022. Employees Represented

Amend to include subparagraph "(4) individuals not currently employed by the Foreign Affairs Agencies, members of the Senior Foreign Service, and members of the Senior Executive Service.

Sec. 1023. Representation Rights and Duties

Amend line 19 after discrimination to include "race and sex"

Amend (b) (1) (A) line 1 after employment to read "specifically negotiated by the exclusive bargaining representative" and delete "including . . . issue;"

Delete (b) (1) (B) page 117 line 18 "other . . . proceeding;"

Sec. 1024. Resolution of Implementation Disputes

Delete (a) (3) "Foreign Service Grievance Board" and include "Federal Mediation Board"

Sec. 1041. Standard of Conduct of Labor Organizations

Amend page 125, line 11 after principles to include "and Affirmative Action and Equal Employment Opportunity objectives"

Sec. 1051. Administrative Provisions

Delete page 128, line 21 "Except . . . execution."

CHAPTER 11—GRIEVANCES

Sec. 1101. Definition of Grievance

Amend (b) (2) line 15 . . . after body to read "acting in accordance with law or regulation or precepts negotiated between the agency and the exclusive representative. The Grievance Board shall review such appeals from such decisions and shall sustain the finding if rendered in accordance with law, regulation, and precepts if supported by a preponderance of the evidence."

Delete sec. (c) page 133 line 1-5.

Sec. 1103. Freedom of Action

Delete and substitute "(b) A grievant shall be represented by a representative of his or her own choosing."

Sec. 1104. Time Limitations

Page 135 line 9 delete the word "three" and include the word "six" and delete the word "shorter" and include the word "longer".

Page 135 line 20 delete "exclusive representative" and include "grievant" and delete "(on behalf . . . unit)".

Sec. 1113. Board Decisions

Page 141 line 19 (b) (1) delete the word "falsely"

Mr. FASCELL. The subcommittees stand adjourned subject to the call of the Chair.

[Whereupon, the subcommittees adjourned at 12:40 p.m.]

THE FOREIGN SERVICE ACT

THURSDAY, SEPTEMBER 27, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees met at 9:35 a.m. in room 2172, Rayburn House Office Building, Dante B. Fascell (chairman of the Subcommittee on International Operations) presiding.

Mr. FASCELL. At today's hearing we will continue our examination of the Foreign Service Act of 1979.

We will begin with the testimony of Dr. Patrick Linehan, who is the author of the 1975 Linehan study on the Foreign Service. Next, Mr. Robert Gershenson will lead us in a discussion of the Hay comparability study, which has been the subject of numerous references during our past hearings.

Then we will hear from Mr. Kenneth Bleakley, president of the American Foreign Service Association. Then we will have Ben Read and Jim Michel with their dog and pony show.

Dr. Linehan, the floor is all yours.

STATEMENT OF PATRICK E. LINEHAN, SENIOR RESEARCH ANALYST, DEFENSE INTELLIGENCE AGENCY, AND AUTHOR, THE LINEHAN STUDY ON THE FOREIGN SERVICE

Mr. LINEHAN. Mr. Chairman, my name is Pat Linehan. I am presently a senior research analyst with the Defense Intelligence Agency here in Washington, D.C.

The purpose for my being here is to present some of the more significant findings of my doctoral dissertation entitled "The Foreign Service Personnel System: An Organizational Analysis," approved in March 1975 by the School for International Service, College of Public Affairs, American University, Washington, D.C.

This testimony is given by me as a private citizen and not as a representative of DIA.

It is indeed a privilege and an honor to be here before you to discuss this research. My dissertation chairperson, Dr. Marian D. Irish, never informed me that besides defending my research before her committee, that one day I might be answering questions before a congressional subcommittee.

It is also by strange coincidence that you, Mr. Chairman, are my Congressman. I doubt that you have the opportunity to meet many of your constituents in this forum.

Historically, the Foreign Service has shown a remarkable capability to resist change. Very few organizational changes of true significance have occurred, the few exceptions being the 1924 Rogers Act, the 1946 Foreign Service Act, the 1954 Wriston Report, and the Macomber study, "Diplomacy for the 1970's" in 1970.

Although this study was completed 4 years ago and was published in 1976, I strongly suggest that its findings are still valid today. This is especially true of the interview data concerning FSO attitudes and perceptions toward their careers.

Whereas the hard statistical data such as that concerning personnel distribution by class, functional specialization—cones—and bureau identification has certainly changed, it probably has not done so significantly.

The methodology involved was a stratified sampling technique structured to insure that each FSO class and cone was proportionately represented in relation to the total Foreign Service. Consequently, 330 individuals—10 percent of the total Foreign Service population), were intensively interviewed on a confidential, nonattribution basis, the average interview lasting 1½ hours.

However, due to research design requirements, the interviews were not randomly selected because key individuals in the organizational structure such as those responsible for counseling, training, assignments et cetera, had to be interviewed.

In September 1973 there were 3,352 Foreign Service officers—3,128 men and 234 women—from FSO class 8 up to the rank of career ambassador. The distribution of personnel up through the grade levels was approximately diamond-shaped with the greatest percentage of personnel at the FSO-4 level. However, the personnel distribution of female FSO's, who comprised only 6.9 percent of the Service, was roughly the same shape as that of the overall distribution, but it was one grade level lower.

The distribution of officers classified according to their skill code or functional specialty—cone—was as follows: political officers, 37.6 percent; economic/commercial officers, 23.7 percent; administration officers, 16 percent; program direction officers, 11.7 percent; and consular officers, 10.6 percent.

The most frequent observations made by Foreign Service officers during the interviews were as follows: FSO's are rank oriented. Everything is directed toward obtaining a promotion. The traditional success pattern still prevails, that is, the political officer with a geographical specialization—"home" in a bureau—frequently in Europe. And there is a general consensus of attitude showing lack of faith and confidence in the integrity of the existing system.

Elitism seems to increase as career officers develop a sense of commitment to the Foreign Service. Although midcareer officers and especially senior level officers do feel that they are in an elite, interviews with 35 junior officers during the 6-week training period following selection-in revealed that incoming officers do not share this perception.

However, from 1971 to 1973, out of 41,317 individuals who applied for the Foreign Service entrance examination, only 412—0.9 percent—entered on duty for the 3-year period. In 1974, 91 percent of all FSO's had at least a bachelor's degree. Almost three-quarters of the service, 73.3 percent, had some graduate study and 47 percent had a master's degree or higher. These and other statistics tend to substantiate the elitist perspective.

Nevertheless, this difference in perceptions between junior and senior level officers is characteristic of a fundamental difference underlying many of the problems faced by the Foreign Service in its attempts to evolve with the times. The fundamental difference is a function of the fact that both junior and senior level officers are products of their historical times.

The senior Foreign Service officer is a product of the Depression, World War II, the rebuilding of Europe, the Korean War, McCarthyism, the cold war, Wristonization, and a polarization of attitudes in an increasingly militarized, technologically advanced, international environment.

Upon going into the Foreign Service, these men were essentially conservative, disciplined, and elite-oriented in the traditional sense. Consequently, they accepted the established values and norms without serious challenge.

The junior Foreign Service officer today has a living history which may or may not include World War II but generally is associated with the time of President Truman. Coinciding with his physical maturation, the junior officer's intellectual development and philosophical orientation had its roots in the time of the liberalism of President Kennedy which matured with the problems of Vietnam, ecology, civil rights, and the drug counterculture.

This particular outlook challenges the status quo and seeks change at a rate which may appear threatening to an established order such as the traditional Foreign Service. Until he has developed a real sense of commitment to the Foreign Service, the junior officer has no personal stake in the system to protect other than immediate job security.

An officer's sense of commitment must be developed by the time an FSO reaches the level of class 4; otherwise, he is trapped due to age, increasing economic responsibilities and skills that are not widely marketable.

Many Foreign Service officers expressed their annoyance with the traditional image of an elitist corps. And even though the subculture norms associated with the traditional image have changed, the stigma lingers on. However, despite officer annoyance, Foreign Service officers as a professional group statistically do represent an elite.

Morale in the Foreign Service is viewed from two basic perspectives. One concerns issues with which the individual can grapple, such as situations in which an officer can participate in the resolution of a problem. He may try to resolve, informally, any dissatisfaction concerning assignments, training, promotion, involuntary retirement or a personal grievance; or he may initiate a formal grievance proceeding after attempting to resolve the problem informally.

The primary point is that the officer knows that he has some recourse, both formal and informal, by which to air dissatisfactions and to resolve a perceived grievance.

The second perspective concerns, primarily, the relationship between the principal officers on the seventh floor and the Foreign Service as a whole. The Navy maxim, "Loyalty upward requires loyalty downward," characterizes this relationship.

Throughout the interview process, officers overwhelmingly expressed the feeling that the corps lacks a sense of direction from the top and that the apex of the Department lacks a sense of responsibility to the Foreign Service.

Although the apex of the State Department is politically oriented and reflects the President and his policies, effective leadership is still, in part, a function of individual personality and style. However, the apex of the State Department has traditionally received a bad press and it galls Foreign Service officers to read about ineffectiveness at the top of the Department.

Mr. FASCELL. I have the same problem. [Laughter.]

Mr. LENEHAN. Although specialization is still viewed by many Foreign Service careerists as a threat to mobility, a much more tolerable attitude now exists for its need. The middle grades, classes 3, 4, and 5, are the levels where most of the specialized work of the Service is done.

When an officer passes the threshold review and accepts promotion to class 5, he commits himself in writing to accept the bulk of his mid-career assignments in his cone. One underlying assumption of this in-cone assignment policy at midcareer is that each cone offers an attractive career to its officers.

However, officer interviews indicate that the present status of the various cones is still not considered equal, perhaps a direct result of the former situation in which the political officer received the majority of promotions and the best assignments and in which the other cones were thought of in varying degrees as dumping grounds for less competitive political officers.

This perception is still prevalent throughout much of the Service, even though management has attempted to balance the competitiveness of the respective cones for both promotions and assignments.

Nevertheless, generalization, complemented by a functional specialization in the political and/or economic-commercial field, is the most preferred route for success, primarily because the political and economic functions are still considered to be the mainstream of the Foreign Service.

The orientation of these two functions is inherently closer to policy considerations and is perceived to be better rewarded in the promotion system and assignment process, thus providing a more direct route to the top. However, many political officers, despite the perceived bias favoring them, feel that they have been shortchanged by the introduction of the cone system of functional specialization.

Certain informal signals at various points in an officer's career indicate that his potential to assume greater responsibilities is being recognized by the Service. Nearly all the informal signals are in the form of certain assignments and training which keynote executive grooming, and an officer's "corridor reputation" plays a primary role in his ability to obtain these key assignments.

Traditionally, the favorite route to the top in a successful Foreign Service career has been the political function. The perceived bias of

the Foreign Service toward the political officer is to some extent substantiated by the type of training available to him, such as it better prepares him for executive/management positions than the training which is provided for other types of officers.

The training traditionally associated with the political cone seems to be required for program direction and eventually for the positions of Chief of Mission and Deputy Chief of Mission, Assistant or Deputy Assistant Secretary of State, and the more responsible positions up from the FSO-3 level.

However, since the adoption of the cone system, both the political cone and the economic/commercial cone offer attractive careers with the realistic expectation of a "shot at the top."

There is a consensus of officer perceptions regarding the bureau influence on the assignment process. The bureau seems to have tremendous impact on actual assignments. Consequently, officers seeking to enhance their competitiveness for promotions and desired assignments often identify with a particular bureau. This serves to establish their importance to that bureau, which in turn works in behalf of the individual.

Thus, officers who make a home in a bureau by becoming specialists often benefit from the mystique which seems to surround these cliques of officer expertise, especially expertise in particular geographical areas. They represent an elite within an elite.

The primary specialist groups or clubs are the German hands, Russian hands, Japanese hands, Chinese hands, and the Arabists. The mystique surrounding these groups enhances an officer's corridor reputation and may influence his success in obtaining desirable assignments.

Mr. FASCELL. May I interrupt you right there? You mean the European Bureau is the bottom of the ladder? It doesn't even make the club?

Mr. LINEHAN. It is probably the most prestigious bureau, sir, but these particular groups of Foreign Services officers—

Mr. FASCELL. There is a special mystique about these four you named, and while the European Bureau has some prestige, it is really not on the inside. That is going to surprise George Vest.

Mr. LINEHAN. No, sir. The European Bureau has the highest level of prestige and was coveted the most.

Mr. FASCELL. OK, go ahead. I was just curious.

Mr. LINEHAN. Implicit in the idea of establishing a "home" within a bureau is the underlying assumption of establishing a number of identifications which appear to present the ideal means of pursuing a successful career in the Foreign Service.

The first identification is to select the political cone as one's primary function with the intent of complementing it with economic training at the midcareer level, preferably, immediately following promotion to FSO-5.

The second identification involves developing a geographical specialization with the primary emphasis on the EUR bureau, NEA bureau, and EA bureau, depending upon the individual's language orientation.

The third identification involves mastering at least one "hard language," preferably Russian, Arabic, Japanese, or Chinese, supported

by at least one of the "world languages," preferably French or German. Both the individual and the service invest a lot of time, money and effort to develop these officers, and the bureaus are quite jealous of their good officers and protect them by facilitating their assignments and career progress.

The fact that these particular regions are of significant importance to the United States makes it imperative that they are staffed by outstanding officers. Thus the Service indirectly sponsors these individuals who have the talent, have demonstrated the ability (functional expertise/geographical specialization/country orientation), have established a "home" in a bureau, and are receiving bureau support.

The age-rank relationship is an extremely important criterion for success in the perceptions of nearly all officers in every rank and cone. Second only to an officer's relative age, the number of years he has served in his present class is the most obvious indicator of his upward mobility. Performance is perceived by officers in terms of how it affects one's chances for promotion and next assignment.

If there is a significant difference between an FSO and his supervisor regarding attitudes toward job performance, the subordinate may likely suppress his own opinions due to the impact of his efficiency report (written by his supervisor) and its crucial role in enhancing his promotability.

Job expectations, although organizationally defined by job descriptions, are often not clarified in terms of the supervisor's interpretation of the job. Consequently, there is potential conflict in legitimate differences of interpretation, and again, the crux of the problem is the role of the efficiency report.

The impact of this report is crucial to the success or failure of an officer's career in the Foreign Service because it is the only tool provided for the promotion selection boards in the exercise of its duties.

Officers now compete for promotion within their functional cone. However, if one assumes that four different applications of merit are inherent in the organizational structure of the cone system, then promotions based on merit must employ a common denominator other than the functional priorities—substantive/nonsubstantive functions—which have traditionally been favored in the promotion process.

From the time the policy of full disclosure was adopted in 1971, FSO's have been required to read their efficiency report, and there is nearly unanimous agreement among officers that efficiency reports are bland as well as overinflated.

These trends, although influenced by many variables, are primarily the result of the evaluator's unwillingness to become involved in a grievance proceeding regarding the contents of an efficiency report that he wrote.

They are bland because the rating officer does not discuss the weaknesses of an individual; they are overinflated in order to make the officer being rated as competitive as possible for promotion. Consequently, efficiency reports range from descriptions of superhuman "waterwalkers" or "comers" who "glow in the dark" to the individual who is "damned by faint praise" or a negative word count.

Inadvertently, officers are often penalized because the task of the promotion selection boards is impossible: To determine on the basis of over-inflated efficiency reports which officers are more perfect than their contemporaries.

Over 95 percent of all officers interviewed agreed that individuals who utilize the grievance procedure take a calculated risk of damaging their career prospects. This perception is the byproduct of the notoriety surrounding several grievance proceedings which seem to have stigmatized the process.

These cases were not perceived solely as a grievance, but rather as individuals challenging the discipline and structure of the organization. Consequently, the stigma is the result of the style in which these initial grievances were individually pursued, styles which, subsequently, have made it difficult for the organization to perceive a legitimate complaint solely on the merit of the facts of the case.

Therefore, the individual who utilizes the grievance procedure must also be concerned with its impact on his career as well as potential reprisals; and the Service must be concerned with its effect on the discipline of the organization. Under such conditions, anyone who pursues a grievance, even a legitimate grievance, runs the risk of being stigmatized as a "troublemaker," or one who "rocks the boat."

As indicated in the 1973 civil service study, the single distinguishing characteristic of the Foreign Service system which justifies its exclusion from the civil service competitive system is its selection-out concept, not its rank-in-man concept.

The rank-in-position concept associated with the civil service states that the rank and income of an individual are equivalent to the rank and income assigned to a particular position. However, the rank-in-man concept allows an individual to serve in positions other than those designated for his rank. The rank-in-man concept is not in conflict with the concept of rank in position; it is simply more flexible.

In addition to selection-out for cause, an officer who has been passed over for promotions too many times may be selected out for exceeding the time-in-grade limitations specified in the regulations. However, the threshold concept at the FSO-5 level guarantees 20 years tenure in which to reach FSO-2, with a maximum of 15 years at any one level.

This tenure, for all practical purposes, assures FSO's of what most people would call a normal career, that is, at least 20 years employment with good retirement benefits.

Thus, the meager use of the selection-out function raises the question of whether or not this concept is still sufficient reason to justify the exclusion of the Foreign Service from the competitive Federal system in practice by the civil service.

Many factors in the Foreign Service system tend to align in the production of a stereotypic image of a Foreign Service officer. Beginning with the highly selective induction process, new appointees are subject to the influence of the strong cultural press during the period of orientation and the first few years of acculturation into the Service.

At some point during this initial period, either the officer inculcates the subcultural norms and values and reflects them in his behavior or he rejects them at the risk of jeopardizing his career. The informal system may make personal dissent extremely costly in terms of career

success—poor corridor reputation, average efficiency reports, slow rate of promotions, mediocre assignments.

Consequently, officers take a calculated risk when they choose to dissent on a personal level. On the other hand, policy dissent may often be acceptable to the informal system, if not to the formal system. The key element in policy dissent is the matter of style, that is, the manner, timing, and audience to which the dissent is made.

One example of this is the FSO disillusionment in Vietnam. Early in the U.S. involvement, FSO's who sought Vietnam assignments received special consideration from the Service. However, this early volunteerism contrasts sharply with the reluctance of officers to accept post-Tet assignments which were based principally on the needs of the Service, not volunteers.

Perhaps the turning point in attitudes toward Vietnam had its origins in the Tet offensive in February 1968, which occurred near the peak of the U.S. military commitment, a time in which the U.S. public was being assured by President Johnson of the validity of the commitment, politically, and of the fact that the United States was in control, militarily, and that a U.S. military victory was in sight. Thus, the Tet offensive undermined the integrity of the administration's stance and created a credibility gap in the public mind.

It also made a Vietnam assignment much less desirable to Foreign Service officers many of whom would serve in the pacification program entitled "Civil Operation and Revolutionary Development Support Program" (CORDS). In CORDS, FSO's functioned as advisors to the Vietnamese civilian and military administration.

Based on interviews with FSO's with Vietnam and CORDS experience, this post-Tet period seems to mark a break in the officer perception of the advantages and disadvantages of a Vietnam assignment. It was CORDS' continuing need for trained personnel that led to the establishment of the Vietnam Training Center (VTC) where personnel received training in the Vietnamese language, history, and culture.

They also learned U.S. policy toward the Vietnam conflict. Perhaps CORDS was the only Foreign Service assignment in which FSO's were issued their own personal automatic weapons and received training in how to fire a grenade launcher before beginning the assignment.

In mid-August 1971, the State Department stopped assigning all but a few FSO's to CORDS: however, by this time, of the 600 FSO's who had been assigned to Vietnam, 350 had served with CORDS. Many of these CORDS veterans were quite vocal about their dissatisfaction with the assignment and its potentially negative effect on their careers.

They were also quite concerned about the lack of integrity in the reporting process in Vietnam. One FSO Vietnam veteran has reported that:

Almost all FSO's who served in the pacification program and most junior members of the Embassy staff itself give examples of how their reporting was distorted and suppressed in Saigon in order that the Embassy might be consistent with the prevailing "line" in dispatches to Washington.

The primary effect of FSO disillusionment in Vietnam has been the development of certain attitudes in men who later will have an impact on the development and implementation of U.S. foreign policy.

Acutely aware of the mistakes made in Vietnam, it is likely that these men with Vietnam experience will seek to prevent a similar situation from occurring again.

This common Vietnam experience provides a potential catalyst for the development of an old-boy network, a network whose influence is enhanced by the fact that it is not identified with a particular bureau or cone or class. And as individuals rise through the ranks to positions of influence, the network will begin to have an impact.

The majority of FSO's from classes 8 through 4 are primarily concerned with personal and career-oriented goals inasmuch as they feel that they are not high enough in rank to influence policy.

However, officers in the political and economic/commercial cones at the FSO-3 level and above—not administration or consular cones—do achieve certain job satisfaction when phrases or sections of reports they have made are incorporated in policy issues, or when they can witness the implementation of recommendations to which they have contributed.

These and other substantive accomplishments are the success to which FSO's aspire and which is only attainable through promotions up through the ranks into a position involving policy issues.

Overall, the functioning of the Foreign Service system is equitable in statistical terms although it is not perceived to be so by FSO's. Consequently, their lack of faith and confidence in the integrity of the formal system is characterized by their pervasive use of the informal system.

In conclusion, I would like to make some observations based on my relationship with Foreign Service personnel over the past 3 years.

Since my employment with DIA in October 1976, I have met frequently with FSO's on a professional basis both here in Washington and abroad. Last fall, I had the opportunity to visit several African countries which included a number of consultations with Foreign Service personnel who also assisted me in the coordination of my itinerary.

This professional association only reinforced my research findings and my personal opinion that the quality of our Foreign Service personnel is very high and they are most capable of representing the United States abroad.

Mr. Chairman, this concludes my presentation.

Mr. FASCELL. Thank you very much, Dr. Linehan. We will receive the attachments to your statement for the committee files.

I want to thank you for giving us this very microscopic look at the tissue and the blood flow of the State Department and for articulating its group dynamics. I don't know that there is any difference between the group dynamics in this particular group and any other group. I would venture, just by guessing, that they are probably exactly the same given the same kind of people or the same culture or the same society.

Mr. LINEHAN. Yes.

Mr. FASCELL. I am a little bit surprised, I guess, at your final conclusion. I happen to agree with it, however, and I am delighted that you reached it. I gather that your study was probably the largest, in terms of the universe that was interviewed, of any study of the Department.

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Mr. LINEHAN. I am not aware of another study in which an individual had this type of access to Foreign Service officers for that length of time, although John Harr has conducted a number of studies and has done some outstanding work on the Foreign Service system.

Mr. FASCELL. You have come to the conclusion, as I gather it, that it doesn't really make any difference to the personnel dynamics within the Department what kind of administrative structure you have. Is that correct?

Mr. LINEHAN. That is correct, sir.

Mr. FASCELL. So you are not specifically suggesting that the cone system be abolished or some other internal system of administration be imposed.

Mr. LINEHAN. I think each Foreign Service officer should be very much aware of the advantages and disadvantages of any one particular cone prior to his agreeing to go into that cone.

Mr. FASCELL. I think that is the problem. If you talk about the administrative and the consular cone and the elimination of the commercial cone for all practical purposes, it leaves you with the economic and the political cone. If you are going to get to the top, everybody knows you are not going to do it if you are in the consular cone. At least that has not been the statistical experience.

Mr. LINEHAN. The statistical data, at least when I conducted my research, supports the conclusion that a consular officer could realistically expect to become an FSO-3, the administrative officer, perhaps an FSO-2, whereas the political and economic officers could realistically aspire to become an FSO-1 and to assume a position of relative importance in policy and decisionmaking.

Mr. FASCELL. It is that very fact that you describe that has concerned us for some time in the Congress and, I am sure, has troubled the Department. Do your studies suggest any way by which this could be improved?

Mr. LINEHAN. No, sir, it did not, other than that each Foreign Service officer should be made very much aware of the advantages and disadvantages of any one career path over the other.

Mr. FASCELL. If the Department did that, and I am sure they either are or will, and then devised by some regulation or some other action a method by which some kind of rotation among cones was possible as you went up the line, without affecting your career adversely, do you think that would produce some improvement?

Mr. LINEHAN. Dr. Kissinger when he was Secretary of State introduced a program that was referred to euphemistically as GLOP.

Mr. FASCELL. GLOP?

Mr. LINEHAN. The first functional training of Foreign Service officers so that they would have a broader experience in each cone. Its success, however, I don't know too much about at this time.

Mr. FASCELL. Mrs. Schroeder.

Mrs. SCHROEDER. I want to compliment you. I really think that you did an excellent job of analysis. I think you gave us a very accurate portrayal. One of the things that concerns me, though, is, as the chairman pointed out, the problems are not that unique to any human organization.

Mr. LINEHAN. No; it is not. Any large organization is going to have similar problems regarding the promotion of its personnel and assign-

ments and what have you. But the thing about the State Department—I am not saying it is any different in the State Department than in any large organization—is that by the time a Foreign Service officer reaches the junior FSO-5 level, and especially if he is a political/economic officer, he had better be working in the informal system. If he is not, unless he is exceptionally good, where he doesn't have to worry about operating in the informal system, his career will be short-circuited.

Mrs. SCHROEDER. I notice one of the things that you didn't mention in here were the family pressures, which I think may be a little bit more unique in the Foreign Service than in some other profession. I know my good spouse took all the exams, passed them all, went to Princeton and did all the right things and thought about going into the Foreign Service. He took one look at me and said, "Oh, my God, I'll never get past there."

He was probably right. It was probably a very good decision. I notice that you didn't mention that in here. That is something we are trying to deal with more in the bill. Did you do anything in your study in particular on the pressures this organization puts on family and spouses?

Mr. LINEHAN. Only that by the time a Foreign Service officer becomes a level 4, if he and his family haven't reconciled the problems associated with a career in the Foreign Service, he is more or less trapped.

First of all, the skills are not that marketable. Age becomes a factor by that time. There are a lot of these other variables which will prevent him from moving out. But I don't address it extensively. I do provide data on marriages, dependency, dependents and what have you. Not a solid analysis in that respect.

Mrs. SCHROEDER. So he could truly be penalized for not having a very adaptable spouse.

Mr. LINEHAN. Yes; he could. The wives are very important to the success of Foreign Service officers.

Mrs. SCHROEDER. Which I think may exacerbate a lot of the things you are talking about. That may make the pressure much more intense.

Mr. LINEHAN. Yes.

Mrs. SCHROEDER. Also, I wanted to ask you, if you compared Intelligence with the Foreign Service, it seems to me one of the big differences is really the Foreign Service is practically all software. You are not talking about any hardware that you need to be dealing with. So maybe those human aspects are much more important because you never have a check.

Mr. LINEHAN. No: I didn't make that kind of comparison.

Mrs. SCHROEDER. What about on the cones? Would you recommend that we try to make them more equal rather than just counseling people that they are not equal? My theory is that if you take everyone into the room and say: "Now, if you get in this cone, you have only got a 5-percent chance." you have already automatically filtered people who think, "Oh, well, I want to go compete with the dummies or something, or I am not really interested in this as a career."

I agree that you should have disclosure, but isn't the real way to do it to try to make them more equal?

Mr. LINEHAN. I don't think you can make the cones equal.

Mrs. SCHROEDER. Why?

Mr. LINEHAN. The main stream, as I view the State Department and the Foreign Service, the substantive issues fall within the political and economic responsibilities. No one can dispute the importance of the consular and administrative function.

But I kind of go along with the perceptions that they do not fall within the substantive mission of the State Department. That might sound like a hard thing to say and I am sure a lot of people don't like to hear it. But the State Department provides political and economic analysis, which is very important.

The administrative officer, who perhaps has more access to a lot of important officials in countries abroad because of the administration of U.S. programs which bring him into contact with so many highly important Government officials, is probably underused in his relative political importance to the country team.

The consular officer, on the other hand, is purely associated with stamping visas, helping Americans out of trouble, not really involved with substantive policy matters which are going to impact on U.S. policy one way or the other.

Also, I might add that administrative and consular officers express to me on a frequent basis the fact that they were not invited to participate in country team meetings. It is an attitude. It is a perceptual difficulty. But as long as they are perceived as not being substantively oriented, trying to balance out the cones is going to be rather difficult.

Mrs. SCHROEDER. I guess that is where we would probably disagree. I have great problems understanding this mystique about the substantive knowledge that people have.

Mr. LINEHAN. Well, that is what they have in this industry.

Mrs. SCHROEDER. I hear that you cannot have both substantive and administrative qualities. If substantive orientation is that vital and important, it seems like you could put that requirement in the consular and administrative cone too, and then you try to make the cones more equal.

Mr. LINEHAN. If you have an organization that is structured one way, and the vast majority of the people who work with that particular organization think and feel another way, then regardless of what your structure is, it is not going to work. You are still going to have the majority of your officers wanting to be political and economic officers, even though you might try very hard to balance out the rewards, if you will, in the consular and the administrative functions.

Mrs. SCHROEDER. That is what we are struggling with. I guess I just don't agree.

Mr. LINEHAN. It is difficult.

Mrs. SCHROEDER. I think the administrative types probably have to be more political in some of the situations they are put in than the purist political types who are sitting there trying to analyze what is going on. I remember full well a political officer telling us in Greece as they were firing at us that it was a bunch of students throwing apples with razor blades in them. The whole Armed Services Committee said: "Are you kidding? Those look like M-1s."

The administrative officers seem to know much more because they have been dealing with people face to face.

Mr. LINEHAN. That is true.

Mrs. SCHROEDER. I just have not bought that mystique. I guess I am in that younger generation that doesn't buy that mystique and can't

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understand why that substantive knowledge cannot be conveyed to the people in the other cones. There is no great mystique about that.

But I really do thank you for your overview and for your presentation this morning. Thank you.

Mr. FASCELL. Mr. Leach.

Mr. LEACH. No questions, Mr. Chairman.

Mr. FASCELL. Thank you very much, Dr. Linehan. I appreciate your testimony. Thank you for appearing. Also, I am delighted to see that you got your dissertation published.

Mr. LINEHAN. Thank you. So am I.

Mr. FASCELL. Our next witness is Mr. Robert Gershenson from the Department of State.

We are delighted to have you here this morning.

STATEMENT OF ROBERT S. GERSHENSON, DEPUTY ASSISTANT SECRETARY, BUREAU OF PERSONNEL, DEPARTMENT OF STATE

Mr. GERSHENSON. Thank you, sir.

Mr. Chairman and Madam Chairwoman, it is a pleasure to be here with you this morning. I am Bob Gershenson, Deputy Assistant Secretary of State for Personnel. My claim to fame this morning is that I was the supervising officer of a famous contract that you have heard a lot about, the Hay Associates study of pay comparability in the Foreign Service. I welcome a chance to talk with you about that study today.

Mr. Chairman, I had thought of covering this today in some depth if that is agreeable to you and the remainder of the committee, basically in three phases. Please let me know, sir, if any of them are not of interest to you.

The first phase will describe the process and the study itself: How was it done, what did it encompass, why did we do it. The second phase will cover the results of the study. The third thing I would like to talk about today are what appear to be the options for implementing the study.

Basically, sir, we undertook this study at the behest of Congress, based on longstanding pressure from and interest of many Foreign Service officers and Foreign Service personnel, because there has been a longstanding difference of opinion as to where our pay system is or should be.

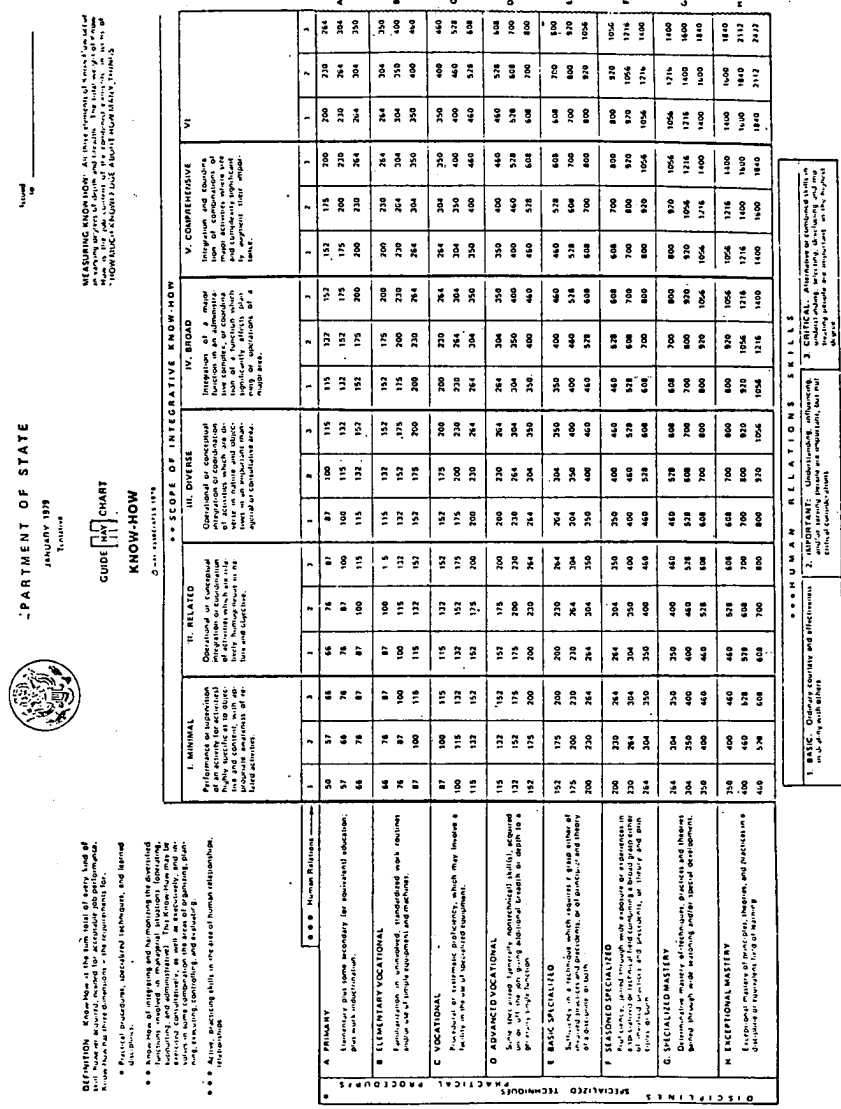
We contacted the Hay Associates, which is one of the largest pay comparability consulting firms in the world. They have contracts with about 350 of the Fortune 500 companies. We asked them to do a study for us which basically tried to do three things.

First, we asked them to look at how the State Department's pay system linked or should link to the civil service pay system. We are required, sir, under the pay comparability study of 1962 to relate to the civil service pay system.

Second, we asked them to look at our pay in comparison to pay in private business, with particular emphasis on corporation activities abroad. The civil service pay comparability studies do not take into account corporation activities abroad.

Third, we asked the Hay Associates to suggest to us either one, several, or many possible pay systems for the Department of State.

Mr. Chairman, if I may, I would like to now lead you through the process we went through. You have in front of you, sir, two sets of charts. I would like to call your attention first to one that has lots of numbers on it and is referred to as "know-how."
 [The chart referred to follows:]



Mr. GERSHENSON. Mr. Chairman, I would like to ask that the lights be turned off. You may not be able to see clearly the charts on the screen, but in all honesty. I think better and sound better on my feet. So if I may, I would like to stand up and do a little pointing at the screen.

Basically, sir, the Hay Associates system does not try to compare a job with a job. It doesn't say: Let's see, we have an officer class 4 in the State Department, let's find someone like that at General Motors and see what they pay, and we should pay them the same thing. They don't do that because their experience over many years is that it is really not possible. Even the same job in two different companies may not be the same. They may have the same title and same description, but the duties may be different.

So they have a system in which they try to avoid interrelating individual jobs and try to calculate the value of job content on a point basis.

The chart you see before you is part of the system that Hay Associates uses to develop the point value for job content of jobs. Basically what they did was ask the Department to formulate a committee with representatives from the various kinds of work in the department, and sit down with four or five of them to discuss and evaluate jobs based on the experience and knowledge that the individuals and the committee had.

We asked our professional labor organization for suggestions as to who might sit on that committee. A number of the committee members were those recommended and suggested by AFSA.

We sat down together and we tried to attack this problem under the leadership of Hay consultants. The first question we were told to ask ourselves, was the basic component of any job. What do you need now to do that job? What you see before you is a chart of what they call know-how points. The question is, how much knowledge, how much background, how much experience, how much management ability is required to effectively perform a given job?

We looked at each job in three ways, Mr. Chairman. First, we looked down this side to see what kind of techniques or disciplines are required to perform the job. If you look at the chart in front of you, you can see it, sir. You will see there are various descriptions ranging from elementary vocational to exceptional mastery.

We went to a job and we said, OK, this job falls into this category; therefore, somewhere around this range is what points that job should have. Next, we are told to look at the top to see how much integration of that "know-how" is required, is there only straight line work or does it require you to put some things together?

So we picked one of these, and further reduced the area of possible points to a group of nine.

Finally, we were asked how much skill in interpersonal relations—human relations skills—were necessary to effectively perform each job. Our committee found that in the Foreign Service, particularly, human relations skills are of extreme importance. We came to the conclusion that our people always require the highest level of human relations skills in almost all our jobs.

So we wound up in this last column and had three numbers to choose from. We made a decision as to which to choose based on which way we had been leaning on any of the questions asked before.

Then we had to answer the second question. I have another chart for us, too.
 [The chart referred to follows:]

DEPARTMENT OF STATE

JANUARY 1979
 Tentative

GUIDE NAT CHART
PROBLEM-SOLVING

OF THE PROBLEM-SOLVING CHALLENGE

MEASURING PROBLEM SOLVING: Problem Solving measures the intensity of the mental process which employs "know-how" in analyzing, diagnosing, and solving a problem. The process is measured by the number of correct responses, the number of correct solutions, the number of correct solutions, or referred to either, Problem Solving is diminished, and the important consequences of the "know-how".

DEFINITION: Problem Solving is the subject, self-testing thinking required by the job for: (1) identify, (2) define, and (3) resolve a problem. The process is measured by the number of correct solutions, the number of correct solutions, and the number of correct solutions. The process is measured by the number of correct solutions, the number of correct solutions, and the number of correct solutions.

Problem Solving has two dimensions:

- 1. The environment in which thinking takes place.
- 2. The challenge presented by the thinking to be done.

Thinking is defined by circumstances by:

TYPE	VALUES	1. REPETITIVE	2. PATTERNED	3. INTERPOLATIVE	4. ADAPTIVE	5. UNCHARTED
A. STRICT ROUTINE	10%	12%	14%	18%	25%	33%
B. ROUTINE	12%	17%	18%	22%	29%	38%
C. SEMI-ROUTINE	14%	16%	19%	25%	33%	43%
D. STANDARDIZED	16%	18%	22%	28%	38%	50%
E. CLEARLY DEFINED	19%	22%	25%	33%	43%	57%
F. BROADLY DEFINED	22%	25%	29%	38%	50%	66%
G. GENERALLY DEFINED	25%	29%	33%	43%	57%	76%
H. ABSTRACTLY DEFINED	29%	33%	38%	50%	66%	87%

Mr. GERSHENSON. The second question is what do you do with all of that "know-how"? There is a relationship between solving problems and how much you know. The example the contractor gave us was that a carpenter, is asked to knock a hole through a wall, has no problem. He knows how to do it. He goes about it with lots of "know-how" and no personnel problems.

If they asked me to knock a hole through a wall, sir, I have a big problem and very little "know-how". So there is a relationship there.

Again, the process for the second question was the same: What is the thinking environment, how much freedom does this person have to think? Is it strictly routine? Is it broadly defined or abstractly defined?

Again, depending on the job, we would then ask what is the challenge. Does he have to adapt? Does he have repetitive kind of work? Again, we came to a conclusion and the percentage values you see here are a percentage of "know-how" points.

Finally came the toughest one, Mr. Chairman. We had a hard time with this one. That was accountability. The contractor told us that in Government, it is very hard to assign accountability.

Mr. FASCELL. You can't even find it. [Laughter.]

Mr. GERSHENSON. We did find in at least two jobs we were looking at, that there is very high accountability. One of them is a visa officer. He says yes or no. He is responsible. Another is a disbursing officer. He pays out the money. If there are any missing, he or she is responsible.

The same process was followed in assigning points for accountability. How free is this person to act? What are the controls and the priorities? Does he have very close supervisory review? Is he at the top? Is he the President of the United States?

We picked one of these point values and we asked about managerial direction. What was the volume of this accountability? As you can see up here, sir, we have dollar signs. In business, if you are responsible for \$20 million in sales, that is your accountability level; if \$250 million in sales, that is your accountability level.

The State Department had very few jobs that had dollar values of responsibility, so the contractor had to modify this chart to give us some help. He gave us things like orders of magnitude. He gave us things like size of country or unit. or was the person responsible for an area of the world.

Again, depending on the situation, we tried to make a choice. The toughest decision was which one of these numbers to pick. The little chart on the right-hand side says that some people have a remote impact on job accomplishment and some have more than that. We found that almost all jobs in the State Department have a shared effect. That is to say, people share responsibility for things.

So again, we came down the line, picked the number and which way we were leaning, and came to a conclusion as to the number of points that each job should have. We then took all the jobs we were analyzing—about 119, including all kinds of jobs in the Foreign Service—and we put them in rank order. We eyeballed them. We said are there any crazy things here?

Well, there were some crazy things there. We had to go back again and look again at some jobs. That is called sore thumbing. The next slide is right off the chart that we did. This is the first page. And what this shows is these are the point values we came up with for these kinds of jobs.

[The chart referred to follows:]

DEPARTMENT OF STATE
JANUARY 1979
GUIDE CHART
ACCOUNTABILITY
OCTOBER 1978



DEFINITION: Accountability is the responsibility for action. It is the assumed responsibility for the results of actions. It has three dimensions in the following order of importance:
1. Responsibility for the results of actions.
2. Responsibility for the results of actions.
3. Responsibility for the results of actions.

Table with columns: Responsibility, Action, and various sub-categories (A-H). Includes a legend for 'IMPACT OF JOB ON OBJECTIVES' (R-Remote, C-Contributory, A-Advisory, S-Supervisory, Ss-Shared, P-Primary).

Impacts of each job function of impact area to be determined during evaluation.

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 DEPARTMENT OF STATE
 FOREIGN SERVICE EVALUATIONS

May 1979

1/6

JOB #	FS TYPE/GRADE	CONE	TOTAL POINTS CLIENT/HAY	MIDPOINT
105	FSO 1	Political	2556 912	47,500
4	FSO 1	Political	2364 844	47,500
106	FSR 1	Spec. Proj.	2328 831	47,500
107	FSRU 1	Spec. Proj.	2328 831	47,500
108	FSO 1	Political	2228 795	47,500
72	FSO 1	Admin.	2148 761	47,500
47	FSO 2	Econ./Comm.	2056 734	47,392
67	FSRU 1	Admin.	2056 734	47,500
93	FSO 1	Econ./Comm.	1976 705	47,500
3	FSO 1	Political	1908 681	47,500
87	FSO 1	Econ./Comm.	1788 638	47,500
109	FSR 2	Spec. Proj.	1788 638	47,392
34	FSO 2	Econ./Comm.	1780 636	47,392
8	FSO 2	Political	1660 593	47,392
73	FSO 1	Political	1550 554	47,500
23	FSO 2	Admin.	1460 521	47,392
71	FSO 2	Econ./Comm.	1404 501	47,392
58	FSO 2	Consular	1358 485	47,392
27	FSRU 2	Spec. Proj.	1354 484	47,392

Mr. GERSHENSON. This is what the rank of the job is now. This is what the pay of the job is now. This will be the kind of job it is. You notice there are all kinds of cones represented here. You will notice a couple of nonsequiturs. There is an FSO-2 job right in the middle of all these FSO-1 jobs. That means that job is badly classified.

The same thing appears down here. Here is an FSO-1 job in the middle of these FSO-2 jobs. The study showed us that we have some small classification problem. That is not unusual. But the question is: How do those statistics compare our job points with their huge data bank?

Hay knows that by and large, people who are analyzing jobs in their own company have certain axes to grind. Those axes can range anywhere from we want to keep the damn pay down as low as possible, so let's be niggardly in giving out points, to we want to be very generous, we love our colleagues and friends, let's give them as much as we can.

The contractor knows this. He has long experience in correlating results to the company's standards. They had vice presidents and all kinds of people sitting there watching our people work, trying to analyze whether our committee was generous or stingy.

They found we were a little generous, so they applied a correlation factor to our numbers here. The normal correlation factor they apply is 2.4, a divisor of 2.4. They applied a divisor of 2.8 to us; they said we were too generous.

These correlated points in the Hay system have the same value of points in their computer. So they are now able to compare us with all kinds of other systems that they have. No we can see the results of all this.

Remember the first question we asked the contractor to tell us about was how do we link with the civil service. Right now our present system links with the civil service at what we call FSO-4 and their GS-13 level, and our FSO-8 and GS-7 level, and I think at the FSO-10 and GS-4 level.

[The diagrams referred to follow:]

COMPARISON OF THE MEDIAN DIFFICULTY OF POSITIONS IN
SELECTED PAY GRADES OF THE FSO AND GS CLASSIFICATION SYSTEMS

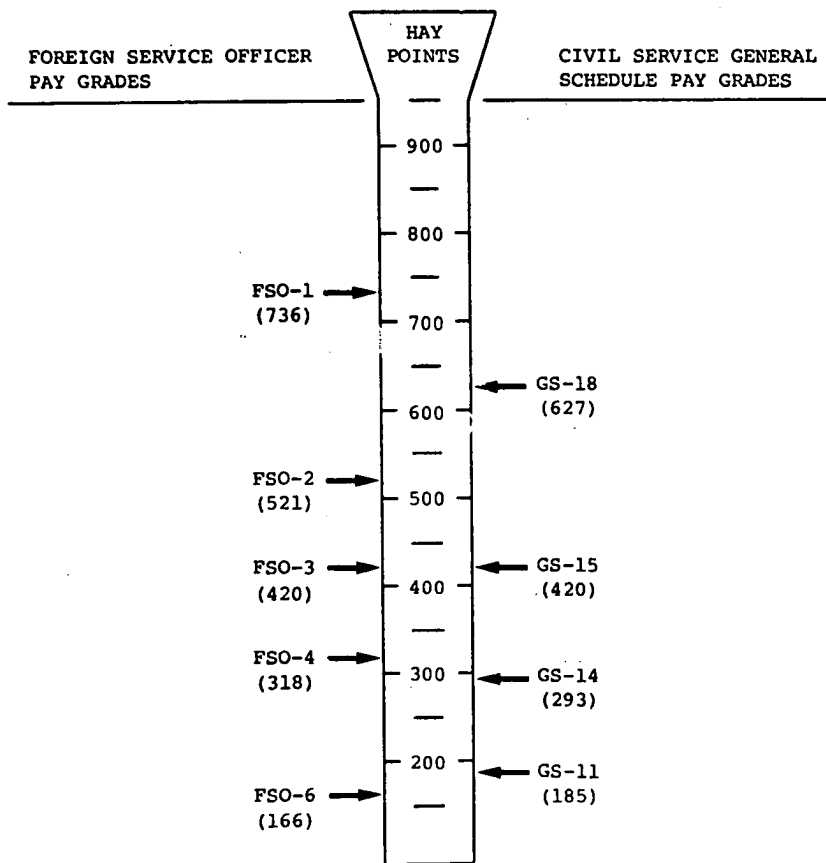


FIGURE 1

COMPARISON OF THE MEDIAN DIFFICULTY OF POSITIONS IN
SELECTED PAY GRADES OF THE FSS AND GS CLASSIFICATION SYSTEMS

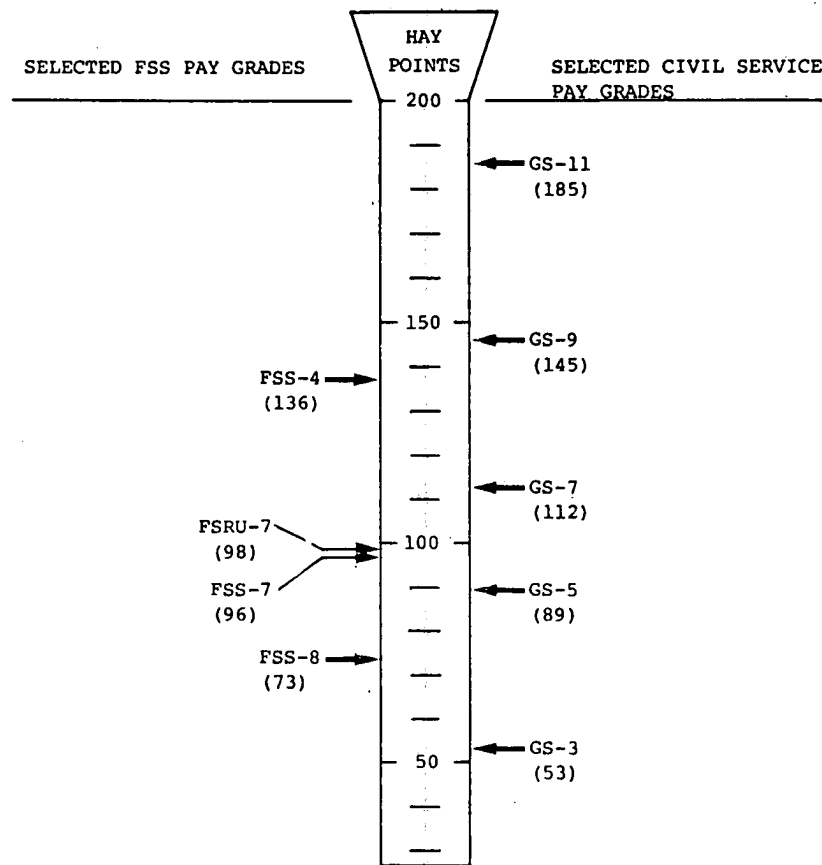


FIGURE 2

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Mr. GERSHENSON. Now, what the contractor found was, first of all, these are median numbers. The median number of points for the job. They found that for the FSO-1 jobs, the median was higher but that they linked very well with GS-18 jobs. Now, that was pretty good news to us because we have been shot at a lot by those who say we have too many senior jobs, they are not very meaningful, and so forth and so on.

The study showed that indeed our FSO-1 job linked very well with GS-18 jobs. The study also suggested there was a link at the lower level, between FSO-2 and GS-18 jobs.

To determine those links, the contractor looked at not just the mean but the range of point levels. So it is the medians and the ranges of the points they look at for each grade.

They also found that FSO-3 happens to have exactly the same level, almost a perfect link, as a GS-15. FSO-3 should be paid the same thing. They are not now paid the same thing. FSO-3's are paid less.

The contractor found that FSO-4 had some very close relationship to GS-14. They said that there is a link between them, but because of the differences in ranges, they were unwilling to call it a firm link. They said there was a close relationship but not a firm link.

Finally, they said that at the officer level there is a firm link between FSO-6 and GS-11.

To summarize, what they said here was that it appears that officers in the middle ranges are somewhat underpaid. Unfortunately, the news at the support levels was less encouraging.

Right now, these two jobs (GS-11 and FS-4) are linked. The median point value shows significant differences, but the contractor was able to support a link at this point. But when he got down below, there was just confusion. And clearly, we are, in the contractor's opinion, overpaying our staff support people in comparison to the civil service people doing like kinds of work.

Fortunately, we think, the contractor also said this is OK. The contractor felt that we require a different kind of personnel in those jobs abroad. He found that we required people who are adaptive, who could handle all the kinds of different situations, change places every 2 years, lots of things.

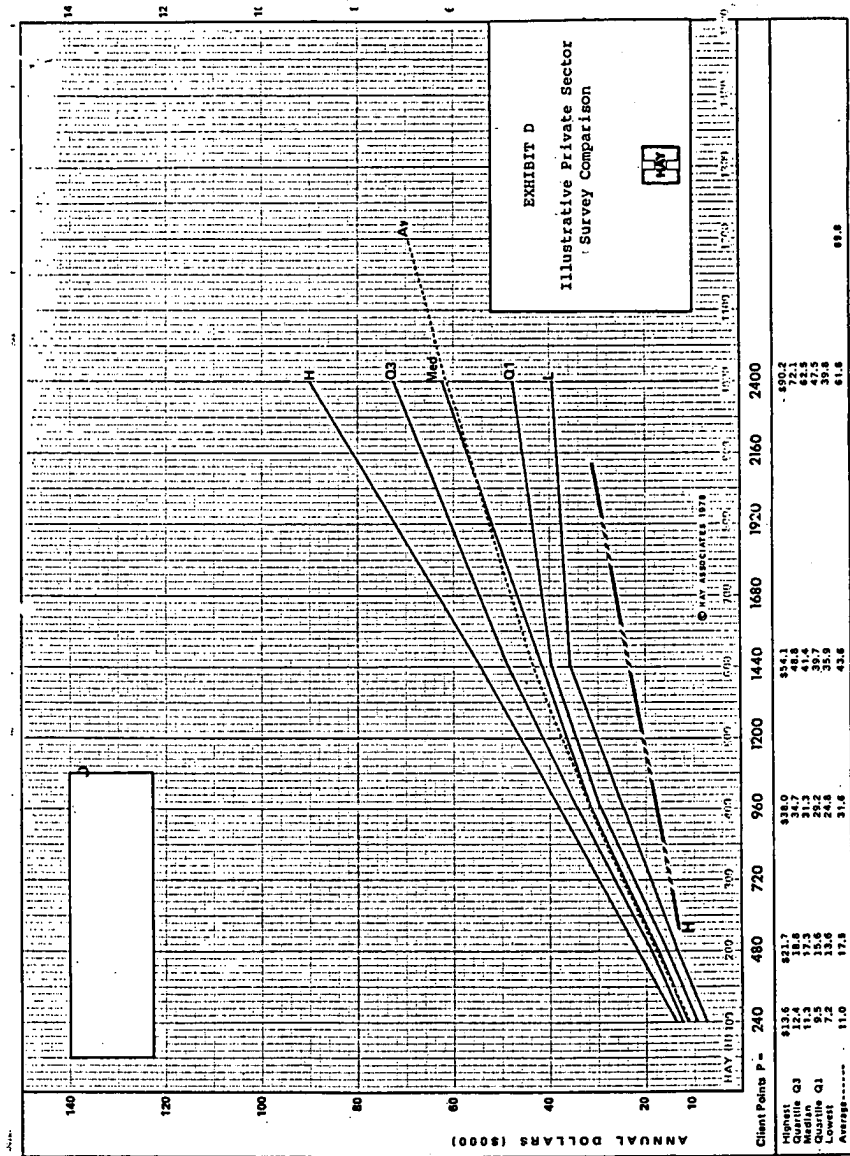
So, he said, yes, you are paying your staff support people a little bit more than their civil service colleagues for the same job content, but that is what you should be doing.

Now, what this shows, sir, is that basically our pay policies have been a little under in midcareer and OK otherwise.

The second thing we asked the contractor to look at, Mr. Chairman, was how we compare in terms of the world of pay, with business. These relationships cannot be used for us to establish pay plans for the Foreign Service, basically because we are required to link with the civil service system, and because this does not give us enough solid data upon which to build a whole pay system on.

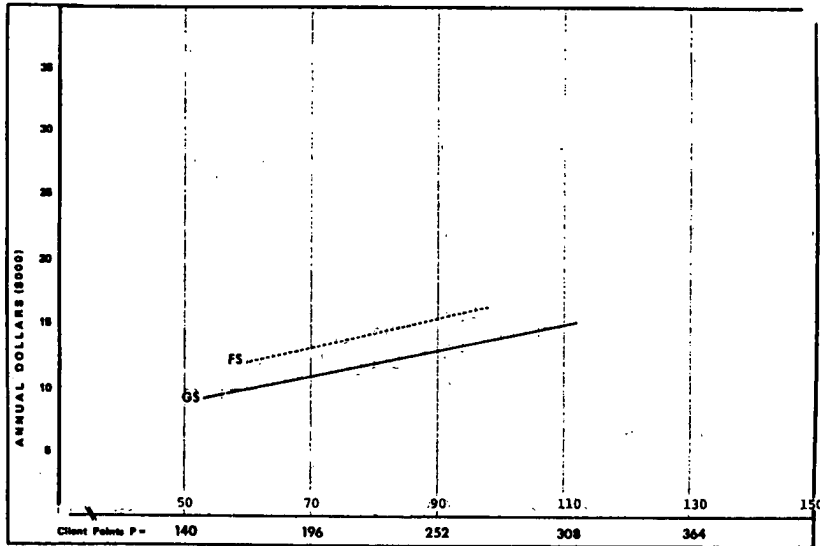
The relationships you are going to see on these charts, Mr. Chairman, are the same ones that I described initially.

[The charts referred to follow :]



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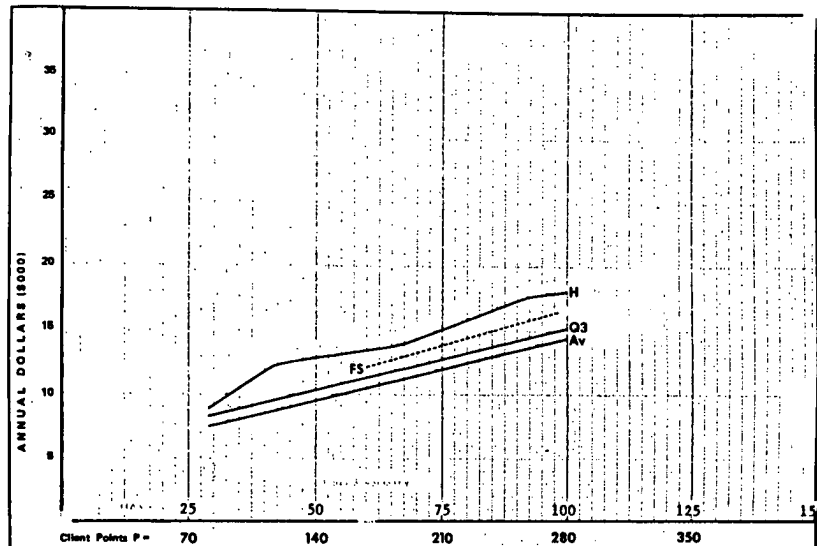
CHART 5
Department of State
GENERAL SCHEDULE SUPPORT LEVEL BASE SALARY COMPARISONS



May 1979
Washington, D.C.

— GS Support Level Base Salary Line
..... FS Support Level Base Salary Line

CHART 6
Department of State
WASHINGTON METROPOLITAN AREA NONEXEMPT SALARY SURVEY



May 1979
Washington, D.C.

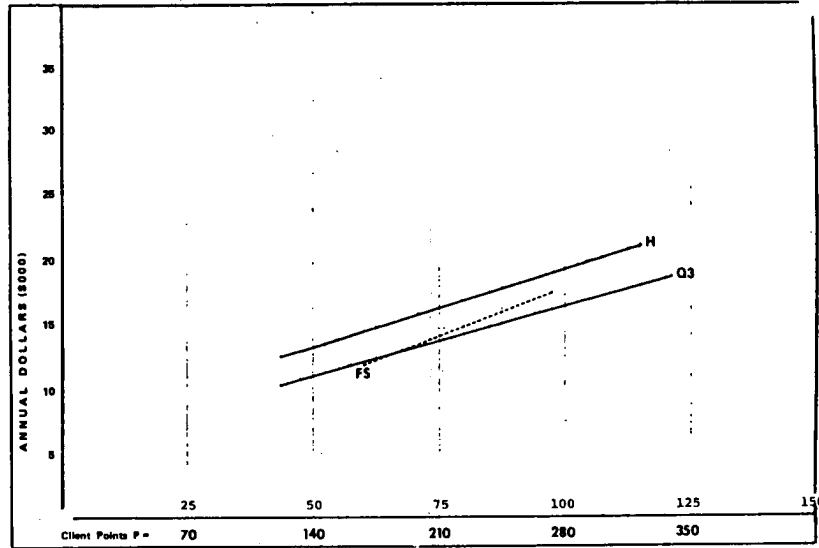
Washington Area Average (Av) and Third Quartile (Q3)
— Nonexempt Salary Practice Lines
..... FS Support Level Base Salary Line

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CHART 7

Department of State

SELECTED INTERNATIONAL ORGANIZATIONS' BASR SALARY COMPARISON



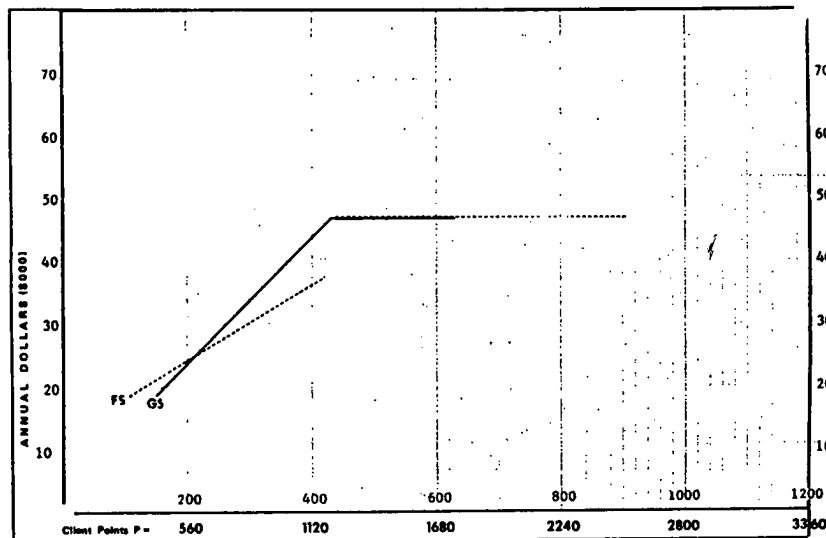
May 1979
Washington, D.C.

— International Organizations' Salary Practice Line
..... FS Support Level Base Salary Line

CHART 8

Department of State

GENERAL SCHEDULE PROFESSIONAL LEVEL BASE SALARY COMPARISON

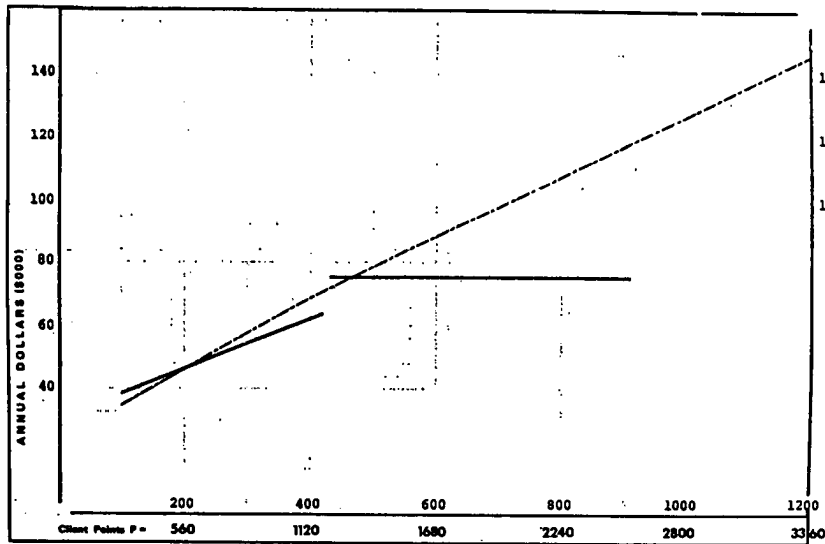


May 1979
Washington, D.C.

— GS Professional Level Base Salary Line
..... FS Officer Level Base Salary Line

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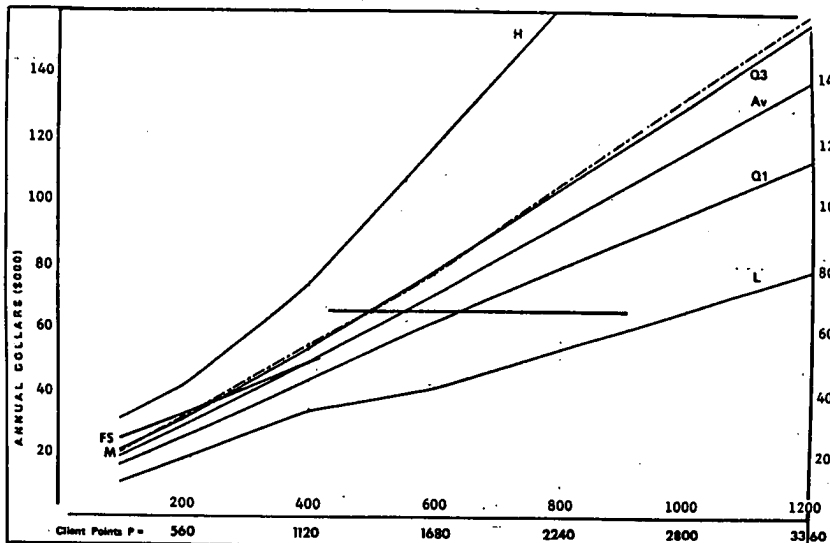
CHART 13
 Department of State
 AMERICAN BUSINESS TOTAL REMUNERATION COMPARISON



MAY 1979
 Washington, D.C.

--- 13 Multinationals' (M) Line
 — FS Officer Level Line

CHART 14
 Department of State
 SELECTED MULTINATIONALS' COMPARISON: OVERSEAS BASE COMPENSATION



MAY 1979
 Washington

— Private Sector High (H), Third Quartile (Q3), Average (Av),
 First Quartile (Q1), and Low (L) Lines
 --- Selected U.S. Multinationals' (M) Average Line
 — FS Officer Level Base Salary Line

Mr. GERSHENSON. On the left-hand side of the charts, sir, are the dollar amounts. At the bottom are the Hay points, or the client points that we talked about. This chart says that our staff support people are consistently above the civil service at comparable levels.

In order to see how competitive our staff support personnel are, we looked at some other groups. First we compared them with Washington metropolitan area salaries for secretarial and support people (chart 6). We figured salaries are higher here. Maybe that would be of some significance.

I would like to describe this little chart for you. This is a system for deciding where you sit versus the outside world. This is an abbreviated chart. It says our staff support people are paid above average, in the top 25 percent, compared to private business in Washington.

We also compared our staff support group with international organization people, both here and abroad (chart 7). And here the relationship is a little less unfavorable, if you want to call it that, because they are paid at the higher level. Here we fall below the top 25 percent at the start but again move up into that area.

Consistent with the linkage findings, the pay findings are the same. At the officer level, again, there is consistency with the civil service system. They start off OK and then they fall below the civil service line.

This is the full chart, Mr. Chairman, which shows the average pay line. The line that crosses right here is the Foreign Service pay line. Again, our Foreign Service officers start off a little above average and finally fall to just below average (chart 8).

What this says, Mr. Chairman, is that some of the things that have been in the newspaper about Federal Government employees being paid adequately are confirmed by the study. The 111 employees in the Foreign Service appear to be paid at average or above average level.

We compared officer level salaries with multinationals abroad, and this is their median line (chart 14). Again, the Foreign Service starts off OK, and then falls below the multinational level at the higher mid-grades. Basically, then, there seems to be a relationship between the pay analyses which confirm each other.

In comparison with our civil service colleagues, our midcareer personnel are underpaid. The question is: What do we do about that, Mr. Chairman? The Hay consultants suggested two possibilities. They gave us two samples, one a so-called 10-class system, and one a so-called nonclass system. They gave pros and cons about each. They also pointed out that there were many other possible options.

After the receipt of the study, OMB formed a committee made up and led by them with participation from the Office of Personnel Management, and the three foreign affairs agencies. That committee has been meeting now for several months to try to determine how to implement the Hay study.

Just this week, the committee finished four options for possible implementation, which I would like to show you, Mr. Chairman. Can you see them, sir?

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[The table referred to follows:]

FOREIGN SERVICE/GENERAL SCHEDULE PAY LINKS AND GRADE EQUIVALENTS

General schedule	Current FS system	Option I	Option II	Option III	Option IV
GS-15		FS-11	FS-11	FS-11	FS-11
GS-14	0-3/GS-14.39	FS-21	FS-21		FS-21
GS-13	0-4	FS-31		FS-2/GS-13.60	FS-2/GS-13.38
GS-12		FS-41	FS-3/GS-12.5	FS-3/GS-12.27	FS-3 ¹
GS-11	0-5/GS-11.75	FS-51	FS-41	FS-41	
GS-10	0-6/GS-10.37				FS-4/GS-10.68
GS-9	FSS-5/GS-9.21	FS-61	FS-51		
GS-8	0-7/GS-8.54, FSS-6/GS-8.10			FS-5/GS-8.94	FS-5/GS-8.76
GS-7	FSS-7/GS-7.01, 0-8 ¹	FS-71	FS-61	FS-61	FS-6/GS-7.20
GS-6		FS-81	FS-71		
GS-5	FSS-8/GS-5.98	FS-91	FS-81	FS-7/GS-5.97	FS-7/GS-5.95
GS-4	FSS-9/GS-4.97, FSS-10 ²	FS-101	FS-91	FS-8/GS-4.97, FS-9 ¹	FS-8 ¹ , FS-9/GS-4.32

¹ Indicates direct Foreign Service/General schedule links.

Mr. FASCELL. I can see that better than the table in front of me, the summary.

Mr. GERSHENSON. This chart was developed in terms of linkages. What we are comparing on this table is how do each of these four options compare with the civil service system in linkage terms. On the left-hand side is the civil service system. The question is where do we link each of these systems?

One of the things Hay said to us was that our findings confirmed that the rank-in-person system is appropriate for us; our jobs have very wide ranges of responsibility, and you move the same person within those bands of responsibility. So they supported very strongly the concept of a rank-in-person system as opposed to a rank-in-job system.

In the current Foreign Service pay system, as you see, FSO-3's are paid at the equivalent of about a 14.3. Our FSO-4's are paid the equivalent of a 13. Wherever you see an asterisk here, sir, that is a direct link to the civil service system.

As you can see we have all kinds of melanges down here because we now have two pay systems. We very much think that we have to have one. There are some crazy situations in here. For the same pay rates, we have people just a quarter or half a grade apart.

The first option that this committee has is one that was suggested by Hay. That is a 10-class option. There are 10 classes in the Foreign Service, and as you can see, it provides for a link at every grade; a firm link at every grade. It creates certain difficulties in terms of management. We don't quite know yet how to solve them.

For example, it takes a grade from down here and moves it up to here, so that we are creating a new officer level grade. The difficult problem is having to fill it, and basically the committee feels that in order to put a system like this in, you probably have to do a complete classification study, which you could do, and decide how many of each of these grades we have; then move to it.

It has a negative impact, at least psychologically, for staff people, because all of the numbers go down. Their pay doesn't go down, but instead of being an S-4, they are an S-5. Instead of being an S-5, they are S-6. The pay is the same, but the numbers change. So there are some psychological problems.

The second option is also suggested by Hay, and it is a nine-class option. As you can see, it links at every point but one. And basically it simply creates a class in the middle of two classes. This system has some of the advantages of the 10-class system. It has a disadvantage of not providing another possibility for promotion at the officer level.

Both of these systems are relatively high cost when compared with the other two systems. I don't want to suggest they are too high cost, sir.

Option 3 is a 9-class system which, if you will, links at certain bridge points exactly where the Hay study said there were links, and then averages between. It draws a curve between the links.

The effect is that instead of having one grade in the middle here, we have basically two classes sort of sharing the differences between civil service grades. All of the systems from here on out match at the staff level, so all three are the same at the staff level.

The final option, on the right-hand side, is an option which is, if you will, a pay system dream. It is a logarithmic curve to design a pay system. That is, you establish a point down here where you link. You establish a point up top where you link. Then you draw a curve between them which reflects increasing levels of difficulty and increases the level of difference between jobs.

Now, the problem with this system is some people are going to go down a grade, and that doesn't seem to be responsive to the Hay study. Also, up here some people stay the same. Certainly, the Hay study shows that they shouldn't stay the same. At officer level, they should get an increase.

I could give you some very general figures, Mr. Chairman, on how much these will cost. Basically, the committee feels that using any one of the systems, there will have to be a transition period; that they will take 1 year or 2 or 3, depending on what system is finally chosen, to move to the selected new system.

I am going to give you the out year final cost rather than the transition year costs. Mr. Chairman, these are very approximate because the costs have not been finally tallied.

The cost of option I is approximately \$34 million a year. That is about 11 or 12 percent of payroll. That is for all the foreign affairs agencies. The cost of option II is \$32 million. The cost of option III is \$22 million, and the costs of option IV is \$15 million.

Those are the out year costs, sir. Those will be reduced in transition years as we lead into them.

Mr. Chairman, I have covered a lot of ground in probably too short a time. I apologize for rushing and panting and running around. I will be pleased to answer any questions you have, sir.

Mr. FASCELL. Thanks very much for giving us a summary of the study. Where did you say it is now, OMB?

Mr. GERSHENSON. Yes, sir. These options will be presented to the Board of the Foreign Service and to other agencies that use the For-

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eign Service pay system: The Peace Corps, Arms Control and Disarmament Agency, and on forth, for their examination and their recommendations and comments.

Mr. FASCELL. I assume the association is very familiar with that study.

Mr. GERSHENSON. Yes, indeed, they are, sir.

Mr. FASCELL. Have you had any negative comment on either the way the study was undertaken, the assumptions that were used or the conclusions that were arrived at, or any recommendations?

Mr. GERSHENSON. I think one thing that surprises me about the study is that it has been almost universally accepted and very slightly challenged. That is true not only among our personnel but it is also true among the people in the task force. There is another study that the task force has been asked to consider as it examines the whole issue of pay and it has had an effect on the development of those options.

In 1975, the then Civil Service Commission did a study of pay in the Foreign Service and came to somewhat different conclusions than the Hay study did. Basically they thought that some of the upper linkages, the higher linkages that Hay had, were not justified. So that has been taken into account in the development of these options, sir.

Mr. FASCELL. Mrs. Schroeder.

Mrs. SCHROEDER. Could I just ask what this study cost?

Mr. GERSHENSON. About \$100,000.

Mrs. SCHROEDER. If you had a choice, which one of those options would you rather have?

Mr. GERSHENSON. That is a very difficult question. I have to look at it in terms of what the budget possibilities are. I was a member of the working group, and I was one of the people who awarded too many Hay points. So my basic inclination is to pay my colleagues as much as I can. That is an emotional response.

From a professional point of view, I can live with a number of those options.

Mrs. SCHROEDER. Would you rather, as the personnel manager, have the money to hire additional staff than to have pay raises? Do you think the pay thing is so out of whack you would rather have that, or would you rather have more slots and be able to have the same money to hire more people?

Mr. GERSHENSON. I don't think we have any choice, Madame Chairwoman, but to pay our people a fair wage, that the study shows they should earn. I dislike being put in the position, as you might imagine, of having to decide between. But basically I feel that our people are underpaid, have been for some time, and that they must be made whole. That takes priority, in my mind.

Mrs. SCHROEDER. Thank you.

Mr. FASCELL. Mr. Leach.

Mr. LEACH. Thank you. I would just like to comment that looking through that whole chart, I was struck that the survey must have been interesting and fun to do. I am doubtful that it was terribly useful. You come right down to whether or not to use a factor of someone else's judgment, whether or not you were too generous. The ultimate decision of whether to use 2.8 or whatever adjustment factor determined where you ended up. My guess is that factor coincidentally happened to produce the desired linkages with the Civil Service.

I have personally been convinced for a long time that it is nearly impossible to do private sector analysis in comparisons except on an individual basis, and that the best thing rationally for the Foreign Service is to look for an arbitrary tie to the Civil Service on grounds of equitability.

Those numbers that were put forth ended up, in effect, substantiating approximately that type of approach. I like the results, but I am very, very dubious of the methodology.

I am a little bit confused at just where the decisionmaking process is. I understand OMB has chaired an interagency task force and that its recommendations will soon be forthcoming. Have these recommendations actually been made; and if they have been made, do they conform to the Hay Associates' study?

Mr. GERSHENSON. The four options that I described were released by this committee that I have been working on, chaired by OMB, earlier this week. As I said, they will go to the Board of the Foreign Service for discussion and to the other agencies. I think at that point the final decision is made, by the President's pay agent.

Mr. LEACH. But they haven't been presented to us, as I understand it. Is that correct?

Mr. GERSHENSON. Excuse me, sir?

Mr. LEACH. No final recommendation has been presented to us.

Mr. GERSHENSON. That is correct.

Mr. LEACH. Thank you very much.

Mr. FASCELL. Mr. Buchanan.

Mr. BUCHANAN. Thank you, Mr. Chairman.

This is elementary, I know, but just to be sure, option I would meet the comparability standards as determined by the study completely, I gather, since there is an asterisk in every column. Is that right?

Mr. GERSHENSON. No, sir, that is not right. The study didn't look at all those classes. It only looked at selected classes. At the classes where the study found full comparability, that option does respond to it. It responds to more linkages, actually, than the study showed. That may be because the study didn't do all the classes.

Mr. BUCHANAN. All right. Thank you, Mr. Chairman.

Mr. FASCELL. Thank you very much, Mr. Gershenson. We will take time out to go answer this rollcall and come back to hear Mr. Kenneth Bleakley.

[A brief recess was taken.]

Mr. FASCELL. The subcommittee will resume the hearing.

The next witness is Kenneth Bleakley, president of the American Foreign Service Association.

Mr. Bleakley.

**STATEMENT OF KENNETH BLEAKLEY, PRESIDENT, AMERICAN
FOREIGN SERVICE ASSOCIATION**

Mr. BLEAKLEY. Thank you, Mr. Chairman, Madam Chairwoman.

I have with me today, Thea de Rouville, who is the vice president of the American Foreign Service Association and the chairperson of our strongest committee, the State Standing Committee, which is directly responsible for our actions on this legislation; on my left, Galen

Fox, who is our secretary; and to his left, Bill Veale, who is our expert on pay issues.

Madam Chairwoman and Mr. Chairman, we asked to appear before you today to indicate our desire, as the exclusive representative of the 11,000 AID and State Foreign Service people, to support a new Foreign Service Act and to outline our comprehensive proposals for achieving this goal.

Our association explained on July 9 why we could not endorse the proposal as it then stood and presented a detailed analysis of it. Today I wish to review briefly events since that time and describe the essential elements, as we see them, of the new bill.

We will be giving you a refined, line-by-line analysis which takes into account recent developments, our further talks with State's leadership, and testimony by others before this committee.

[The analysis referred to follows:]

AMERICAN FOREIGN SERVICE ASSOCIATION

Updated section-by-section analysis of the bill to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States and for other purposes

CHAPTER I.—GENERAL PROVISIONS

Sec. 101(a)(1) (p. 2), insert after Foreign Service "*of the United States,*"
Comments.—Emphasis on the national, interdepartmental character of the Service

Sec. 101(a)(3) (p. 2), add in first line "that the *members of the Foreign Service * * **" Insert after "languages, and."

Comment.—Each member of the Service should strive to be representative of the American people and to remain truly American rather than becoming too foreign or cosmopolitan.

Sec. 101(a)(4) (p. 2), add new subsection (4) "*that the Foreign Service should be operated on the basis of merit principles; and*

Comment.—It is desirable to reaffirm that the merit principles of the Civil Service Reform Act apply to the Foreign Service as indeed they do by the terms of 5 U.S.C. 2301(b)(1).

Sec. 101(a)(5) (p. 2), add new subsection (5) "*that the growing scope and complexity of the nation's foreign affairs has heightened the need for a professional Foreign Service that will serve the foreign affairs interests of the United States in an integrated fashion and that can provide a resource of qualified personnel for the President, the Secretary of State and the agencies concerned with foreign affairs.*"

Comment.—This addition explicitly acknowledges that the need for a Foreign Service of the United States is increasing due to world events.

Section-by-Section Analysis: Add new paragraph under Findings and Objectives, following paragraph ending "merit principles":

"*Finally, this section finds that our growing and increasingly complex foreign affairs has heightened the need for a professional Foreign Service to serve the President, the Secretary of States, and the various agencies concerned with foreign affairs.*"

Comment.—This emphasizes the broad scope of responsibilities envisioned for the Foreign Service.

Sec. 101(b)(6) (p. 4), insert new phrase "to provide *compensation including salaries * * **"

Comment.—This wording clarifies the concept that it is "compensation" in its broadest sense and not merely certain elements of it which encourages and rewards outstanding performance.

Section-by-Section Analysis: Revise para on Section 101(b)(6) to read: "Section 101(b)(6), drawn from section 111(7) of the 1946 Act, states that the Act will provide [salaries, allowances and benefits] *compensation* that will attract and retain qualified personnel, [and] *as well as* incentive payments and awards to encourage and reward outstanding performance. *Compensation for the*

Foreign Service must take into account the conditions of overseas service referred to in Section 101(b)(5)."

Comment.—The additions make clear the intent to minimize the impact of the hardships, disruptions and other unusual conditions of overseas service upon the members of the Foreign Service and to mitigate the special impact of such conditions upon their families.

Sec. 101(b)(9) (p. 4), revise subsection to read: "(9) to increase efficiency and economy by promoting maximum [compatibility] uniformity of personnel management among the agencies authorized to utilize the Foreign Service personnel system particularly in the Senior Foreign Service as well as compatibility between the Foreign Service and the Civil Service; and"

Comment.—Just as there is a single Civil Service system flexible enough to serve the interests of the individual domestic U.S. agencies, there should be a Foreign Service with a Senior Foreign Service component paralleling the Senior Executive Service which serves U.S. national interests abroad.

Sec. 104(2) (p. 7), insert as follows: "provide guidance for the formulation and conduct of United States foreign policy and programs * * *"

Comment.—This establishes that the Foreign Service advises the President and Secretary on foreign policy in addition to executing it.

Section-by-Section Analysis, para 3 (p. 7), insert as follows: "Section 104(2) states that members of the Foreign Service shall provide guidance for the formulation and conduct of United States foreign policy and for the formulation and conduct of Government * * *"

Comment.—See comment on 104 (2) above.

CHAPTER 2.—MANAGEMENT OF THE SERVICE

Sec. 202(a) Section-by-Section (p. 9), add: "It is expected that these agencies will use all the appointment authorities in the Act. For example, the International Development Cooperation Agency will establish a Foreign Service Officer corps."

Comment.—In order to enhance compatibility among the Foreign affairs agencies and the status of the international development function, the law should strongly encourage the establishment of a Foreign Service Officer corps in IDCA, parallel with FSO's in State and FSIO's in USICA. The categories of personnel who would be so appointed would be worked out subsequently by regulation.

Sec. 206 (p. 13).

Comment.—We strongly support the re-establishment in law of the Board of the Foreign Service. We agree with the composition and functions of the Board described in Sec. 206 and its analysis. We welcome the proviso that a career member of the Senior Foreign Service chair the Board, and we believe that a majority of Board Members should likewise be career Members of the Senior Foreign Service. Only those domestic agencies with governmentwide responsibilities (OPM and OMB) or which use the Foreign Service overseas but have none of their own (Commerce and Labor) should be represented. To insure that the Board can function as an independent and useful source of advice to the Secretary and other foreign affairs agency heads, it should have a staff, like that of the FSLRB in Chapter 10 or the FSGB in Chapter 11, independent of agency management and responsible only to it. Its career Foreign Service members should be neither officials of the exclusive employee representative nor management officials as defined in Sec. 1002 (10) (F). It should not only respond to requests from agency heads for advice on issues arising under the Foreign Service Act or the Secretaries' governmentwide authority, but also initiate such advice. In forming its judgments, it should feel free to hear representatives of both agency management and the exclusive representative.

CHAPTER 3.—APPOINTMENTS

Sec. 311(a) (1 (p. 17)), add:

"The President shall provide to the Committee on Foreign Relations of the Senate, with each nomination for a chief of mission position, a report on that nominee's demonstrated competence to perform the duties of chief of mission in the country in which he or she is to serve."

Section-by-Section add: "Additionally it requires a report from the President to the Senate Committee on Foreign Relations on the competence of his or her nominees, measured against these criteria."

Comment.—This provision will improve the Senate's ability to judge the qualifications of a nominee, and deter the nominations of inadequately qualified persons. *Sec. 311(a)(3)* (p. 18), and Section-by-Section, change to read "(3) [for] to the *maximum* extent practicable * * *"

Comment.—This change parallels the language of *Sec. 311(a)(1)* with respect to the qualifications of a chief of mission and reflects the previously expressed sense of Congress (*Sec. 120, P.L. 94-350 (90 Stat. 829)*) that "a greater number of positions of ambassador should be occupied by career personnel of the Foreign Service." *Sec. 311(b)(1)* (p. 18), section-by-section, add: "*It is expected that Foreign Service personnel from the foreign affairs agencies other than the Department of State will receive fair consideration for Chief of Mission nominations.*"

Comment.—IDCA and USICA Foreign Service personnel should receive fair consideration for Chief of Mission positions.

Sec. 321. (p. 19) Section-by-Section, add: "*As noted in the analysis of section 511(b), the number of non-Foreign Service personnel serving in Foreign Service positions (which includes those serving under limited appointments in the Service) is not expected to exceed the number of Foreign Service personnel assigned to non-Foreign Service positions.*"

Comment.—This reflects the expectation that the present balance of exchange in senior assignments between the Foreign Service and the rest of the Government will be maintained lest Foreign Service promotion and assignment opportunities be reduced.

Sec. 322 (p. 19), Section-by-Section, line 10, insert after "Before four years": "*Career members of the Senior Foreign Service will normally be appointed by the promotion (cf Sec. 602) of career personnel who will have established records of performance in the Foreign Service. Career candidates at the SFS level will be appointed from outside the career Service only in extraordinary cases where the needs of the Service cannot otherwise efficiently be met. Accordingly, such candidates will serve not less than four years in probationary status so that their qualifications for career status can be thoroughly evaluated. Appointment to the highest rank of the Senior Foreign Service shall be from the ranks of those who have already achieved career status.*"

Comment.—This section provides clear safeguards that the new mechanism for accepting career candidates directly into the Senior Foreign Service will be controlled. This will ensure that candidates demonstrated competence for top level management have been carefully evaluated and confirmed before career status is conferred. The aggregate number of such outside appointments should not undermine the predominance of appointments from within the career service which is necessary to maintain healthy flow rates throughout the Service in recognition of meritorious performance.

Sec. 323 (p. 20).

Comment.—Reference to "class higher than class 4" should be reviewed to bring it into conformity with determination of classes under Section 421 once that provision has been established.

Sec. 333(b) Section-by-Section, insert "*full-time*" before "positions."

Comment.—This change is consistent with existing law (*Sec. 413, P.O. 95-426, 92 Stat 963*) which makes it clear that full-time American career positions should not be abolished in order to create those positions, sometimes part-time, temporary, or intermittent (PIT), for family members. Such action of creating PIT positions reduces promotion and assignment opportunities for current career members of the Foreign Service. Our proposed change is not intended to impede increases in job opportunities for family members, or innovations concerning job-sharing overseas.

CHAPTER 4.—COMPENSATION

Sec. 401 (p. 25).

Comment.—We approve of this section, which essentially continues existing law. Since chiefs of mission, pursuant to *Sec. 203*, have full responsibility for the direction, coordination, and supervision of all government officials and activities in the country, their positions should be classified according to the scale of such activities.

The continued use of different pay levels for chiefs of mission recognizes the level of performance inherent in the requirements of a specific position.

Sec. 421 (p. 26).

The question of Foreign Service pay linkages will be treated separately.

Sec. 462 (p. 36), Section-by-Section, and Table of Contents—Change “Allowances” to “*Differential*.”

Comment.—The special allowance, unlike other allowances available to government employees overseas, but like the post differential, is taxable, and established as a percentage of basic salary. Also unlike overseas allowances, it can be paid for positions in Washington. Calling it a differential would be more logical.

This authority was created last year to mitigate the adverse impact on FSO's and FSIO's of the loss of premium pay pursuant to Section 412 of the Foreign Relations Authorization Act of 1978. We are seeking the repeal of Sec. 412, but we also have problems with the implementation of the special allowance. We ask that the legislative history indicate that:

Fifty hours per week is “in substantial excess of normal requirements” (the current regulation refers to 55);

There should be no upper limit imposed on the number of FSO's receiving special allowances (the current regulations refer to “approximately 100” in State);

FSO's of all ranks should be eligible for the special allowance (FSO 3's, who will be FS-1's, are not);

Twenty-five percent of basic salary is a reasonable figure for the special allowance (which now ranges from 12 to 18 percent);

There should be no positions exempted (special assistants to Presidential appointees at Executive Level 3 and above are now ineligible to receive the special allowance);

The Department should not take advantage of the inability of FSO's to receive premium pay by requiring them to work for periods in which work is not really essential (i.e. to hang around on weekends in case an Assistant Secretary may want them) or to avoid the need to adjust its workload or ask for more personnel when necessary to perform the Department's mission. See also (Sec. 2301(3)) below.

Sec. 462 (p. 36), after “authorized” insert “(a)” and line 25, add: “*or (b) to Foreign Service personnel who are required by the nature of their assignments overseas to remain on call on a regular basis for substantial periods of time outside normal duty hours.*”

Section-by-Section, add: “*Subsection (b) would apply the concept of the special differential to Foreign Service personnel required by the nature of their assignments overseas to remain on call on a regular basis for substantial periods of time outside normal duty hours.*”

Comment.—Many Foreign Service personnel, especially secretaries and communicators at small posts overseas, are required to remain on “stand-by duty” or on call for extremely long periods of time, but are not compensated except and to the extent that they are required during such periods to come in to work. The concept of the special allowance, of a certain percentage of basic salary, is an appropriate way to compensate personnel for such a substantial loss of free time.

CHAPTER 5.—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

Sec. 511(b)(1) (p. 38, line 1)—Insert after “filled by” “*the assignment for specified tours of duty * * **”

Section-by-Section analysis, first paragraph, add: “*The number of such personnel is not expected to exceed the number of Foreign Service personnel assigned to non-Foreign Service positions.*”

Comment.—All Foreign Service personnel assignments are for specific tours of duty, normally for two or three years. Similarly, an assignment of a non-Foreign Service employee to a Foreign Service position should be for a specific period of time after which the assignment could be renewed or another person assigned to the position. The purpose of revising the legislative history is to reflect the expectation that Foreign Service assignment and promotion opportunities will not be adversely affected by reversing the present balance in assignments between the Foreign Service and the Civil Service.

Sec. 521(a)(4) (p. 39). Section-by-Section analysis, add following at end of paragraph: “*A substantial number of Foreign Service personnel should be given assignments under this paragraph.*”

Comment.—This restores the original concept of the “Pearson Amendment” (Sec. 572 of the Act of 1946 as amended). The legislative history should reflect the sense of Congress that such assignments are important to a comprehensive career development program.

Sec. 521(b)(1) (p. 39), first sentence: Insert "*the higher of*" before "the salary"; and in the following line delete [irrespective of] and insert "or". Also, revise the accompanying legislative history by amending all of paragraph four before the last sentence to read as follows: *521(b)(1) preserves the rule established by 571(c) of the 1946 Act that a member of the Service assigned under this section will receive the salary of his or her Foreign Service class or, when assigned to a non-Foreign Service position, the salary of the position to which the member is assigned if it is higher than the salary of the member's class.*" [Continue with existing last sentence.]

Comment.—This is consistent with the existing law and with the concept of equal pay for equal work which is part of merit system principles.

Sec. 531(a) (p. 41), Section-by-Section analysis, add the following to the end of the first paragraph: "*It is expected that regulations limiting assignments in the United States and procedures for exceptions of the eight-year rule would be negotiated with the exclusive representative for each agency.*"

Comment.—We applaud *Sec. 531(a)* as a reaffirmation of the principle of worldwide assignment in the Service. However, it is essential that the regulations and procedures under which these aspects of service discipline are applied be co-determined by the exclusive representative to ensure equitable application and prevent arbitrary abuse.

Sec. 531(b) (p. 41), Revise Section-by-Section Analysis by adding the following at the end of the second paragraph: "*The implementation of this subsection implies that a reasonable number of Foreign Service positions will be maintained in the United States in all categories so as to permit the assignment of those who desire assignment in the United States after extended duty abroad.*"

Comment.—We approve of paragraph (b). However, there are some specialties, e.g., secretaries and communicators, in which there are not enough positions in Washington to meet this objective because not enough positions are classified Foreign Service. This revision envisions steps to ensure that enough slots are made available for all Foreign Service personnel categories to permit reasonable domestic rotations after extended duty abroad.

CHAPTER 6.—PROMOTION AND RETENTION

Sec. 602(a) (p. 43), Section-by-Section Analysis, add following as a new paragraph: *It is contemplated that the exclusive representative will be able to negotiate the time-in-class (TIC) for new FS-1, as well as the number of years in the threshold window during which one may be considered for promotion. In AID/IDCA, where retirement for excessive TIC has not been used, the establishment of a threshold window would have to await the establishment of a TIC at that level—both on the basis of negotiation with the exclusive representative;*

Comment.—Our approval of the senior threshold "window" and the extension of TIC to AID is conditioned by the requirement that the application of these authorities be negotiable as a safeguard for employees.

Sec. 602(b) (p. 43), substitute the following:

"(b) *Decisions by the Secretary on the numbers of those to be promoted into and retained in the Senior Foreign Service shall be based upon a systematic long-term projection of personnel flows and needs designed to provide—*

- (1) a regular, predictable flow of recruitment at the junior levels of the Foreign Service;
- (2) effective career development patterns to meet the needs of the Service;
- and
- (3) regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service."

Section-by-Section analysis, revise as follows: First sentence, delete "in making" and insert in lieu thereof "*to base,*" and insert "*upon*" after "SFS" and delete "to take into account". Insert as new second sentence the following: *This subsection calls for the establishment of long-term promotion ranges in the relevant competition groupings, together with the associated ranges of combined voluntary and involuntary attrition necessary to achieve overall balance in the flow pattern.*"

Comments.—These changes are necessary to lend greater specificity to the Congressional requirement that the personnel system of the Service be managed as an integrated whole in which the overall entry, departure and promotion rates are consciously kept in balance.

Sec. 602(b) (p. 43), Section-by-Section Analysis, add following as another paragraph:

It is contemplated that these long term target promotion ranges in the relevant competition groupings would be subject to negotiations which would also identify the range of permissible forced attrition necessary to achieve overall balance in the flow pattern. Anticipated failure to stay within the agreed target promotion ranges would trigger renegotiation of either the long term promotion and/or attrition target ranges.

Comment.—The fundamental long-term trade-offs between advancement and security must be negotiable if the exclusive representative is to properly safeguard the interests of employees. By negotiating overall ranges with a long-term character management would be free to make the necessary adjustments to fine tune the system from year to year, but employees would be empowered to negotiate if exogenous factors force a fundamental shift in the balance between job security and promotion opportunities.

Sec. 603. (p. 44), Section-by-Section Analysis, add following sentence at end of second paragraph: "It is expressly understood that the composition of selection boards, and the precepts under which they function, should continue to be subject to negotiation and agreement with the exclusive representative."

Sec. 612(a) (p. 44)—After "Dependability" insert "usefulness", and lines 2-7 delete everything after "Service".

Comment.—"Usefulness" is from the 1946 Act; to us it carries an implication of assignability. However, we would eliminate all the examples of reports in the performance file in order to leave these for negotiation between management and the exclusive representative. Many of our members are concerned that records of prospective assignments for SFS members might be subject to abuse.

Sec. 641 (p. 47), Section-by-Section analysis, add the following to the last sentence of the first paragraph: "and/or among classes, but all individuals in a given occupation and within the same class, competing for the same assignments and promotions will be covered in an identical fashion."

Comment.—This section is meant to protect specialist categories, particularly communicators, to ensure that those competing for the same jobs and assignments at a given level will be treated identically with regard to TIC regardless of the different rules which applied before to those formerly holding FSS versus FSR/U designations. Equitable application of this provision requires that it be negotiable between Management and the Exclusive Representative.

Sec. 641(a), Section-by-Section analysis, add the following to the second paragraph:

"The establishment and adjustment of regulations specifying time-in-class (or combinations thereof) and the duration of limited extensions of career appointments shall be negotiable with the exclusive employee representative to ensure that these authorities are exercised in a manner consistent with equity and stable career planning."

Comment.—Adjustment in time-in-class or the duration of limited extensions of career appointments are extremely blunt instruments for managing the composition of the work force. These regulations must be negotiable to maintain confidence in the Service that this authority will not be abused because of external political influences or internal cronyism. In AID, different historical circumstances require that TIC must be established very carefully and gradually as safeguard by mandatory negotiations with the exclusive representative.

Sec. 642 (p. 48), delete "relative" and substitute "failure to meet standards of" in heading of bill, section-by-section heading, and table of contents.

Comment.—We support the concept of selection out for substandard performance, including its extension to what is now the Foreign Service Staff Corps, and to AID, where the authority has not been used recently. We oppose, however, a section title which suggests that selection out could occur to a career member of the Service who is performing adequately, albeit not as well as his/her peers and if retired, would not receive an immediate annuity. Either immediate annuities should be extended below age 50 or new FS class one, or the legislation should not be written so as to prejudice the negotiations on performance standards precepts. On the other hand, we would have no problem with retirement for relative performance for personnel who are eligible for immediate annuities and whose retirement would increase promotion opportunities for outstanding mid-level and junior members.

Sec. 642 (p. 48), Section-by-section analysis, revise last sentence of first paragraph as follows:

"However, section 210(e) of this bill exempts those members currently on the rolls to whom section 633(a) (2) of the 1946 Act does not now apply from appli-

cation of this section for a period of ten years or *eligibility of the individual before that time for voluntary retirement with immediate annuity.*"

Comment.—This fixes a tracking mistake and grandfatheres the current exemption for ten years or eligibility for immediate annuity, whichever comes first. It would be a gross injustice to summarily change the original conditions of employment offered the staff corps unless they are protected from the application of this provision for ten years or until eligible for immediate annuity, whichever comes first.

CHAPTER 7.—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING,
AND ORIENTATION

Sec. 701 (b), section-by-section, first line (p. 53), after "that" insert "*in addition to training for employees.*"

Comment.—Parallels text of *Sec. 701 (b)*.

Sec. 703, Section-by-Section, line 11 (p. 54), insert new sentence: "*This provision, derived from sections 702 and 703 of the 1946 Act, is intended to encourage a variety of activities to foster broadened experiences for members of the Service, including activities involving. * * **"

Sec. 703 (b) (p. 55), delete "esoteric."

Comment.—The Service may require proficiency in languages which are not esoteric.

Sec. 704 (a), lines 2 and 5, (p. 56), delete "orientation and language." *Sec. 704 (a)*, line 7, and Section-by-Section, delete references to \$300 per month and six months.

Comment.—The Secretary should have the authority to provide grants to cover the actual costs of training for family members pursuant to *Sec. 701 (b)*.

Sec. 705 (b) (p. 57), delete "facilitate" and insert "assistance in facilitating through a family liaison office," after "personnel", insert "including"; delete subparagraph (c); section-by-section, add: "*Of course, the family liaison office may be assigned additional functions by the Secretary. (The existing Family Liaison Office currently provides a wide variety of services relating to Foreign Service families.)*"

Comment.—This recognizes the role which the family liaison office can play in facilitating the employment of Foreign Service spouses.

CHAPTER 8.—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Sec. 821 (c) (2) (p. 71), revise to read:

"*If an annuitant dies and is survived not by a spouse but by a child or children, an annuity equal to the maximum survivor annuity for a surviving spouse shall be paid to the child or in equal parts to the children.*"

Comment.—Considering the very unique problems of orphaned minor children, we believe the current schedule of annuities to be unrealistic. Making arrangements for the further support of such child or children can be very difficult because foreign service life weakens ties to the extended family and the only surviving relative may reside in a foreign country. We recommend that the annuity schedule for surviving orphan children be increased under the above formula.

Sec. 835 (p. 80), (lines 9 and 10—delete the words "and with the consent of the Secretary."

Comment.—When an employee becomes eligible for voluntary retirement, the employee should have full freedom to decide when to retire. There is no justification that the employee be placed in a condition of "voluntary servitude" and be required to continue to work in the Foreign Service at the pleasure of the Secretary.

Sec. 836 (b) (p. 80)—Amend to read: "** * * shall determine that the needs of the Service require any participant * * **"

Comment.—The justification for extending the period of employment of a career employee beyond age 60 should be tied to Service needs, which can be measured and determined.

Sec. 837 (p. 81).

Comment.—This section is an improvement over *Sec. 519* in the 1946 Act in that it extends coverage to all career employees with Presidential appointments not just chief of mission appointments. Section 519 retirements have been used sparingly; we ask that the Congress express its view that *Sec. 837* should be used systematically as one of the attrition mechanisms in the Act.

Sec. 872(a) (p. 93), change to read: "not to exceed during any calendar year the basic salary the member would be entitled to receive under this Act if currently employed in the Foreign Service class which the Secretary determines most compatible to the class the member held on the date of his or her retirement from the Service."

Comment.—Considering inflation and the significant basic federal salary increases which have occurred, it is unrealistic and unfair to use the employee's salary at time of retirement as a ceiling for what he can receive as annuity and salary when re-employed. Rather, the ceiling should be no less than that salary which the employee would be receiving if he or she had continued his or her career employment.

CHAPTER 9.—TRAVEL, LEAVE AND OTHER BENEFITS

Sec. 901(1) (p. 98) Section-by-section analysis, last line, change to read "tion 911(1), (2), and (6) of the 1946 Act."

Comment.—Management officials have testified that 901(1) includes the authority of old 911(6).

Sec. 901(2), and Section-by-section (p. 98), change to read "authorized or required home leave in the United States."

Comment.—Parallels Sec. 911.

Sec. 901(3) (p. 98), delete all after "duty."

Comment.—The Secretary should have the authority to determine by regulation conditions under which travel costs of family members may be paid in connection with an employee's TDY.

CHAPTER 10.—LABOR-MANAGEMENT RELATIONS

Sec. 1001(3), last sentence (p. 106), change "shall" to "should"

Comment.—Parallels CSRA Sec. 7101(b).

Sec. 1002(5) (p. 108), change to read:

"(5) 'confidential employee' means an individual who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations."

Section-by-section, first paragraph, insert "certain" before "management"; delete parenthetical phrase.

Comment.—Parallels CSRA, Sec. 7111(d)(13) as well as the definition used in EO 11636.

Sec. 1005(a)(1) (p. 112)—delete "of type and classes"

Comments.—Parallels CSRA, Sec. 7106(a), and is consistent with Sec. 1005(b) of this bill.

Sec. 1011(a), last sentence (p. 113), change to read " * * * on a nominee, each such agency and exclusive representative whose agreement is required. * * *"

Comment.—To make clear that the exclusive representative for employees in each agency has the same right as the management of that agency to participate fully in this process, even though one labor organization may be exclusive representative of more than one bargaining unit.

Sec. 1014(e) (p. 118), delete all after "otherwise"

Section-by-section, delete last two lines.

Comment.—Parallels CSRA, Sec. 7119(c)(5)(C).

Sec. 1023(b)(1)(A) last three lines (p. 122), change to read "concerning any grievance or any personnel policy or practice or other general condition of employment."

Change section-by-section to read "other employees groups."

Comment.—Parallels CSRA, Sec. 7114(a)(2).

Sec. 1023(d)(2) (p. 123), change to read "... any conditions of employment;"

Comment.—Parallels CSRA, Sec. 7114(b)(2).

Sec. 1041(e) (p. 132).

Comment.—This subsection, paralleling Sec. 1(b) of EO 11636, has prevented and will effectively prevent any real or apparent conflict of interest for any employee, if not a management official or confidential employee. Thus additional exclusions from the bargaining unit are unnecessary.

Sec. 1041(f) (p. 132) delete "prohibited picketing"

Comment.—Parallels CSRA, Sec. 7120(f), which reflects a decision of the Conference on the CSRA (see p. 156 of Conference Report).

Sec. 1051(c) (p. 133), delete "under Section 1021(b)(1)(a)" and insert "alleging that 10 percent of the employees in an agency have membership in the organization"

Comment.—Parallels CSRA, Sec. 7115(c)(1).

CHAPTER 11.—GRIEVANCES

Sec. 1101(a)(1) (p. 135), insert "involuntary" before "separation" and "character of" before "information."

Comment.—Parallels the existing grievance legislation, Sec. 692(1)(B) of the Foreign Service Act of 1946 as amended.

Sec. 1101(a) (p. 135), Section-by-Section amend next to last line to read " * * * alleged wrongful or capricious denial of allowance * * * "

Comment.—Consistent with current law, the provision should be clear in its coverage to include cases where an allowance or financial benefit has been denied arbitrarily or capriciously even if permissible under the letter of the applicable statute.

Sec. 1103(b) (p. 138, lines 18-21).

Comment.—This section departs from the current legislation and practice by allowing a grievant who is in the bargaining unit to be represented only by the exclusive representative organization, which may approve the participation in the proceedings by an additional person on the grievant's behalf. Heretofore, a grievant has had full freedom in choosing who and under what circumstances he or she will be represented.

AFSA is aware that this will impose a new workload on its limited resources. We are also aware that a grievant may want to advance an argument or seek a relief which is contrary to AFSA policy. AFSA did not seek a monopoly of grievance representation; only to be present at all grievance proceedings, the result of which may affect general conditions of employment.

Sec. 1103(b) (p. 138)—Add after "choosing":

"However, the exclusive representative of members of the Service in the agency in which the employee serves or served shall have the right to be present during the grievance proceedings."

Comment.—The Foreign Service Grievance Board on occasion must interpret the meaning or intent of agency regulations which derive from agreements between the agency and the exclusive representative. The exclusive representative is a necessary party in any such grievance and it is important that the bill enable it to protect its interests.

Sec. 1103(d) (p. 138), Amend to read "The Foreign Service Grievance Board shall have authority to ensure that no record of—"

Comment.—The above wording repeats that contained in present legislation. Because the present wording has presented no problems and there is precedent concerning its meaning and interpretation, AFSA recommends against any change.

Sec. 1111(b) (p. 140), amend to read: " * * * each such agency and exclusive representative shall select two nominees * * * "

Comment.—The revised wording clarifies and reinforces the concept of equality between the agency and the exclusive representative for the bargaining unit in that agency.

Sec. 1112(2) (p. 142, line 4)—After "sentatives," insert "the exclusive representative,".

Comment.—The exclusive representative should be present at all hearings involving members of the Foreign Service, even if not in the bargaining unit, in the agency in which it is the representative of the Foreign Service. See also Sec. 1103(b) above.

CHAPTER 12.—COMPATIBILITY OF PERSONNEL SYSTEMS

Sec. 1203 (p. 150)—Add " * * * in a manner that will assure maximum uniformity of personnel management, particularly in the Senior Foreign Service, among * * * "

Comment.—This fosters the concept of a Foreign Service of the United States and of the flexibility which could result if uniformly administered by the various participating agencies.

TITLE II.—TRANSITION, AMENDMENTS TO OTHER LAWS, REPEALS AND MISCELLANEOUS PROVISIONS

CHAPTER I.—TRANSITION

Sec. 2101(b) (p. 153), change "availability" to "assignment".

Comment.—This corrects what is apparently a typographical error.

Sec. 2102(c) (p. 154)—Insert new subsection "(c)"

"(c) Any Foreign Service officer or candidate currently serving who at the time of original appointment met the new criteria for appointment at class 4, shall be immediately promoted to the appropriate step of that rank if it has not already been attained."

Comment.—This is a necessary transitional authority to avoid disadvantaging an employee who is already in the Service in contrast to a new recruit.

Sec. 2104(e) (p. 160), change to read: "(e) Retirement under Section 642 of the Foreign Service Act of 1979 shall not be effected until ten years after the effective date of this Act with respect to members of the Foreign Service."

Change section-by-section analysis last sentence (page 159) to read * * * for ten years * * *

Add new (3): "(3) who are not eligible for immediate annuity upon retirement under Chapter 8 of the Foreign Service Act of 1979."

Comment.—We support the extension of retirement for substandard performance throughout the Foreign Service. However, we have many members of the present Foreign Service Staff Corps who have served for many years under the assumption that they would be able to continue to serve until eligible for retirement with an immediate annuity, but who are not yet in FSSO Class I or age 50 with 20 years' service. It would be harsh to apply selection out to them, particularly to secretaries who find it very difficult to start a second career after age 40, and particularly in the context of relative performance which may be adequate although relatively less good than that of their peers. Our amendment would start the selection out process immediately after enactment, but would avoid for ten years thereafter actual retirements from the Service of those not eligible for an immediate annuity. This would apply to AID Foreign Service Corps Members as well.

Sec. 2105 (p. 160)—delete ["under the direction of the President"]

Comment.—There should be no doubt that the Secretary (and other foreign affairs agency heads) have the discretionary authority to prescribe implementing transitional regulations—and therefore, the obligation to negotiate these regulations with the exclusive employee representative. We would be particularly interested in negotiations on procedures for the determination of worldwide availability, pursuant to Sec. 2101(a) (2), p. 173, lines 11–13, and Sec. 2102(d), p. 175, lines 3–4; and the determination of needs of the Service, pursuant to Sec. 2101(b) (1), p. 173, lines 19–21, and Sec. 2102(d) (1), p. 175, lines 8–10.

CHAPTER 2.—AMENDMENTS TO OTHER LAWS

Sec. 2201(a) (p. 164)—Insert a new subsection "(4)" and renumber succeeding subsections:

"(4) Sec. 27 Exemption from Foreign Customs Duties and Local Taxes.

The Secretary of State shall take all appropriate steps, including the negotiation of bilateral and multilateral agreements, necessary to carry out fully the provisions of the Diplomatic and Consular Conventions which extend to non-commissioned diplomatic and consular personnel assigned abroad protection from host government customs duties and local taxes. Pending completion of such agreements, the Secretary is authorized to reimburse members of the Service for those customs duties and local taxes which the member has paid despite the protection accorded by the appropriate conventions."

Comment.—The Vienna Conventions extend to non-commissioned diplomatic and consular personnel assigned abroad certain protections from host government customs duties and local taxes. Despite these assurances, many host governments deny such exemptions at considerable extra expense to members of the Service. Departmental efforts to persuade host government compliance with the Conventions have always been time-consuming and all too often unsuccessful. The purpose of this new section is to reinforce the Department's determination to force other governmental compliance and to authorize reimbursement of disadvantaged employees, and to place the Department's obligation in this regard on

an equal basis with its obligation to bargain for employment for family members. If other countries are not willing to accord the internationally recognized privileges, immunities, and employment opportunities, the Secretary should withdraw any such benefits from the country in question.

Sec. 2206 (p. 20, after line 8)—Insert new Section:

Sec. 2206 Post Differential

5 U.S.C. 5925 is amended as follows: All members of the Service shall receive the full amount of post differential to which they are entitled, provided that the amount of basic salary, post differential, and, if applicable, senior differential, shall not exceed in any fiscal year the salary provided by law for Level I of the Federal Executive Salary Schedule (5 U.S.C. 5312).

Comment.—5 U.S.C. 5925 establishes a taxable post differential, often called a "hardship allowance", of 10, 15, 20, or 25 percent of the basic salary as a recruitment and retention incentive to staff assigned to certain designated posts. A post differential is established for when, and only when, the location of the post involves extraordinarily difficult living conditions, excessive physical hardship, including physical danger, or notably unhealthful conditions. Living costs are not taken into account. Heretofore, pursuant to regulations, post differential has not been paid to chiefs of missions and has been paid to subordinate personnel only in amounts so that the employee's salary plus post differential will not exceed \$100 less than the salary of the chief of mission. These restrictions were apparently adopted in the belief that chiefs of mission receive sufficient other forms of compensation and that their authority would be threatened if their salary were less than the salary plus post differential paid to subordinate employees.

AFSA believes these regulatory restrictions are unfair and anachronistic. The full amount of allowed post differential should be paid to all governmental employees assigned to the post. This is in line with the recommendations of the 1977 report of the Inter-Agency Committee on Overseas Allowances and Benefits for U.S. Employees. Using the base salary of the chief of mission as a ceiling on the amount of post differential that can be paid to a subordinate employee creates undesirable anomalies. A senior official, including a present-day FSO-3, could receive more in the form of salary plus allowances if assigned to a relatively subordinate position at a "differential post" Class I mission than when assigned to a more challenging position, such as deputy chief of mission, at a Class III "differential post" mission. The outstanding officer thus has an incentive to accept the less challenging assignment.

Chiefs of mission are subject to the same physical hardships and unhealthful conditions as all other members of the mission. In many cases they are the most likely person at the post to be selected as the target for a terrorist attack or other acts of violence.

We believe that senior management officials of the Department are sympathetic to this proposal. See also Sec. 441 above.

CHAPTER 3.—REPEALS

Sec. 2301(3) (p. 201, line 24)—After "section" insert "412 and".

Comment.—This section is the amendment which abolished premium pay for Foreign Service officers. Since it took effect in October 1978, it has caused great bitterness among FSO's, including those who never personally apply for overtime. The provision for special allowances (repeated as Sec. 462 of the draft bill), has so far only benefited some 77 FSO's who regularly work more than 55 hours a week, and they are making much less than they would have. This provision enables the Department, by overworking its FSO's, to cut its costs and avoid requesting adequate staffing.

While we understand that the author of this amendment was aiming at what he regarded as the unprofessional practice of FSO's seeking overtime pay, the provision bans all forms of premium pay for FSO's, including extra pay for night, Sunday, and holiday work which may be imposed on the office or activity in which the FSO serves with other Foreign Service or non-Foreign Service personnel who are eligible for premium pay. In principle, FSO's are not even allowed to take compensatory time off or to participate in flexitime which the Office of Personnel Management is now urging.

We strongly urge the repeal of the provision. See also Sec. 462 above.

CHAPTER 4.—SEVERABILITY, SAVING PROVISION, REPORTS AND EFFECTIVE DATE

Sec. 2402 (p. 203)—After line 9 insert: “including recognition of any organization of Foreign Service officers and employees in the Agency for International Development as the exclusive representative of employees in the International Development Cooperation Agency).”

Comments.—IDCA is being touted as not just a “successor agency” to AID within the meaning of Executive Order 11636, but a superagency of which AID is only one element. We want to make sure that the status of the current exclusive representative of AID Foreign Service people, and thus its ability to protect the interests of the AID Foreign Service in the coming transition, is not adversely affected either by the IDCA reorganization plan or this bill.

Sec. 2404 (p. 181)—change “January” to “October” add “Provided, that actions may be taken after that date on the basis of any the current Foreign Service evaluation cycle as if this Act had been in effect at the beginning of that cycle.”

Section-by-section, change “January” to “October” and add: “permits implementation to be retroactive to the beginning of any the current personnel evaluation cycle.”

Comment.—The January 1980 date is not realistic. October would correspond more closely to legislative reality, including the budget cycle. The additional words would take account of the various promotion cycles.

Mr. FASCELL. Very good. Thank you.

Mr. BLEAKLEY. I think we will have that analysis ready before the weekend. It is prepared and is being typed.

Mr. FASCELL. We will be very happy to receive it.

Mr. BLEAKLEY. A variety of developments since July have shaped our thinking. The thoroughness, fairness and openmindedness that this committee has shown throughout these hearings has answered our concern that the bill you report out might not reflect the unique and complex requirements of the Foreign Service. The statements of Henry Kissinger and George Ball gave eloquent testimony to the importance of a separate Foreign Service.

The Foreign Service has become alarmed and dismayed by the administration's decision to fragment further the foreign relations apparatus by presenting its Reorganization Plan No. 3 on foreign trade. We now realize that we need legislation which protects the Foreign Service from such hastily conceived attempts to paper over fundamental international problems by bureaucratic position shuffling.

For that matter, the Congress is still in a position to undo the folly of the reorganization plan. We urge you, the members of these subcommittees, to lead the fight to reject it.

Our consultations with the leadership of State and AID as well as with the various interest groups that have appeared before you convince us that there is a greater commonality of objectives than may have been immediately apparent. Secretary Vance has concurred fully in the basic principles which I am about to present to you.

He has expressed his confidence that we can reach agreement or substantially narrow our differences on specific points at issue. We share that confidence and are prepared to give support to a bill which secures these principles.

There are three elements which are essential if there is to be a new Foreign Service Act. The role and integrity of the Foreign Service must be preserved and enhanced. Career employees must be assured a strong voice in the evolution of the Foreign Service. The Foreign

Service must be compensated on a par with the Civil Service and must receive appropriate incentives for a lifetime of service abroad. I will concentrate on those specific points under each which are not adequately addressed under the administration's proposal, with particular attention to areas where we expect resistance.

I will abbreviate some of the specifics on this and highlight some of the major points.

We ask the Congress to support a Foreign Service of the United States which: one, advises and assists the President and the Secretary of State in the formulation of foreign policy; and two, conducts the full range of U.S. Government civilian affairs overseas on behalf of the principal foreign affairs agencies and those with major foreign affairs concerns.

This will require that there be maximum uniformity of Foreign Service personnel management, particularly of the Senior Foreign Service, among the individual agencies operating abroad. We have modified our original proposal for Foreign Service development officers in AID to outright endorsement for the concept of Foreign Service officers serving each of the agencies utilizing the authorities of this act without artificial labels implying that officers of some agencies are more equal than others. The Civil Service makes no such distinctions. We see no need for them in the Foreign Service of the United States.

The range for our system of intake into the Service, career development through the middle grades, and intake into the senior ranks, as well as just, honorable and secure retirement, must be predictable and controlled. Only in this manner can we end the vagaries of successive managers, commissions and boards.

The changing roles and aspirations of families of our overseas employees must be an integral part of a comprehensive improvement of the quality of Foreign Service life for all.

Ultimately, the preservation and enhancement of the role of the Service can only be accomplished if the administration and the Congress provide the financial and personnel resources necessary for us to accomplish our mission. We can no longer survive by alternately shifting resources from one important activity to another, such as reducing political reporting to provide administrative services.

The United States cannot continue to maintain a strong international diplomatic position in the complex world of the 1980's by deploying fewer people than it did in the 1950's.

Our second principle is that career employees must be assured a strong voice in the evolution of the Foreign Service. The proposed Act will give foreign affairs management broad new authorities for administering the Foreign Service. While we know where we stand under existing legislation and Executive orders, we do not know how successive administrations will attempt to implement these new authorities.

We also need to guard against possible political abuses in the future. Therefore, the safeguards of an effective employee organization are essential if there is to be a new Foreign Service Act.

In order to play a creative, responsible and influential role, our employee organization must be as broadly based as possible.

We see no need for exclusions from the bargaining unit beyond management officials and confidential employees as defined in Executive Order 11636, which has served the Foreign Service well for 7 years. Additional exclusions, proposed in the bill, must be minimized in legislative history and in practice.

Exclusions of "supervisors" along the lines of title VII of the Civil Service Reform Act would be intolerable because it would disenfranchise more than half of the Foreign Service, whose need to participate in collective bargaining is in no way diminished when they are assigned as supervisors under our rank-in-person system.

Our scope of bargaining must be as broad as that accorded the civil service. For example, Disputes Panel decisions, like civil service arbitration awards, must be final. We must be able to negotiate in advance the implementation of such provisions of the bill as: (1) precepts for tenure, promotion and selection out; (2) changes in time in class; (3) definition of concepts such as "worldwide availability" and "the needs of the Service"; and (4) ranges of promotion and attrition rates.

This concept is essential to a new Foreign Service Act. We would adamantly oppose an act which granted management major new authorities without providing those whose careers they affect a handle to prevent the abuse or neglect of these authorities.

Solving this is going to be one of the most difficult remaining issues we address. It is an issue which has a broad range of possibilities for resolution, and we are confident, with the attitude that has been demonstrated by both sides on this so far, that we will be able to bridge that gap. But more work is still necessary.

We could only accept the imposed monopoly on grievance representation if its inclusion would not then be used to reduce further the size of the bargaining unit in the name of preventing conflict of interest. Aside from the above and some particular word changes, we are favorably impressed with the grievance proposals in chapter 11.

Finally, the Foreign Service must be compensated on a par with the Civil Service and must receive appropriate incentives for a lifetime of service abroad.

For the Staff Corps, this means: one, compensation built into the salary structure for the overseas factor and a renewed assessment of the extra responsibilities they assume abroad. We believe that a further assessment of those extraordinary responsibilities that our secretaries and communicators assume abroad really is needed. We can study this through empirical analysis, but their importance is already well understood by the officers who must rely on them. throw work at them. at times at an extraordinary pace. and ask them to work into the night. When the chips are down, we have to rely on our secretaries and our communicators in ways that I think are really unique. and that has to be factored into pay studies with regard to those vital people in our organization.

Authorization for reimbursement for foreign customs duties is equally important. They are supposed to be protected under international conventions, but that is not always the case. It is not the U.S. Government but these individuals who suffer.

Finally, compensation for the long hours—they are regularly on standby, the functional equivalent of house arrest, and that is not an

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exaggeration. They cannot leave their homes and they do not get paid anything for it.

For officers, full pay parity means implementation, as established by law, of the Hay Associates study, which did demonstrate the chasm between Civil Service and Foreign Service pay, particularly at the middle ranks.

Mr. Gershenson described to you today the four options for the implementation of the Hay study. We ourselves are just beginning to review them. It is clear that two of those options for a nine-class system fall well short of the conclusions of the Hay study.

We consider those two proposals as being inconsistent with the legislated principle of equal pay for equal work. This attempt to find loopholes in a study whose preponderance of evidence points in another direction is disconcerting to us. Choice of either of these options would cause serious doubt or the true objective of this bill to "strengthen the Foreign Service."

I might add here, Mr. Chairman, an illustration. It was mentioned that Hay Associates stated that they were not able to establish a firm link between FSO-4's and GS-14's. In fact, we are unable to find any such statement in their reports. More realistically, the data that they used for their establishment of a link at that level raised some questions.

The Hay Associates responded to those specific questions with a detailed and unequivocal analysis that established a firm GS-14/FSO-4 link. We are very comfortable with the methodology, as confusing and as difficult as it is, in arriving at their findings.

Bill Veale has been studying it intensely over the last year. We are also comfortable with it because the findings conform very closely to the intuitive sense that those of us who are in the Foreign Service have.

For example, an FSO-4 on detail at the Pentagon is likely to do the work of a full colonel. This is the normal level that prevails, both in terms of our relationship with the military and with the Civil Service where FSO's generally find themselves interacting with civil service personnel two or more grades higher on the pay scale.

The association stands for establishment in law of the 10-class system below the senior ranks linked to the GS scale at the points outlined in the Hay study. The legislative history should prescribe that the new class will be at the level of tenured FSO-6. This option best fits the conclusions of the Hay study.

Finally, compensation for the Senior Service means an end to exclusion from hardship pay for ambassadors. With five ambassadors assassinated in the past decade, more than all U.S. generals killed by hostile fire in Vietnam, ambassadors do not deserve this exclusion, which also serves as a cap on the hardship pay for senior officers under them.

Senior personnel are entitled to compensations ranges on a level with the Senior Executive Service. That brought us face to face with an issue which has the Service split right down the middle: Should we swallow our pride and accept a little money in the form of performance pay.

There are a substantial number of officers who feel very strongly that we should not do this. On the other hand, it seems to be the only means now available for providing equitable compensation for our senior ranks. We as an association cannot oppose its enactment.

It is essential that there be guarantees of its protection from political abuse and impartial distribution through the selection boards. We must emphasize, however, that it is not financial incentives but the standard of excellence which has provided our real motivation for superior service.

Madam Chairwoman and Mr. Chairman, if the Foreign Service Act of 1980 contains those three essential principles, we, the American Foreign Service Association, are prepared to give it our active support. We are prepared to work with you and the administration to develop that kind of a bill. We think we can achieve it on the record of our discussions, both with you and your knowledge of our unique problems, and with those of our own management.

Now, I would like to conclude my statement by addressing the question of equal opportunity employment in the Foreign Service. It is clear that the Foreign Service has failed to attract a sufficient number of women and minorities. It is equally clear that in the minds of some of the representatives for these groups, the association which I represent has contributed more to the problem than to its solution.

I want to go on record today as stating the American Foreign Service Association is committed to actively supporting the goal of equal opportunity for all. We are in complete agreement with the explicit application of the principles contained in 5 U.S.C. 2301(b) (1) and (2) to the Foreign Service.

Legislation alone, however, cannot bring about the changes required to produce a fully representative service. Unless by implementing the principles I have outlined, the Foreign Service is made more monetarily attractive for all and flow is restored to the personnel system, we will continue to be disadvantaged in competing with the civil service and private sector for the outstanding women and minorities we need.

Foreign affairs agencies must produce career development programs that will assure the growth of all their Foreign Service personnel to achieve a more open and balanced service in the years ahead.

We, as an association and as individuals, need to undertake our own affirmative action program to broaden the base of our Service by individual recruitment efforts particularly of outstanding women and minorities for the career service. We need to assure that all new entrants to the Foreign Service receive the training and support to launch their careers with a fair chance of competing as equals for promotion to the top of the Service.

In all aspects of Foreign Service life, we need to take affirmative action to eliminate any remaining vestiges of discrimination, either personal or institutional.

As I reminded over 500 colleagues in our address last week, the Foreign Service is too small and too valuable to the Nation to allow ourselves to emphasize differences arising out of artificial specialization categories, agencies, our infamous cone system, sexes, races, staff corps versus officers or union versus management.

We in the Service are now hard at work tearing down those barriers.

We ask your support in reporting out a bill which provides an enduring structure for those efforts.

Thank you.

Mr. FASCELL. Thank you very much, Mr. Bleakley. I want to commend you and your associates and the association for the constructive posture you have taken with regard to this bill, and your willingness to work hard and cooperate in seeing that a proper bill is fashioned.

Mrs. Schroeder.

Mrs. SCHROEDER. Thank you. I want to compliment you also. Let me just ask one question.

I am glad you mentioned your stance toward minority representation and women. I know in your speech of September 18 you said that the area of lateral entry should be a negotiable right.

I am a little skittish about allowing you to negotiate on that because your association has always been attacking lateral entry. Lateral entry has been the only way that the few minorities and women have gotten in, in any kind of numbers.

So tell me how you are going to approach that issue if it becomes a bargainable right.

Mr. BLEAKLEY. On the question of lateral entry, I think you have to begin with the reality of our present situation which is the core of all of our problems. Our system is frozen. We do not have extra space in the higher grades above the entrance level of the service. Any lateral entry literally comes at the cost of a promotion for some other member of the Service.

Since our record on the junior levels is improving rather rapidly, both in terms of minorities and women, it means that when a lateral entrant does come into the system, a promotion is being denied equally to a member of a minority or a woman. It must complicate our efforts to bring in people who are going to be career officers and rise through the system.

Now, how do we get at this problem? We are in a situation right now where we have little alternative but to fight a lateral entry. Instead, if we can get the kind of legislation we are talking about which restores flow to the system, there can be a legitimate place for lateral entry, both to handle specialists and to handle special categories such as minorities and women in the system itself.

It can be made predictable. It doesn't have to come out of the vagaries of the promotion system. If we are allowed to negotiate so that a normal flow can take place, we can strengthen our service in this field without having to have a zero sum game in which every lateral entrant means a denial of a promotion for someone else.

That is one of the reasons we believe that negotiability of this point is essential in order to make sure the system is managed in that fashion.

Mrs. SCHROEDER. Also in this bill we have to deal with your association's right to collect dues from retired Foreign Service officers and high level officers who were not in the bargaining unit. I wonder if these nonbargaining unit people should have any control over policy, since they are having to pay dues.

Mr. BLEAKLEY. That is an agonizing question. As you know, particularly with the retired personnel, we have close to a third of our membership in the retired category. They pay a reduced dues level and they have reduced representation. They have two representatives

on the Board. But they cannot, for example, vote in referenda on issues affecting the bargaining unit per se.

So that both their dues structure and their control over the organization are circumscribed. They seem to be quite comfortable with that, and we are also quite comfortable with it.

Aside from dues, though, our Foreign Service retired personnel are a tremendous asset to us. They are the ones who provide us a lot of the wisdom and the guidance on issues that we don't always have a chance to look at. So it is not so much a question of their controlling us as their being able to provide an extremely valuable input into the system.

You know, the Foreign Service isn't just a career. It is a vocation to most of us. When we retire, unfortunately, the system still cuts off our retired people without very many links back to the organization to which they do feel a vocational tie.

The association attempts to provide that, and I think we both benefit by it.

Mrs. SCHROEDER. Thank you.

Mr. FASCELL. Mr. Buchanan.

Mr. BUCHANAN. Thank you, Mr. Chairman.

I would simply like to join in commending Mr. Bleakley for his testimony and his leadership in this matter. It is good to hear you say we think we can get together on legislation that will be equitable and hopefully solve some of the present problems of the Foreign Service.

No questions, Mr. Chairman.

Mr. FASCELL. Mr. Gray.

Mr. GRAY. Thank you, Mr. Chairman.

Mr. Bleakley, in the final paragraph or so of your statement, you mention affirmative action. You say we as an association, as individuals, need to undertake our own affirmative action program to broaden the base of our service.

What do you mean by your own affirmative action program? Do you have a concept or do you have a proposal for an affirmative action program?

Mr. BLEAKLEY. Mr. Gray, I am now about 2 months into the term of office and can deal with this in terms of concepts which we are working very hard to adopt. Let me try to outline the concept, the directions in which I believe that we as an association can move and the type of dialog that we are now establishing.

First of all, you heard from many representatives of various women and minority groups. I am working directly with them in attempts to establish a type of dialog so that we can get away from the feeling, justified or unjustified, that they have not been fully represented by their association.

So the first step is to listen to and work out with the groups directly concerned what is at the core of their issues, drawing on the same expertise, as I mentioned before when we were talking about retired Foreign Service personnel. That is, those who know the issue first hand.

The second element in this is a recognition that our Service needs to become a much more broad organization if we are to survive. And with that recognition comes a positive commitment, both of the association and its individual members, that we will go on out and make a real effort to do recruiting, something on which I must say I think the Department's record has been rather weak.

Right now there is a study underway being conducted under the chairmanship of Ambassador Philip Habib. We testified before his committee last week and attempted to give them some ideas about directions in which we think we could move in terms of recruitment and in terms of providing the support, particularly during the early years, that is necessary to take personnel who come in via other than the normal selection routes and give them the extra assistance they will need in some areas to exploit the extra strength they bring in others.

So I think what we are really talking about is a concept that puts a lot more emphasis on the individual and on the voluntary efforts of our association. We need to turn around the situation in which we find ourselves where there is an affirmative action plan, much of which we can support and we are supporting, but where our position ends up being that whatever we do not support puts us in an antiaffirmative action bind.

I want to get us out of that situation.

Mr. GRAY. So at this particular point, you do not have an affirmative action program. You just have some directions that you feel might be able to move toward establishing an affirmative action program.

Mr. BLEAKLEY. That is right.

Mr. GRAY. And that they be based on individual recruitment efforts. I also noticed that you use the phrase in that same paragraph, "particularly of outstanding women and minorities." Could you give me some understanding of what you mean by outstanding women and minorities?

Mr. BLEAKLEY. Yes, sir; as we have emphasized, I think, from the beginning, we are in a rather unique situation in the Foreign Service.

Mr. GRAY. I assume you also recruit outstanding males, too.

Mr. BLEAKLEY. Yes, sir; this is exactly the point that I want to get to. I recognize that it sounds elitist when we say what our standard has been since the founding of the Foreign Service. It has been a standard of excellence, and that standard of excellence means precisely that, that everyone we recruit has to be outstanding.

I would like to emphasize here that what we are talking about is going after outstanding people across the board, and not saying that there is a different standard applying to different groups.

Mr. GRAY. I just find it interesting that you use that modifying word there, outstanding women and minorities. I would assume that you would want to recruit outstanding people, period, and not just women and minorities would be outstanding, but everybody in the Foreign Service would be outstanding.

Are you familiar with the Thursday Luncheon Group?

Mr. BLEAKLEY. Yes; I certainly am.

Mr. GRAY. In their testimony before this committee, they stated that a recent study commissioned by the Department of State to evaluate equal employment opportunity—in June of 1977, I think it was completed—left little doubt that there is widespread opposition to equal opportunity among the majority of State Department employees.

Are you familiar with this report? And what is your feeling about the need to include EEO provisions in the new legislation?

Mr. BLEAKLEY. Mr. Gray, I am familiar with the report in general, as Jim Washington has described it to me pretty well. I have not read

it myself. With regard to EEO provisions, as I have stated, we support the inclusion and the specific applicability of the EEO provisions to the Foreign Service.

I must agree with the assumption that there is widespread opposition to EEO. Once again, it is a very difficult concept. I would like to go back to this question about "outstanding."

When I talked about our senior officers accepting performance pay, I mentioned the standard of excellence which applies to them. This is the same context with regard to performance. This is something which I believe is what serves our Nation tremendously well, the amount of dedication and this feeling that there is something special about being a member of the U.S. Foreign Service.

That is why, when we are talking about doing the things that are necessary to make us more representative, we want to make sure that we uphold that same pride and distinction that has been true in the Service from the beginning. And that is where we as individuals and as an association have a real role to play.

Mr. GRAY. Is it your implication that we move toward a more open policy for minorities and women, that somehow inherently lowers the standard? That is not what you are saying, is it?

Mr. BLEAKLEY. Certainly not. Certainly not that it inherently lowers the standard. At the same time, we have to make sure that in moving toward that, we are indeed getting the strongest from throughout our population and not merely filling the quota.

Mr. GRAY. You see, the problem I have when you raise that kind of phraseology is that although I clearly understand and you have clarified what you mean, it raises the specter that somehow to include minority and women, we have to be careful of standards, and therefore that they are somehow going to lower the standards.

It seems to me that one of the things that might happen to the State Department is it will raise the standards. I have been attending these hearings. I have missed a few because of my commitments to other committees like the Budget Committee. I am sorry I wasn't here earlier. We had the second budget resolution.

But in all of the hearings I have been at, I think this is the first woman I have seen sitting at that table. I said the ones I have attended. That is the first woman I have seen sitting at the table. I haven't seen a black here yet or a Hispanic here yet.

So when you start talking about standards and using phrases like outstanding, and particularly when you are talking about bringing in and widening the possibility of opportunity, I am a little concerned and a little disturbed that it implies somehow that the inclusion of those groups or providing for access somehow lowers standards.

Certainly I would be very much interested in getting a position on that, a thought-out one. I understand that you are there only for 2 months now, and I would like to have a thought-out position as to what you think is the way it can be done.

Let me just go to another question. Given the crucial role assigned to selection boards and the resulting effect on the lives of Foreign Service personnel, are there any safeguards that you would recommend to be included in the act to govern the composition of selection boards in an effort to assure that we have outstanding women and minorities?

Mr. BLEAKLEY. It sounds to me like it would be very difficult to get at through legislation, the composition of the selection boards. The effort over recent years has been very strong to make sure that there is a balance on each of the selection boards to assure that minorities and women are given an equal break, and that their particular concerns are reflected.

I don't know how you could actually legislate the composition of selection boards. It goes to more than just picking a person by sex or by race. It goes really to making sure that the people you get are committed to the values of a truly representative Foreign Service, whatever their color or whatever their sex.

Mr. GRAY. Do you know if there are any women who sit on the selection boards?

Ms. DE ROUVILLE. Yes; there are.

Mr. GRAY. How many?

Ms. DE ROUVILLE. I don't know how many. I don't know the exact percentage. Probably about 20 to 30 percent.

Mr. GRAY. How about minorities?

Ms. DE ROUVILLE. There again, about the same number.

Mr. GRAY. I would imagine the selection boards are at various levels, right?

Ms. DE ROUVILLE. Yes.

Mr. GRAY. What about at the upper levels?

Ms. DE ROUVILLE. Pardon?

Mr. GRAY. What about at the upper levels? Are minorities and women represented on the selection boards at the upper levels?

Ms. DE ROUVILLE. Yes; I am talking about across the board.

Mr. GRAY. Most people use the term "Foreign Service" synonymously with the Department of State. We all know that there are indeed several agencies that make up the foreign affairs community and upon whom the implementation of all aspects of U.S. foreign policy is dependent.

In your opinion, how representative is this proposed legislation of the interest and needs of the entire foreign affairs community, would you say?

Mr. BLEAKLEY. I believe it can be made much more representative of the needs of the entire foreign affairs community than it is at present. We have proposed a number of specific changes to the act which will accomplish this. We are talking about utilizing to the maximum extent possible a concept of uniform personnel management so that the Foreign Service is indeed the overseas equivalent of the civil service.

We are talking about doing away with the artificial distinction between this group of FSO's per se and other groups who serve the Nation overseas in equally dedicated and outstanding service. So that we are submitting specific changes which have as their goal the idea of reinvigorating the Foreign Service of the United States as opposed to the Foreign Service of the State Department.

Mr. GRAY. No further questions, Mr. Chairman.

Mr. FASCELL. Mr. Leach.

Mr. LEACH. To shift gears a little bit, you mentioned that the distribution of the bonuses, should be done through the selection boards. Do you think that should be put in the statute itself?

Mr. BLEAKLEY. I believe a section-by-section analysis as presently configured makes a reference to the selection boards as being the vehicle for doing that.

Mr. LEACH. Would you recommend that by statute we address the cone system? Frankly, I am very concerned about using cones in the selection process.

Mr. BLEAKLEY. Mr. Leach, we haven't taken a position on this. I think if I had to give a reaction to it based on consultations that I have had with our colleagues, though we are all unhappy with the cone system, it does not appear to be the type of problem that can be gotten at through legislation.

I think we can get at it in the peripheral or broader context in which it should be addressed by getting into the question of a managed personnel system which addresses the various questions of selection and so on, so that a broad context is established for reviewing the cone system.

But quite frankly, the specialist versus generalist question which is linked so closely with cones is one where I think there is going to have to be a lot more trial and error before we can come up with something that we would be able to recommend being committed to.

I would hope that the committee will be expressing its sentiment in one form or another that we move away from the rigidities of the present system and look at alternative ways of getting across to the whole spectrum of specialists that we need.

Mr. LEACH. One of the things that has always impressed me about the military services, in contrast with almost every other Government agency is the extraordinary amount of advanced-degree training given military officers. It struck me that whereas the State Department has from time to time sent people off for a year, they are not as inclined as the military is to send people to degree granting institutions or degree granting programs.

Would you have any feelings on that issue? Do you think we ought to be moving more in that direction at State?

Mr. BLEAKLEY. Yes, sir; generally, our State university training programs are for 11 months, which is insufficient to obtain a degree. While it is not prohibited to obtain one, it makes it extremely difficult for the officer and removes one of the major incentives for moving ahead on that.

I think one of the reasons for this has to do with a shortage of personnel. While we talk about grade surpluses, as I emphasized in my statement, we are continuing to try to do more and more overseas with less and less people.

Mr. LEACH. Fewer people, you mean.

Mr. BLEAKLEY. Yes.

Mr. LEACH. Let me ask one final question.

One of the issues that has hit Congress in the last few days, that you touched on briefly, is the fact that it looks as if we are going to be losing some 160 positions in the Department of State to the Department of Commerce. I personally have grave doubts that Commerce is really the ideal place for all aspects of the commercial function.

By the same token, it strikes me that State has not done as good a job as they should have. Do you have any suggestions for programs

or ideas that would bolster the commercial function at State, or are you mainly just opposed to the proposed transfer?

Mr. BLEAKLEY. I would answer that by saying both. We are certainly in opposition to the present transfer, and I think you have described the major reason for it: doubts that there is an improvement possible under this proposed legislation or reorganization.

On the other hand, we agree that State has not done an adequate job on this. I believe it has lacked three things. It has lacked resources, the personnel we were talking about, once again. It has lacked the priorities. It has been relegated as a subbureau function within State, and it has lacked a support base back in the United States.

Much of the problem there lies with the Department of Commerce, which has failed to supply the kind of backup that our dedicated people overseas need. The results of all of these is that we have an integrated mechanism overseas in place capable of promoting U.S. trade interests. But, for the reasons I have just outlined, it has not been anywhere near as effective as it could be.

It might be worth considering going from the level of the office director in State, at least to the Assistant Secretary and perhaps the Under Secretary level, in establishing a full-fledged support base with clout and the ability to get the resources that our people overseas, who are undoubtedly the best people to do the job, can then utilize to move us into the 1980's. We are desperately going to need the kind of trade support overseas to move us into that new era with the strongest possible integrated team to represent U.S. trade interests.

So the answer is yes, we believe that State should quickly elevate its support base for our commercial officers.

Mr. LEACH. Are you fearful of the trends that seem to be taking place, that State is losing little bits of ground vis-a-vis other agencies? Is this of grave concern?

Mr. BLEAKLEY. This is a matter of grave concern that we are not just losing a little ground but we are losing a lot of ground. The trend seems to be accelerating. The erosion began a good bit of time ago. This is not a new trend. But there is one organization after another that we already have lost or could lose.

This fragmentation of foreign policy, which I believe Dr. Kissinger addressed very eloquently, should be a matter of concern not just to the Foreign Service, because after all, we are all outstanding and all of us think we can survive somewhere else. But it should be a matter of concern for the Nation because of our foreign policy and our foreign policy apparatus being fragmented by following the trends we see in existence over the last decade.

The United States is going to find it very difficult in an age where we lack the material resources that we once had to secure benefits around the globe for our people. We need to field the best personnel resources that are available throughout our country to get the job done.

When I say personnel resources, I am including the ones we haven't adequately used before, particularly minorities and women. We have got to get all of those groups involved in a major effort to have a cohesive, coordinated personnel structure in place for the difficult days which lie ahead in our foreign policy.

Mr. LEACH. Thank you.

Mr. FASCELL. Do you have any fear that automation will displace memory in decisionmaking?

Mr. BLEAKLEY. No, sir, I do not. I am a real advocate that automation gives you tremendous reach that did not exist before. I am afraid, once again, this is an area where the State Department has been a little bit slow in moving into the latter part of the 20th century.

Mr. FASCELL. It hasn't been your fault; it has been Congress. But it is partly yours.

Mr. BLEAKLEY. Our job is usually to prod our management to ask for more and more, whether it is more people or more money or more tools to do the job effectively. I think that is our responsibility as an organization, and we want them to come on up and ask Congress for the money.

Quite frankly, we don't think that State has over a long period of time taken the vigorous stands that are necessary in these various areas. But in response to your specific question, I myself don't fear automation. I welcome it as a chance for us to do away with and get out from under some of the incredible volumes of paper that are weighing on us all.

Mr. FASCELL. I want to thank you very much and simply say that it has taken 33 years for us to get to this point. With your continued hard work and the willingness of the Secretary, which I think has been abundantly displayed, we might have a chance.

So if we don't want to wait another 33 years, I just want to say keep up your work and your effort.

Mr. BLEAKLEY. We will do that, sir.

Mr. FASCELL. Thank you very much.

Mr. BLEAKLEY. Thank you.

Mr. FASCELL. Secretary Read, Mr. Michel, and Ambassador Barnes.

STATEMENT OF HON. BEN H. READ, UNDER SECRETARY FOR MANAGEMENT, DEPARTMENT OF STATE, ACCOMPANIED BY JAMES H. MICHEL, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE; AND AMBASSADOR HARRY BARNES, DIRECTOR GENERAL, FOREIGN SERVICE, DEPARTMENT OF STATE

Mr. FASCELL. Do you have the right pages turned here?

Mr. MICHEL. Page 125.

Mr. FASCELL. On the four-column side-by-side. We are still in chapter 10?

Mr. MICHEL. Yes, sir.

Mr. FASCELL. We are in the four-column side-by-side.

Mr. MICHEL. Section 1024, resolution of implementation disputes.

Mr. FASCELL. Let's continue to follow the same procedure as we discuss this section.

Mr. MICHEL. This section represents something new in the labor management system of the Foreign Service. The civil service system as set up in the third column contemplates a negotiated grievance procedure between the union and the management of the agency.

Under that negotiated grievance procedure, the union can bring a grievance with respect to problems that the union has or problems that an individual member of the bargaining unit may have. It covers both.

We have in the Foreign Service the statutory grievance procedure in chapter 11 of this bill and the existing 1946 act, with respect to individuals. We didn't have a mechanism for resolving problems that the exclusive representative might have as to whether there has been a breach or a disagreement over the implementation of the agreement between management and the exclusive representative.

If it affected the rights of the individual, the individual could go to the Grievance Board, but if it affected the rights of the organization, they would have to bring an unfair labor practice charge. That was the only way to get at it. That simply is an inadequate way to proceed.

So what we have provided is that there would be in this chapter an opportunity for implementation disputes to be appealed to the Foreign Service Grievances Board, which is the equivalent in our system of the arbitrator who in the civil service system would hear these kinds of implementation disputes.

Then we provide that the Grievance Board decision may be appealed to the Foreign Service Labor Relations Board just as an arbitrator's decision may be appealed in the civil service to the Federal Labor Relations Authority.

So we have tried to build into the system something that parallels the civil service by providing a remedy that was needed to make the system complete, and it didn't exist before.

There is a related aspect to this section in the grievance chapter. That is the role of the exclusive representative in individual grievances. We have had heretofore the right of any individual to bring any grievance to the Grievance Board, and the individual member of the bargaining unit can go to the Grievance Board and seek a result that was totally at variance with the position of the exclusive representative on a matter that had been bargained and negotiated out and agreed to with management.

Chapter 11, then, provides that the exclusive representative will be the one with respect to people in the bargaining unit who may represent the individual before the Grievance Board. As in the civil service where it is only the union that can invoke the arbitration procedures, the exclusive representative has the responsibility for representing the interests of the members of the unit, both through its organizational dealings under chapter 10 and the adjudication of grievances that are not resolved through agency procedures.

So we have tried to make it more parallel to the civil service in that regard. The principal difference is that instead of an arbitrator, we have the Grievance Board, which was described in Mr. Block's testimony a couple of weeks ago. We have a system where the costs of administration are borne by the Department of State rather than shared between the parties to the collective bargaining agreement, which is what happened if you use an arbitrator under civil service.

Mr. FASCELL. So what this section does is lay down the guidelines within which negotiations will take place to establish the procedure.

Mr. MICHEL. Well, this sets out a mechanism for resolving a dispute that arises after agreement has been reached and the dispute is over whether the parties are complying with that agreement. It involves interpretation or alleged breach of the collective bargaining agreement.

Mr. FASCELL. Now summarize the actual steps rather rapidly, starting from the beginning of the process, with an individual who has a

grievance and how that grievance determination is ultimately decided to be or at least interpreted by the exclusive representative as in violation of the actual contract.

Mr. MICHEL. If the Department took an action affecting an individual employee and the union thought that violated the agreement that we had reached, the union could under chapter 10 invoke the negotiated procedures for the resolution of implementation disputes. This is section 1024.

If they went that way, there would be the negotiated procedures to be followed. And if there was no resolution of the dispute, there could be appeals to the Foreign Service Grievance Board. The Board would hear the union's complaint that management was violating the agreement.

Mr. FASCELL. The Board is the ultimate appeal?

Mr. MICHEL. The Grievance Board's judgment can be appealed to the Foreign Service Labor Relations Board, the overseeing body of the whole labor management system, just as an arbitrator's award on an institutional grievance can be appealed.

Mr. FASCELL. So the Grievance Board process is an intermediate decision.

Mr. MICHEL. That is right.

Mr. FASCELL. And the Labor Relations Board is the ultimate decision.

Mr. MICHEL. That is right. Now, the union alternatively could represent the individual going through the individual grievance procedures within the agency, and if it is not resolved, represent the individual in that individual's case before the Grievance Board, which would set a precedent. You would have to take into account how you would treat other people. But it is because of this overlap.

Mr. FASCELL. If I recall that other section, though, there was an option there. That is, the individual could proceed on his own although the exclusive representative would be notified and would have the opportunity to participate.

Mr. MICHEL. No, sir.

Mr. FASCELL. OK. Straighten me out, then.

Mr. MICHEL. The way that we have set up the grievance chapter in this bill is that if you have a member of the unit represented by the exclusive bargaining representative, it is only that representative who can invoke the Grievance Board's jurisdiction.

Mr. FASCELL. What section have I got confused, then, that we discussed at length the other day where we had that question arise, the last section on representation rights. Have I got something confused here?

Mr. MICHEL. Once the union invokes that jurisdiction, then it can agree to share the representation. The employee can have a corepresentative or represent himself.

Mr. FASCELL. Don't you remember I raised the paradox that arises whereby individuals vote to have an exclusive agent represent them, and that exclusive agent represents them, and then they would still have the right to proceed on a grievance procedure on their own.

I raised that question very specifically in the grievance section, wherever that was.

Mr. MICHEL. That is the next chapter. We haven't gotten there yet. I don't remember that.

Mr. FASCELL. Section 1022. Somewhere I remember discussing it. Maybe I have got it all confused. Page 122, my very alert staff tells me.

Mr. MICHEL. Oh, that is in a meeting.

Mr. FASCELL. That is just in a meeting.

Mr. MICHEL. That is a meeting between a management representative and an employee. That is not the grievance part. I remember the discussion now.

Mr. FASCELL. All right. So that is just a meeting, not a formal grievance.

Mr. MICHEL. That is right.

Mr. FASCELL. All right. So that is just a meeting, not a formal meeting and an informal meeting.

Mr. MICHEL. Formal discussions and informal discussions.

Mr. FASCELL. But what I understand now from what you are saying is that as far as the actual grievance is concerned, in the next chapter, the actual start of that would be the responsibility of the exclusive representative.

Mr. MICHEL. To invoke the Grievance Board's jurisdiction if the grievance has not been resolved through agency procedures, through internal agency procedures.

Mr. FASCELL. Right. That answers one of the questions I had when we read that other section. I didn't see how you could have an exclusive representative and at the same time not have one.

Mr. MICHEL. He wasn't exclusive. That is what we are trying to address and correct in the bill.

Mr. FASCELL. I have got that.

Now, procedures by which you will do all of this under the section are to be negotiated within certain guidelines that are laid down here; correct?

Mr. MICHEL. That is right. And if those procedures do not produce agreement on the interpretation or a resolution of the alleged breach of the agreement—

Mr. FASCELL. I gather that the negotiation on procedures will be between management and the exclusive representative.

Mr. MICHEL. For resolving these disputes.

Mr. FASCELL. For resolving these disputes.

Mr. MICHEL. But if they are not resolved—

Mr. FASCELL. I gather then that would be laid out in the rules and regulations or something.

Mr. MICHEL. Or in an agreement; in effect, a contract.

Mr. FASCELL. I see. It could be part of the contract or a whole contract.

Mr. MICHEL. That is right. Or it could be made a matter of regulation endorsed by both sides.

Mr. FASCELL. Or a protocol to the existing agreement. I think I have got that straight in my head.

Any questions? Andy?

Mr. FEINSTEIN. On the question of judicial review from these proceedings, I see you cut off judicial review from those implementation dispute provisions under section 1024.

Mr. MICHEL. That is right.

Mr. FEINSTEIN. However, I assume that most of these, nearly all of them, could also be brought as unfair labor practices.

Mr. MICHEL. We are trying to parallel what is in the judicial review under the Civil Service Act. If you look at that provision on judicial review, you will find an exception to judicial review for grievance adjudication.

Mr. FEINSTEIN. With a double negative following that unless the order involves an unfair labor practice.

Mr. MICHEL. That is right. There is an election of remedies as there is under the Civil Service Reform Act.

Mr. FASCELL. I was going to say it is conceivable that a particular action could be both. The question is, is there an election of remedies? Is that election exclusive?

Mr. MICHEL. No, there is an election of remedies in each case, and you can proceed either way. Once you have proceeded one way, you can't come back and proceed the other way.

Mr. FASCELL. Who says that?

Mr. MICHEL. This is on page 129.

Mr. FASCELL. I just wanted to be sure.

Mr. MICHEL. Under subsection (d) of section 1031 on unfair labor practices.

Mr. FEINSTEIN. Am I correct in saying in both cases there is an election of remedies? The exclusive representative can either go the unfair labor practice route or the implementation dispute route?

Mr. MICHEL. Or if it is an individual's case, they can use the individual grievance procedure where there is judicial review.

Mr. FEINSTEIN. After that process has gone through in the Civil Service Act, if it involved an unfair labor practice or if it was taken through this grievance mechanism, I read that as saying there could be an appeal for judicial review, even if it was brought under the grievance mechanism in section 7123 of the Civil Service Reform Act.

And I read your bill as saying that if that mechanism is chosen, there wouldn't be any judicial review.

Mr. FASCELL. Let me see if I can restate that. Clearly, if there is an election of remedies by going to the resolution of the implementation dispute, with the prohibition of judicial review, it is your interpretation that that election of a remedy forecloses judicial review although if it went the other route, you would have the judicial review. Is that what you are saying?

Mr. FEINSTEIN. Yes.

Mr. FASCELL. Is that inherent in the election of remedies?

Mr. MICHEL. The exception is written in the Civil Service Reform Act. It says, "Unless the order of the arbitrator"—which would be the Foreign Service Grievance Board, in our case—"involves an unfair labor practice under 7118." Now, I am not sure how you know when it involves that. It seems to be a very ambiguous standard for judicial review.

Mr. FASCELL. It is an unfair practice, obviously. I don't know anything about that area of civil service, and I know less about labor law. But the mere fact that you have got an exception which allows you to do that which is basically a factual matter means you have to

decide either at the start or at the end that you have got an unfair labor practice involved and take your chances. You can't wait until you get to the end of the election of one remedy and say, aha, I have suddenly decided I have an unfair labor practice.

Mr. MICHEL. Now I can appeal.

Mr. FASCELL. Now you can do something else. You have to decide, it seems to me, which route you are going to take at the beginning. As Andy points out, it has to be absolutely clear in here that that is what is involved, because you do cut off judicial review.

Mr. MICHEL. By making one election.

Mr. FASCELL. By making that one election. So otherwise, you rely on case law for what is an unfair labor practice, depending on what is defined in this law as to what is an unfair labor practice.

So if the factual situation at the beginning is such that on examination you feel like you have got an unfair labor practice and you want to go that route and you want to protect your right of judicial review, you would go the unfair labor practice route. I mean, is that the theory or the law? That is the main point.

Mr. MICHEL. Among the unfair labor practices that are identified in this bill, it is an unfair labor practice to enforce any rule or regulation which is in conflict with an agreement that was negotiated. Now, it is pretty hard for me to come up with a case of a dispute over the interpretation of an agreement or an alleged breach of the agreement that could not also be said to be the enforcement of a rule or regulation in conflict with an applicable collective bargaining agreement.

So I am left, I must admit, somewhat confused as to what the Civil Service Reform Act is trying to do by saying that you don't have judicial review of an arbitrator's award unless it is an unfair labor practice.

Mr. FASCELL. I don't know what that means either, frankly. It certainly seems to me that it destroys the whole efficacy of the labor system. You never know where you are. Now, I don't want to do that in this law. I want to make clear if we are going to have separate remedies, that the individual or the exclusive representative will have a fair choice, know where they are going, and that we don't have any duplication or confusion.

That language in the Civil Service Act, to me, sounds very confusing unless there is some other law involved or some other part of the statute or some case law which makes that explicitly clear. It seems to me it puts the burden on the arbitrator to determine whether or not it is an unfair labor practice. And you don't know whether that decision is made before or after he gets through with the hearing.

Mr. MICHEL. We will do some more consultations with staff and do more homework ourselves, but as it stands now, I think we may have made an improvement.

Mr. FASCELL. Let's look at that very carefully, then.

Let's go to the next one. We will wait until the second bell, and then we will go answer this rollcall. I don't have any idea what it is on. I know we have the second budget resolution up. This is the Giaimo substitute to the second current resolution on the budget. I see. This is the so-called compromise.

We had better take an informal recess and go vote and try to get back. I gather this is the key vote on this resolution.

[A brief recess was taken.]

Mr. FASCELL. We will resume after that informal recess. Let's move on. We are up to page 126 now, in which unfair labor practices are spelled out.

Is there anything new or unusual about the designations there or the definitions?

Mr. MICHEL. Mr. Chairman, these are drawn very closely from the Civil Service Reform Act, and there is no significant difference in the statement of unfair labor practices between the bill and the Civil Service Reform Act.

Mr. FASCELL. So there is nothing here that would change case law or generally accepted practice.

Mr. MICHEL. I don't believe so. I could point out one technical difference, perhaps, that we provide as an exception to the prohibitions against strikes, work stoppages, or picketing. We say informational picketing in the United States which does not interfere with operations is an exception. We didn't want to have an across-the-board exception that they could picket embassies abroad, for a number of obvious reasons. That is about the only difference.

Mr. FASCELL. OK. Any questions on that?

Now we are up to 1041.

Mr. MICHEL. Section 1041, standards of conduct for labor organizations, is the same.

Mr. FASCELL. Is that boilerplate?

Mr. MICHEL. Yes, sir. It is the same for Foreign Service and the civil service. I think it is all derived from Landrum-Griffin Act standards of conduct for unions in the private sector.

Mr. FASCELL. So there is nothing in there that would cause any eyebrow raising. OK.

Mr. MICHEL. I can't think of anything in that regard.

Mr. FASCELL. I am sure the organization would have alerted us had there been.

Mr. MICHEL. Yes; we would have heard about it.

Mr. FASCELL. OK. Let's go to the administrative provisions.

Mr. MICHEL. The administrative provisions are somewhat more simplified than those in the Civil Service Reform Act, but they are substantively the same. They provide for dues withholding agreements and for the use of official time for the exclusive representative to engage in bargaining and other activities under this chapter.

Mr. FASCELL. OK. That is taken from sections 7115, 7131 of the Civil Service Reform Act.

Mr. MICHEL. Yes, sir.

Mr. FASCELL. You say generally simplified, rewritten, and reorganized.

Mr. MICHEL. That is right.

Mr. FASCELL. How about 7132 of the Civil Service Act? Is that incorporated or is that out?

Mr. MICHEL. That is out. Because we have a smaller, simpler, and more centralized system, we don't have a general counsel specifically designated for the Foreign Service Labor Relations Board. We didn't build in a separate section on subpoena powers, compilation of data and regulations. We built in regulational authority for the Foreign Service Labor Relations Board, and we have a subpoena power for that Board.

On page 115, we have just incorporated into the enumeration of powers of the Board, which is section 1012 of the bill, the authority to issue subpoenas and to adopt regulations. So it is, again, a simplification of the structure. We deal with continuation of existing recognition separately rather than as a part of the codification, which is permanent law. We have dealt with that in the saving clause at the very end of the bill, section 2402.

We provide there that exclusive recognition which preexisted the enactment of this law would continue in effect so that the representation that exists now within the Department of State and AID, by AFSA, and within USICA by AFGE, would continue after the enactment of this legislation, subject to the provisions of new elections provided for in the bill.

Mr. FASCELL. OK, but the authority for the Board to carry out all of this responsibility is carried out in the section on page 115.

Mr. MICHEL. Yes, sir.

Mr. FASCELL. The taking of hearings and the compelling of testimony, the issuing of subpoenas and all of that.

Mr. MICHEL. Yes.

Mr. FASCELL. OK. Any questions?

Mr. FEINSTEIN. On dues withholding, you used the term "person" instead of the term "employee."

Mr. FASCELL. What are you referring to now?

Mr. FEINSTEIN. It is the beginning of the administrative provisions section. In the civil service law, dues withholding is only for employees in the bargaining unit.

Mr. MICHEL. It could be somebody excluded from the bargaining unit, like an official who says I would like to have my dues withheld rather than write them a check every 6 months or whenever they collect their dues. That is the difference. But it takes the individual to elect that.

Mr. FASCELL. All right. I suppose the word "person" is synonymous with the word "employee"?

Mr. MICHEL. It is broader. It includes someone who is a management official and therefore not an employee within the meaning of this chapter. An employee within the meaning of this chapter is someone in that unit.

Mr. FASCELL. That is the reason for the use of the word?

Mr. MICHEL. Yes.

Mr. FASCELL. Any others?

Mr. FEINSTEIN. No.

Mr. FASCELL. All right. Let's switch now and go to the other side by side and take up chapter 11, which starts where?

Mr. MICHEL. Page 135. This chapter is essentially a codification of the existing part J of the 1946 act. We have tried to reorganize it and simplify it a bit and preserve the substance of it. This is one of the areas where we have gone through the language very carefully with the exclusive representative to be sure that we were not changing anything in any substantive way that would have an adverse impact on an individual.

If I may, I would just like to go through and point out a few differences that we have adopted in the course of this codification rather than go through the whole thing line by line.

Mr. FASCELL. Yes; I was just thinking about a Ramseyer print. When we get to that point, we might as well be ready for that because we are just going to have to do it.

Mr. MICHEL. Technically for that purpose, for the committee report, I think you are repealing the existing part J in its entirety and enacting this in its entirety.

Mr. FASCELL. OK. So that won't be any problem.

Mr. MICHEL. I don't think so.

Mr. FASCELL. OK. I would hate to have a Ramseyer print showing every word and every period. It would be impossible.

Mr. MICHEL. Yes, it would. The significant things that I might point out here include the scope of grievance in subsection (c) of section 1101 on page 137. Under the existing law, the scope of grievance may be narrowed. This appears at the bottom of page 136. It says, "other matters not specified may be excluded on the written agreement of the agencies and exclusive representative."

Now, what we have done is make it go either way.

Mr. FASCELL. Excuse me. Oh, you are reading from the whole law.

Mr. MICHEL. Yes, sir. In subsection (c) on the following page, we have provided a formation that simply says, "The scope of grievances may be modified by written agreement." This makes it more of a negotiated grievance process.

I would like to point out specifically on the record that we have made the time limit for filing a grievance applicable to grievances concerning former members at the beginning of section 1102. The court of appeals just found that the existing law did not prevent someone separated in 1944 from bringing his grievance, and we think that the 3-year statute of limitations is more than adequate for grievances to be settled administratively.

Mr. FASCELL. It seems to me it is.

Andy?

Mr. FEINSTEIN. The head of the grievance board suggested to us he thought there were some problems in the drafting of the definition of former member.

Mr. MICHEL. He was wondering if there might be situations where the former members should be allowed to file a grievance about a separation. I guess where we came out on that after considering the issue at an earlier stage was that nothing happens so fast in the separation of employees that deprives the individual of the opportunity to get to the Grievance Board and file his grievance before going off the rolls.

So we have limited the former member to a claim of loss of financial benefit. Someone can go off the rolls and later say, "Hey, I didn't get my allowance, "My pay wasn't properly computed."

Mr. FASCELL. Of course, everything else can be dealt with while he is an employee.

Mr. MICHEL. That is correct. I think that is consistent with civil service and with the private sector generally, that you don't use the negotiated or the internal grievance procedure for resolving disputes of people who don't work there any more.

Mr. FASCELL. Any other questions, Mr. Feinstein?

Ms. Schlundt.

Ms. SCHLUNDT. Mr. Michel, in an earlier draft of this bill, section 1102 specified that a former member of the Service could present a grievance with respect to allegations described in paragraph 1 or 7. Why did you delete that?

Mr. MICHEL. That is what I was just addressing, that the concept of separation was thought to be—the thought was why should you keep somebody on the rolls to let him file a grievance? Let their separation become effective and let them bring their grievance after they are off the rolls.

As we thought about it some more, we concluded that nobody goes off the rolls that fast and that they will have an opportunity before they go off the rolls to file their grievance.

Mr. FASCELL. It also solved the question that was raised as to whether or not by termination you became a former member and therefore limited your rights in some fashion, limited only to the rights of a former member. The answer you are giving is that this section does not do that, for obvious reasons.

Mr. MICHEL. That is correct.

Mr. FASCELL. OK. Let's go on.

Mr. MICHEL. The other significant change we have already discussed, that is, the exclusive representative's role with the Grievance Board.

Mr. FASCELL. Otherwise, all of that is recodification.

Mr. MICHEL. This is recodification until the very end. We have a new issue raised by the Civil Service Reform Act because the existing law provided if there was a statutory procedure for disposing of an issue, it was the exclusive remedy and you couldn't use the grievance system.

At that time, there simply was no occasion for title 5 procedures to apply to the Foreign Service, but the Civil Service Reform Act provides that there are certain kinds of activities that would be within the jurisdiction of the Merit System Protection Board by law that had heretofore been within the jurisdiction of the Grievance Board.

That change in the Civil Service Reform Act, in effect, narrowed the jurisdiction of the Grievance Board. So we provided in section 1131(b) at the top of page 148, with respect to a matter arising out of chapter 12 of Title 5, United States Code—

Mr. FASCELL. Which is?

Mr. MICHEL. At the top of page 148.

Mr. FASCELL. What is chapter 12, title 5?

Mr. MICHEL. That is the jurisdiction of the Merit System Protection Board. We have provided an election of remedies for the individual members of the Foreign Service so they can, if they wish, still bring their case to the Foreign Service Grievance Board, even though it might involve a prohibited personnel practice, for example, that would also be within the jurisdiction of the Merit System Protection Board.

Our assumption is that most members of the Foreign Service, knowing this system, would prefer to go to the Foreign Service Grievance Board than to go to the Merit System Protection Board, which is a body they don't know about.

Mr. FASCELL. Let me ask you: What part of the law gives an individual in the Foreign Service community the option to go the merit system route?

Mr. MICHEL. It is the opportunity to bring to the Merit System Protection Board a matter falling within its jurisdiction.

Mr. FASCELL. In other words, the individual has an election by law.

Mr. MICHEL. That is right.

Mr. FASCELL. Do you want to read that reference in chapter 12, title 5, so that I can get a little better understanding of what the Merit System Protection Board right is?

Mr. MICHEL. Section 1205 of title 5 provides that the Merit System Protection Board shall hear and adjudicate matters within the jurisdiction of the Board under that title. Now, that includes—

Mr. FASCELL. That is an unusual statement of law, since that is what their purpose is.

Mr. MICHEL. That includes matters which are, for example, the prohibited personnel practices in title I.

Mr. FASCELL. So title I spells out the jurisdictional area of the Merit System Protection Board. Section 1205 says that is what the jurisdiction is.

Mr. MICHEL. They have, for example, a position concerning pay, benefits, or awards, concerning education or training.

Mr. FASCELL. Let's get to the definition of coverage. Who is covered under that act—everybody?

Mr. MICHEL. The Foreign Service is not exempted from title I.

Mr. FASCELL. But everybody in the Government is covered under that act.

Mr. MICHEL. That is correct. Now, my understanding of the Civil Service Reform Act is that if there is a negotiated grievance procedure providing for an arbitrator, that procedure may be invoked. And we are providing a comparable election of remedies here to the equivalent body, the Grievance Board, like the arbitrator in the civil service, so that the individual can elect, rather than go to the Merit System Protection Board, to go to the Grievance Board. If they prefer, they can go to the Merit System Protection Board, but if they do, then they can't come back to the Grievance Board. They get only one shot at it.

Mr. FASCELL. I don't see any problem with that. We can't change chapter 12 of title 5.

Mr. MICHEL. We didn't want to.

Mr. FASCELL. Not in this law. I doubt if we ever get it changed, anyway. So the only sensible approach, then, is to provide for the election.

Explain to me now about the judicial review referred to in this chapter as against the prohibition of judicial review in the other chapter, and the relationship between the two. I think you have done it already but I just wanted to go over it one more time.

Mr. MICHEL. This chapter retains the provision for judicial review that was in the existing law.

Mr. FASCELL. We are talking about the grievance chapter now.

Mr. MICHEL. That is right. Under the 1946 act, the aggrieved party may obtain judicial review in the district court after a grievance decision has been rendered.

Mr. FASCELL. And that is retained in this law.

Mr. MICHEL. That is retained. That is a somewhat broader right of judicial review than exists for individual grievances in the civil service law. In the civil service law, there is judicial review from an arbi-

trator's decision only on performance evaluation questions, and separation.

Mr. FASCELL. This section makes it operative for any grievance?

Mr. MICHEL. On any grievance. The question for us in preparing the draft was whether we should diminish the scope of judicial review that was in the law.

Mr. FASCELL. That was already in the law, and makes it conform with the civil service.

Mr. MICHEL. And we thought not.

Mr. FASCELL. Mr. Feinstein.

Mr. FEINSTEIN. Do you have data on how many of these have been appealed—how many grievances?

Mr. MICHEL. Decisions appealed to the district court? We have an estimate of two.

Mr. FEINSTEIN. Do you know whether those were cases involving matters which would have been appealable under the appeals procedure of the Civil Service Reform Act?

Mr. MICHEL. Since I didn't know the cases, I don't know what the subject of them was. We would have to supply something to you on that because we don't know. There haven't been very many.

Mr. FASCELL. In any event, my immediate reaction is that I don't think you ought to restrict the appellate rights that have already existed in law—notwithstanding that you have a specific limitation in the Civil Service Reform Act, since actual practice indicates you haven't had that much trouble.

Mr. MICHEL. That is right.

Mr. FASCELL. I don't know how the organization feels about that, but obviously they looked at this and concur with leaving it like it is.

Mr. MICHEL. I don't think they would favor narrowing the judicial review.

Mr. FASCELL. I can't see any reason to restrict it just for the sake of uniformity.

Let's go to chapter 12.

Mr. MICHEL. Chapter 12 is the final chapter of the Foreign Service Act of 1979 and pulls together the administration of these various substantive authorities that we have been discussing through the course of the hearings. It provides a strong mandate for compatibility in the administration of the Foreign Service with the administration of the Civil Service.

Mr. FASCELL. That is the reason for 1201.

Mr. MICHEL. Yes, sir.

Mr. FASCELL. Who has the responsibility in Government for that kind of thing? Is that OMB now, or is that the Civil Service independent of them, or what?

Mr. MICHEL. This is a function that we think will be carried out through the consultative process.

Mr. FASCELL. Not through an OMB circular letter?

Mr. MICHEL. No, sir. And we think the Board of the Foreign Service will play some role in this because it is made up of representatives of the agencies using the Foreign Service personnel system. And also the

Office of Personnel Management and the Office of Management and Budget.

Mr. FASCELL. So you see the Civil Service people or Foreign Service people and OMB working out what is desirable here in terms of policy.

Mr. MICHEL. Compatibility, we call it in the bill.

Mr. FASCELL. All right.

Mr. MICHEL. Section 1202 has to do with compatibility in the retirement system. This is the same as existing law. It is just that we didn't have a compatibility chapter before. So it had been in the retirement chapter. We have put it here with the other compatibility provisions.

Mr. FASCELL. So this is simply a question of lifting it out and putting it in the proper place.

Mr. MICHEL. Yes, sir.

Mr. FASCELL. There are no substantive changes.

Mr. MICHEL. No, there is none.

Mr. FASCELL. How about 1203?

Mr. MICHEL. Section 1203 directs that the Service be administered, to the extent practicable, in a way that insures maximum compatibility among the agencies using this Foreign Service personnel system.

Mr. FASCELL. What policy statement? And that is what it is, right? It is a policy directive.

Mr. MICHEL. A policy directive by the Congress that states IDCA and ICA should get together and operate the Foreign Service system to the maximum extent possible in a compatible way.

Mr. FASCELL. How does the Peace Corps fit in here?

Mr. MICHEL. The Peace Corps is one of those agencies that does use the Foreign Service personnel system and would be within this injunction of compatibility.

Mr. FASCELL. I see. We are going to hear from Mr. Celeste. He is the only one we haven't heard from so far. We will be hearing him next week or the week after.

Mr. MICHEL. To foster that objective of compatibility, there is authority in section 1204 for consolidated and uniform administration. This is not an ironclad directive that says there shall be one personnel office for all the agencies, but it is encouragement to maintain uniformity.

We have a number of joint regulations on subjects such as travel. We couldn't have three sets of travel regulations providing different rules for Foreign Service people.

Mr. FASCELL. I gather that the efforts and the direction under 1204 would be subject to the same injunctions with respect to a mechanism that would be used in section 1201. You directed a mechanism be established to do this, and you leave it open as to whether it is going to be an interagency committee, a consultative process, an individual or whatever.

Mr. MICHEL. Probably a variety of means would be used. We have existing mechanisms on joint regulations.

Mr. FASCELL. Whatever you do on uniformity, in other words you say you have a variety of mechanisms.

Mr. MICHEL. I think we would maintain a joint regulation staff trying to come up with common regulations. We would have the Board of the Foreign Service for considering among agency representatives

policy questions where there could be uniformity and how you get there. And there would be ad hoc consultations.

Mr. FASCELL. OK.

Mr. MICHEL. Section 1205 identifies functions throughout the bill where some central authority is needed. We have put these authorities exclusively in the Secretary of State to the exclusion of the other agencies that are authorized to use the system.

The list, I think, is self-explanatory. It indicates some things where there has to be one person who does this rather than three or four people who do it.

Mr. FASCELL. The Director General and the Inspector General. What are those definitions? That applies to all agencies using the Foreign Service system?

Mr. MICHEL. No. This means that the Director General, provided for by section 204 of this bill, and the Inspector General of the Foreign Service, provided for in section 205, reports to the Secretary of State.

Mr. FASCELL. I understand that. But I am trying to refresh my memory on the law or whatever to establish those positions. Are they exclusive to the Department of State?

Mr. MICHEL. They are not identified as being in the Department of State. They are in the Foreign Service. But the functions of the Inspector General include the inspection of posts abroad, which involves an interagency aspect. He also inspects the Department of State, and not the other agencies.

The other agencies have their auditors and their own inspectors.

Mr. FASCELL. They have their own auditors and inspectors, each agency which would utilize the system.

Mr. MICHEL. Yes. And the Inspector General of the Foreign Service is not intended to supplant those offices.

Mr. FASCELL. Let me ask you again: Why do you need a specific reference to the responsibility of the Secretary? Is there some question or doubt as to whether or not the Secretary really has supervision and responsibility for the Director General and the Inspector General in the State Department?

Mr. MICHEL. It is a clarification that we thought was desirable to avoid a construction of the statute where there could be some confusion. We have provided that references to the Secretary General include references to the other agency heads.

Now, logically, this is one where that wouldn't make sense. We thought it better to be explicit in the bill rather than have any question about it.

Mr. FASCELL. Under the bill, the Inspector General is a Presidential appointee.

Mr. MICHEL. Yes, and confirmed by the Senate.

Mr. FASCELL. With confirmation by the Senate. And his term of office is?

Mr. MICHEL. An unspecified term.

Mr. FASCELL. That would be up to the President?

Mr. MICHEL. Yes. And he must be a career member of the Foreign Service.

Mr. FASCELL. OK. Have you had a chance to examine the Inspector General Act as it applied to the other 12 agencies?

Mr. READ. We have not since the hearing just a few days ago of the Brooks committee, Mr. Chairman.

Mr. FASCELL. I just wondered what the relationship in that bill is with respect to the Inspector General and the head of the agency for which he is inspecting. It would have to be the same as this or it wouldn't have any meaning.

I raised that question myself the other day in the hearings before Government Operations. I wouldn't want an Inspector General who was so independent he was not subject to the Secretary's control.

Mr. MICHEL. We have provided for this office of Inspector General in chapter 2 of the bill, which establishes the management of the Foreign Service. We see the Inspector General as a very integral part of the management of the Service under the direction of the Secretary of State.

Mr. FASCELL. Well, because the question has arisen, I don't know whether we have got it put away yet or not as to whether or not we simply ought not to lift the Inspector General out of here and put him in to the 1978 act concerning Inspectors General. I don't really see any reason to do that.

Obviously, the thought is there by somebody. I don't know who it is. I read that GAO report. I don't recall off the top of my head that they made the specific recommendation to do that.

Mr. READ. I believe they did, but it was in the oral report, not the written report, of 1978.

Mr. FASCELL. I see. It was in the oral presentation that they made that statement. In the report itself, they simply suggested the independence by Presidential appointment and Senate confirmation, and this bill does that.

Thank you.

All right, let's go to the next one.

Mr. MICHEL. That is the end of title I of the bill. In title II, we have a transition chapter, chapter 1, that provides for conversion to the new categories and pay structures that are established in title I.

Section 2101 provides basically that below the Senior Foreign Service level, that there will be an automatic conversion of individuals in the career service to the appropriate category of Foreign Service or Foreign Service officer made by the Secretary of State after the enactment of this bill.

We have a problem here of identifying those people who are not truly of the Foreign Service but are in the Foreign Service with limited or not-existent availability for worldwide assignment. Those persons would be offered an opportunity to convert into the regular Foreign Service only if there is a certification of need for them in the Foreign Service and if they accept the obligation that will now be a part of the conditions of employment, worldwide availability.

We would hope that some of these people would be willing to accept these conditions and that we would find needs for them and convert them.

Mr. FASCELL. How can you do that when there are no slots?

Mr. MICHEL. It will be limited, and there will be some where that just won't be possible.

Mr. FASCELL. In other words, it depends on the attrition rate between now and the time you implement the bill.

Mr. MICHEL. And it probably depends on occupational category.

Mr. FASCELL. I see. It doesn't look to me that OMB is going to have any latitude going into 1982, none whatever. I don't see any relief in Congress, frankly. The way politics is going right now, everybody is rushing to see if they can get to minus zero. As far as I can tell, that means no real dollars. That means further limitations on personnel because we are fast getting Congress to the position where, in the appropriation bills, there is a limitation on personnel.

They will be fixed. So that means that will give rise to disputes between OMB and the Appropriations Committee. They are going to have the final say because they are going to appropriate the money. They are already doing that. So I expect in the sheer dynamics of the process, they are going to keep on doing that.

I don't mean to paint a pessimistic picture here, but in real dollar terms, we are going to be below 1967, and that is going to be for some time until a whole host of things straighten out. I don't think people have any illusions in the Department or in the Foreign Service community. They are pretty well aware of what is going on. I think we are just going to have to live with it the best way we can in the struggle for the allocation of funds. It is a tough and bitter fight.

I think State has done extremely well even though it is the smallest agency with a very limited budget. This means it is going to be more difficult. As far as our committee is concerned, of course, we will continue to try to be of whatever assistance we can in the years ahead on this matter.

In any event, until such time as we see some openings, it would be useful to have good basic law and procedures upon which the personnel we have will be able to operate.

Let's go on to the next one.

Mr. MICHEL. Section 2102 concerns conversion into the Senior Foreign Service. What we provided here is that those who are now serving at the class 2 or above may elect within 120 days after enactment to come into the Senior Foreign Service, and they are entitled to appointment if they make an application in that timeframe.

Mr. FASCELL. In other words, those who are eligible have 120 days to decide whether they want to take a shot at it.

Mr. MICHEL. And come in.

Mr. FASCELL. What happens at the end of 120 days. That right is lost?

Mr. MICHEL. That is right.

Mr. FASCELL. What happens if they elect that right and they go into the competition and they are not selected?

Mr. MICHEL. They are in. It is sort of like Senior Executive Service. If you are there at the time it is created, you have the right to come in.

Mr. FASCELL. So it is simply a question of applying and deciding what your status is going to be.

Mr. MICHEL. That is right. There is, again, the exclusion for those who are not worldwide available. They get in, again, if there is a certification of need and they commit themselves to worldwide availability.

Mr. FASCELL. Excuse me right there.

Mr. Feinstein.

Mr. FEINSTEIN. On that question of certification of need, is that an individual determination as to whether that person is qualified for the Senior Foreign Service or would that be more general?

Mr. MICHEL. It is a combination of qualifications and their skills.

Mr. READ. I think the simplest way of phrasing it is in some cases there are counterpart jobs and positions available abroad, and in some cases there are not. Some people who were persuaded to take on Foreign Service status did so with the foreknowledge that there were no such positions abroad.

In that case, we would find that they would not meet that certification. It is that sort of individual analysis that is going to have to take place.

Mr. FEINSTEIN. That is analysis based on individual qualifications.

Mr. READ. Correct.

Mr. FEINSTEIN. Would it be performance based analysis, whether this individual has been performing up to the standards, the type of determination which would be made for subsequent entry into the Senior Foreign Service?

Mr. READ. No; it is not a performance evaluation, a new or special type of performance evaluation. It is strictly an analysis of whether there is need for that particular occupational skill code category in overseas positions. That would be the first and foremost consideration.

Mr. FASCELL. How about explaining to me, since I don't understand it, the problem with an individual who accepts the commitment for worldwide service when there are no slots. If there are no slots, there is obviously no need.

Mr. READ. This is part of the fallout, Mr. Chairman, of the effort to go toward a unified single service in the early 1970's. People were induced to take on Foreign Service status and very strongly encouraged to do so if they undertook minimal obligations. But in many cases, they could assert availability for overseas service knowing that there was no counterpart position abroad in which they could serve or were qualified to serve.

So we have ended up with this anomalous category of several hundred persons who have never and will never serve abroad.

Mr. FASCELL. Let me take that one step further. Say I am one of those people. Slots do open up. I believe there is a need. Is there any time limit as to when I can get into this business?

Mr. MICHEL. We have a 3-year—

Mr. FASCELL. The slot doesn't open up in 3 years?

Mr. MICHEL. We have a transition period.

Mr. FASCELL. That is what this chapter does. It gives those folks 3 years and an opportunity to come in, whether it is an expanded service with slots or attrition or whatever.

Mr. MICHEL. I am sure we have historians in the Historical Office who are in the Foreign Service. There is never going to be a slot overseas for an historian.

Mr. READ. Or lawyers in the Legal Adviser's Office. [Laughter.]

Mr. BARNES. To give you an area, we have 40-some categories of specialists, and we calculate that will be reduced to 17 because essentially those categories are types of occupations in which we need people only in the United States and not abroad.

Mr. FASCELL. OK, thank you.

Let's go on.

Mr. MICHEL. Section 2103 deals with those people who have been identified as not worldwide available and with respect to whom either there is no need for their service or they are unwilling to accept the obligation to serve.

Mr. FASCELL. I have lost 2103. Is there another page?

Mr. MICHEL. Page 157.

Mr. FASCELL. My staff is going to furnish me with page 157.

Ms. MANN wants to ask a question.

Ms. MANN. How are you interpreting worldwide availability?

Mr. BARNES. Essentially, in terms of the willingness to serve overseas.

Mr. FASCELL. Anywhere in the world, you had better say.

Mr. BARNES. Where needed.

Ms. MANN. Throughout their career? In other words, would you still expect an officer to be available to serve in Bujumbura or someplace like that?

Mr. BARNES. Yes, unless something intervenes which limits their ability, say the advent of a medical condition which would make it impossible to serve at high altitude.

Mr. FASCELL. OK. Let's discuss 2103.

Mr. MICHEL. 2103 deals with these individuals who have not converted because they are not worldwide or there is no job for them in the Foreign Service. This provides a 3-year period during which and by the end of which they are converted into the civil service or into the Senior Executive Service if they are at the appropriate level and meet the qualifications for Senior Executive Service.

There is a special provision for the International Communication Agency because of their existing collective bargaining agreement, which defers this until 1981. Section 2104 provides for the preservation of benefits of the individuals in this entire process of conversion, either within the Foreign Service or from Foreign Service to civil service.

It provides that they convert to the step and grade most comparable to the one at which they are serving, but nobody loses money as a result of conversion. It provides that the individuals who convert to the civil service who have been members of the Foreign Service Retirement System may elect to retain that participation in the Foreign Service Retirement System within 120 days after their conversion.

Now, this provision simply recognizes that these people are in the Foreign Service Retirement System now, and we chose in drafting this bill not to try to take those retirement benefits away from them, but rather to give them an election to move the civil service retirement if they wish to.

Mr. FEINSTEIN. In this conversion from Foreign Service to civil service, it is conceivable that you are going to have classification problems. The person might end up in a job which is overgraded or undergraded as a result of that conversion. Would it then be your assumption that if the correction of that classification were to take place, the ordinary provisions for saved pay and grade, would be applicable?

Mr. MICHEL. These people have a sort of personal rank even though they have converted into a rank-in-job system. There is a provision in here on the preservation of rights. OPM has agreed with us that we should have in effect a permanent grade, say grade A, for individuals who are caught up in this situation.

It would be a bit unfair to someone now in the Foreign Service, serving in a job in the United States, to say, "now you are in the civil service and we are going to look at your job and see if it is really worth the salary you have been earning," and come in with a desk audit and reduce the rank and reduce the pay while they are sitting there doing the same thing they were doing yesterday.

Mr. FEINSTEIN. This is a permanent preservation of pay and grade?

Mr. MICHEL. Certainly while they are serving within the same job.

Mr. BARNES. If they were to move voluntarily to another job, then that would not continue.

Mr. FEINSTEIN. Then that position would be audited and reclassified, probably.

Mr. MICHEL. To be filled, you would classify that position appropriately. If there is some disparity, then you would fill the position that way.

Mr. FASCELL. None of the practices and none of the laws contemplate a cut in pay for anybody anyway. The only election you have got is termination. So preservation is not an unusual question.

Mr. MICHEL. No.

Mr. FASCELL. It has its basis in equity. I don't know about the other principles, whether or not that is equitable, but I am not here to debate that anyway. We will look at the technical stuff in chapter 2, and if we have any questions on that, we will get with you on it.

For right now, since we have concluded the substantive provisions of this bill, I want to thank you, Mr. Secretary and Mr. Barnes and Mr. Michel, for all of the cooperation you have given us, and for your patience and the expertise which you have in dealing with this bill. It is obvious that all of you have spent a great deal of time and effort in the Department to come up with this proposal, and I congratulate you.

Mr. READ. The Secretary shares our feeling of a great appreciation of the committee and the staff. I don't know of any other group on the Hill who would have borne with us so patiently and so consistently.

Mr. FASCELL. That is one of the reasons why nothing has been done for 30 years. [Laughter.]

Mr. READ. Exactly.

Mr. FASCELL. We are anxious to see if we can't make an improvement. We look forward to a continuation. We have one more hearing, and we are going to hear the Director of the Peace Corps, Mr. Celeste. In the meantime, we will be working with you on drafting problems and look forward to hearing about your continued discussions with the American Foreign Service Association as well as other groups.

We will put together a proposal in which we will consider every comment that has come to us from groups and individuals. We will seek to dispose of every comment and suggestion in some fashion as we proceed with the markup of this bill. So wish us luck. We have only been at this several weeks now. It feels like several months. The hardest part of it is still before us.

Thank you very much.

The subcommittee stands adjourned, subject to the call of the Chair. [Whereupon, at 1:35 p.m., the subcommittees adjourned.]

THE FOREIGN SERVICE ACT

TUESDAY, OCTOBER 16, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
AND
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittees met at 11 a.m. in room 2255, Rayburn House Office Building, Hon. Dante B. Fascell (chairman of the Subcommittee on International Operations) presiding.

Mr. FASCELL. The subcommittees will come to order, peacefully, I hope.

Today marks the last day of our hearings. You have an unusual distinction, Mr. Celeste, and we are delighted to have you here as our only witness this morning to conclude the hearings. You are accompanied, I see, by your General Counsel, Jonathan Marks, and your Director of Management, Nancy Kingsbury. I know that you have a statement, so why don't you just go right ahead?

**STATEMENT OF RICHARD F. CELESTE, DIRECTOR, PEACE CORPS,
ACCOMPANIED BY JONATHAN MARKS, GENERAL COUNSEL, AND
NANCY KINGSBURY, DIRECTOR OF MANAGEMENT**

Mr. CELESTE. Mr. Chairman, Madam Chairman and others, I appreciate the opportunity of being in what is an unusual position for the Peace Corps in bringing up the rear. I am sure that you are happy that this marks the last day of your hearings.

Let me highlight, if I may, the testimony, rather than reading it through, since you have it.

Mr. FASCELL. Without objection, all the testimony will be put in the record and Mr. Celeste will be awarded the Blue Medal of Distinction. You may summarize.

Mr. CELESTE. For the early years of the Peace Corps we operated in a dual personnel system with our overseas employees who were hired under the Foreign Service Act and Washington headquarters personnel under the standard civil service general schedule.

But in 1965, the Peace Corps proposed and the Congress strongly supported amendments to the Peace Corps Act that provided a unified Peace Corps personnel system which was based entirely on the Foreign Service authority.

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In the reports on one of the committees talking about those 1965 changes, they said they were aimed at placing the Peace Corps in essentially the same position as that of the volunteer in the sense that the staff was serving for a limited period of time and then moving on to the same opportunity of service to others.

The application of the Foreign Service Act authorities to Washington staff would permit a constant inflow of new blood and ideas by allowing administrative flexibility which is not possible under the restrictions of the civil service system.

Our unified system was complicated a bit in 1971 when the Peace Corps was folded into ACTION, but I still feel strongly that that Foreign Service Act-based unified and non-career-personnel system is one that has worked very well. It has allowed a great deal of flexibility. It has allowed us to attract staff, and to be open to returning volunteers as they have come back to work at the Peace Corps.

In considering the Peace Corps personnel system and how it bears on the proposals for reform, I think it useful to keep in mind the difference between the Peace Corps staff and the more traditional Foreign Service, and I will underscore why I speak of our personnel system as based upon the Foreign Service Act.

Peace Corps staff members are not and have never been treated as members of the career Foreign Service, or even for that matter as traditional limited term Foreign Service employees. Let me give you some examples. Peace Corps personnel overseas do not receive cost of living or hardship differentials. They do not receive PX or commissary privileges. They don't receive the usual Foreign Service fringe benefits. They receive lower housing allowances, in keeping with the notion that Peace Corps personnel are to live modestly as local people live. In fact, they come under the civil service retirement system rather than the Foreign Service.

Similarly, Peace Corps Washington employees receive only the standard benefits of other Government employees and not the usual benefits normally available to members of the Foreign Service.

So in effect, what the Congress created by its amendments to the Peace Corps Act of 1965 was a unique Peace Corps personnel system which was unified in that it is based completely on the Foreign Service appointing authority but unique in its character of a limited term and the opportunity to provide distinctions. The Peace Corps clearly maintains an independence from the day-to-day conduct of our foreign policy.

You are familiar with the joint cable from the Secretary of State and the Director of ACTION, which was sent out to the chiefs of mission in March 1978, which emphasized the importance of the Peace Corps having maximum feasible autonomy from the Foreign Service affairs activities. Yet, in the administrative arena, while maintaining that arm's length relationship, we have made a point of collaborating and cooperating where it would be appropriate and it makes sense.

For example, in virtually every country we have joint administrative support. Similarly, we really do use the personnel authorities based upon the Foreign Service Act, and we find that substantial benefits, not merely in basing the Peace Corps personnel system on the Foreign Service Act but also in choosing, in many instances, to

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adopt personnel practices and policies which are identical to or similar to those of other foreign affairs agencies.

In many areas, the Peace Corps benefits from basing its personnel practices upon those promulgated by the Department of State, as in the Foreign Service Personnel Manual, which is relied upon heavily by our Peace Corps staff.

So in looking at the Foreign Service Act of 1979 and the proposed changes contained therein, the question I have in mind is can we accommodate what seems to me to be the central thrust of Congress in 1965 in maintaining the essential attributes of the Peace Corps personnel system that has distinctive needs, and accommodate changes which in my view are very important and positive within the context of the Foreign Service Act?

I have concluded on the basis of our own analysis and conversations with those concerned at the Department of State and Office of Management and Budget and so on that the changes proposed would not substantially affect the operations of the Peace Corps. And I think that to the extent changes are required, they are changes which we would wholeheartedly support, for example simplifying the Peace Corps pay system by bringing all Foreign Service employees within the same pay scale and eliminating the distinctions between FSR and FSS. That is an important and welcome change.

The act would not make a substantive change between the Peace Corps and the Department of State in its relationship on personnel matters. Those sections, 202 and 2106, which bear on this, affirm the independence of the Peace Corps Director from the Secretary of State in administering the act as it applies to the Peace Corps for its personnel purposes subject to the important requirement of consultation. And that, in my judgment, should always be the case.

In effect, what happens, as I understand the legislation over the past 15 years, the Peace Corps Director has the authority to make partial use of the Foreign Service Act, not adopting where they are irrelevant to the Peace Corps provisions relating to retirement and things of that kind. But the Peace Corps Director does not have the authority to be selective in the sense of doing things that would be contrary to the provisions, the requirements of the act.

So the question for the Peace Corps is whether the act's provisions require the agency to make changes in its present personnel policies and practices which would be detrimental to its operations. I guess to me the most important question is whether the act requires the Peace Corps to modify the unitary non-career-personnel system which is based upon the Foreign Service Act authorities which the Congress mandated in 1965. I am pleased that I have been able to reach the conclusion that this is not necessary.

The central principle behind the act's revisions has been to make a clear distinction between two classes of career employees in the Department of State and other foreign affairs agencies, those who are obligated to serve abroad and those for whom there is a clear expectation that their service will be based here in Washington or domestically.

Now, as I understand it, while the act in section 531 obligates career personnel to serve abroad, as now written it imposes no such positive obligation on limited term and temporary personnel appointed under

the authority of section 331. I understand that the Department of State intends to seek a change in the present draft of the act to extend that obligation also to limited and temporary personnel as well.

With that modification I guess would come the question of whether Peace Corps staff, since they are of limited term, whether it would be appropriate for the Peace Corps to continue to use the act's authorities to appoint all its employees who begin their work with Peace Corps in Washington, irrespective of whether it could be said with certainty that such employees would serve abroad during their 5 years of working with the Peace Corps.

In this regard, certain other provisions of the act are instructive. Sections 2101 to 2103 provide the standards for deciding whether a particular person should retain their appointments under the act's new Foreign Service authorities or be converted to a general schedule Civil Service appointment. Those standards provide that the test for retention in the Foreign Service should be the individual's availability for worldwide assignment. Employees initially determined not to be available for worldwide assignment may be retained in the Foreign Service if they accept in writing such an obligation.

Accordingly, once the act is passed, the Peace Corps intends to require that all new employees, wherever they are assigned initially, affirm in writing and as a condition of their limited term employment with the Peace Corps, their willingness to accept a temporary or permanent assignment to any Peace Corps post. The same condition would be required of present Peace Corps employees who sought a renewal of their contracts. Normally it is 30 months and a renewal for another 30 months.

Because of the limited number of American Peace Corps staff serving overseas at any time and because of the limited term of their appointment, it may well be that not all staff will be afforded the opportunity to serve abroad, but virtually all of them are prepared to do so and indeed eager, I might say.

I do not view requiring a commitment to worldwide availability for all Peace Corps employees as a change merely to bring Peace Corps policies in synchronization with an important principle behind the Foreign Service Act of 1979. In fact, I view such an additional condition of employment as an appropriate one for other reasons as well.

It would reemphasize to those joining the Peace Corps staff, as well as those joining the Peace Corps as volunteers, that they should come to the Peace Corps not because the Peace Corps provides the security of traditional government employment, but because they want to become part of a unique noncareer government enterprise. Part of that unique commitment should be willingness to accept any Peace Corps job anywhere in the world where they are needed.

And I think frankly on the basis of my discussions with our staff currently, both overseas staff and Washington staff, that they would welcome the opportunity to express that commitment.

[Mr. Celeste's prepared statement follows:]

PREPARED STATEMENT OF RICHARD F. CELESTE, DIRECTOR, PEACE CORPS

Madam Chairwoman, Mr. Chairman and members of the committees. I am pleased to appear before these two subcommittees today to discuss the relationship of the Foreign Service Act of 1979 to the Peace Corps, and to add my

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support for the Act to that of the heads of the other foreign affairs agencies which would be affected by it.

Before I comment specifically on the Act, I would like to summarize briefly certain pertinent aspects of the Peace Corps personnel history.

For the first years of its existence, the Peace Corps operated under a dual personnel system. Overseas employees were hired under Foreign Service Act authorities; Washington headquarters personnel were employed in accordance with standard civil service general schedule laws and regulations.

In 1965, the Peace Corps proposed and Congress enacted amendments to the Peace Corps Act providing for a unified Peace Corps personnel system based entirely on the Foreign Service Act authorities. The adoption of a unified Peace Corps personnel system based on the more flexible Foreign Service Act authorities—involving, for example, the rank-in-person concept essential to personnel mobility—went hand-in-hand with the adoption of what has come to be called the “five year rule,” which limits the service of Peace Corps employees to five years, with a possibility of a sixth year at the discretion of the Peace Corps Director.

As a favorable report of the Senate Foreign Relations Committee put the matter, the 1965 changes were aimed at placing “the Peace Corps staff in essentially the same position as that of the volunteer; serving for a limited period of time and then moving on to give the same opportunity of service to others.” “The application of Foreign Service Act authorities to Washington staff,” the report continued, “would permit a constant inflow of new blood and ideas by allowing administrative flexibility which is not possible under the restrictions of the civil service system.”

Although the administration of the Peace Corps' unified system has been complicated in recent years by the Peace Corps being a component of ACTION, I feel strongly that the Peace Corps Foreign Service Act-based unified personnel system is one which has worked well. It permits the Peace Corps to attract and utilize in a flexible manner the kind of staff it needs, both in the field and in Washington, to support its volunteers. It has significantly simplified the administrative burdens of personnel administration.

In considering the Peace Corps personnel system, it is important to keep in mind the differences between service on the Peace Corps staff and in the more traditional Foreign Service. Even apart from their noncareer status, Peace Corps staff members are not and have never been treated as members of the career Foreign Service, or even as traditional limited term Foreign Service employees. The initial purpose of the 1965 amendments—to reduce differences between paid staff and volunteers, and to convey to our host countries a message about the different nature of the Peace Corps than that of other American government agencies working abroad—has been consistently upheld. Peace Corps personnel overseas do not receive cost of living or hardship differentials, PX or commissary privileges, or other Foreign Service fringe benefits. They receive lower housing allowances, in keeping with the Peace Corps policy that they live modestly. They come under the civil service retirement system rather than of the Foreign Service. Similarly, Peace Corps Washington employees have received only the standard benefits of other government employees, not those normally available to members of the Foreign Service.

In effect, since 1965, when Congress authorized the Peace Corps Director to employ the Foreign Service Act appointing authority and such other Foreign Service Act authorities as he “deems necessary” or as is “appropriate,” the Peace Corps has had a unique personnel system. As the Senate Report from which I've previously quoted said, “This will be a Peace Corps personnel system—not a Foreign Service system—although it will be based on Foreign Service Act authorities.”

As Sargent Shriver put the matter in a 1965 letter he wrote to Chairman Fulbright in support of the proposed amendments, “the State Department and the Peace Corps use Foreign Service Act authorities but in very different and unrelated ways and to achieve very different and unrelated aims.” With due respect, I would not put the matter so strongly today, nor would I take such a definitive position with regard to the proposed Act.

The mission of the Peace Corps is still very different from that of the Department of State or any of the other agencies which are authorized to use the authorities of the Foreign Service Act. The Peace Corps still maintains an independence from the day-to-day conduct of American foreign policy. That independence has consistently been emphasized as a matter of our national policy—for example, in the joint cable from the Secretary of State and the Director of ACTION, sent

to all Chiefs of Mission in March 1978, which emphasized that the Peace Corps must have maximum feasible autonomy from other United States foreign affairs activities.

Yet, especially in administrative matters, I do not think that the necessary independence of the Peace Corps means that the agency's procedures must be different in every respect from those of other foreign affairs agencies. For example, the Peace Corps depends in almost every country upon the administrative support of the State Department. This joint administrative interest also applies in the Peace Corps' use of the personnel authorities based on the Foreign Service Act. There are substantial benefits to the Peace Corps, not merely in continuing to base its system on the Foreign Service Act, but also in choosing in many instances to adopt personnel practices and policies identical or similar to those of other foreign affairs agencies. In many areas, the Peace Corps benefits from basing its personnel regulations upon those promulgated by the Department of State—as in the Foreign Service Personnel Manual, upon which the Peace Corps has and will continue to rely heavily.

Thus, in reviewing the Foreign Service Act of 1979, I have sought to find a way to accommodate the central purposes of the Act with what I think are the essential attributes of the Peace Corps personnel system, so that the system which has suited the Peace Corps needs so well over the past 15 years could be maintained. It is my view that the Act would not substantially affect the operations of the Peace Corps. The changes in Peace Corps personnel policies and practices which would be necessary or appropriate under the Act are ones which I can wholeheartedly support. Passage of the Act would, for example, simplify the Peace Corps pay system by bringing all foreign service employees within the same pay scale and eliminating the distinctions between FSR and FSS employees. This is an important and welcome change.

More generally, the Act would make no substantive change in the relationship between the Peace Corps and the Department of State on personnel matters. In sections 202 and 2106, the Act would affirm the independence of the Peace Corps Director from the Secretary of State in administering the Act as it applies to Peace Corps, subject only to an important requirement of consultation. Further, the Act would continue unchanged, in section 2202(a), the language of the Peace Corps Act, as passed in 1961 and amended in 1965, which recognizes the inherent differences between the Peace Corps and the regular Foreign Service by allowing the Peace Corps Director to make use of certain of the Act's personnel authorities. It thus would reaffirm the decision of Congress in 1965 that the Peace Corps should have its own personnel system based upon the Foreign Service Act's authorities.

It must be recognized, however, that the Peace Corps Director's authority to make partial use of the Act's provisions—to not adopt, as irrelevant to Peace Corps, the Act's important new provision relating to retirement and merit promotion in the career service—does not carry with it an authority selectively to act directly contrary to specifically relevant requirements of the Act. Thus, the question for Peace Corps must be whether the Act's provisions would require the agency to make changes in its present personnel practices which would be detrimental to its operations. To me, the most important question has been whether the Act would require the Peace Corps to modify the unitary non-career personnel system based on Foreign Service Act authorities which Congress mandated in 1965. I have been pleased to be able to reach the conclusion that this will not be necessary.

A central principle behind the Act's revisions to the Foreign Service Act of 1946 has been to make a clear differentiation between two classes of career employees in both the Department of State and other foreign affairs agencies, and to mandate the conversion of certain career Foreign Service employees to the civil service. The Act, as the Secretary of State put the matter in his testimony before these subcommittees on June 21st, "clearly limits Foreign Service Career status only to those people who accept the discipline of service overseas."

While the Act in section 531 obligates career personnel to serve abroad, as now written it imposes no such positive obligation on limited term and temporary personnel appointed under the authority of section 331. However, I understand that the Department of State intends to seek a change in the present draft of the Act to extend that obligation to limited and temporary personnel as well.

With this modification would come the question whether as a matter of policy it would be appropriate for the Peace Corps to continue to use the Act's authori-

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ties to appoint all its employees who began their work with Peace Corps in Washington, irrespective of whether it could be said with certainty that such employees would serve abroad during their five years working with Peace Corps. In this regard, certain other provisions of the Act are instructive. Sections 2101-2103 provide standards for deciding whether particular persons should retain their appointments under the Act's new Foreign Service authorities or be converted to a general schedule civil service appointment. Those standards provide that the test for retention in the foreign service should be the individual's "availability" for world-wide assignment. Employees initially determined not to be "available" for world-wide assignment may be retained in the foreign service if they accept in writing such an obligation.

Accordingly, once the Act is passed, the Peace Corps intends to require that all new employees, wherever they are assigned initially, affirm in writing and as a condition of their limited term employment with the Peace Corps, their willingness to accept a temporary or permanent assignment to any Peace Corps post. The same condition would be required of present Peace Corps employees who sought a renewal of their contracts. Because of the limited number of American Peace Corps staff serving overseas at any time and because of the limited term of their appointments, it may well be that not all staff will be accorded the opportunity to serve abroad.

I do not view requiring a commitment to world-wide availability for all Peace Corps employees as a change merely to bring Peace Corps policies into synchronization with an important principle behind the Foreign Service Act of 1979. In fact, I view such an additional condition of employment as an appropriate one for other reasons as well. It would reemphasize that those joining the Peace Corps staff, as well as those joining the Peace Corps as volunteers, should come to Peace Corps not because the Peace Corps provides the security of traditional government employment, but because they want to become part of a unique, non-career government enterprise. Part of that unique commitment should be a willingness to accept any Peace Corps job anywhere in the world for which they are needed.

I will be happy to answer any questions which you may have.

Mr. FASCELL. I commend you for that statement of principle. As an outsider, I would certainly say it should be helpful to management if everybody on the staff had the opportunity to serve overseas, but I will let my colleague over here, who served, speak on that subject.

Mr. HARRIS. Thank you, Mr. Chairman. I have no questions other than maybe to help me update myself a little bit. How many personnel does the Peace Corps have? Could you just give me an approximate number of volunteers, Foreign Service and civil service?

Mr. CELESTE. We have approximately 6,000 volunteers. There are a number of additional trainees. We have currently—our count as of September 26 was 659 staff members.

Mr. HARRIS. You don't have those figures?

Mr. CELESTE. Let me give you a breakdown. In terms of Peace Corps overseas we have 160 FSR's, American staff. We have 157 FSN's and 195 Foreign Service local employees who are nonprofessional. So that better than two-third of our overseas staff are host country nationals.

Mr. HARRIS. That's the 195 figure?

Mr. CELESTE. 195 plus 157, 157 professional FSN's, so we only have 160 American personnel overseas. In Washington we have 107 FSR's and 40 FSS personnel for a total of 147. There are no GS employees.

It may be interesting to note that 99 out of 160 American staff overseas are former Peace Corps volunteers. In other words, 62 percent of them and 94 of the 147 staff in Washington are former Peace Corps volunteers. About two-thirds of our staff positions are held by people who served as Peace Corps volunteers, including people like Jonathan Marks, who was a Peace Corps volunteer in India more years ago than he would acknowledge.

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Mr. HARRIS. Why exactly do you prefer using the Foreign Service limited appointment approach rather than a limited GS authority? We can do it with the GS limited authority, as I understand it. I think Mr. Campbell is willing to do it administratively.

Mr. CELESTE. In the first place because most of our staff have served overseas, so that the FS authority is more appropriate—in fact there is a substantial movement of people from jobs in Washington to jobs overseas or from jobs overseas to jobs in Washington. The rank-in-person concept rather than the rank-in-job provides substantial flexibility, given the kinds of assignments we make for people in handling their responsibility overseas. Congress initially made the decision that the Peace Corps use the FS limited authority because the main thrust, the main responsibility, of the Peace Corps was in administering programs overseas.

One of the things that we have looked at was the number of people who would move from assignments in Washington to assignments overseas. We have found that individuals in virtually every kind of job classification that we have in the Peace Corps in Washington spend time overseas, either on a short-term or long-term assignment. An example would be the person who was a country desk assistant handling secretarial to administrative tasks for three countries in Africa who served a 6-month assignment in Luanda assisting the new country director in setting up the office there. People who are budget analysts will go out for 3 to 6 months and serve in overseas posts. People who are programing specialists will go out for extended periods of time. As a consequence I think they more appropriately deserve the designation as, and ought to be governed by the rules and regulations of, Foreign Service personnel.

Mr. HARRIS. Quite frankly, I hate to see the administration of overseas Peace Corps programs being run by Foreign Service officers.

Mr. CELESTE. I teased Jonathan about his pinstriped suit.

Mr. HARRIS. Your friend from India smiles on that comment.

Mr. CELESTE. I tease him about his pinstriped suit because we think the Peace Corps is doing something very healthy for Foreign Service and other foreign assistance agencies in developing a new pool of talent and personnel and experience and perspective; 50 percent of the AID interns hired this past year are Peace Corps volunteers who successfully completed service, and I have been impressed by the number of new Foreign Service officers who have been recruited from Peace Corps.

My hope is that that distinction diminishes over time, but there is clearly a distinction and I think carrying the Foreign Service personnel designation has not turned our country directors into pinstriped diplomats.

Mr. HARRIS. Let me make it clear I don't think there is anything wrong with volunteers turning into Foreign Service officers. There are a lot of lawyers who become politicians. [Laughter.]

This happens clear across our society. It's just that I hate to have a volunteer and those running the volunteers to start thinking and acting like Foreign Service officers at such a tender age. [Laughter.]

I think it should take a little while to develop that sort of cynicism. [Laughter.]

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Mr. CELESTE. I wish I could have shared with you the experience I had 10 days ago when we had our country directors who are and have been since 1965 carrying a Foreign Service designation, together for the first worldwide workshop in 3 years. I guarantee you, having spent time as a special assistant to an ambassador, they were a different cut of the cloth, regardless of the designation they carry on a personnel action.

Mr. HARRIS. I think and hope that that is true. I just don't want to do anything to encourage the change. Have they started going to cocktail parties or not? Do you know? [Laughter.]

Mr. CELESTE. I have visited five countries and the best I could get was warm beer. [Laughter.]

Mr. HARRIS. OK, thank you, Mr. Chairman.

Mr. FASCELL. Mrs. Schroeder.

Mrs. SCHROEDER. Thank you, Mr. Chairman. Some of those in-country directors came around to see me while they were here. One of the things that they brought up that they were really distressed about were the problems with the host country nationals. They said they were using them extensively, much more extensively than the Foreign Service. They wanted to make that very clear. They did not want that operation to change but they had great trouble having host country nationals overseeing Americans who were making more money than the host country nationals.

How do we deal with that? What you are saying is make it more the same. But, as we make it more and more the same, don't we exacerbate those kinds of problems?

Mr. CELESTE. No, what pleases me about the language in the act, as I understand it, is that it permits the Peace Corps to continue to enjoy the same flexibility with respect to our American personnel, Washington and overseas, that we have enjoyed in the past, where we have had a unitary, noncareer service based upon the Foreign Service appointing authority. The problem with respect to our host country nationals is real, and it is something that we need to sit down with people at the State Department and other foreign assistance agencies in the U.S. Government to talk about.

We find ourselves hiring host country nationals in more and more responsible positions. Our ability to compensate them properly is restricted because we don't have the same flexibility with respect to a personnel system dealing with host country nationals that we have with respect to our American personnel. It is a difficult issue and one we intend to explore, both internally and with our colleagues working overseas. But this issue does not directly bear on the use of the Foreign Service authority for our American personnel. That is not the source of the problem.

As a consequence of our meeting with country directors, I have charged Associate Director Marks and Director of Management Kingsbury to take a detailed look at the host country staff matter and work with people at the State Department and others to determine how we might address this question. The fact is, as the U.S. Government tries to reduce the American presence overseas, we have been at the forefront of that and now we face a complication.

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If we replace more and more American officers with responsible host country nationals, we have to have a system for compensating them properly.

Mrs. SCHROEDER. Their other complaint was the attempt by different intelligence agencies to try to use them. They were feeling conflicts in that incredible role. Again I wonder how much we want to fold them into the overall Foreign Service.

Mr. CELESTE. We have persistently resisted at every level and with the consistent support of every President since the Peace Corps was founded, to make it clear that the Peace Corps should never be used as a cover for intelligence activity. We have a flat prohibition on the hiring as staff, people who have been involved in the collection of intelligence for any agency overseas. We have a restriction on who may be accepted as volunteers based upon any kind of intelligence activity in the past.

A condition of my accepting this position was the knowledge that the President would fully support efforts to insure that the Peace Corps never becomes a cloak for intelligence operations. I can feel comfortable with that knowledge, and I do, and I intend to pursue that in a determined fashion.

One of the values of communicating that instruction from the President and from the Secretary of State and others is to make it clear to each ambassador, the leader of the country team in each country and to our country directors that they have a responsibility to see to it that this does not happen as well.

Mrs. SCHROEDER. Is there anything you can do to keep the intelligence community off their backs? I hear what you are saying but they are pressured. They said they have been subjected to incredible pressure in the last 6 months.

Mr. CELESTE. If that is the case they didn't report it to me. I really am surprised to hear that because it is one of the questions I raise when I visit countries as I travel around. I would be eager to pursue any allegations of intelligence pressures in the case of any country where that is happening. It is totally out of line. Anyone participating in that is acting in a manner that is absolutely contrary to the instructions of the President, and for that matter, the instructions of the Director of the CIA and any other intelligence agency.

Mrs. SCHROEDER. But you do tell the intelligence agencies to stay off their backs?

Mr. CELESTE. Absolutely.

Mrs. SCHROEDER. That and the host country nationals were the biggest problems that they communicated to me.

Mr. CELESTE. I would be delighted to canvass our country directors because it did not come up in any of their discussions with me.

Mr. MARKS. May I add a point?

Mr. CELESTE. Sure.

Mr. MARKS. I think it is important that the cable which the Secretary of State and the Director of ACTION, when he had authority over the Peace Corps, sent out in March 1978 stated very explicitly that while the Peace Corps in one sense had to be viewed as a part of an American presence overseas, that the Peace Corps had a very different mission and it was thus, to use the cable's words, "to be

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accorded maximum feasible autonomy in all its operations." In particular, there was a no-holds-barred, explicit statement that the Peace Corps was in no way to be involved in intelligence activities.

There is, therefore, very strong guidance from the Secretary of State to that effect.

To respond to the earlier thing you said, Madam Chairwoman, I think the other point is that we do not understand what is happening in the context of the proposed Foreign Service Act to be in any way folded in. Our perception is that what the Foreign Service Act of 1979 will do is simply reaffirm what Congress mandated in 1965, which was to set up a Peace Corps personnel system, not a Foreign Service system, although based upon Foreign Service Act authorities. We see precisely the same kind of relationship being set up here.

We see that we may to some degree, given the importance from a career standpoint of the principle of overseas obligation, need to consider meeting the spirit of the act as it may be modified, for example with regard to worldwide availability. But quite frankly, meeting the spirit of the act in the sense of worldwide availability matches one of our management objectives, matches the kind of thing we would like to see anyway. And we find that again fortuitously coincidental, and therefore very acceptable.

Mrs. SCHROEDER. My concern was that people worry about careers. Pressure can be put on in-house. Maybe it is one of the things they didn't feel free to talk to you about. When they came to me they said this is something that worries us very much. And I think that we should have it on the table.

My question is, what happens if the in-country directors give you the names of people in the Foreign Service who have pressured them for Foreign Service data? What happens to that person in the Foreign Service? Who gets burned in that whole process? Is it the in-country director who gets moved to another country or is it the person in the Foreign Service? We can deal up here in the atmosphere where we have all those papers saying that won't happen, but it is happening.

Mr. CELESTE. My concern would be to indicate support for the country directors and their staffs in resisting any effort to persuade, cajole, or pressure volunteers or staff to become sources of intelligence. And I might say that is a real consideration when our volunteers doing their job are probably closer to what is happening in countries than many other folks who are living there. That is just a fact of their workday life.

Mrs. SCHROEDER. Should the Peace Corps country staff get Foreign Service benefits like retirement and special allowances? I noticed you mentioned it.

Mr. CELESTE. My view is it is very important we not be the beneficiaries of those privileges. I think we have a solid basis in the retirement system with the civil service retirement. I guess the area that concerns me most is the effort we put into career placement for our staff as they come out after 5 years. These are talented people. They have gained a great deal of experience in a wide range of management because they are running small missions with a variety of responsibilities.

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I think the place the Peace Corps needs to do more is in having an effective career assistance and placement operation, frankly taking advantage of the opportunity for noncompetitive eligibility which was accorded by the Congress in their recent actions.

I think Peace Corps staff members are a pool of talent we cannot afford to ignore in our own public and private agencies, and the Peace Corps has not made a very big investment in that in terms of staff development and staff placement. That is where we should do more.

Mrs. SCHROEDER. Do you have second career training?

Mr. CELESTE. We hope to see that happening regularly. It is a second career for many people.

Mrs. SCHROEDER. Third career training?

Mr. CELESTE. Are you interested? [Laughter.]

Mrs. SCHROEDER. I must end by saying it would be unfair for me, having had the gentleman from Virginia compliment the pinstriped suit, not to compliment Nancy's necklace. I think it is very attractive.

Ms. KINGSBURY. Thank you.

Mr. CELESTE. Just as a matter of perspective, you may find that I was also impressed when with 53 country directors we had 22 women, 18 black, and Hispanic country directors.

We have appointed six codirectors. We have six couples serving as codirectors in which the responsibility is split evenly. The salary checks are paid out separately. Both of the spouses are accredited to the host government and to our country team.

Mr. HARRIS. I think you have gone way too far. [Laughter.]

Mr. CELESTE. And the amazing thing is that all the marriages are still together. [Laughter.]

And they are performing extremely well. It is an interesting opportunity.

Mrs. SCHROEDER. Thank you.

Mr. FASCELL. Well, you led up to the \$64,000 question on professional staff being folded in noncompetitively. That is the law now in the Development Assistance Act, and the question is whether or not it ought to be continued, and the rationale for that continuance.

So as I understand it now, volunteers are folded in under an Executive order. Is that correct?

Mr. CELESTE. They have 1 year of noncompetitive eligibility.

Mr. FASCELL. One year of noncompetitive eligibility and the amendment in the Development Assistance Act gives the professional staff how long, 3 years?

Mr. CELESTE. Three years, yes.

Mr. FASCELL. You have what, 659 professional staff now?

Mr. CELESTE. American employees are substantially less. It is about 300.

Mr. FASCELL. 300. Do you have any idea how many former professional staff are around anywhere?

Mr. CELESTE. There seem to be a lot around from the calls I get. We could probably work up a total on that. My guess is it's a fairly substantial number.

Mr. FASCELL. I think we ought to have that because it would have some bearing on the retaining of that particular amendment, it seems to me. If it is a large number of people, for example, then you have a

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real impact on the policy decision that has to be made as to whether or not we are going to continue that.

Mr. CELESTE. We would be happy to develop that information for you.

[The information referred to follows:]

PEACE CORPS,
Washington, D.C., November 21, 1979.

HON. DANTE B. FASCELL,
Chairman, Subcommittee on International Operations, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Last month, when I testified before the joint hearing of the Subcommittee on Civil Service and the Subcommittee on International Operations, we discussed the impact of extending non-competitive civil service eligibility for certain Peace Corps staff. I offered at the time to provide data on the numbers of present and former staff eligible for such a benefit.

I apologize for the delay in getting this information to you. Because Peace Corps and ACTION staff records are comingled, it was necessary to examine approximately 18,000 records to obtain the data. (I didn't realize that problem at the time!)

In any event, the data bears out our hypothesis that far fewer than half of our former staff are, in fact, eligible under current law for non-competitive appointment:

1. Total number of former Peace Corps staff who left the rolls prior to August 14, 1979¹—3,194.

2. Number of above staff who served in substantially continuous service for 36 months or more—1,327.

3. Number of current Peace Corps staff who have served 3 or more years in their current appointment or cumulatively with a prior service—190.

4. Number of Peace Corps staff who left the rolls between August 14, 1979,¹ and the present (November 14, 1979) who served 3 or more years—26.

Thus, on the average, a third of all former staff are eligible for non-competitive appointment now, and—if the current resignation rate is typical—that number might continue at 100 or so a year. Thus, after August 14, 1982, only 300 former staff would be eligible at any given time. Incidentally, of the 1,327 eligible former staff, some we know to already be holding competitive appointments.

These numbers are small, but we are convinced that the concept of encouraging the talent that has served the Peace Corps in a non-career status to give career service to other agencies is very important. It reinforces the reemployment rights now available to career employees who join the Peace Corps staff. I hope you and your colleagues will continue to support this concept.

If there is any further assistance we can provide on this matter, please call on us.

Sincerely,

RICHARD F. CELESTE, *Director.*

Mr. FASCELL. Also the question arises as to whether or not there should not be some uniformity with respect to the period of eligibility. Do you see any reason why it should be different?

Mr. MARKS. Mr. Chairman, I think the rationale in the volunteer context was that a volunteer must serve at least 1 year before the volunteer obtains noncompetitive eligibility and that the thought was that because of the shorter term of the volunteer service, that the volunteer should only have 1 year to find some kind of new employment.

I think the perception was that the noncompetitive availability ought to be available to the volunteer coming out of the Peace Corps into his or her next job, and at that point cease. From a staff standpoint it is my understanding that the 3-year period of eligibility is one

¹ Effective date of eligibility under the International Development Cooperation Act of 1979.

which matches to some degree other kinds of noncompetitive eligibility in the Government, and there is therefore some rationale for choosing that period of time.

Mr. CELESTE. I was going to comment on an irony in the treatment. If two-thirds of our staff are former volunteers who come onto Peace Corps staff and during their period of service on the Peace Corps staff they in effect lose the opportunity to be considered for a career job with the Government—

Mr. FASCELL. So the way it stood prior to the time of the amendment—

Mr. CELESTE. They gave up that noncompetitive eligibility in effect by working on the Peace Corps staff.

Mr. FASCELL. They gave up that right.

Mr. CELESTE. We should certainly provide the data on former staff, and I would be happy to furnish it to the committee.

Mr. FASCELL. Maybe the Schroeder subcommittee has some feelings on this subject.

Ms. KINGSBURY. There is also another determinant. As I understand the amendment that exists now, it requires that noncompetitive eligibility only take effect after 3 years of service in-staff, which means service into a second term, a second contract, and a rather large number of Peace Corps staff leave short of that 3 years.

So I suspect that the absolute number of Peace Corps staff floating around in the country is a larger number than the people who would actually be eligible under the existing amendment were it to be continued. So we will have to look into that, but it will take a little time because it will require individual examination of the records with respect to when they left.

Mr. FASCELL. Well, I think that will be helpful. I know it is a lot of work.

Ms. KINGSBURY. We will do it. It will be interesting for us, too. It is a part of another problem.

Mr. FASCELL. Are there any other questions?

Mr. HARRIS. If you have 2 minutes, I would just like to have a quick response to whether or not you believe the Peace Corps is accomplishing its mission.

Mr. CELESTE. I am excited to report that, in my judgment, the Peace Corps is accomplishing its mission overseas in a way that is unfortunately less visible today than it has been in past years, perhaps because we have reached a time where good news is no news. There used to be a time when no news was good news.

I was in Costa Rica recently and, just off the plane, met with the President and Vice President of that country who said: "You know, we believe deeply in the Peace Corps. If we can help recruit Peace Corps volunteers, we would like to do that. Our ability to achieve a program of social justice and economic development in our country depends upon our ability to use volunteers effectively to help in that process. We don't expect you to be here all of the time, but we think you have a real role to play."

And I found that in each of the five countries I visited this was a persistent theme. In talking to our Ambassadors serving overseas in countries where we have Peace Corps, or in talking to Ambassadors in coun-

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tries where the Peace Corps would be appropriate, like Guinea-Bissau, Cape Verde, this is a persistent theme. There is a real role for the Peace Corps to play in a development strategy, trying to reach the poorest of the world's poor and build their self-reliance, their self-help skills around food production, around primary health care, around education, around matters of this kind. I believe the Peace Corps is increasingly effective as we have targeted those development projects and as we have been able to recruit and place volunteers.

I don't think we are as visible. I don't think people understand us as well, and that is part of the challenge of leadership that I see for myself and our senior staff.

Mr. HARRIS. Thank you.

Mr. FASCELL. OK, thank you very much.

Mr. CELESTE. Mr. Chairman, Madam Chairman, thank you very much.

[Whereupon, at 11 :45 a.m., the hearing was adjourned.]

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APPENDIX 1

QUESTIONS SUBMITTED IN WRITING TO HON. JOHN REINHARDT, DIRECTOR, INTERNATIONAL COMMUNICATION AGENCY, AND RESPONSES THERETO

QUESTION

How many years do you estimate that it will take to complete the transition from Foreign Service to Civil Service and vice versa for your Agency?

ANSWER

If the transition is accomplished under the terms as specified in the proposed legislation, the transition will be completed by July 1, 1984. If the transition is accomplished under the terms of our agreement with AFGE, and employees who are presently in the FAS category are allowed to remain in the Foreign Service if they so choose, the transition could take 30 years, based on the age of the youngest domestic specialist employee. However, as a practical matter, the number of FAS employees will diminish rapidly as attrition runs its course, and we would anticipate that within 15 years the number of employees in this category will be nominal.

QUESTION

What effect will this legislation have on improving management flexibility and effectiveness in your Agency?

ANSWER

The legislation would result in domestic employees serving under the Civil Service system and Foreign Service employees serving under the Foreign Service system. This would provide a clear delineation of the personnel as well as the systems under which they serve, and would therefore go a long way toward simplifying and rationalizing the administration of our personnel system. We believe it would enhance both the flexibility and effectiveness of the two systems, because both management and employees would have a clearer understanding of who is, and who is not, available for assignment within each service.

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QUESTION

How will your Agency manage its Civil Service component once this legislation is enacted?

ANSWER

If this legislation passes, all domestic personnel would be managed the same with the expectation that certain employees would be serving in a personal grade which would complicate competitive comparison for job retention in the event of reduction-in-force. For this purpose, we would have to compete employees on the basis of the grade assigned to the position rather than the grade in which serving.

QUESTION:

What happens if your agency wishes to keep someone who has reached the age of 60?

ANSWER:

The Agency must first mandatorily retire the officer for age and then may recall the officer to active duty the following day (sec. 324) but not to a class higher than the class held at retirement.

QUESTION

Have you done any cost estimates on the performance pay provisions?

ANSWER

No. The entire question of pay scales and compensation is now the subject of an ongoing discussion among OMB and the affected agencies. As soon as the results of this inter-agency consultation are available, we can begin to make our own projections and will keep the Committees informed.

QUESTION

How does merit pay operate for your Agency?

ANSWER

A merit pay system has not yet been implemented by USICA. One will be in place for certain General Schedule employees by October 1981.

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QUESTION

Does the GAO report of January 8, 1979, recommending improved coordination and greater uniformity in foreign national pay plans suggest or require any changes in the provisions on local compensation plans of your Agency?

ANSWER

USICA pay plans for national employees abroad follow Embassy mission compensation plans, according to statute. Therefore, the Agency relies on the Department of State in determining foreign national pay plans, with local USICA clearance when new plans are adopted. We concur in the Department's comments on this portion of the GAO report, which include the need for:

--closer coordination whenever possible between State and Defense to more closely align, or make identical, embassy local compensation plans and those at nearby military bases.

--a greater effort to eliminate reliance on the U.S. Civil Service retirement system to provide retirement benefits for foreign national employees and to rely instead on local systems.

QUESTION

The bill as written would appear in some instances to provide for a unified system for all foreign affairs agencies, but through the promulgation of regulations, provisions would appear to pave the way for some major differences. For example, it would appear that State could establish a five-year "time-in-class" limit on an FSO-3 while USICA could establish a three-year limit for an FSIO-3 and AID could establish an eight-year limit for a comparable position. Doesn't this situation have the potential to create a bidding up process between the agencies on time-in-class requirements?

ANSWER

The number of officers in a given class varies from agency to agency as do the needs of the agencies with respect to the spectrum of rank. Therefore, there will be differences in the time-in-class standards to fit individual agency situations. We do not believe that this will lead to a "bidding up" of time-in-class limitations.

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QUESTION

What is OPM's opinion of the Labor-Management agreement you signed with AFGE in December 1977 which states that all conversions from Foreign Service domestic specialist to Civil Service status would be voluntary?

ANSWER

We have received no comment from OPM on our agreement with AFGE.

QUESTION

Exactly what does the USICA-AFGE agreement seek to protect?

ANSWER

The USICA-AFGE agreement outlines the Agency's revised personnel system for Foreign Affairs Specialist employees (comprising Foreign Service Reserve officers with limited and unlimited tenure, and some Foreign Service Staff personnel) and guarantees the conditions under which domestic FAS employees can convert to GS until June 30, 1981. After June 30, 1981 the option to convert to GS will not necessarily be foreclosed, but the requirements and conditions for conversion will be based on the Agency's personnel situation at that time and could be very different from the conditions outlined in the circular. It was a specific concern and intent of the union and management that these employees would not be forced to convert to GS and thereby be deprived of the advantage of Foreign Service status, but that such conversions would be made strictly on a voluntary basis.

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QUESTION

Isn't there a difference in circumstances between the time you signed the agreement and now due to the protection of employee pay, grade and benefit rights under the proposed legislation? Doesn't this make it possible for domestic specialists to move expeditiously into the Civil Service system without abrogating the spirit of your agreement with AFGE?

ANSWER

At the time of the Agency agreement with AFGE (December 12, 1977), any domestic Foreign Affairs Specialist employee who converted to GS would automatically lose all Foreign Service benefits, and would have conversion rights only to the GS grade of his or her position. Therefore, if an FSRU-4 employee (equivalent in grade and salary to a GS-13) was serving in a GS-12 position, he or she would only be allowed to convert to GS-12 and could, depending on his or her step level, suffer a reduction in salary. Lost Foreign Service benefits would include retirement and disability benefits, loss of the "rank-in-person" status, access to the Foreign Service statutory grievance procedure and the annual within-class salary increases provided Foreign Service employees (GS employees must wait two or three years for step increases at higher levels).

The draft legislation (sections 2103 and 2104) would allow these FAS employees to convert to GS with no loss of grade or salary (regardless of the GS grade of the position they occupy) and would continue their right to participate in the Foreign Service Retirement and Disability system. The advantages these employees would lose would be the annual within-class increases, loss of "rank-in-person" status, and access to the Foreign Service grievance procedures.

The intent of the conversion portion of the AFGE agreement was to allow FAS employees (who originally entered the FAS corps due to management's encouragement or requirement) to decide voluntarily whether to convert to GS or remain FS, based upon the employee's view of which system was more advantageous to his or her particular circumstances. Since the draft bill would preserve most of the pecuniary Foreign Service benefits for employees who convert to GS, the primary disadvantages of conversion for these employees would be eliminated.

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QUESTION

What is your estimate of the time it would take to eliminate Foreign Service domestic specialists if done by attrition?

ANSWER

See response to general question #1.

QUESTION:

Do you see any difficulties, legal or otherwise, if USICA converts domestic specialists voluntarily to the Civil Service while the Department of State does it mandatorily (with legislative protection for pay, grade and benefits)?

ANSWER:

Under the proposed legislation, State Department employees who would be required to convert would enjoy two benefits not presently available, under the terms of the Agreement with AFGE, to USICA employees who choose to convert.

- o State's employees could elect to remain in the Foreign Service Retirement and Disability System. USICA employees would have no such election.
- o State's employees would be permanently safeguarded against loss of grade and salary so long as they did not voluntarily move to another position.

USICA employees thus would have two fewer benefits and rights upon conversion, but on the other hand, under the agreement they could elect to remain in the Foreign Service. We therefore do not foresee any difficulties if the two systems were to function differently.

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QUESTION

What do you consider to be the fundamental differences, if any, among State, USICA, and AID which justify a different approach for USICA on a given issue? Are these differences recognized and addressed in this proposed legislation?

ANSWER

There are two fundamental differences between USICA and the other foreign affairs agencies which justify a different approach to personnel administration in certain circumstances.

First, USICA requires significantly different skills and experience of its officers. Officer candidates take a different entrance examination from their State Department colleagues. Throughout their careers they are required to be in close contact with developments in American culture, to be able to explain American society and to gain a deeper understanding of the cultures and societies in which they function overseas. To enhance and develop these skills among our officers, we believe it is sometimes necessary to set different administrative requirements, and to retain our current flexibility in such matters as time in class, tours of duty, promotion precepts and domestic assignments.

The second difference concerns our domestic specialists. We believe that the agreement negotiated with AFGE in 1977 is a binding one, and that the number and importance of these employees in the Agency merits a different approach from that which may be taken by the other foreign affairs agencies.

Both of these issues are addressed in the proposed legislation. We regard the flexibility granted to the Director of USICA by the proposed act as sufficient, and are confident that it will enable us to meet the needs of our Foreign Service employees within the stated overall goal of achieving compatibility among the systems. With regard to our domestic specialists, while the legislation does grant an extension in the time required for mandatory conversion to Civil Service, we would nevertheless prefer that our employees be excepted entirely from the mandatory provision.

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QUESTION:

What would be the effect of requiring mandatory conversion of domestic specialists to the civil service, while maintaining Foreign Service Retirement benefits?

ANSWER:

Under the proposed Foreign Service Act of 1979, domestic specialists upon mandatory conversion may elect to remain in the Foreign Service Retirement and Disability System or to be folded into the Civil Service Retirement System. While the benefits under the Foreign Service Retirement and Disability System permit early voluntary retirement (beginning at 50 years with 20 years of service) and slightly higher benefits for equal length of service (roughly 4% better), participants are subject to mandatory retirement for age at 60. Under the Civil Service system, a higher annuity may be earned in the long run (80% versus 70%), and there is no mandatory retirement for age.

Upon conversion, the domestic specialists would essentially lose rank in person, access to the grievance system, annual within-class salary increases and, in some cases, the right to be returned to place of final residence at Government expenses. The rank in person operates regardless of the grade of the position to which the specialist is voluntarily or involuntarily assigned. The grievance system created by legislation in late 1975 offers far more protection to Foreign Service personnel than does any grievance system in the Civil Service.

Loss of access to the grievance system would affect those employees who would at some time or other feel aggrieved by some act or condition under the control of their agency and who did not have the remedies available under the Foreign Service grievance system. Loss of rank in person would not be felt until the employee voluntarily moved to another position.

Foreign Service personnel may be given annual within-class salary step increases upon satisfactory performance of

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duties. In the civil service, within-grade increases are staggered coming only after one, two or three years in grade depending on length of service in grade.

Some domestic specialists (e.g. those whose travel and transportation of effects to first duty station were paid for by the Government or those who were required by the Agency to change duty station several times during the course of their service) are presently entitled under Agency regulations to travel and transportation to place of final residence. This benefit would be totally lost to employees who were otherwise qualified to submit a claim.

One other benefit available at this time to Foreign Service personnel would probably be subject to litigation upon attempted withdrawal. In 1975, Congress eliminated the broad provisions sheltering some disability annuities from income taxes. In doing so, however, Congress excepted personnel of the Armed Forces and a few civilian employees in special categories from the limitation provided they were in the designated services on September 24, 1975. Among those who obtained the benefit of the grandfathering provision were Foreign Service personnel. Domestic specialists who qualified for the benefit by date and membership in the Service, who elect to remain in the Foreign Service Retirement and Disability System and are retired on disability may well litigate any attempt by IRS to deny them the benefit of a tax free annuity.

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QUESTION

How do USICA personnel classifications fit into the system vis-a-vis State Department and AID classifications?

ANSWER

While USICA does not use the same system as State to determine its Foreign Service position grade levels, the two systems are generally compatible. In most cases the head of USICA's overseas establishments (Public Affairs Officer) is one grade below the Deputy Chief of Mission who has supervisory responsibility for the entire U.S. mission. Subordinate USICA overseas positions are related to the PAO grade level. New criteria are currently under study for grading USICA Foreign Service generalist positions in Washington. While USICA position grades at the senior and upper middle levels may sustain some downward revision in the future, nothing in the present or proposed classification systems appears to conflict with the provisions of the Foreign Service reform bills.

We are not familiar enough with AID's classification system to draw a comparison between it and the USICA system under the proposed Foreign Service reform legislation.

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QUESTION

Please describe the problem of conversion of USICA employees who are covered by an existing union agreement (section 2103(b)). How long will this conversion take?

ANSWER

A negotiated labor-management agreement reached between the Agency and AFGE Local 1812 in December 1977 (Circular 487D & 486F, 12/19/77), provides USICA's domestic FAS employees (FSLR, FSRU and FSS) the right to convert voluntarily from Foreign Service to Civil Service (GS) until June 30, 1981, the option to convert would not necessarily be foreclosed, but the requirements and conditions for conversion would be based on the Agency personnel situation existing at that time and could be very different from the conditions described in the agreement.

The special provision in section 2103(b) of the draft legislation honors the commitment made by the Agency in the union agreement by allowing USICA's FAS employees to retain the right to voluntary conversion to GS through June 30, 1981. The mandatory conversion provisions that immediately govern the Department's FAS employees would then, after June 30, 1981, also apply to our FAS personnel.

The procedures outlined in the agreement were intended to eliminate the Agency's FAS corps through attrition, not mandatory conversion, since it was thought that employees who entered the FAS program at the behest of requirement of management should not be made to suffer any loss of benefits because of management's subsequent decision to change directions. The number of FAS employees has begun to decrease under our agreement, but it may still take as long as 30 years to eliminate completely the FAS personnel category, although the vast majority of these employees should have converted, retired or left the Agency within 15 years. The thirty-year estimate is based on the age of the youngest domestic specialist.

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QUESTION:

In classifying positions under this legislation, how do you plan to treat legal positions? If they are not classified as attorney positions, won't it be difficult to fill them with highly qualified attorneys, who generally expect to be treated as attorneys in name as well as positions?

ANSWER:

All domestic specialists who serve as attorneys are assigned to positions classified as attorney positions and have attorney titles. The titles would not change upon the mandatory conversion of these attorneys to the civil service and it is not anticipated that the preparation of current civil service job descriptions would pose any great difficulty.

Since the method of selecting attorneys was the same in the past whether the attorneys were appointed to the Foreign Service or in the Civil Service, we do not believe there are any differences in the quality of recruited attorneys.

However, in view of the superior benefits available to Foreign Service personnel, we believe that the retention of highly qualified attorneys who are domestic specialists would be easier than the retention of attorneys appointed in the Civil Service. Moreover, appointment of attorneys in the Foreign Service facilitates their lateral entry into the Foreign Service or to another related professional specialty should they so desire.

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QUESTION

Currently, what proportion of the salaries of Foreign Service personnel on loan to other agencies and organizations are reimbursed?

ANSWER

As of July 1, the Agency had twenty-five Foreign Service employees on loan to other Federal agencies. Fourteen (56%) of the assignments were reimbursed.

QUESTION

Is the Congress expected to pay travel and certain other expenses for personnel assigned to a Member or office of the Congress? (Sec. 521(b)(2)). Why?

ANSWER

A member of the Foreign Service who is assigned to a Congressional office shall continue to be compensated as a Foreign Service officer, with salary and benefits to be paid by the Department or Agency from which he or she is detailed. For purposes of travel and other expenses, however, the individual shall be considered as an employee of the Congress, and expenses incurred in carrying out the work of the Congress, including travel, shall under the provisions of the Act be compensated by the Congress. This provision, together with Section 521(b)(1), provides a more equitable arrangement than present law which requires reimbursement by Senate offices for half of the officer's salary, and leaves open the question of travel and other expenses.

QUESTION

Section 521(c) establishes a limitation of four years on assignment to positions outside the Foreign Service, a limitation which is independent of the eight-year limitation on continuous assignments within the United States. Theoretically, this means that members of the Service could serve in the U.S. for twelve years before going back overseas. Doesn't this threaten the concept of worldwide availability?

ANSWER

This is a theoretical problem only. It is USICA's policy to limit Washington tours to four years. Exceptions are generally based on medical disqualifications. In addition, USICA rarely assigns officers outside the Agency for more than two years, with one-year details the general rule.

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QUESTION:

Regarding selection-out for substandard performance, what provisions have you made to ensure that this kind of selection-out will be fairly applied and will actually result in removal of personnel?

ANSWER:

Selection out for substandard performance under the proposed Foreign Service Act of 1979 will be initiated by means of review and comparative judgment of the relative performance of the officers in each class by annual selection boards.

When review of an officer's performance indicates to the members of selection boards that the officer may not meet the standards of performance of his or her class, they will recommend selection out to USICA's Director of Personnel Services. The proposed Act calls for administrative review of the officer's performance including a formal hearing--a codification of existing case law and practice.

The law of course will have to be implemented by regulations establishing the criteria by which substandard performance can be gauged. This Agency has in the past selected out officers for substandard performance even after the imposition of requirements for a due process hearing. We expect to continue to select out officers. At the present time, an officer designated for selection out on the basis of substandard performance may obtain a hearing by appeal either to the Foreign Service Grievance Board or to the Special Review Board. An appeal to one tribunal automatically eliminates the other as a forum available for a hearing.

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QUESTION:

What is the definition of merit principles under the Foreign Service Act of 1979?

ANSWER:

By definition (sec. 102(7)), the proposed Act adopts the merit principles established by the Congress in the Civil Service Reform Act of 1978 (5 USC 2301). Essentially, these are:

--(b) Federal personnel management should be implemented consistent with the following merit system principles:

- (1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
- (2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
- (3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sectors, and appropriate incentives and recognition should be provided for excellence in performance.
- (4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.
- (5) The Federal work force should be used efficiently and effectively.
- (6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
- (7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
- (8) Employees should be--
 - (A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
 - (B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
- (9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences--
 - (A) a violation of any law, rule, or regulation, or
 - (B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

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QUESTION:

How will selection-out for substandard performance and time in class operate?

ANSWER:

We have earlier described the method by which officers will be selected out for substandard performance. The proposed Act also specifies that the head of the Agency shall establish by regulation the maximum length of time during which an officer may remain in a class without being promoted.

At the present time, under regulations negotiated with the exclusive representative of Foreign Service personnel in USICA, officers designated for selection-out on the basis of time in class may challenge the proposed separation by invoking grievance procedures attacking the accuracy and validity of their performance ratings, thus indirectly litigating their failure to be promoted. The Foreign Service Grievance Board has the authority to set aside or to leave undisturbed the proposed selection out. We believe that basically the system will continue to operate as in the past. USICA does select out officers for excessive time-in-class.

QUESTION

The bill as written would appear in some instances to provide for a unified system for all foreign affairs agencies, but through the promulgation of regulations, provisions would appear to pave the way for some major differences. For example, it would appear that State could establish a five-year "time-in-class" limit on an FSO-3 while USICA could establish a three-year limit for an FSIO-3 and AID could establish an eight-year limit for a comparable position. Doesn't this situation have the potential to create a bidding up process between the agencies on time-in-class requirements?

ANSWER

See response to general question #8 above.

QUESTION

How will retirement for excessive time-in-class operate?

ANSWER

See response to question #16 above.

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LIMITED CAREER EXTENSIONS

QUESTION:

How will limited career extensions operate? Doesn't this create a potential loophole, if not administered closely, for individuals to be retained in the Service when in fact the needs of the Service and their performance does not justify it?

ANSWER:

The offer of limited career extensions will in fact be dependent upon the needs of the Service and may be offered only upon recommendation of Selection Boards.

In the case of the Senior Foreign Service the Act expressly requires that the needs of the Service include plans for continuing admission of new members, for effective career development and reliable promotional opportunities.

Offers will be made to members of the Service whose maximum time in class expires, after they have attained the highest class for their respective personnel categories or while they are serving as members of the Senior Foreign Service in classes designated by the Secretary.

Thus some administrative and technical support personnel, who may never have promotional opportunities to the Senior Foreign Service, may be offered limited career extensions, when they reach the top class in their occupational cone. Senior Foreign Service officers may be offered limited career extensions upon expiration of their time in class in any of the three classes of the Senior Foreign Service.

The statute establishes a framework where the annual opportunities for limited career extensions must be predetermined. The determination must take into account the number of new officers to be brought into a class, the number of officers to be retired and the proportionate number of retiring officers to be retained. Since enhanced mobility is an avowed goal of the new statute, we do not anticipate the retention of an excessive number of officers whose time in class has expired.

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QUESTION

Section 701(b)(2) authorized the employment of Foreign Service spouses. Does your Agency now or are you contemplating providing functional training for spouses in preparation for jobs overseas?

ANSWER

The Agency appreciates the need to provide employment opportunities for spouses. We are presently expanding language and area studies for spouses, which we anticipate will improve their capacity to function in foreign environments and increase their opportunities for employment overseas. In addition, we have begun to provide limited practical training as well. For example, we are establishing mini-computer systems in a number of posts that may be operated by American dependent employees in some cases. In those instances, a two-to-three month training course in Washington would be provided for the employee.

QUESTION:

Will you submit to the Committee a copy of the statement you prepared for delivery here today prior to its submission to the Office of Management and Budget?

RESPONSE:

Yes. See attached.

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Mr. Chairman, Members of the Subcommittees:

I am pleased to appear before you today to discuss an issue of great importance and interest: The proposed Foreign Service Act of 1979.

While I have had the pleasure of meeting with the International Operations Subcommittee on many previous occasions, I have not met previously with the Civil Service Subcommittee. Therefore, before I begin my discussion of the Personnel Act itself, I would like to take a few minutes to describe the International Communication Agency.

USICA came into being on April 1, 1978, as a result of Reorganization Plan No. 2 of 1977. It is comprised of the former United States Information Agency, and the former Bureau of Educational and Cultural Affairs of the Department of State.

We are an independent foreign affairs agency, charged by the President with: encouraging the broadest possible exchange of people and ideas between our country and other nations; increasing understanding of our society and policies among other peoples; expanding the knowledge of Americans about societies abroad; and advising our government in the formulation of foreign policy.

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Our budget for the current fiscal year is \$418 million. Our staff includes 8,858 employees, of which 4,447 are American personnel and 4,311 are non-Americans hired locally overseas. Our American personnel include 1,725 GS employees; 870 Foreign Service Information Officers, and 1105 Foreign Service Reserve officers, 900 of whom are the so-called "Domestic Specialists." We also have 230 Wage Grade and 245 Foreign Service Staff employees. We operate in 196 posts in 121 countries.

To fulfill our mission we:

- facilitate the international exchange of nearly 5,000 scholars and professionals every year;
- annually arrange for approximately 400 visiting American experts to talk to foreign audiences on topics of mutual concern;
- broadcast 820 hours per week in 38 languages on the Voice of America;
- maintain and support reading rooms, libraries and centers in over 100 countries;
- produce or acquire videotape programs and films for use in our posts overseas;

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-- produce approximately 10 large exhibits and 75 small exhibits per year;

-- and through our offices overseas, maintain regular contact with a broad segment of opinion leaders, including the media and the academic and cultural communities in each country.

The Agency has 6 Presidential appointees: the Director at Executive Level II, the Deputy Director at Executive Level III, and four Associate Directors at Executive Level IV, one each for Educational and Cultural Affairs, Broadcasting, Programs, and Management. our five geographic area offices, usually headed by career Foreign Service Information Officers, parallel the structure of the geographic bureaus in the Department of State.

With this general background, Mr. Chairman, I would now like to talk about the Foreign Service Act itself, and the particular impact which it can have on the Agency and its employees.

Proposals for changing personnel policies deserve the closest scrutiny and the most careful consideration because they go to the very heart of the morale, efficiency, and effectiveness of any career service. Experience has made us fully aware of this fact in the Foreign Service, and it has

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weighed on our minds at every step of our deliberations about the proposed bill. We have consulted with representatives of our union, Local 1812 of the American Federation of Government Employees, who have had considerable influence on the development of the Agency's position. We have consulted members of the Service, both at home and abroad, who have studied the various proposals and have shared their concerns. We have worked closely with the Department of State in drafting the proposed legislation and have been encouraged by the cooperation we have received. We have met with Secretary Vance, Under Secretary Read, Director General Barnes and other officials of the Department. Our lawyers and personnel staffs have been in regular contact with their counterparts at State as the bill was drafted.

The proposed Act reaffirms the need for a professional Foreign Service with its own personnel system. Secretary Vance has already described the purposes of the bill. I associate myself fully with those purposes and urge the Committee to report favorably on the bill as rapidly as may be possible.

MAJOR PROVISIONS:

There are a few major provisions which I would like to address.

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- 1) The bill creates a Senior Foreign Service comparable to the Senior Executive Service in the Civil Service. I support the proposed Senior Foreign Service. I see it as a positive personnel management proposal, well adapted to promote the best opportunities and incentives for our ablest senior officers. I believe the Senior Foreign Service system will contribute to enhanced productivity in the public service. At the present time, Foreign Service Officers do not enjoy many of the incentives which are available to their counterparts in the Senior Executive Service. The Senior Foreign Service proposal would put the two career services on a par and make available to senior Foreign Service officers the incentives and rewards which are now available only to senior Civil Service employees. In return, it is reasonable to set the highest, most stringent standards of performance, as this bill does.

2. The bill provides a single Foreign Service salary schedule for American personnel. The new schedule will supersede the two overlapping schedules that now exist for officers and staff employees.

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These salary provisions of the Act will enable us to achieve two long sought objectives:

- a) greater comparability between Foreign Service and Civil Service salaries, and
 - b) a uniform pay scale for all Foreign Service personnel, including Foreign Service Information Officers, Foreign Service staff employees, and Foreign Service Reserve Officers who are available for worldwide assignment.
3. The bill will provide a useful statutory basis for labor-management relations, which has been lacking heretofore.
 - 4) Consistent with Reorganization Plan No. 2 of 1977, which established USICA, the bill provides the Director with all authority necessary to manage USICA's personnel systems. It recognizes the need for differences in personnel policies and practices among the foreign affairs agencies while seeking the maximum compatibility.
 - 5) Finally, under the proposed bill, the Foreign Service "domestic specialist" personnel category is eliminated.

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The proposed legislation states that all Foreign Service domestic specialists shall be converted mandatorily to the Civil Service after June 30, 1981.

We heartily concur with the need to consolidate the personnel systems which have evolved over the years, clearly sorting them into two systems -- foreign and domestic. Only in that way will all employees, from the time of initial employment, know clearly where they stand in terms of work requirements, pay scales and assignment obligations.

We no longer appoint officers to positions in USICA under any "foreign service" personnel system unless they are available for assignment overseas. Further, we have implemented a regulation which severely limits the length of domestic tours for our Foreign Service Information Officers.

To accomplish the distinction between domestic and foreign service, we entered into an agreement in 1977 with Local 1812 of the American Federation of Government Employees, the exclusive bargaining representative of our Foreign Service personnel. That Agreement provides that USICA's Foreign

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Service "domestic specialists" (known as FAS employees) will not be subject to mandatory conversion to Civil Service, though they have the option, through June 30, 1981, of converting voluntarily. Those who do not exercise this option remain in the Foreign Service. A corollary provision of this agreement states that no new domestic specialists will be brought into USICA's Foreign Service.

We felt the ultimate objective of a clear distinction between Foreign Service and Civil Service within USICA would be achieved in time, through attrition and the application of new hiring policies, and without disruption to the agreement with present Agency personnel.

Over 900 Agency employees are now classified as Foreign Service "domestic specialists." They work as VOA technicians and broadcasters, magazine editors, exhibit designers, and in many of the positions essential to the support of our missions overseas. Many of them have expressed strong opposition to mandatory conversion, and we must be candid in stating that application of this provision to the Agency could cause us serious problems.

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We are prepared to tolerate a slower shift of our domestic specialists to the Civil Service than the Department is, because we do not wish to impair the existing agreement with our employees and their collective bargaining agent, and also because, under the specific history and circumstances applicable to this case, we believe it would constitute a breach of faith and contract to do otherwise. We urge the Committee to give this question -- and its solution -- the most careful consideration.

SUMMARY

In summary, Mr. Chairman, I reiterate our full support for a revised, updated and consolidated Foreign Service personnel system. The revised Act can serve to clarify many aspects of our present patchwork personnel system, to correct inequities which have evolved over the years, to consolidate the many branches of the Foreign Service into a single career service, to obtain greater comparability of pay between the Foreign Service and the Civil Service, and to convey to all members of the Service our appreciation for the changing requirements and challenges they face.

I shall be happy to respond to questions.

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QUESTION

Were there any concerns which you expressed either to the Department of State or to OMB which are not addressed by this legislation?

ANSWER

We expressed no concerns which are not addressed by this legislation. There are, however, a number of concerns which we have which are not susceptible to legislative remedy. Primary among them is the fact that a Foreign Service career is considerably less attractive today than it has been in the past. The devaluation of the dollar and inflation have reduced the standard of living for officers assigned overseas. Employment opportunities for spouses are extremely limited. Terrorism is a fact of life, and the need for security precautions plus the frequent disruptions caused by overseas conditions take their toll on officers and their families. Finally, there is the fact that persons who want the experience of living overseas need not join the Foreign Service to find the opportunities they seek; less expensive travel is available today, as are a multitude of short-term experiences through the private sector.

QUESTION:

Does USICA have an Inspector General or similar officer? What does this officer do?

ANSWER:

USICA has a Chief Inspector who is responsible for inspecting and auditing all USICA posts and programs; advising the Director on trends which can be perceived through a continuing analysis of inspection reports in order that the Agency can be in a position to react promptly and effectively to such trends; and serving as liaison with the Department of State's Inspector General in order to ensure compatible inspection procedures and purposeful sharing of findings.

Unlike the position of Inspector General in State, this position was not created by statute.

APPENDIX 2

ANNEX 1 TO STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, JULY 9, 1979

1. Section 204 The Director General

This section gives the Director General a vague jurisdiction over the Foreign Service employees of USICA which does not currently exist. Neither the State Department nor the Director General has an obligation to consult with USICA employees or their exclusive representative. Therefore, the greater the role of the Director General in USICA personnel matters, the less meaningful is our collective bargaining relationship with the agency. In addition, the authority of the USICA Director is undermined. We ask for clarification that the Director General will exercise no authority over the Foreign Service personnel of USICA or AID.

2. Section 206 The Board of the Foreign Service

We do not understand what function the Board is expected to fulfill now that labor-management relations and other adjudicatory functions have been assigned to other authorities. For the same reasons discussed above, we cannot accept a situation where the Board is making personnel rules and regulations. If the Board is to be retained purely as an advisory body, it should be insured some degree of independence by a provision that administrative services will be provided to it upon request of the Chairman.

3. Section 421 Foreign Service Schedule

We are disturbed that the Department of State apparently does not intend to make available its pay proposals during the period that this bill is under discussion. We object to this since from the beginning, the Department has enlisted support for its legislative effort by suggesting that it would improve Foreign Service pay. Since the Hay Study Report is complete, the State Department and OMB should make known its proposals for pay linkage.

4. Section 441 Performance Pay

Subsection (c) - We have misgivings about selection boards making recommendations for performance pay. The same board will be determining pay, promotion and retention. Different factors are involved in each of these determinations. Selection boards already work under the pressure of time and limited resources. Adding this function will worsen that situation. If performance pay must be instituted, we suggest that an alternative mechanism be devised for administering it.

Subsection (d) - As written, this section provides that recommendations for the highest performance awards to SFS members in all three foreign affairs agencies must be reviewed by the Secretary of State before going to the President. We propose amending the section to allow the Director of USICA and AID Administrator to make recommendations directly to the President or to a third party such as the Office of Personnel Management.

5. Section 462 Special Allowances

This provision was passed by Congress as a substitute for premium pay after the latter was prohibited to all Foreign Service Officers and Foreign Service Information Officers by the Pell Amendment (section 412, P. L. 95-105). We opposed the Pell amendment and have sought its repeal. Junior and middle level officers should be entitled to overtime compensation on the same basis as other government employees. Special allowances are not an adequate substitute. Only seven positions in USICA are currently certified as eligible.

6. Section 603 Selection Boards

Item (2) should be deleted, per our comments regarding section 441, performance pay.

7. Section 602 Promotion and Retention in the Senior Foreign Service

Subsection (b) - This section should be deleted. By making the need for attrition a prominent factor, this section conflicts with the provision that promotions will be made based upon merit principles.

8. Section 641 Retirement for Expiration of Time-in-Class

Subsection (b) - Deletion should be made of the "limited extension". This provision has no equivalent in the Civil Service Senior Executive Service. It places awesome power into the hands of management to eliminate senior level officers for any number of reasons, and to keep them in a constant state of uncertainty and conformity. In our view this device will not enhance performance considerations but will expand the area for non-performance factors.

Subsection (a) - Provision should be made for a minimum time-in-class for those in the SFS if the "limited extension" is retained, to assure to officers a reasonable expectation of continued employment for a given period. Periods of five and eight years have been suggested.

Subsection (c) - We propose amendment of this section to provide a "parachute clause" similar to that in the SES to entitle a SFS member to retreat to the FS-1 level for the remainder of time-in-class. Addition would be made of the following language:

"Members of the Senior Foreign Service shall, upon election, be entitled to return to the FS-1 level and assigned to a non-SFS position for the period, if any, remaining to be served in class 1 under applicable time-in-class regulations. In determining the length of time remaining, periods previously served in class 1 and periods served in the SFS shall be subtracted from the time-in-class period."

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9. Chapter 10 Labor-Management Relations

Our position is that the labor management chapter of the Civil Service Reform Act should apply to the Foreign Service except with regard to definition of unit and unit membership. The existing units reflect the unique characteristics of the Foreign Service although admittedly they do not conform with normal labor relations principles. Should the present legislation go forward with a separate labor management system for the Foreign Service, we have the following specific objections or comments which in large part, simply point to areas in which the proposed bill is not equivalent to the Civil Service Reform Act.

Section 1005(a) Management Rights

In paragraph 1, deletion should be made of the words, "of types and classes". In paragraph 2, deletion should be made of the word "promote". Paragraph 5 should be deleted in its entirety.

Section 1011 Foreign Service Labor Relations Board

The Board should be made independent from the Secretary of State. Establishment of an independent third party whose members are removable only by the President for cause was a major objective of the labor management section of the Civil Service Reform Act. We would point out that the Foreign Service Labor Relations Board does not include a General Counsel to prosecute unfair labor practices.

Section 1014 Foreign Service Impasse Panel

In subsection (e) deletion should be made of the words, "or the Secretary finds that the Panel's action is contrary to the best interests of the Service". As written, the Panel's final orders are not binding on the foreign affairs agencies.

10. Chapter 11 Grievances

Section 1103 Freedom of Action

Subsection (b) represents a departure from current procedures which we do not favor since we believe that with regard to a legislated appeal procedure, individual choice of a representative is most appropriate. The Foreign Service Grievance Board has jurisdiction over matters which in the Civil Service system would be considered adverse actions and appealable to the Merit Systems Protection Board. Therefore, we propose deletion of subsection (b) and substitution of the following:

"(b) The grievant has the right to a representative of his or her own choosing at every stage of the proceedings. The grievant and his/her representatives who are under the control, supervision or responsibility of the foreign affairs agencies shall be granted reasonable periods of administrative leave to prepare, be present and to present the grievance. Where the grievant is not represented by the exclusive representative for Foreign Service employees of the agency, the exclusive representative shall have the right to be present during the grievance proceedings."

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Section 1113 Board Decisions

The Statute should abandon the distinction between those cases in which remedies may only be recommended by the Board and those cases in which remedies may be ordered. The procedure should be made equivalent to binding arbitration. This would be achieved by making the following amendments to section 1113:

- delete subsection (d)
- revise subsection (b) as follows: add a new paragraph (5), "to promote an employee who is found to have previously failed to receive proper consideration. Promotion may be made retroactive where the Board finds that, but for the failure to be properly considered, the grievant would have been promoted."

11. Section 1203 Compatibility Among Agencies Employing Foreign Service Personnel

Deletion should be made of the word "maximum" in the third line of the section. While we agree that the personnel systems of the foreign affairs agencies should be compatible enough to permit interchange of employees and reasonable personnel administration at overseas posts, the word "maximum" implies much more, and perhaps, uniformity. There are any number of reasons why each agency should be able to manage its own personnel: different promotion patterns and rates of attrition, special needs for specialists, varying degrees of political sensitivity. Congress recently affirmed its belief that USICA should be an autonomous agency. To insure that autonomy, references to "maximum" compatibility should be eliminated.

12. Section 1205 Exclusive Functions of the Secretary

Deletion should be made of part (6) in accord with our comments on section 441 (nominations for performance awards). Deletion should be made of part (12) in accord with our comments on section 1011 of Chapter 10 (Foreign Service Labor Relations Board).

13. Section 2102 Conversion to the Foreign Service Schedule

Subsection (f) - Deletion should be made in lines 16-17 of the words, "not more than three years after the effective date of this Act", and substitution made of the words, "the time-in-class period to be determined by the Secretary which in no case shall be less than five years". This provision has no equivalent in the Civil Service Senior Executive Service where a person not opting into the SES may remain in grade without loss of pay or benefits and does not face termination. The section as proposed is coercive; an individual not within three years of retirement will have no choice but to enter the SFS. Entry into the SFS is supposed to be voluntary.

14. Section 2103 Conversion into the Civil Service

Subsection (b)(1) - Deletion should be made of the words, "prior to July 1, 1981". This date does not represent the expiration date of the AFGE 1812/USICA agreement regarding domestic Foreign Service employees.

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15. Section 2104 Preservation of Status and Benefits

Under Secretary of State Read testified on June 21 that employees converted to the Civil Service will not be subject to loss of pay or grade as long as they do not voluntarily move to a different position. This guarantee does not appear in the bill.

16. Section 2403 Reports

Deletion should be made of the word, "maximum" in lines 7-8 on page 203 in accord with comments made on section 1203 (Compatibility among agencies employing Foreign Service personnel). This section assigns solely to the Secretary of State the duty of reporting to Congress and making recommendations on the progress of achieving conformity. The Director of USICA and Administrator of AID should be given access to the Congress to report and recommend. Foreign Service employees in USICA fear that this section is an invitation for a recommendation to eliminate the separate FSIO corps, a step that we would vigorously oppose.

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APPENDIX 3

REPORT OF THE FORUM OF THE ASSOCIATION OF AMERICAN FOREIGN SERVICE WOMEN ON THE CONCERNS OF FOREIGN SERVICE SPOUSES AND FAMILIES

The Concerns of Foreign Service Families

Background

The AAFSW Forum was established in August, 1976 to identify and analyze "The Concerns of Foreign Service Women and Families" and to recommend possible actions that the Department of State might take.

Five study groups--Family Life, the Modern Foreign Service Wife, Orientation, Re-entry, and Women in Transition (retirement, widowhood, and divorce)--have met under the Forum project to consider specific aspects of Foreign Service life. The chairman of each study group sits on the Steering Committee, which meets regularly to coordinate the project.

The Forum attempted to involve as many women as possible in the project by mailings to over 9,000 Foreign Service spouses and by publicity in the Department of State and AAFSW newsletters. All interested spouses, whether members of AAFSW or not, were invited to participate.

In the Washington area, the Forum collected information for this report from letters and telephone conversations, at an Open Meeting held Sunday, November 7, and at meetings at post. All participation in this project has been voluntary.

In addition, the Research Committee on Spouses, the Spouses' Skills/Talent Bank, and the Workshop for Foreign Service Families at the Foreign Service Institute have contributed to the project.

This report concentrates by necessity on the concerns of Foreign Service families and allows little room for mentioning the positive benefits of Foreign Service life. We wish to express our awareness and appreciation of what is already being done for Foreign Service employees and their families. We hope that the forwarding of these concerns will give the families and the Department of State an opportunity to work together to make Foreign Service life as rewarding as possible.

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The Problem

The concerns of Foreign Service spouses are both "Service-related" and "role-related." The Forum recognizes fully the Department of State's willingness and effort to minimize service-related problems--those that are caused or aggravated by constant mobility and world-wide service. Continued constructive attention to these concerns will benefit both the Foreign Service and the individual, improving morale and employee performance.

Role-related concerns are more difficult to define. In the last 15 years, the political, social and economic role of women in America has changed significantly. Increased mobility, smaller families, higher levels of education and economic necessity have combined to alter the American woman's way of life.

In 1960, 33% of the work force were women; today that percentage is 40.7%, and 48% of American women over age 16 are gainfully employed outside the home. Women who do not work occupy an increasingly important role in the family, in family decision-making, and in the community. Women are now more independent, economically and socially, and are recognized as such by society and by themselves.

In 1972, the Department of State recognized these societal changes and the increasing dissatisfaction with the "two for the price of one" philosophy. It declared that spouses were no longer to be treated as associate employees of the Department of State, and their contribution or lack of contribution to the Foreign Service community could no longer be mentioned in the employee's personnel file or efficiency reports. The 1972 Policy Statement on Wives was hailed as an important first step in eliminating many of the injustices of the past.

However, this policy does not deal effectively with the realities of Foreign Service life, since Foreign Service spouses will always be a part of the "system", especially abroad where they are dependent on Departmental services and implicitly responsible to a larger community. Most Foreign Service wives recognize this paradox and have struggled since 1972 to reconcile their formal independence with the continuing demands and responsibilities of Foreign Service life.

This contradiction causes very real problems for Foreign Service spouses--problems which have a significant effect on the Foreign Service as a whole. Spouses are

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frustrated by the Department's inability to adapt fully to the changing role of women in society. They feel that the Foreign Service is unaware of their diverse abilities and their desire to make a contribution, though not necessarily through representational entertaining. This frustration, coupled with the service-related problems discussed below, often produces extreme disenchantment with Foreign Service life and reduces family commitment to the Foreign Service.

The Forum recognizes that the foreign affairs agencies have little control over the forces that have led to a reappraisal of the women's role in the family and community. It is equally apparent that Foreign Service wives cannot request blanket permission to "do their own thing" while expecting the foreign affairs agencies to nurture them with additional services. However, it is important for the welfare of individuals and the Service to work together to deal with these concerns.

Participants in this study believe that the Department of State can help resolve these concerns by (1) developing new ways to view and treat spouses as assets in the foreign affairs effort, and (2) ensuring that the disadvantages of Foreign Service do not outweigh its benefits.

The Forum study groups have identified specific concerns which are discussed below:

The FAMILY LIFE study group concentrated its research on the concerns and experiences of families with children. Letters to the Committee consistently listed four major areas of concern: (1) rearing and educating children, (2) family health, (3) family participation at post, and (4) difficulties with support services. Some families are becoming increasingly reluctant to serve overseas, particularly at hardship posts, despite pay differentials. Many questioned whether present conditions of life in the Foreign Service permit them to realize their family goals. They consider the frequent changes of climate, culture and languages, the repeated remaking of the home environment in all its material and psychological complexity, the uncertainty of education good enough to meet today's competitive standards, plus the varied physical and financial stresses and ask, "Are we preparing our children adequately for their future?" "Is life in the Foreign Service worth the hassle?"

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The study group on the MODERN FOREIGN SERVICE WIFE focussed on the present, unsatisfactory relationship between the Department of State and spouses and its effect on the resolution of urgent concerns. Since 1972, this relationship has been based on a denial of mutual obligations and responsibilities while, in fact, diplomatic life imposes limitations and responsibilities on both the Department and spouses. Without more effective communication and a new understanding and definition of this relationship, specific mutual problems cannot be addressed. One of these problems is the inequity of implicit representational responsibilities. Although wives are no longer required to entertain, the need for representation continues. Women feel there has been no realistic assessment of what must be done in the Foreign Service community, who will do it, and how they will do it, and how they will be compensated for it. The most crucial concern addressed by the study group is the widespread dissatisfaction with the lack of employment and career opportunities for spouses. Women cannot participate fully in society because the opportunities to pursue their own intellectual and professional development are limited.

Foreign Service spouses possess a wide variety of professional and technical skills, as documented by the SPOUSES' SKILLS/TALENT BANK. However, the Department has yet to establish a mechanism by which such skills can be identified and utilized in the best interests of the foreign affairs community and the individual family unit. Lack of progress in this area continues to affect morale, a family's willingness to serve abroad and the ability of the Foreign Service family abroad to demonstrate the positive aspects of American life. The creation of a centralized skills bank would be seen by employees and spouses alike as a demonstration of positive concern for the welfare and social and professional fulfillment of all Foreign Service individuals and a creative utilization of previously untapped individual resources.

Foreign Service families spend a significant portion of their time adjusting to new surroundings and circumstances, so much so that one wife described her time in the Foreign Service as "life among the packing crates." Some families become acclimated more quickly than others, but all agree that the transitions--whether the family moves to a post abroad, returns to Washington, or leaves the Foreign Service altogether--impose unique stresses on the family. The following paragraphs summarize the findings of the study groups that concentrated on these transitions.

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The study group on ORIENTATION AND TRAINING found that many spouses are poorly prepared for life in the Foreign Service. Basic information about the obligations and options of Foreign Service spouses would help prepare women for the demands of diplomatic life. However, many families cannot attend basic training in Washington for financial reasons, and many spouses do not see published material, such as the new pamphlet for married applicants, because it is not brought to their attention. Wives at all levels stressed the importance of improved training opportunities, especially language training in Washington and at post, that would enhance their contribution to the community abroad and facilitate a smooth adjustment to life in foreign cultures. Spouses' participation in programs at FSI is limited by the "space available" requirement, and many cannot attend courses at all because of conflicting responsibilities and the lack of child care facilities. Families need more take-home training material, printed materials and cassettes, to prepare them for overseas assignments.

For many Foreign Service wives, RE-ENTRY to the United States from abroad is a time of severe stress, a transition that has not been fully appreciated by the Department of State. For families that have served many years abroad, re-adjustment to life in the United States is similar to adjustment to life in a foreign country. Families must make immediate decisions about housing, education and, frequently, medical treatment--decisions requiring basic information that is often difficult to obtain. The Foreign Service wife often suffers an "identity crisis" caused by adjusting to a new lifestyle, trying to resume a career or an education interrupted by overseas assignment, and struggling with the feeling that she is a stranger in her own country. These stresses converge to make re-entry to the United States a difficult experience.

The study group on WOMEN IN TRANSITION found that retirement does not appear to present major adjustment problems, perhaps because the transition is expected and the family unit is still intact. Widowed and divorced women, however, feel vulnerable and unprepared for life in today's society. Most women who now face widowhood or divorce had "served" with their husbands in the old sense of the word. Their future has been clouded by the personal sacrifice made in serving overseas in a role secondary to that of their husbands. If the foreign affairs agencies work to allow women to develop independent roles and financial security, as suggested elsewhere in this report, this problem may diminish. In the meantime,

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divorced and widowed women need a service within the Department that can give them information, legal assistance and counseling. While these women do not blame the Department for their personal problems, they feel their transition is more difficult because of the nature of their Foreign Service experiences.

Recommendations:

1. Establish a new relationship between the Department of State and the spouses of Foreign Service employees, based on a recognition of mutual responsibilities.
2. Create a Family Liaison Office (FLO) headed by a director who is directly responsible to the Deputy Under Secretary for Management and who works in close cooperation with M/DG, M/FSI, M/MED and M/MO. This office would assist State, USIA and AID family members and should be established through a joint cooperative effort between Foreign Service families and employees of the Department of State. FLO should:
(1) Provide regular and dependable dissemination of information from the foreign affairs agencies to family members in Washington and abroad, and (2) Communicate the views and needs of Foreign Service families to the foreign affairs agencies, especially on policy matters and planning affecting their welfare.

FLO should act as a central clearing house of all information pertinent to Foreign Service families. The office should direct family members to up-to-date information on facilities abroad, including post reports, slides and videotapes. The office should be a center of information on all regulations affecting family members, such as regulations on training, moving, family health, widowhood, retirement, and employment opportunities. Written memoranda on these subjects in a format suitable for filing in a loose-leaf notebook would be helpful. A well-informed administrative officer should be present to answer questions and brief family members. The office should become familiar with all services available to Foreign Service families (such as FSECC, FSI, medical services, AAFSW services and community resources) and should publicize these services as appropriate.

FLO should insure the provision of confidential psychological and family counseling by a sensitive and knowledgeable person to assist family members

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facing service-related problems or crisis situations. This service exists for USIS and AID families in their respective agencies, so referral and cooperation would be necessary. This special assistance and advisory service is especially important for widows and divorced dependants.

FLO should initiate direct contact with spouses of candidates for Foreign Service employment to insure that they receive a full appreciation of Foreign Service life before the family enters the Foreign Service. Following the candidate's decision to enter the Foreign Service, the office should maintain direct contact with the spouse.

FLO should initiate frequent contact with posts abroad, providing up-to-date information pertinent to families living abroad or preparing to return to Washington.

FLO should act as a liaison with individuals and organizations such as AAFSW, WAO and AFSA on all matters pertaining to family members and should assist these organizations upon request whenever possible.

The Spouses' Skills/Talent Bank should be institutionalized within FLO to encourage and facilitate the utilization of the individual talents of spouses. Career counseling for spouses should be provided, and the information gathered by the Skills/Talent Bank should be used to expand employment opportunities as described in recommendation #7.

FLO should be staffed by at least four full-time professionals (director, information specialist, skills bank coordinator, counselor) and adequate secretarial support, and should be able to fund the programs described.

3. Improve the training provided spouses to insure that it meets their needs. Training in languages and other cross-cultural skills (full or part-time, take home and at post) should be a priority. The materials in the FSI seminars on Family Living, Money Management and Career Planning are vitally important and should be available to all families in the Foreign Service community. These and other orientation materials on re-entry and community participation should be available in written form, on cassettes, or on

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videotapes for use by families who are unable to attend FSI and for distribution overseas. Child care facilities should be provided at FSI. Recognizing that the spouse is an important part of the diplomatic unit, the Department should authorize per diem for family members to accompany the employee to Washington for orientation, training and consultation.

4. Review and clarify representational responsibilities and explore ways to compensate spouses for their work and expenses.
5. The 30-day temporary housing allowance for families returning to Washington should be extended. The Department of State should recognize the special travel needs of families fragmented by divorce and provide appropriate travel allowances.
6. Review the quality of medical care provided for Foreign Service families, particularly at posts abroad, and take prompt action to improve medical care worldwide. Counseling for mental health problems must be expanded, using para-professional counselors abroad. The assignment process should include a thorough consideration of all family members. Medical personnel in Washington should recognize and understand the stresses of Foreign Service life and be more sensitive in their dealings with family members.
7. Recognize the diverse skills and talents of spouses and work to integrate these into the post community abroad. Maintain a catalog (the Spouses' Skills/Talent Bank) of contract positions, positions in American businesses, foreign country resource needs, legal requirements and family member skills. Reinforce and implement existing regulations to facilitate and encourage the employment of spouses overseas.
8. Review family educational requirements and work to minimize the adverse effects of Foreign Service life on educational continuity. Work with family members to improve standards of State Department supported schools, up-date educational allowances, provide standardized testing for dependents abroad and re-assess assistance for handicapped dependents. Provide two paid trips per year for dependents age 22 and under to visit parents at post. FSECC has offered to prepare a complete and frequently up-dated re-entry package on schools in the Washington area; this project should be funded by the foreign affairs agencies.

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9. Provide financial support for ad hoc community efforts (part-time work, clubs, special activities) to improve teen-age morale abroad.
10. Improve evacuation procedures by sending a specially trained TDY officer to safehaven posts to help evacuees with information, counseling and financial assistance.
11. Meet with Forum participants to promote mutual understanding and cooperation regarding the above recommendations.

Attachments:

- Tab 1. Family Life Study Group Report
- Tab 2. The Modern Foreign Service Wife Study Group Report
- Tab 3. The Spouses' Skills/Talent Bank Report
- Tab 4. Orientation and Training Study Group Report
- Tab 5. Re-entry Study Group Report
- Tab 6. Women in Transition (Retirement, Widowhood and Divorce) Study Group Report

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Family Life Study Group Report

The morale and well being of U.S. Government employees and their families overseas are crucial factors in the excellence of the employee's performance. We, the members of the Family Life committee, have been gathering information from spouses here and abroad about their experiences in rearing children overseas. Some employees are becoming increasingly reluctant to serve overseas--particularly at hardship posts, despite pay differentials. We have received many letters questioning whether present conditions of life in the Foreign Service are a satisfactory way to realize their family goals.

When they consider the frequent changes of climate, culture and languages, the repeated remaking of the home environment in all its material and psychological complexity, the uncertainty of education good enough to meet today's competitive standards, plus the varied financial stresses, families are asking themselves: "Are we preparing our children adequately for their future?" "Is life in the Foreign Service worth the hassle?" One woman phrased her concern: "It is one thing to sacrifice one's own comfort and well being to a cause, but one has no right to sacrifice one's children's future to a personal choice."

Letters to our committee of Family Life consistently listed five major areas of concern: (1) rearing and educating children, (2) family health, (3) family participation at post, (4) difficulties with support services, and (5) finances and family life.

Children

The conventional saying, "children adapt so easily to new environments overseas" is no longer accepted as truth by Foreign Service families. They have seen, heard about or personally suffered with children who have had real problems.

Too often Foreign Service children have been shoved aside in the name of representational duty. Time for family activities is often in short supply and not considered important by superiors. Departure and arrival times are so full of activity that children's needs can be neglected.

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Young children left in the care of unsuitable servants can be victimized by unscrupulous and dangerous individuals. The Werkman Report documents many cases of psychological difficulties that have arisen due to mental and physical abuse of children by household employees.¹

Grade school children do not have sufficient opportunities to learn about their own country, form lasting friendships with other children, or have the security which comes from a more settled existence. They miss organized group sports programs and the chance to participate in scientific and nature study programs. Many young children today acquire large amounts of technical information in this country that is unavailable elsewhere. Sometimes the constant changes of language and environment precipitate problems of dyslexia and antisocial behavior which will continue to impede their learning and affect their psychological development unless properly diagnosed and treated.

Many parents observed that when children spend most of their formative years abroad they are "superficially at home in all cultures, but not truly a part of any--including their own." Young adults, products of an earlier era of Foreign Service life, still see themselves as permanent observers, never fully participants in their own country.

Teenagers find it difficult to acquire a working knowledge of their own culture. They have little or no knowledge of what things cost, have never had a chance to earn their own money, nor the opportunity to observe careers other than their fathers'. Adolescence is always a time of stress, but young people abroad find it very difficult to deal with their loneliness, instability and boredom. "They have very special problems of identity, involvement and loyalty." In the worst cases, drug and alcohol abuse, criminal actions, mental health problems and even death have been the result--causing terrible anguish to families and the government.

There is at present very little help available overseas to the families involved in these difficult problems. There is no crisis prevention counseling, and many parents fear their careers may be jeopardized if they do seek help. When parents and children are separated

¹Sidney L. Werkman, a former lecturer at the Foreign Service Institute and former Senior Psychiatric Consultant to the Peace Corps, did a study on Foreign Service children which was read at the 124th Annual Meeting of the American Psychiatric Association in Washington, D.C., May 3-7, 1971.

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by excessive representational duties, assignment or boarding school, it is difficult to maintain close communication and deal with unsatisfactory situations before serious problems result.

The quality of education overseas is of prime concern to all Foreign Service families. The office of Overseas Schools does try to insure that Foreign Service children receive comparable educational experience abroad. Their success is gratefully noted at larger posts where it is easier to attract quality teachers, maintain adequate facilities and quickly receive the latest educational materials. "However, at less pleasant and/or more isolated posts, our children often endure very poor, if not perverse, educational experiences."

Inadequacies reported are: lack of libraries and laboratory equipment, antiquated textbooks, limited or inconsistent curriculum, unqualified teachers, inadequate college counseling, and no special attention to learning disabilities and emotional problems. Frequent changes in teachers and administration are common. Furthermore, the unique overseas experiences of Foreign Service children are no longer of use to them within the typical standardized competitive exams for eligibility for admission--let alone scholarships--at university level. It is no exaggeration to say "a child who received his early education at remote posts in LDC's with few educational experiences comparable to the U.S. norm, can be as deprived in some relevant respects as one from the most rural or impoverished ghetto areas in the U.S."

Over the years, employees and wives have served long hours on school boards at isolated posts trying to promote high standards; now they question, along with all Foreign Service parents, whether it is fair to offer their children such an erratic and interrupted educational experience, considering today's competitive job market.

Too often adolescents must cope with correspondence courses at post, attend boarding school in another foreign country, or the student is forced to return alone to the States--sometimes halfway around the world from his parents. The young teenager will only have one round trip per year to settle any worries or problems he may have. "Cutbacks in dependent travel allowances and the failure of educational allowances to keep up with the increased educational costs cause real financial and emotional stress in families. This is when families really begin to question whether the sacrifice is worth it."

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Travel allowances for children or divorced parents are another source of serious concern. Rules for these fractured families vary, and in some cases the Foreign Service officer without custody has no opportunity to see his children while working abroad.

The Foreign Service Educational and Counseling Center (FSECC), a private activity funded by AFSA and AAFSW, responds to some of the needs listed above. The Center is a concentrated and ever-expanding source of information on all aspects of education. Mrs. Bernice Munsey, the new director, is eager to work with parents and students here in the U.S. and through correspondence with those abroad. Unfortunately, families overseas who could benefit from FSECC's services are unaware of its existence.

Family Participation at Posts

The sense of participation in the U.S. government community abroad is very lacking at some posts. "Recent emphasis on individual freedom has torn down the social supports of the past which helped ensure that all employee families abroad were integrated into the efforts--business as well as social--of the Embassy/Consulate. Nothing has replaced this."

Many letters expressed confusion about Airgram A-278 of January, 1972 and expressed the urgent need to rethink the official policies, official practices at post, and volunteer efforts in the government community that affects us all. A more detailed discussion of this problem is presented in the Modern Foreign Service Wife Study Group Report.

Many people mentioned the need for improvement of welcoming customs over and above the official arrival procedures. The Forum also received numerous suggestions for the creation of a new position, a "family liaison officer" at posts abroad, who could help coordinate community activities, locate community resources and work to maintain or improve post morale. This person could work in close cooperation with the Family Liaison Office (FLO) recommended by the Forum in this report.

Spouses recognize that the burden of most representational duties, the care and feeding of VIP's and boosting of post's morale still falls to the senior wives. Isn't it time the job of Foreign Service wife received compensation?

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The 12-year old son of a DCM visiting the Kennedy Center "Town Meeting on the Air" remarked over National Public Radio that his mother worked as hard at representing our country as the wife of the U.S. President and deserved to be paid for her service. He was right.

Financial worries are intensified by the inflation at home that frightens families trying to plan for the purchase of a home, college bills, and retirement. Two incomes have become necessary.

A committee member who entertained frequently abroad without reimbursement expressed bitterness and resentment that no recognition is given to her family for their personal efforts to improve cross-cultural understanding. Today she is uncertain if she will be able to continue her children's education at the graduate level.

Family Health

Families are also concerned with sacrificing their physical and mental health for the needs of the service. "Facilities for prevention, diagnosis and treatment of endemic diseases at posts located in less-developed countries are usually not adequate to insure the maintenance of family health at a good level. Often the overworked regional doctor has to cover too large an area to provide thorough medical coverage for the number of persons, including dependents, under his jurisdiction."

Forum participants felt that the Medical Division should review with greater care the health record of the total family unit before clearing them for service at a post lacking facilities for their particular problem. For example: direct transfer from one hardship post to another when someone in the family suffers from serious amoebic dysentery, recently had surgery or has a handicap which can't be treated at the ongoing assignment.

In 1962, Bea Russell wrote in LIVING IN STATE that "personnel serving in Africa can expect to lose at least a portion of their health." That was fourteen years ago, yet one wife who recently returned from Africa reports "the incomplete list of our family's health problems included nearly constant dysentery, tapeworm, a child's vaginal infection from a nursemaid's masturbation, concussions and resulting shock, hepatitis, an array of skin infections, head lice, insomnia and dizziness from altitude, and malnourishment due to a lack of safe meat, milk and fresh vegetables. We considered ourselves to be among

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the more fortunate as other families fared worse, including death." It must be noted that some families seem to thrive in the most adverse health conditions; however, others suffer many of the above medical problems, plus exotic varieties peculiar to their particular assignment.

The Medical Division recognizes that many illnesses are stress related (psychosomatic) yet there are few facilities at posts abroad for helping individuals and families cope with stress. Lee Dane, in her paper "The Use of the Paraprofessional for Treatment of Americans Abroad"² stated, "The expatriate American is unique in his potential for encountering more stressful situations than his stateside counterpart, with less recourse for alleviating stress... The fact that the Foreign Service functions at all allows some room for thought that perhaps there exists a special breed with uncanny talents for social adjustment. Whatever accounts for those who function well, I surmise they represent the extreme end of the bell scale, and wives and children do not necessarily fall into the same category."

A paraprofessional at post, working in conjunction with the Medical Division, might be able to help those patients whose medical problems are stress related, thus easing the doctor's burden and aiding post morale. A family with medical problems has a government employee who isn't working to capacity. Many work hours are lost, and considerable money spent to medically evacuate such people; to say nothing of the personal and family distress involved.

Support Services

Like the poor, administrative complaints will always be with us. While recognizing that many support services are efficiently and well provided, there does seem to be a real need for better communication of regulations and directives among management, administrative sections at posts, and the people they are designed to serve. Too often the administrative regulations concerning weight allowances, shipment of household effects, housing allowances, transfers, policies toward evacuees are poorly understood, inaccurately interpreted or too rigidly followed by the administrative section at post.

²This paper was published in excerpted form in the Department of State Newsletter, June 1974 under the title "Psychological Realities for Americans Abroad."

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Concerning household effects, furnished posts usually contain the basic family needs; however, the limited shipment allowance "hardly permits bringing any quantity of books, records and hobby equipment the experts advise you to bring." If the parents know in advance that Christmas and birthday toys and gifts will be impossible to buy at post, they use a portion of their limited weight allowance for such purchases. In fact, if the advice in some post reports were followed, most of the shipment allowance would go for anticipated needs, leaving little room for the family's favorite possessions which help make government quarters home.

The housing standards vary widely from country to country. What would be considered substandard in one country becomes more than adequate in another. "Coming from a post with furnished housing, the inequality of this situation is unrealistic. Every family either spends a lot of savings or goes into debt just to move in. Financial burdens create stress, poor housing creates stress, being unsettled creates stress--with the whole family in a state of threatened mental health, it is impossible for the officer to be effective in his work."

Transfers are a trying time for the Foreign Service family due to culture shock; they are acerbated--and many work hours are lost--trying to locate the family's household effects which may have never left the previous post, were sent to the wrong post, badly damaged in transit, or finally arrived, but were incorrectly billed excess weight charges.

Administrative personnel need sensitivity training to deal with these stresses and the truly traumatic stress of evacuation due to acts of terrorism, war, revolution or medical emergencies. An influx of evacuees causes a work overload at the embassy/consulate safehaven, yet the evacuees have real emotional, financial, medical and logistical needs which must be met. Though personnel at safe haven posts usually rally to help the evacuees, their enthusiasm may be strained if the crises are continual.

Support services should ideally help the employee and his family settle into post as quickly as possible. This insures that overseas employees will do more effective work faster; and their families will have the opportunity to contribute to the sense of community at post in a positive way.

Finances and Family Life

The financial burdens of Foreign Service life are closely related to the discontent of many spouses and have a direct impact on family life. Some spouses might merely like to find employment commensurate with their training and capacity. Others are obliged to leave children of various ages (when they would prefer not to do so) to find employment for the main purpose of making ends meet.

For the Foreign Service family, Washington, D.C., is an economic hardship post. In many cases, returning home means taking what amounts to as much as a 30% cut in salary, and the Foreign Service family often has to spend what it was able to save overseas to make ends meet in Washington. The cost of living in the area is high, with the cost of housing having risen the most drastically. However, the main concern of many families is to save enough to ensure their children's post-secondary school education (not to mention private secondary school, should that be necessary). With the current low salary scale, such saving is extremely difficult if not impossible.

In addition, the Foreign Service family has unusual expenses such as paying for transit insurance, temporary lodging, representation at posts and for the expenses of home leave. Transit insurance, though absolutely necessary, is never reimbursed and temporary lodging and representational expenses are often only partially reimbursed. Home leave can result in a particularly objectionable form of financial hardship; home leave is obligatory, but many necessary expenses--such as lodging and transportation--are only partially reimbursed. Thus, unless one can borrow a friend's house and car, home leave often results in financial hardship.

It is true that some of these expenses can be included in making income tax calculations. However, since they are considered as tax adjustments and deductions and not as tax credits, the Foreign Service family ultimately loses money in the service of the United States Government.

Furthermore, the rhythm of expenditure of funds can be very erratic. A Foreign Service family going off to a hardship post may suddenly find itself faced with purchasing \$1500 worth of staples and other supplies because the local market is unreliable or non-existent.

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Finally, as for automobiles, with one limited exception, the Government will not ship foreign-made cars for the Foreign Service family. It is often more expensive and difficult to maintain an American car overseas than it is to maintain a foreign car in Washington. However, since the cost of shipping a foreign car is prohibitive for most families, they bring an American car with them and are faced with the high cost and frustration of maintenance overseas.

Because of these unusual financial demands, the Foreign Service is in great danger of returning to the past, when only people of independent means could afford to serve their country overseas. The pay scale and reimbursements are not commensurate with the demands placed upon the Foreign Service family, nor for that matter with the education, expertise and dedication of most Foreign Service officers. As for the Foreign Service spouse, it is difficult to find employment because of the transient nature of Foreign Service life. Much bitterness and frustration could be alleviated if working could be made a matter of choice for the spouse rather than of necessity.

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The Modern Foreign Service Wife Study Group Report

The changes in the roles and expectations of the American woman, and hence the Foreign Service wife, is what one scholar has called "One of the most significant social and economic facts of our time." The significance of this change for the institutions of the country is just beginning to be felt and the long range consequences are still unknown. The extent to which institutions deal constructively with these changes is the extent to which they will succeed.

The Foreign affairs agencies recognized these changes in the Directive issued in January, 1972. The regulation says specifically:

"Women have gained increasing recognition of their right to be treated as individuals and to have personal and career interests in addition to their more traditional roles as wife or mother. If the Foreign Service is to remain representative of American Society, and if its traditions are to be preserved and strengthened, the Foreign Service must adapt to these changing conditions."

After emphasizing that "It is not intended to undermine the sense of cooperation, participation and community spirit abroad..." the regulation says, "the wife of a Foreign Service employee who has accompanied her husband to a foreign post is a private individual."

In the eyes of a few people, the policy followed since 1972 might be described in the words of one young woman, as "salutory neglect" and therefore desirable. This woman, who had never been overseas as a Foreign Service wife, explained her attitude in the following way.

"The phrase 'salutory neglect' best describes the treatment I would like from the State Department. I would like to pursue my career at foreign posts basically as I do here, without the concern of the State Department. I cannot perceive of any conflict of interest between my work, technical editing, and that of my husband."

She appears to believe that she will be able to act as if she were in her own country. But as many have testified, this is clearly not the case and one of the major reasons

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why the majority of spouses feel it is time to reevaluate the results of the Directive and deal more realistically with the changes as they are affected by the constraints of Foreign Service life.

The 1972 Directive was a laudable first step...but with time the complexity of the situation became apparent. In the last five years the Foreign Service has witnessed the breaking down of the traditional and often unequal structures and conventions of diplomatic life, allowing for more individual choice. But, although the directive did wipe away the inequities of the past, it had the unintended and unfortunate effect of destroying, in many posts, the positive aspects of the Foreign Service community. The old structure, as one woman wrote,

"created a sense of community and esprit de corps, (it) gave continuity to women's lives, (an Embassy tea in Paris or Ouagadougou, only the trimmings differ) and provided some kind of a standard for and a sense of personal worth."

The Forum received many letters commenting on the growing isolation of the women from each other, and how "fragmented the Embassy community is." A particularly articulate spouse discussed the problem in these terms.

"It is a pity that we FS wives have lost our sense of community, yet it is our own fault. We mistrust the motives of the senior wives despite their caring for us and being enormous resources of information. We feel coerced when it is our imagination or else we are on the defensive. We feel isolated when older wives do not seem to feel the impact of the women's movement. We feel pressured by those who sublimate their own roles to their husband's and then we fall into the same trap. We do not give ourselves or other women enough credit. Here we are trying to find ways to focus on problems despite rank, to inform ourselves, and to co-operate with each other."

Another wrote, "A helping hand offered to anyone, regardless of husband's rank, does not infringe upon anyone's 'rights' to remain private." Unfortunately, what in other circumstances would be considered neighborliness, is interpreted as pressure to conform.

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It would be inaccurate to report that all the women feel this way. Community spirit has not uniformly dissolved. For example, one woman described her community as "much more interesting" now. She continued,

"Most women have their own interests these days even if they cannot work. They will explore things and, as a result, there is more real exchange. But fluency in the language is the key."

These women were in the minority, however, and enough evidence was presented to the Forum to suggest that, in many places, the community is in serious trouble.

It is now time to put something in the place of the old structures. The new structures must contribute to a new sense of community with the Foreign Service, a community based on shared talents, strength, experiences and concerns, but one which is also democratic in spirit and respectful of individual differences.

To achieve this, the study group on the Modern Foreign Service Wife believes that the foreign affairs agencies and the spouses jointly must address three major problems which were identified as inherent in Foreign Service life:

1. The peculiar relationship between the foreign affairs agencies and the spouses.
2. The lack of employment and career opportunities for spouses.
3. The inequities of implicit representational responsibilities of spouses.

The Nature of the Peculiar Relationship

Since the 1972 Directive, the relationship between the foreign affairs agencies and the spouses has been based on a denial of mutual obligations and responsibilities.

Theoretically, during the last five years spouses of Foreign Service employees have been free to seek employment, follow their own careers, and entertain if and when they wished. The phrase, "Two for the price of one" was considered not just obsolete, but dead. The wife was a "private person" not a "government employee."

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In practice, "The Emancipation Proclamation does not work," declared one woman. Many women expressed very strongly that the wife is "still an unpaid and unappreciated employee of the Department of State." For, despite the regulations and the fact that in the United States women are more independent, socially, and economically, the Foreign Service spouse is involved, through marriage, with an institution and way of life that imposes limitations on that independence overseas. Legal restrictions, cultural constraints and diplomatic traditions very often continue to place her in a dependent position. The result is that it is now practically impossible for many women married to Foreign Service employees to reconcile the conflict between the demands of American life (that of being independent) with the demands of Foreign Service life (that of being dependent).

The women who sought to be regarded as individuals, independent of their husband's positions, found that the Directive had the effect of making them non-persons. They became private persons in theory without the means to act as such in private. Those who valued the traditional role of the Foreign Service wife have been left feeling, as one wife put it:

"Only a great emptiness (bordering on the feeling of having been a sucker all these years), a sense of frustration, of a lack of fulfillment and recognition."

Others found that the conflict between the changes in the roles and the constraints imposed by Foreign Service life caused them to question whether Foreign Service life is worth the personal and family sacrifice it demands. As one woman put it,

"I am simply forced to ask myself, 'Am I stupid or cruel, or both, to do this to myself and to my children? And if this is the case, what about my husband?'"

Not all ask the question as dramatically, as negatively or as undiplomatically as this woman, but the findings of the Study Group on the Modern Foreign Service Wife seem to indicate that a large group of women are questioning the wisdom of continuing to be "of the Foreign Service if we are not in the Foreign Service."

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The options for dealing with the contradictions and limitations that diplomatic life imposes on their personal lives are few. One can revert to the 19th century and accept them; one can divorce one's husband/wife, or get one's husband/wife to divorce the Foreign Service. Or, one can try to change Foreign Service family life. Increasingly the Foreign Service is experiencing more cases of divorce, wives leaving posts shortly after arrival and requests for longer tours of duty in Washington, D.C. Figures are not available to document the number of resignations because of the problems, although a few people spoke of resignations as the course of the Forum project. Most of the people who wrote to the Forum and who participated in the meetings in Washington were overwhelmingly in favor of the last alternative, improving Foreign Service life.

For this to be accomplished, the Forum has recommended that unless a service of bachelors is the long-range goal (suggestion submitted by one woman), a new relationship between the Department and families must be evolved. This relationship must be based on mutual respect with a clear understanding that each has specific needs that must be fulfilled and, by the same token, that each has specific responsibilities which must be accepted.

Spouses would like to be recognized as a very diverse group of individuals who are capable of and desirous of contributing to the U.S. interests abroad in a variety of ways. Some would like to continue the role of the traditional Foreign Service wife, in the best sense of the phrase. Some are primarily concerned about their own career and do not want to be involved in any way with the Foreign Service. Others would like to combine their own family and career needs with the Foreign Service, and still others view homemaking and mothering as a full time job with little time left over for other activities until later.

Spouses, on the other hand, must recognize the representative (not representational) nature of their life overseas, regardless of whether they are paid employees of the foreign affairs agencies. Other people, host country nationals, third country nationals, including other diplomatic, and even other Americans, continue to regard the Foreign Service spouses as official Americans. Her activities are not seen as "private actions" but more likely as extensions of the Embassy. As one person wrote, "Whether they like it or

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not, whether they seek such status or not, all wives are representatives of the Embassy as well as of themselves and their country." The Forum believes that the establishment of a new relationship in a climate of mutual understanding and cooperation is central. Without this the other recommendations cannot be discussed.

In order to foster a new and more productive relationship between the agencies and families, the Forum believes that the Family Liaison Office (FLO) ^{should} be the institutional means that would facilitate direct and regular communication between the agencies and family members.

Limited Gainful Employment and Career Opportunities for Spouses

The modern Foreign Service wife is representative of American women in general when it comes to the question of gainful employment. According to the New York Times of September 12, 1976, 48% of American women over sixteen are gainfully employed. Roughly two-thirds of these women are employed because they have to be. Many are the sole support of their children. Others are doing their part to help maintain the family income and budget in the face of inflation, which the Bureau of Labor says has reduced purchasing power by one-third in the last six years. Those who are lucky enough to work seek the same sense of self-actualization and satisfaction in developing their potential that men have long pursued.

If the Foreign Service wife ever was a "Lady Bountiful" with time on her hands and money to spare, she is no longer. Today she admits her own needs and seeks her identity in her own interests and life's work, not in those of her husband. A sentiment expressed by many is contained in the following comment made by one woman: "I do not think I could ever sublimate my own ambitions entirely to my husband's work."

The modern Foreign Service wife is also acutely aware of the negative effect that inflation and increasingly limited resources at home and abroad have and will have on her economic future and that of her family. Foreign Service salaries have never made a family rich, but today without a second income, they may well leave a family poor. As one young wife wrote in dismay,

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"Certainly no one can expect a family to survive on the salary of a Junior officer (the average of which is 28-30), or have aspirations of owning their own home."

Recently the Research Committee on Spouses surveyed Foreign Service Officers, Foreign Service Information Officers, and Foreign Service Reserve Officers living in Washington and found that 47.4% of the spouses (almost all female) of these officers are gainfully employed. The Spouses' Skills/Talent Bank has received over 900 completed forms from spouses who are gainfully employed or who are seeking employment. In 1974, the Institute sent a questionnaire to all diplomatic posts in which information on working wives was requested. As of February 1977, 117 posts out of 252 had responded to the survey, reporting that over 560 women held paying jobs. (The kinds of employment range from those within the Embassy to jobs with local enterprises, jobs with U.S. or other third country businesses, to self-generated employment. They are listed on Appendix A.)

Although the data from the survey in Washington, the information from the Skills Bank, and the FSI questionnaires indicate that many Foreign Service wives already are employed, more and more wives would like to work if the opportunities were available. The need for gainful employment and meaningful career opportunities was considered the issue by the Study Group on Modern Foreign Service Wives, a group which has participants from a cross-section of the Foreign Service community. The members ranged from the wife of a Career Minister to the wife of an FSO-7. In the letters received from overseas missions, employment was mentioned time and time again as one of the most important issues the Forum should address.

That the Foreign Service must try to help facilitate this desire if it wants to be able to recruit highly educated married officers seemed obvious to many of the participants in the Forum project. Both the Study Group members and the people who wrote from abroad felt that it is in the interest of the Foreign Service to assist in innovations which might create more opportunities for spouses to seek gainful employment overseas, and many suggestions were offered in several areas in which participants believe efforts would be strengthened.

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Spouses' employment needs should be considered and dealt with equitably, meaning that qualified spouses wish to be regarded and judged first as professionals in their own right and secondly as wives. At the same time, the Study Group recognize that the Department cannot respond to the employment issue in a way that would prejudice the professional standards and concerns of its career employees.

Constraints on Employment

The FSI survey highlighted the major legal constraint operating against the Foreign Service spouse who seeks employment on the local economy: the need for a work permit and the difficulties involved in obtaining one. Said one woman who had tried unsuccessfully to get one,

"They are difficult to obtain. This forces wives either to free-lance or to work underground. It also absolves posts of any obligation to aid working spouses."

The requirements are different for every post. In fact, the only pattern reflected in the answers to this part of the survey is that no generalizations can be made about work permits. In some countries the wife would have to forfeit diplomatic immunity in return for the permit; nevertheless, an option some wives would like to have. Other countries will only give permits to people who have very specialized skill, and the high rate of unemployment in other countries makes it nearly impossible for any foreigner to be given a permit.

Part of the difficulty in finding a job overseas stems from the lack of detailed information about what spouses can realistically expect to happen to their lives when they marry into the Foreign Service. Many feel the Department has the responsibility to inform spouses adequately and accurately before the employee is hired; many feel it is equally important to have detailed information, prior to arrival, about employment opportunities at the different posts. While this may not be possible for every post, region specific information can be provided.

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Existing regulations could be more strongly implemented and publicized. One regulation (76 State 168096) directs the administrative officers to provide more complete job opportunity information in the post report. Yet many spouses, particularly those about to go overseas, complained that post reports continue to give inadequate information. Even if the information were complete, reports are almost always two years out of date. One person suggested that the Foreign Service Institute explore ways of using information systems which take advantage of sophisticated technology and on the spot people to update the information on a given country much more frequently.

Another regulation (76 State 127433) that few spouses seem to be aware of authorizes the certification of their volunteer efforts abroad. This can then be used on a resume as valid work experience, reducing the problem of frequent breaks in a spouse's employment history.

Assuming that an ounce of prevention is worth a pound of cure, many women suggested that the foreign affairs agencies expand and fully fund the workshop on career planning and money management, which many indicated were extremely valuable. These kinds of courses help spouses manage their own career goals. Also, by actively welcoming spouses to the employee's career counseling sessions, the agencies could convey that they recognize the importance of the spouses's career interests. They would also begin to provide the information that is so vital in planning for the future.

Foreign Service Reserve appointments offer professional employment opportunities. However, some spouses expressed frustration because while they knew these jobs were available, they found no information or office which could explain the skills needed to apply.

Although lack of information continues to be one of the most fundamental obstacles spouses face in pursuing employment, there were other areas that the spouses wrote about.

Several women complained, for example, that the anti-nepotism policies, as interpreted by personnel people have the unfair and illegal result of denying equal opportunity to one sex over the other because the majority of Foreign

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Service spouses are women. Currently, anti-nepotism means that many women married to Foreign Service employees are ineligible for Fulbright-Hays Scholarships and professorships. Other grants, contracts and jobs are consistently denied to women married to Foreign Service employees.

Many individuals wrote about one solution now open to spouses, that of becoming an employee of one of the foreign affairs agencies and serving as a working couple. They cautioned the Forum and the agencies about relying on this one approach as a cure-all for the wife who is looking for employment. Just as all spouses cannot be expected to be artists and writers, professions often cited as "perfect" for such a mobile life, neither are all wives desirous of or qualified for employment with the foreign affairs agencies.

The list of specific suggestions is lengthy. "Hire wives to be the social secretary for the Ambassador," or to "write the post reports." Consider "shared work, where two dependents share the work week in the same job." Let wives do research on "socio/anthropological subjects," and hire them "locally through purchase orders." Train wives in "English language teaching, but give it a professional status, by paying better salaries." Let them do the "work now done by managemenet firms and outside consultants." Provide "counselling about what one can do professionally or to add to one's experience and personal growth." And perhaps providing "examples of what other individuals are doing" would be constructive. In short, the spouses would like to see "the scope of career options widened," be it "through hiring and training in the field," by "reserving a working quota for foreign spouses in Embassies," by "giving them priority over third country nationals," "expanding PIT programs where possible," or "establishing a wife corps." But they do not want jobs to be only "at the lowest grade level." One spouse spoke pointedly about the practice at many posts where,

"Posts take advantage of eager, qualified spouses' willingness to work and insist that they take the lowest salary - despite the Department's savings in transportation, housing and all. Further, working at a lower salary is a black mark on your resume later."

No one of the above suggestions is the answer, but they all speak to the need for "an institutional approach

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to breaking down the barriers," as one woman pointed out: "eliminating the bureaucratic obstacle would assist us greatly," she added.

The Forum's recommendation #7 speaks to the need of expanding employment opportunities for spouses. Specifically, the Forum recommends that the foreign affairs agencies recognize the diverse talent of the spouse and work to integrate them into the post communities abroad, that a catalog of contract positions be maintained, and that the existing regulations regarding the hiring of spouses abroad be reinforced and implemented.

Inherent and Implicit Representational Responsibilities

The modern Foreign Service wife is unhappy about representation. The 1972 Directive theoretically exempted her from representational responsibilities, but in practice, especially at the senior level, it is she, not her husband, who bears the brunt of the work involved in the mission's representational duties. She contributes a great deal of time and effort, innumerable unrecognized skills and considerable amounts of money, and yet she gets nothing in return, frequently "not even a thank you," according to many women who wrote on this subject. Many said essentially,

"If entertaining is so important in foreign relations, the person entertaining should be reimbursed for expenses and time for preparation. The wife...should not feel she is doing all the work for nothing."
"It's just not fair."

There appear to be two different definitions and approaches to representation. In the best sense of the word, representation refers to a wide variety of mutually satisfying and beneficial ways Americans can come to know the citizens and officials of a host country and thereby convey to them a better and truer understanding of the people, government, and culture of the United States. This can be done through community and family activities, friendships formed at school, at work, through one's children, or in a hundred other ways. There are few spouses who do not agree that "representation" in this sense of the word is an important and valid activity.

However, when representation becomes a synonym for the social staples of diplomatic life--cocktail parties, massive receptions, large buffets--many women question its validity. This quote expresses the feelings of many.

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"After attending innumerable coffees, receptions and dinners, any intelligent person can only conclude that most of the resources, human and monetary, are wasted in such events,"..."Foreign Service business is not normally aided by these affairs."..."Suddenly it's the superficiality of the existence that's disturbing."

The Modern Foreign Service Wife Study Group has chosen to call this kind of representation, diplomatic entertaining. The opinion of most of the women is that (1) it does not represent the best of American life and values and (2) it is more costly in terms of time and money taken away from already strained family schedules and budgets than it is worth. This is especially true when the people who do all the work, the wives, receive no compensation--psychic or financial--for their efforts.

Foreign Service wives have reacted to implicit responsibilities for diplomatic entertaining in two ways. Many women feel that they are foolish to continue to knock themselves out and shortchange themselves and their families by accepting these responsibilities and so they have simply refused to play the diplomatic entertaining game. Others accept these implicit responsibilities, carry them off with less help and less money than before and, needless to say, feel resentful of those who in their words "do nothing." This division among wives has contributed in large part to the breakdown of the sense of community and spontaneous neighborliness which reportedly characterized Foreign Service life overseas in the past.

In order to represent the best of the United States to host country nationals, treat Foreign Service spouses more equitably and thereby encourage the restoration of a sense of community among Foreign Service families overseas, the Forum has recommended that the agencies review and clarify representational responsibilities and explore ways to compensate spouses for their work and expenses.

Cultural Constraints

American diplomatic women are not the only one's examining and challenging the professional, economic, and social impact of the Foreign Service on their personal lives.

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In December 1975, the Professional Association of Foreign Service Officers in Canada established a "committee that would study the professional, financial, and related implications for Foreign Service Officer spouses of the Foreign Service life." The study done by this committee raised similar issues of concern: wider employment opportunities for spouses' participation in "official hospitality," more frequent annual leave, improved housing conditions abroad, and longer home leave." In West Germany, Foreign Service wives are organizing to bring about changes in the thirteen-year old "Women and Family Service (FPD). The General-Anseiger of December 24, 1976¹ in the final goal of the Foreign Service wives... (is) "that they are given permission to look for a job, within the limits of their possibilities, while they are abroad, or that their cooperation with their husband in foreign posts is adequately honored by the Foreign Office." Among other things the wives are asking for are "shorter tours of duty in hardship posts, early information about imminent transfers, continued payment of contributions to old-age insurance for wives who have to stop working because they accompany their husbands to a foreign post, temporary suspension for female civil servants, assistance in finding a job to returning Foreign Service wives, and permission to both spouses to work in the same embassy."

A very significant movement among diplomatic wives is taking place in New York. On February 28, 1977 an Ad Hoc committee of diplomatic wives, sponsored a general symposium "The Role of The Diplomatic Wife--Its Future and Potential." About 150 diplomatic wives from different countries discussed the findings of four discussion groups which focused on (1) the Role of the Diplomatic Wife, (2) Personal Adaptation, (3) Current Diplomatic Wives Associations and, (4) Positive Aspects and Suggestions. The goal of the symposium was "to exchange ideas and experiences, to consider common aims and specific situations, and to improve communication and information among diplomatic wives all over the world." Again the issues raised were familiar ones: clarification and definition of the wife's role, the problems diplomatic life poses for the family, education for children, economic inequities, employment and career opportunities for diplomatic wives, adequate information, improved communication between diplomatic wives and their governments.

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The cultural constraints imposed by the traditions of the diplomatic life-style are being questioned by women in many nations. The Study Group on the Modern Foreign Service Wife was particularly concerned with the need to shed the traditions which are no longer useful. In the process a new image of the American diplomatic spouse would be promoted reflecting the diversity and competence of these women in a large number of fields. This alone would contribute significantly to helping the foreign affairs agencies "remain representative of American society."

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APPENDIX A

Jobs held by Foreign Service Wives Overseas,
as compiled by the FSI Survey, 1974-1977.

Embassy Jobs

Nurse
Secretary--usually substitute, but sometimes permanent
Arabic translator
Commissary manager
Property inventory taker
Research assistant
Consular officer--when the regular officer is on leave,
or hasn't arrived yet
Visa officer--when the load is particularly heavy or
someone is on leave
USIS English Language Director
Teletype operator
Managing the home of Ambassador accredited to one or more
posts when his house is empty between visits
Budget and Fiscal work
Commissary, other work than managing
Proctor for Fulbright exams
Teaching English at Bi-national Centers

Jobs with Local Enterprise

Food columnist and cooking teacher
Advertising agency
Model
TV Commentator
Editor/writer
Magazine editor
Editing in a law office
Free-lance illustrating
Conversational English teaching at a local junior college
Economic research
Nurse at a local hospital
Lab assistant at an Agronomic Institute which is part of
the faculty of agriculture at a local university
Tutoring executives in English at local business firms

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Editing business related English language publications for
local firm
Teaching at local universities and schools
Editing job at a bank
Airline hostess
Secretary for local businesses
Librarian at a local school
Interior decorator with local shop
Student counseling at local university
Free-lance photographer
Boutique owner
Cost estimator for an international moving company
Teacher/librarian at an Institute of Modern Languages
Social Worker
Teacher at a local parochial school
Illustrator
Purchaser of locally published books for U.S. universities
Beautician

Jobs with U.S. or Other Foreign (third country) Business

Public relations and personnel for a U.S. banking corporation
Secretaries at foreign embassies
Secretaries with U.S. businesses
Teaching in British or other third country schools
Translator for the UN
American University Alumnae Association

Jobs Held by Foreign Service Wives Overseas

Run motor pool at international school
Teaching at the American school
Manager of American Community Club
Managing the Fulbright Study program
Manager of the Recreation Association Club

Self-Generated Jobs

Piano lessons
Violin lessons
Art lessons
Organizer of a nursery school
Ceramic artist
Tutoring

The Spouses' Skills/Talent Bank Report

The creation of a centralized skills/talent bank for the spouses of Foreign Service personnel is not a new idea, but one that was suggested by many individuals prior to 1976.

The Medical Division in the State Department recommended that the Department establish a skills bank to locate qualified medical personnel overseas who could provide emergency medical services to Foreign Service personnel. In fact, the concept of a skills bank was submitted as an employee suggestion in 1972.

As early as 1971 the Department began issuing policy statements and regulations to encourage and facilitate the overseas employment of spouses. In 1972, another directive (3FAM121.3-3) requested posts to establish local skills inventories of dependents, while another (3FAM122.5-1), stated that differential posts were encouraged to employ qualified Foreign Service dependents to limit the number of U.S. citizens required at post. Nevertheless, the policy directives and regulations were not uniformly implemented. Most posts did not set up the required inventory nor hire more spouses. The decentralized efforts to encourage the hiring of spouses were not working.

In 1975, the Research Committee on Spouses, an ad hoc study group of the Women's Action Organization (WAO) was created to concentrate on expanding employment opportunities for spouses. This committee, aware that increasing numbers of spouses wanted to be gainfully employed overseas and that they continued to express frustration over the difficulties of finding such employment, reached a consensus very early that a centralized skills/talent inventory was needed. Several factors influenced this decision. The majority of organizations which hire professionals to work abroad, including the foreign affairs agencies, other U.S. Government agencies, the International Organizations and American corporations, do so through centralized, U.S.-based personnel systems. The Committee felt that a centralized skills bank located in Washington, D.C. would serve the needs of the individuals and organizations better than several, scattered in various places.

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The Committee also believed that the U.S. Government would realize substantial savings as a result of a centralized file. The specialized talent of spouses already stationed abroad at government expense could be contracted at post or from a neighboring mission, rather than being sent out from Washington, as is the present practice. It was felt that this more efficient system would go a long way towards improving the morale of the Foreign Service community, seriously affected by the current waste of talent. The prospect of an overseas assignment would seem less constraining for the spouse who wished to continue her/his career and would decrease the number of officers who, for this reason, are choosing to spend longer tours in Washington.

Consequently, in December, 1975, with the support of the WAO, the Committee developed a proposal to create a centralized Skills/Talent Bank in Washington. The proposal was discussed with several high-ranking officials in the three foreign affairs agencies, including the Director General of the Foreign Service in a meeting Committee members had with her on February 5, 1976. Specifically the Research Committee requested \$3900 (or approximately 50¢ per spouse) to fund the project.

In these discussions it became apparent that there was a general lack of information about the concerns of spouses. Responses to the need for an inventory of spouses' skills varied from "Wives don't want to work," to "If they do, they certainly aren't qualified in any areas the Foreign Service could use." It became even more important, then, to be able to document the actual skills of the spouses, and their attitudes towards gainful employment.

Committee members continued to meet for the next four months with a designated Department liaison person, with the hope that the Department would undertake, or at least finance, the project. In May, 1976, after receiving no response from the Department about the inventory, the Committee decided that if the project were to become a reality, they should proceed immediately with the mailing of a questionnaire in order to reach everyone before the summer reassignments cycle.

The questionnaire, designed in consultation with the Department and other government and private personnel specialists and information systems analysts, became the base of a data bank system which would facilitate easy organization,

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tabulation and retrieval of vast quantities of information, either manually or electronically. Individuals were asked to list their occupational speciality or specialities, educational qualifications, foreign language skills, employment history and current employment status. The individuals were also asked to indicate their interest in full-time, part-time, or volunteer work. This information would allow the Project Director to match individuals who wanted employment with organizations looking for help. Each person was asked to contribute a fee of three dollars to cover mailing costs and other expenses.

In July, 1976, the questionnaire was mailed to 4672 spouses of Department of State employees. In November and December, 1976, 1589 USIA spouses and 2040 AID spouses received the questionnaire, making a total of 8301 questionnaires mailed. In addition, the project was widely publicized through various magazines and newsletters so that any individuals who were missed could participate.

The initial purpose of the project was to identify and locate the available professional and technical expertise of spouses and to encourage the utilization of these skills by government and private organizations. In the final analysis, however, the Skills/Talent Bank has become much more. To date the Bank has received over 900 questionnaires and an additional 400 comments and letters documenting the enormous wealth and variety of talent. But the letters and questionnaires have identified many problems created by the unique demands of Foreign Service life, especially the difficulties of maintaining a career while overseas. Also, the Skills Bank became for many spouses (and even employees) the only channel of communication with the foreign affairs agencies.

Almost half of the respondents have an advanced degree, and 10% of the total either have or expect to complete doctoral degrees this year. In the medical field alone the Bank has located: 27 Registered Nurses, many with specializations and most unemployed; a Pediatrician, a General Practitioner with twenty years of experience, both unemployed; three Nutritionists; three experienced Clinical Psychologists; and 18 individuals with Master Degrees in Social Work and counseling experience.

The Skills/Talent Bank has also identified spouse expertise available overseas to perform work which has previously been contracted from the U.S., such as architects,

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computer specialists, economists, political analysts, and interior designers. There are also lawyers, teachers, school administrators, special education teachers, urban planners, engineers, artists, writers, and business managers. While many of these specialties do not represent the duties of most posts, many do apply to some support service contracted from the United States, or to work performed by local employees, or to services which are needed, but are not provided at all, such as pre-crisis counseling at post. The Bank has also identified a variety of technical skills, such as many unemployed secretaries and even a mechanic in an underdeveloped country whose talent could be used to train local employees.

The individuals who wrote to the Projects Director made it very clear that these skills are not being used. One employee, an FSO-4, described this reaction to the problem:

"I am resigning because my wife cannot pursue her own career. I am disappointed that the Department is not taking effective measures to deal with this situation which is a growing personnel problem."

While others had not yet decided to resign, the specific examples they provided of qualified spouses who were overlooked at the time a job needed to be done, described the same feeling of frustration. For instance, in a Central American country a seven million dollar loan for a nutrition program was approved without consulting with a nutrition specialist, although a spouse at the post was trained in and had experience in nutrition.

In another South American post, a linguist was contracted from Washington at great expense when there was an equally qualified spouse at post. And in a West African post, a person was hired on contract from the United States to conduct an economic-commercial survey when there was a better qualified spouse available who not only was fluent in French but who knew the economic leaders of the country. Had the Skills Bank been in operation, these examples might not have happened.

In many instances, the source of frustration was due to unrealistic expectations because the individuals had received incorrect information. As one person commented,

"It's incredible that so many people in personnel can go around making statements like, 'Of course

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you will get a job at post,' without having any idea of what the rules and regulations are."

Others referred to the problems created by lack of access to training courses, particularly the Foreign Service Institute's language programs. The inability to speak the language was one of the most serious handicaps to finding employment mentioned by many people.

The Foreign Service is more than just a job for an individual. It is a way of life which affects the entire family and as such presents unique problems to the spouse who hopes to continue working while abroad. First, normal academic preparation for a career is not sufficient in itself to provide an individual with the scope and flexibility needed to create a position anywhere in the world. Secondly, the mobility of Foreign Service life prevents one from establishing continuity and seniority in a field, even if positions are found. Consequently the employment pattern of most spouses is more likely to show a series of unrelated jobs than career development. This mobility can totally disrupt the career of those with highly specialized skills. This is brought out in the following comment:

"Bravo for the Skills Bank if it can in any way help those of us who have lost touch with our own careers."

Unanticipated re-entry problems were discussed by many people who underlined the need for continual career counseling for spouses. For instance, a teacher who had been overseas for several years found the U.S. job market in education completely changed when she returned. Not only were the old avenues closed to her, but the new possibilities which exist for those who have had the opportunity to retrain themselves were also closed. Another said:

"I know that I will have great difficulty in locating any interesting position when I return to Washington. The trouble with all my previous experience is that there is no piece of paper giving me instant placement at a certain ability level. I have taught, but I have no certificate. I have worked as a secretary, but I have no Civil Service rating."

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Those who volunteer their time overseas face problems too, when they attempt to convince employers that the skills acquired and developed in the years of volunteer work are valid experience for gainful employment. While the Civil Service Commission, as well as most private employers, do recognize this kind of experience, the prospective employee must be able to explain the experience in terms people outside the Foreign Service can understand.

An unanticipated, but perhaps the most important, service the Skills/Talent Bank has performed until now is to provide a responsive two-way channel of communication for spouses and even employees with the Department, where there apparently was none before. The majority of the 400 letters received described specific problems encountered and requested information on Department policies, regulations and practices. In another case, the wife of a Junior Officer wrote, saying:

"--My husband just joined the Foreign Service. I expect to finish my MA degree this June and want to know what my career opportunities will be. You are the only person I know to contact."

The Skills Bank has also received 27 letters from working couples describing problems caused by a lack of coordination and responsive communication with the agencies. Many felt that they could not get the help they needed from their employers.

The Skills/Talent Bank was a pilot project but already four bureaus within the State Department and an office in USIA are using the files to locate qualified individuals. In addition, the Project Director has received requests for information and copies of the questionnaire from the Canadian Office of External Affairs, the German and Norwegian Embassies, and the spouse organizations of the International Monetary Fund and the United Nations.

The responses from the individuals the Project was designed to serve have been equally enthusiastic, as in the case of a Career Minister, who wrote,

"--With thanks in advance and much luck on what you're doing--something I wish had been undertaken years ago, but something I'm glad, in any case, to see underway."

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A few were extremely pessimistic about the end result.

"-- While I encourage your efforts and believe that such a 'bank' could be extremely useful, I confess that I am very pessimistic with regard to the utilization of the talent of Foreign Service wives because of the seemingly total disregard of the problem on the part of the Department."

The vast majority expressed the hope that the volunteer efforts of the Project Director and members of the Research Committee, who devoted an untold number of hours to the monumental tasks of organization, tabulation of the information received, publicity and referral and counseling services, would not be in vain. As reflected in the comment of a spouse with a PhD in economics, they stressed the importance of making the Skills/Talent Bank a permanent part of the Department.

"--I am delighted to see the Skills/Talent Bank, although a little disappointed to find that this enterprise has to involve so much dedicated volunteer work. One would have thought that the Service could recognize its own interest, both in making it easier for Foreign Service families that wish to maintain two careers to do so, and in making use of the large and growing fund of talent which could so much improve the effectiveness of the U.S. representational effort."

The Forum believes that the most appropriate place for the Skills Bank is in the Family Liaison Office and has recommended that a coordinator of the Skills/Talent Bank be part of the staff of FLO.

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Orientation and Training Study Group Report

Effective orientation and training programs are essential for spouses as well as employees. Foreign Service spouses are partners in family decision-making and are often solely responsible for helping the family through a smooth transition and adjustment to life abroad. The family's ability to adapt successfully to life in foreign countries has a direct effect on the employee's performance and post morale.

Orientation

Women involved in the Forum project defined "orientation" to include far more than the quality and availability of post reports. They viewed it as a continuous process, beginning at the time the family is considering a career in the Foreign Service and renewed at each successive period of transition.

Many wives do not know enough about Foreign Service life before their husbands enter the Service. The woman of today is a partner in making decisions that affect her family's welfare, but to make wise decisions, she must have accurate information about a career in the Foreign Service so that she and her husband together can weigh the advantages and disadvantages of Foreign Service life for them. Basic information about the obligations and options of Foreign Service spouses would help prepare women for the demands of diplomatic life.

Several women at the Forum's Open Meeting in November brought up this point, and the group agreed that unrealistic or inaccurate impressions of Foreign Service life lead eventually to dissatisfaction and frustration, and that the wife should be given an "honest evaluation" of her role in the Foreign Service so that the couple can "work out some of these questions when they are considering entering."

The initial pre-entrance orientation can be general, but once the family has entered the Foreign Service, the wife needs more detailed and specific information. If she has questions on health, education, housing, financial management or training, there is no one place where she

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can go to obtain this information. It is scattered in many different offices, and the wife, being unfamiliar with the Department, is bewildered when she starts trying to find answers to her questions. The husband may not be able to answer all her questions either, and there is no one person, Foreign Service employee or counselor, to whom the two of them can turn for advice or answers to their questions.

In a letter received by the Forum, a wife says, "I get the impression from talking to new arrivals (at post) and from talking to new Foreign Service wives at the Family Workshop that the information on one's allowances, health benefits, shipment of effects, per diem, even the advice to keep open a Stateside bank account, is far from easy to come by. So many new personnel are misled or uninformed. 'I didn't know we could do that... didn't know we were supposed to do this...' The husband is occupied with higher considerations as to what type of job he is to do and how to prepare for it--to him it probably seems crass to try to get all one is entitled to during the transition period."

Another wife writes, "The wives know nothing about their husband's jobs or what our government is doing overseas."

Wives who have attended the Junior Officer Course at FSI with their husbands have found this orientation helpful, but many cannot attend. Often they are unaware that they are allowed to participate. Many times the employee's family does not accompany him to Washington for basic training, either because they do not have the money to live in Washington for the training period, or because they have obligations and responsibilities at their former place of residence. Wives with young children are unable to attend because of the lack of child care facilities at FSI.

The information on foreign posts and how to proceed to post is also scattered. It often happens that the husband precedes the wife to post, and she is the one who is responsible for packing up the household effects and making arrangements for herself and the family to join the husband. Wives need to know where they can get information and assistance.

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One wife says, "I think that information on the Foreign Service should be consolidated and put into a packet. When we were getting ready to go overseas, my husband would bring home pamphlets pertaining to regulations in the Foreign Service, but it was confusing for me because I did not get an overall view of everything that had to be done." I also feel that the information should be as concrete as possible."

Another wife suggests that "the services that are available to wives should be documented in a publication that is updated frequently and eventually paid for by the Department of State, i.e., medicals every two years, services available through AFSA, the services of the lounge, etc." "More emphasis should be placed on explaining F.S. regulations and how they apply to the family, perhaps in the Family Workshop or in special seminars at post."

The Family Liaison Office (FLO) recommended by the Forum in this report could provide spouses with most of the orientation material they need or refer them to the appropriate resources. The Forum has recommended that FLO initiate direct contact with the spouse to correct the present, inadequate system of relaying information--"the husband route"--both before and after entrance into the Foreign Service. FLO would provide the foreign affairs agencies with a channel of communication with families and would assist spouses in gaining access to the information they need to function successfully.

In addition, counseling services within FLO could provide new spouses with an opportunity to discuss their concerns about Foreign Service life. An interview with both the employee and the spouse before their first assignment could promote a better understanding of Foreign Service life in general and could insure that the new family gains as full an appreciation of Foreign Service life as possible.

Training

Most Foreign Service wives believe that improved training opportunities could make their lives in the Foreign Service more rewarding and could enhance their contribution to their families and the service. However, the Department of State should realize that many wives are unable to attend

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full-time classes--sometimes because the classes are open only on a "space available" basis, and sometimes because of conflicting family responsibilities.

The present small attendance of spouses in classes at FSI is not an indication of spouses' interest in further training. Spouses are interested in all aspects of training--from language study and area studies to the excellent and varied courses offered by the Workshop for Foreign Service Families.

The Forum received many letters from women who think it is essential for them to speak the language of the country in which they are living:

"Allow wives to train in languages. Not just before departing and on a space available basis. If it's important for the man to speak, it is equally important for the wife. She'll be much more willing to entertain people she can communicate with."

"Actually, I have found that by making an effort to learn the Arabic language, I can talk to the Arabic women and understand how they see themselves, as the encouragers and domestic caretakers to their families, and I can hear from first hand exactly what they think. Although they don't understand my role, it is a very good feeling to know that I could establish communication within two years. With two more years, there might even be a dialogue or understanding. At least these women have the satisfaction of knowing someone takes a real interest in them, enjoys their language, and learns from them."

"I have resolved that I will never go to a country again without language training. Being unable to speak the language makes me more dependent on my husband, increasing my fears of living in a new place, reduces my self-confidence and nourishes resentments. Not only should language be available at FSI for wives on an equal basis (not just tag-along with classes set up for officers) but also classes should be set up at post on an intensive basis for wives. Such an investment by the Department would bring enormous benefits to morale and capability."

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"No room in language class. We cannot be admitted if there are already six people in a class. So, we go overseas unable to speak the language. Very ugly American."

Many wives would like permission to take the language proficiency test for a rating upon completion of language training.

The Forum has recommended that the Department set a high priority on training in languages and other cross-cultural skills for spouses and that the Department make training and orientation materials more widely available by issuing them in written form or on cassettes and videotapes. These materials should be available at posts abroad as well as in Washington. Per diem for family members to accompany the employee to Washington for orientation, training and consultation would allow many more wives to gain the benefits of increased training opportunities, and child care facilities at FSI would free many mothers of young children to attend classes. All wives feel that the money spent by the government to encourage wives to attend courses or to make materials available to them for home study would be money well spent.

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Re-entry Study Group Report

For many Foreign Service wives, re-entry to the United States is a time of severe stress. For families that have served many years abroad, re-adjustment to life in the United States is similar to adjustment to life in a foreign country.

The difficulties of this transition have not been fully appreciated by the Department of State, possibly because it assumes that returning home should not, in theory, present problems to families. However, women reported that the very fact that problems are not expected makes the transition more difficult.

The Forum's Re-entry Study Group analyzed the factors that are a part of the re-entry crisis, as presented in letters, the FSI Re-entry Seminar and other conversations and found that, while all families do not experience the same combination of difficulties, the following stresses play a part in "re-entry shock."

Reverse Culture Shock

American life is considerably more complex, competitive, commercial and congested than life at most foreign posts. The wife must adjust to a sometimes radically different life style after years in a foreign environment. While adapting to these conditions, she is at the same time coping with the adjustment problems of her husband and children--the whole family needs reassuring.

Loneliness is a factor for the wife who may have few social contacts in the Washington area. She often feels like a outsider in the neighborhood and community where, for many, there is no network of family, relatives or old friends for emotional support. This is particularly the case for foreign-born wives. The sense of anonymity is heightened by the feeling that no one understands or cares about her problems, and the average American is indifferent to her intercultural experience.

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Feelings of alienation are strong, although sometimes ill-defined. To quote a few wives: "Extreme change can give one a sense of unreality. Altogether one tends to feel like a being from outer space." "I felt like a foreigner in my own country." "I don't feel quite American."

The rapidity of change in the United States intensifies the likelihood that the wife will feel very much "out of it" after only a few years away. In this country, the women's movement, for example, burgeoned while she was abroad. The Foreign Service wife feels she has not kept up with her colleagues in the American mainstream and loses confidence in herself.

Many wives suffer an "identity crisis" upon re-entry. Abroad, whatever the problems of foreign living, the wife was part of the official American community. She may have felt that she was a significant spokesperson of the United States as the wife of a diplomat. Back home she is anonymous, at least temporarily.

Special problems frequently arise: returning as a widow with no home base or network of old friends; a child returning for schooling, unaccompanied by a parent; or a wife returning ahead of her husband for purposes of children's schooling. In addition to the emotional trauma, all of these circumstances may entail great financial hardship, particularly if temporary housing allowances or other benefits do not apply.

Medical Treatment

The impersonality of the Medical Division was cited by an astonishing number of wives as contributing to the stress of returning to the United States. Many wives wrote that medical personnel are insensitive to the emotional strain being experienced by the whole family. Wives feel that they are not treated with respect and dignity and that there is little appreciation of how frightening unfamiliar tropical diseases, for example, can be. They also reported inadequate practical help with the follow-up of service-induced medical problems. In sum, the Medical Division was seen as augmenting the trauma of transition rather than ameliorating it, as it might be expected to do, by the sympathetic handling of family members.

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Housing Difficulties

Although the Foreign Service family abroad should be aware of the steadily increasing cost of housing in the Washington area, the reality upon returning is a shock. While searching for an affordable house, families face bewildering choices of geographical jurisdiction and school districts. Since the employee often begins working soon after the family's return, the house search falls to the wife. She may at the same time be caring for her children, who are not yet placed in school and who have no friends.

With only one month temporary allowance, the pressure to find housing quickly is severe. No family attempting to buy a house upon return to the United States can possibly expect to be settled within the 30-day period covered by the temporary housing allowance. Even if the family found the right house on the first day of their search, the process of securing financing and coming to settlement takes a minimum of 30 days, and often as long as 60 days. When the 30-day temporary housing allowance expires, the family must move to other temporary quarters, often paying a very high rent for the privilege of a short-term lease.

Children's Education and Adjustment

Foreign Service children have special problems in this area. They may be academically far ahead, far behind, or both at the same time, according to subject. Mothers need to make decisions, often under the pressure of time, and may lack the detailed knowledge of Washington area schools necessary for wise choices.

Children suffer the same cultural shock as their parents. They miss their friends, school, sports and overseas environment. It is hard to fit into the peer group in Washington--they are different, and they have a sense of being rejected because of different experiences.

Career Continuity

A returning wife is often faced with picking up the threads of her education or career, abandoned when she went abroad. She has lost her professional and other contacts,

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and she worries that if she starts something new (job or education), it will be one more thing to "pack up" when she goes overseas again.

Poor Communication with the State Department

Wives feel that there is little recognition by the Department of problems facing families. There is a sense of being treated "with more disdain than deference," to quote one wife. The Foreign Service wife believes that she is an integral part of the diplomatic unit and should be recognized as such. She does not receive adequate information about regulations and benefits affecting the family. Information directed to a wife via her husband never reaches her, with the result that the wife remains poorly informed and is thus handicapped in coping with family matters.

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Re-entry and the Forum Recommendations

Several of the recommendations made by the Forum in this report would help to facilitate the transition to life back home.

Recommendation #1: FLO

The Family Liaison Office (FLO) would serve as an information center for families and could refer women to information on housing, education and regulations affecting the family's recent transfer. This service would be especially helpful to women who have returned to Washington without their husbands or for those whose husbands have begun working in Washington and cannot help the family settle in.

By maintaining contact with posts abroad, FLO could help reduce the "shock" element of re-entry, insuring that families abroad are well-informed on what to expect in Washington.

Counseling services at FLO would insure that wives have easy access to someone who recognizes and understands their problems. Pre-crisis counseling, the availability of someone with whom the wife can "talk it over," would facilitate the family's successful readjustment.

The Spouses' Skills/Talent Bank would help women maintain career continuity, and career counseling would help the spouse to gain the full benefit of her overseas experiences in the Washington area job market.

FLO could also serve as a re-entry registration center, facilitating the efforts of AAFSW to institute better publicized and more successful "Welcome Home" activities.

Recommendation #3: Training

The Re-entry Seminar at FSI would be more beneficial to families if the materials presented were available before

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the family returns. By knowing what to expect, the family would be better prepared to cope with the re-entry situation. Take-home materials, printed materials, cassettes and audio-video materials could be prepared on the subject of re-entry for distribution abroad.

Recommendation #5 (Travel) and Recommendation #6 (Medical) relate to the travel and medical needs of returning families as described above and need no further explanation.

Recommendation #8: (Education)

The Foreign Service Educational and Counseling Center (FSECC) is working to create an up-to-date file on schools in the Washington area. FSECC has offered to provide a complete re-entry package on schools in Washington for distribution to Foreign Service families preparing to return. The Forum requests funding for FSECC, which is supported by contributions from AFSA and AAFSW for the presentation and distribution of this package.

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Women in Transition Study Group Report

The Study Group on Women in Transition was set up to consider the problems which confront a Foreign Service wife at the termination of her Foreign Service "career," either by retirement, widowhood or divorce. The committee devoted most of its attention to the problems of widowhood, separated and divorced women, since retired women did not communicate serious adjustment problems to the Forum.

At the time of widowhood, separation or divorce, the Foreign Service wife is uniquely handicapped in coping with financial, emotional or physical difficulties. She has been geographically and culturally separated from her home roots and probably has been totally dependent on her husband for support and financial planning. In addition, she has had no direct contact with the Department of State.

In a period of rapidly changing concepts of the role of women, there has been an increasing acceptance of a woman's need to be an independent individual with her own place in the economic world. However, the Foreign Service wife is uniquely deprived of the opportunity for continuous training and continuous employment because of the demands of Foreign Service life. As one wife said, "If a wife gives up her own career to support that of her husband she takes a terrific risk. If he should die or divorce her, she will have no resume of skills meaningful to a future employer."

The present insecurity of the Foreign Service wife is aggravated by the rapid spread nation-wide of the "no-fault divorce" and the easing of divorce laws generally, and by the growing realization that "terrorism" has become a tool of diplomacy, and that she is more likely than her predecessors to become a "woman in transition" at an earlier age.

A central point in the discussion of widowhood and divorce is the principle of accrued rights: that the unearning wife earns a gradually accruing fund of rights and vested interests in whatever future requisites are acquired in the marriage and assured to her husband.

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These accrued rights are being recognized nationally in the following ways:

1. Under the new tax reform law of 1976, a non-working wife can set up an independent, tax-free retirement account in her own name.
2. Social Security payments to wives recognize a wife's vested interest in a marriage.
3. Representative Patricia Schroeder of Colorado has proposed a bill to amend the Civil Service retirement plan, to provide that a former spouse who has been married to a Federal employee for at least twenty years would be entitled to a portion of that employee's retirement annuity.

Foreign Service wives earn accrued rights in a marriage on the basis of the generally observed practice of moving households at regular short intervals--with attendant hardships in change of climate, health conditions, available schooling, varied housing and new languages--sometimes to posts with little intellectual stimulation and no opportunity to be gainfully employed, with the obligation to act as a partner with the Foreign Service husband in representing the United States abroad.

The Department of State ought now to recognize these rights and interests by providing the wife with information so that she can determine what security she is entitled to on the basis of her presence overseas at post with her husband, such as the continuance of medical insurance, travel and schooling rights for children and the current condition of the husband's retirement or disability benefits.

The Family Liaison Office (FLO) proposed by the Forum would be of great benefit to the widowed, separated or divorced woman, providing and promoting a "feeling of respectability about seeking guidance" which is lacking at present. FLO would serve as a point of direct contact between the spouse and the Department of State, and the office's counseling services could be invaluable during the period of transition. Through its contact with posts abroad, FLO could provide assistance for women in difficulty around the world by disseminating information and locating help.

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The committee hopes that the Department of State will take an interest in Representative Schroeder's bill mentioned above. As one wife says, "I hope thought will be given to providing for the other half of the husband-wife teams that make successful diplomatic service possible. Personnel serving abroad know that the husband goes from one government office to another...only the view from his window changes. It is the wife who struggles to build a safe and healthy home environment for the family."

At present, Mrs. Schroeder is preparing similar legislation for the military, and she has said that she will then turn her attention to the Foreign Service. Foreign Service wives feel that they are entitled to the same protection as the wives of Civil Service employees.

The committee would also like to call the Department of State's attention to the need to reinstate the obligatory nature of the provision for the survivor's annuity, with no right allowed the wife to waive the claim or the husband's obligation. Provision of a survivor's annuity was required for a few years to provide relief for widows. However, the regulations adopted in 1976 have dropped this requirement, and many wives consider this to be a step backward. They feel the husband should not have the right to ignore their vested interests in the marriage and that the provision of survivor's annuities should be compulsory. (This concern was not presented to the AAFSW Board, and therefore it is not included here as a recommendation but as a topic for further study and discussion.)

The suggestions above are made with the adage in mind that "the time to prepare the ship for the storm is not when the hurricane's on." The Foreign Service wife who is assured that her rights are recognized, that help will be at hand if and when she needs it, and that her future is not unfairly clouded by the personal sacrifice she makes in serving overseas, will make a greater contribution to the foreign affairs effort.

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APPENDIX 4

REPORT OF THE ASSOCIATION OF FOREIGN SERVICE WOMEN TO THE SECRETARY OF STATE ON DEPENDENT EMPLOYMENT

We are encouraged that the Department recognizes the serious problems facing Foreign Service spouses, both male and female, who wish to pursue careers appropriate to their interests, experience and educational background. It is increasingly clear that inadequate employment for spouses is adversely affecting assignments, efficiency and morale in the Foreign Service. That men want careers of their own has never been questioned. Many female spouses now also want the opportunity to have careers of their own. This is not purely a matter of economic need, although that plays a strong role in times of rapid inflation. Women, now more than ever before, want the satisfaction of an independent career and the security a career provides them for weathering the uncertainties of middle and later years.

We are grateful to the Department for its efforts to improve employment opportunities for Foreign Service dependents. The setting up of a Skills/Talent Bank in the Family Liaison Office, the successful negotiation of new regulations governing employment of diplomatic and consular dependents in this country (A-1 and A-2 visa holders), the pilot implementation of Sec. 401 of the Foreign Relations Authorization Act (FY 1979) which converts some foreign national slots to American family member positions (FN/AFM) will have an impact on employment possibilities and morale at post. The Family Liaison Office itself is of great assistance in answering questions and providing advice on employment programs. The Career Workshops offer positive assistance for reentering the work force. PIT (Part-time/Intermittent/Temporary) and contract jobs can add to employment choices. Two programs recently initiated deserve support: the state-side use of the 90-day security clearance waiver to permit hiring spouses for emergency short-term needs of the Department, and the admission of spouses to functional training courses at the Foreign Service Institute so that they might be employed to fill administrative and consular needs abroad.

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This report discusses the above programs and offers suggestions for changes. It will then turn to other key issues which the Forum and the AAFSW feel must be addressed by the Foreign Affairs Agencies in order to meet the needs of Foreign Service dependents in today's world. These other issues include the special employment problems of the spouses of senior diplomats, the need for spouse participation in individual retirement benefit programs, and the need to earn career status.

THE SKILLS/TALENT BANK. We applaud the Department's funding of a half-time position for six months to implement the Skills/Talent Bank and to promote its use within the Foreign Affairs Agencies and among firms doing business abroad. It is, however, unclear what will happen when the six-month period ends in June 1979. We do not see how the Skills Bank can continue to function as a useful service if there is not at least one part-time employee to manage it. We hope the Department would agree with this point of view and fund a permanent part-time position for the Skills Bank. The Skills Bank Coordinator not only answers requests for names of persons with geographic availabilities and skills, but also promotes the Bank with international firms and organizations hiring abroad. She is available to answer questions and counsel those going abroad on work opportunities at particular posts. In addition, the current Skills Bank Coordinator, working approximately thirty-two hours a week, has developed a job information resource packet for mailing to all posts, coordinates the semi-annual Career Planning Workshops at the Foreign Service Institute (discussed separately), conducts monthly meetings to assist spouses returning to the D.C. job market from overseas, and recruits spouses to fill PIT positions in the Department and for the pilot training program at FSI. These efforts must be continued to make the Skills/Talent Bank the valuable service that it should be, both to the Foreign Affairs Agencies and to the Foreign Service family.

As an adjunct to the services of the Skills Bank, a repository of full, up-to-date information on the employment situation at each post would enable every spouse going abroad to obtain valuable information on her/his job prospects. In some cases, the spouse/dependent might be able by using this information to land a job even before arriving at post, thereby making a happier transition to a new location. While we recognize that post reports and the Overseas Briefing Center generally have some information available, it is often incomplete and out-of-date. We urge the Department to set up a system for gathering this information on a frequent basis and to make it available both in the Overseas Briefing Center and in the Skills Bank. We recommend that posts collect this type of information by entering into a contract with a qualified dependent who will also seek job openings in the private sector for official American dependents.

A-1, A-2 VISAS AND RECIPROACITY. The Department is to be congratulated on the dispatch with which it accomplished changes in the regulations permitting A-1 and A-2 visa holders in the U.S. to accept employment. We hope that the dependents of many embassies and consulates in the U.S. will take advantage of this new opportunity, so that our own

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dependents in the reciprocal countries may easily obtain permission to work. Although we do not have much information on the effectiveness of the new reporting requirements concerning ambassadorial permission for dependents wishing to accept work on the local economy, we feel that the new process should represent a change for the better.

CONVERSION OF FOREIGN NATIONAL POSITIONS TO FN/AFM. We appreciate the difficulties encountered by the Department in its efforts to comply with Sec. 401 of the Foreign Relations Authorization Act of FY 1979. We hope that the Department, as it works out the final regulations will support the intent of the law which is to expand employment opportunities for family members of U.S. personnel assigned abroad. But for a few exceptions, the kinds of positions which were identified at pilot posts offer low-level jobs both in the skills demanded and the pay offered. The former may be a result of the fact that the pilot posts had a very short time to respond to the request for this information. There is some indication that at least in one post not all foreign affairs elements were consulted thoroughly and, therefore, did not designate jobs which might become available. It is possible that with more time to consult and focus on the program at post more positions and more interesting positions might have been selected.

Because, according to the present plan, the FN/AFM positions will remain on the local pay scale, many positions will pay far less than even the present U.S. minimum wage. In some cases the wage will be less than half of the poverty level wage. In a few geographic areas, such as the Persian Gulf and Europe, wages paid at the local rates will be higher than comparable positions in the U.S. It appears to us that in the interest of equity all FN/AFM positions when held by an American dependent should follow American pay schedules. We believe that this is what the law intends when it refers to compensation practices "consistent with the public interest." If this program mainly offers low-level jobs at pay scales unfair to Americans, then the program will not make a significant difference in the overall job picture and will not carry out the main intent of the law. If the Department determines that under the present language of the law it cannot legally pay American dependents in FN/AFM positions on an American pay scale, then we urge the Department to seek appropriate changes in the law.

CAREER WORKSHOPS. We wish to underline the contribution made by the Career Workshops conducted at FSI by the Overseas Briefing Center and the Family Liaison Office. These workshops have provided invaluable guidance for those attempting to reenter the work force both here and abroad. Not only have the courses been extremely well run and well attended, but they have also created support groups for those trying to break into today's tight job market. The fact that the Foreign Service dependent must continually interrupt her/his career with each new assignment makes finding suitable employment difficult, if not impossible, in the States as well as overseas. Furthermore, it is not uncommon for a potential employer to turn down an applicant just because as a Foreign Service dependent she/he looks

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like a short-timer. The Career Workshops offer the spouse, whether returning or departing, an essential service in facing yet another job search. We urge the Department to continue funding these two-day workshop programs twice yearly.

PIT AND CONTRACT PROGRAMS. We look forward to learning the results of the Director General's inquiry into the pros and cons of expanding the PIT program and of encouraging the use of non-personal service contracts and consultants drawn from the dependent community. We would welcome information on any expansion of these programs in the past year. Given the fact that there are spouses of U.S. employees abroad who have professional backgrounds in economics, political science, journalism and other areas, and who could perform important services in those areas, we suggest that the Department give full consideration to employing these individuals on contract or as consultants to meet the changing needs of the Department's work abroad. //

As the PIT program is now designed, it presents a number of problems which we would like to bring to the attention of the Department: appointments are limited to one year, followed by a three-month break in employment before the employee can be given the same position again; the position can be terminated at any time; grade levels with rare exceptions are limited to FSS-8 and below; PIT jobs offer no career potential; and, unlike DOD hiring programs, no preference is given to official dependents. We propose that these deficiencies be examined. Specifically, we propose that the Department offer PIT positions at all grade levels, that the three-month break in employment be eliminated, that positions be offered for two-year periods, that official U.S. civilian dependents be given preference in this and other hiring programs, and the PIT employees be eligible for promotion and step increases. The question of status will be dealt with later in this report.

TWO NEW DEPARTMENT PROGRAMS. The Forum is keenly interested in two programs recently approved by the Department: the temporary employment of Foreign Service spouses on an emergency basis under security clearance waiver of Executive Order 10450; and training for a pilot group of spouses in regular Foreign Service Institute administrative and consular courses on a space available basis. We fully support the first program and look forward to being of service in this way to the Department. The security clearance time lag works a hardship both on the Department and the individual waiting for final clearance. We urge the Department to apply the security clearance waiver to summer hire of teenage dependents.

As to the second program, we also strongly endorse the Department's idea of training spouses to handle designated administrative and consular tasks. Under this program spouses with appropriate training at post can fill staffing gaps, thus eliminating possible TDY expenditures and providing continuity of service. Such a program can also contribute markedly to the improvement of morale at post, not only because it will increase employment opportunities, but because it will demonstrate a realization on the part of the Department that the

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skills and experience of dependents are a valuable resource. We support the implementation of these programs by the Department and will urge the other Foreign Affairs Agencies to follow suit.

OTHER KEY ISSUES

The Forum is encouraged by the steps which the Department has taken to try to expand the employment opportunities for dependents abroad and at home. We view these adjustments to the increasing demands of women and male dependents for a fair chance in the job market as a very important beginning. Eventually, however, the issue of career status and benefits, and of employment for spouses of senior officials will have to be met.

RETIREMENT. Retirement puts the Foreign Service spouse in a particularly difficult situation. She/he is ill prepared for later years because of mobility and the failure of many job programs abroad to offer adequate retirement benefits. Even some U.S. Government jobs abroad do not provide retirement programs (i.e., English language teaching, commissary, and other contract work). The spouse who devotes full time to supporting the Foreign Service Officer's representational activities receives no monetary or retirement benefits in her/his own right. The spouse who leaves a job with paid-in retirement benefits in the States may find a job abroad, but it will probably not permit her/him to continue to pay into the retirement program of the agency which had employed her/him at home. The person who had been employed by a company where the retirement benefits were fully paid by the company may lose all retirement credit with that company. The dependent who left a retirement program at home usually must enter a different program when working abroad, but might not be in any program long enough to qualify for adequate benefits or any benefits at all. These are intolerable situations, and ones which, in some cases, may require new legislation in order to give the Foreign Service spouse a fair chance at earning decent retirement benefits. One suggestion which deserves study would be to permit the dependent spouse, even while unemployed, the option of paying into an independent retirement account or the Social Security system while abroad. (To offer adequate retirement income, these programs should permit larger contributions and benefits than at present.) Those who have a stake in another retirement system should be permitted to continue to pay into that system if they so desire.

Two concepts are central to understanding this problem: it is essential to recognize that the non-working person has the same retirement needs as the working person, and that each individual needs to have retirement benefits in her/his own right. We urge the Department to take the lead in requesting appropriate changes in laws and regulations to permit spouses more opportunities and greater flexibility for participation in retirement programs. We also recommend that all jobs connected with official missions abroad and held by official dependents offer adequate retirement benefit programs.

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The Forum strongly supports the proposal to make Foreign Service spouses who are divorced or legally separated eligible for inclusion, along with Civil Service spouses, under P.L. 95-366. This law permits a spouse to claim a portion of the employee spouse's pension at retirement. The proposal meets an urgent need for those spouses now facing this circumstance.

EMPLOYMENT FOR SPOUSES OF SENIOR OFFICIALS. Spouses of senior diplomatic officials face special employment problems. The officer's position may make employment both within and outside of the mission awkward. Many may feel that under these circumstances the best use of their talents is in the representational area and that relinquishing these activities for other employment would not be in the best interests of the United States. Appropriate steps should be taken to recognize their efforts. Although we do not support the idea of honorary awards, we do support the request made by wives attending the recent Chiefs of Mission Regional Conference in Colombo (State 00317, Jan. 19, 1979) that COM spouses be given a job description which could be used as a model for inclusion in their resumes. There should be a form of appropriate certification, if requested by the spouse, for her/his efforts. Naturally, no spouse should feel compelled to fulfill the duties outlined in the job description. She/he should be free to accept or reject the traditional role.

We feel that those spouses who accept the responsibilities of the role as outlined in the proposed guidelines should be compensated by receiving a salary based on a percentage of the employee spouse's salary. Along with this should go the right to earn retirement benefits, or at least to pay into an independent retirement account. We realize that this idea will require serious study and changes in the law before it can be put into effect. Nevertheless, we think it has great merit. It would permit official recognition of the dedicated and expert services rendered by the spouse who takes on this traditional role. It would permit monetary reward to satisfy the spouse who objected to the two-for-one arrangement but who could not comfortably avoid it. We hope that this proposal will receive serious Departmental consideration and support.

CAREER ISSUE. The modern Foreign Service spouse who works in various U.S. government positions abroad, be they PIT, contract, or some other form of direct-hire, is, under present regulations, denied status regardless of how long she/he has worked for the Government. Under the plan for the new FN/AFM positions and PIT positions, the dependent is allowed to work for one year with a possible one-year extension. Present regulations permit acquisition of status even in career jobs only after three years of basically unbroken service, and under no circumstances when working in direct-hire, FN/AFM, PIT or contract positions. Thus, the limitations attached to such employment discriminate unfairly against a class of persons who have practically no other choice for employment but to work for the U.S. government. The fact that this employment offers no hope for career status also adversely affects the individual's employment opportunities in the U.S. Since the U.S. government, the largest employer in the

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Washington area, makes status a qualification for many positions, the Foreign Service dependent who returns without status is cut out of much of the job market.

The AAFSW Forum plans to do all it can to have regulations adopted which permit Foreign Service dependents to accumulate Civil Service status through credit for each month worked for the Government, both in the States and abroad, regardless of breaks in service. We will also request that this change be made retroactive. We hope that the Department will actively support us in this endeavor. It is our belief that, in the short and long run, increases in real career opportunities, not just work opportunities, will strengthen the Foreign Service by making it more attractive to all employees.

Spouse employment and career development will continue to be a priority concern of the AAFSW Forum. So long as these concerns are manifest throughout American society as a whole, the Foreign Service community will feel their effects, and must respond one way or another. We are encouraged that the Department of State has, through its statements and actions, recognized this growing issue. We hope to continue to work with the Department to make needed adjustments, to eliminate inequities in existing and future programs, and to find new ways to expand dependent work and career opportunities.

APPENDIX 5

TIME USE SURVEY SUBMITTED BY THE ASSOCIATION OF AMERICAN FOREIGN SERVICE WOMEN

Time Use Survey:

LOTS OF HOURS

— Margaret W. Sullivan

"I knew I worked hard, but I was surprised at how many hours it really was", commented a wife as part of her response to a time-use survey undertaken this year by the Association of American Foreign Service Women Newsletter. The survey documents the hours of unremunerated work spouses contribute to the official functioning of U.S. Missions and delineates the ways these hours are spent. Time use — not opinions about if or how it should or should not be recompensed — is all the survey studies. The results do not so much present a new picture as fill-in, highlight and confirm areas of the commonly assumed one.

Although some respondents report no involvement at all in the official life of a Mission, a substantial majority contribute to it in some way. The degree of involvement — except in activities of a purely community-building nature — is generally related to the employee's position. The unique demands of the specific post and the variations of individual personalities are also factors in the amounts of time invested.

Two findings stand out:

- *Being an Ambassador's wife is frequently a full-time job.* An Ambassador's or Charge's wife probably devotes an average 167 hours a month — over four 40-hour work-weeks — to official functions. Some devote much more. The top number reported was 328 hours 30 minutes, or almost 11 hours a day, seven days a week; enough for two full-time jobs.

- *Being the wife of an officer with representational responsibilities is frequently*

equivalent to having at least a part-time job. The survey suggests that nearly half the wives of officers who have such responsibilities may contribute more than 40 and less than 120 hours a month — more than one and less than three 40-hour work-weeks. An additional fifth of such wives put in more than 120 hours a month.

The Sample

The survey was initiated in October 1977 when the questionnaire appeared in the *AAFSW Newsletter*. A later story about it in the *Department of State Newsletter* elicited a few requests for forms. At a number of posts, the survey form was reprinted and circulated. It is impossible to know, therefore, how many foreign affairs agency dependent spouses saw the form or knew that the survey was being undertaken. Nor is the total number of dependent spouses currently abroad with the various foreign affairs agencies known. Such statistics are not kept by the agencies involved. In 1976, the questionnaire for the AAFSW Forum Report was sent to some 8,000 people. Using a 60/40 abroad and home ratio, this would suggest that nearly 5,000 dependent spouses are at posts at any one time. Educated guesses based on other Departmental statistics tend to confirm this estimate. Clearly, more accurate statistics about spouses are needed.

One hundred sixty-nine responses to the survey were received. This number by itself is not statistically sufficient to more than suggest the range of involvement and hours

some wives invest. The survey is important, however, as the first documentary study of the subject. Some sub-groups of the response are big enough to be statistically significant. Twenty Ambassadors' and Charge's wives responded, 14.38% of such possible responses. This, and the geographical and post-class distribution of this sub-group makes the picture of full-time involvement of wives at the top level of Foreign Service life statistically valid. A log kept in 1957 by an Ambassador's wife was also submitted. Very little has changed at that level. Two posts responded in sufficient numbers that a reasonably accurate profile of the contribution of spouse-time can be drawn for each of them. One, with a 24% response, is a Class 1 Asian post. The other, with a nearly 75% response, is a Class 4 post in South America. That the other responses to the questionnaire follow in the same basic pattern of these sets gives greater weight than otherwise might be the case to the profile suggested by the limited number of responses.

The number of responses as a whole is skewed toward spouses who are involved. This is not surprising in a self-selected group of respondents. People doing something are often quicker to talk about it than those who are not. The number of respondents who list their husbands as having representational or representational and post leadership responsibilities outnumber the responses from those whose spouses do not, three to one. While this may be larger than the ratio in the foreign affairs agencies married population as a whole, it is probably not substantially so. (As mentioned, however, observations about overall numbers must be educated estimates rather than statistical fact.)

The responses come from 44 posts out of 240 (18.3%). The Department classifies its 139 Embassies as Class 1,2,3 and 4. There are 103 non-Embassy posts. Responses were distributed among the classes of post as follows:

Class 1	8	44.4%
Class 2	3	17.6%
Class 3	12	42.9%
Class 4	12	15.8%
Others	9	8.5%

The geographical distribution of responses has two major gaps: Eastern European countries and the London-Paris-Rome axis. The responses, therefore, could be and were

analyzed to see if class of post makes any marked difference in time involvement for wives. A break-down by geographical area was not possible and was not attempted.

Other variables that appear to affect the time wives invest — the isolation and fish-bowl factors, and the political "sexiness" of certain posts — could only be judged on the basis of common knowledge. Were a broader-based, more detailed study to be undertaken at a later date, these aspects would need to be more carefully addressed.

Single responses were received from 24 posts. Multiple responses came from 20 posts. A block of 13 came from an Embassy and two of its Consulate Generals. Two male dependent spouses participated in the survey. Responses were solicited from any dependent spouse at post without regard to which agency or service the employee works for. A number of responses from military wives were received from the two posts which sent in substantial replies. Some women mentioned being regularly or intermittently employed themselves. Not enough information was consistently available about this aspect, however, to draw any conclusions.

For this sample, percentages and average numbers of hours are misleading. It seems more relevant to look at clusters of times reported and to talk in terms of 40-hour work-weeks. One hundred sixty hours constitutes a full four 40-hour work-weeks per month. Percentages and averages are cited primarily for those sub-groups with great enough responses to be meaningful in those terms.

Respondents were asked to keep a log for a month and from that to answer five questions giving the number of hours per month spent: preparing for and entertaining at home; attending official functions hosted by other Americans and host or third country nationals; assisting in official activities such as updating post reports, price surveys, escorting visitors, etc.; other time-consumers the respondent considers official rather than personal; and community building/supporting activities within the Mission. They were also asked to identify the post and give some general information about their spouse's position in it.

The Total Picture

Individuals reported monthly totals of unremunerated work time contributed to the official functioning of U.S. Missions abroad varying from 0 to 328.5 hours a month. Including those who reported no involvement, just over a quarter of the respondents reported under 39 hours per month total contribution — less than one work-week. More than half reported over 40 hours and less than 120 (between one and three work-weeks). Nearly a quarter of the responses reported over three work-weeks (120 hours) per month. Ten women reported over 200 hours for the month surveyed. A number submitted logs to substantiate their reports. There seems to be only minor variation in the pattern of the hours reported among the Class 1,2,3 and 4 posts. Constituent posts show a larger proportion of responses in the 80-119 hour range. Whether this is because the posts are smaller or because of the particular jobs of the husbands of those who took time to respond, is impossible to say.

Among those women whose husbands have representational responsibilities, nearly 2/3 reported more than one and less than three work-weeks total time (compared to just over half of the total sample). More than a quarter of them reported over three work-weeks while about 10% reported less than one work-week and only one person in this category reported no involvement at all. Conversely, of women whose husbands have no representational responsibilities (about a quarter of the sample) well over half reported less than one work-week's total contribution and over 10% reported no involvement of any kind.

The patterns of total time distribution of each of the two posts with substantial responses shows a similar picture, although at both posts the proportion of responses under one work-week is larger (38% of the Class 1 post, 34.2% of the Class 4 post). The hour range at the Class 1 post was from 0 to 309 although the second highest reported there was 169. At the Class 4 post, the range is from 0 to 235 hours per month. Of those whose husbands have representational/leadership responsibilities at the Class 1 post, 59.25%

report between one and three work-weeks per month while 22% report over 120 hours for the month. At the Class 4 post, the same group reports 85% between 40 and 119 hours while 13% report over 4 work-weeks a month. Of those whose spouses have no representational responsibilities, at the Class 1 post, 23.1% show no involvement, 46.2% under one work-week and 30.8% between one and three work-weeks per month. At the Class 4 post, 13.3% of the wives whose husbands have no representational responsibilities report no involvement while 46.6% contribute less than 39 hours a month and 40% report between 40 and 120 hours a month.

The Ambassadors' and Charges' wives, predictably, report larger numbers of hours. The totals range from 54 to 338.5 hours for the month. The average is just over 167 hours (more than four 40-hour work-weeks in one month). The wife who reports only 54 hours for the month surveyed, however, notes special circumstances which indicate that 130 hours per month would be more nearly normal for her. The distribution of time these women report is 30% between one and three work-weeks, 30% between three and four work-weeks, and 40% over four work-weeks per month.

While the responses do not always indicate other specific leadership positions beyond Principal Officer and Deputy, occasionally internal evidence pinpoints an AID Mission Director's, Defense Attache's or an ICA Director's wife. Uniformly, these women are among those reporting the most hours. The same is true to a lesser extent for Section Chief's and Cultural Affairs Officer's wives. However, not enough of these were pinpointed to make statistical analysis possible. Comments suggest that the time demands of posts are cyclical and seasonal. There seems to be about as much variation in the time ranges of posts within a single class as there is between posts of different class. This suggests that each post has its own dynamic or that there are other dynamics that the survey did not bring out. The length of time a person has been at post also seems

to affect the amount of time spent on official activities. A few women mentioned deliberately restricting involvement either to spend time with children or to pursue other careers. No one cited these as reasons for total non-involvement although it may be the case. None of the "non-participants" gave reasons.

One woman wrote "Even though I expect to start work next month, I anticipate that I will still spend about 50 hours a month in representational and community activities". In looking at those responses which are well over four 40-hour work-weeks per month (235 hours, 240 hours, 260 hours, 273 hours, 294 hours, 309 hours, and 338 hours) one has to wonder if there is a point where the demands of the post stop and the needs of the individual to be constantly working take over.

Official Entertaining

One of the major, and traditional, contributions of time wives make is in preparing for and being hostess at representational functions in their own homes. The range of time reported for this function varied from 0 (about 1/6 of the response) to a monumental 205 hours per month on the part of one woman. Over half those responding spend between one and 39 hours a month (less than one work-week) preparing and entertaining. The hours for those whose husbands have representational responsibilities are slightly higher although they still primarily fall in the under one work-week a month range. Fifty-five percent of the Ambassador's and Charges' wives, however, report between 40 and 79 (between one and two work-weeks) spent entertaining and 10% report between 80 and 119 hours a month. The pattern for time invested in official entertaining at the two posts with substantial responses bears out these observations. Not unsurprisingly, those women whose husbands have no representational responsibility show little or no time spent in "required" entertaining. One woman whose husband's job is not representational reports doing a substantial amount of "effectively" representational entertaining because of their long-time and now high-level connections in the country. Personal as well as official relationships affect the number of hours spent. "It is our pleasure".

Much entertaining is done in the evening although many people also report daytime activities. One night a week entertaining officially at home is the pattern for about a third of the respondents. Almost as many report less — one, two or three evenings a month. For those whose husbands have representational responsibilities, two-thirds report between three nights a month and four nights a week. Twenty-five percent of Ambassadors' and Charges' wives entertain one evening a week, 25% report two evenings a week, and 30% report from three to five evenings a week. In addition, 25% also give one daytime social function a week and 30% give more than that.

The amount of time spent preparing for functions in the home varies with the function, the ease of shopping at the post, the availability of household help and the capabilities of that help. Women at one post report the necessity of crossing one of the world's largest cities to shop for things needed for representational entertaining. At another post, the food supply is so bad that periodic motor trips on difficult roads to a neighboring country are necessary to be adequately supplied. Without these extreme cases, a minimum of two hours preparation time for every hour's entertaining time seems usual.

A number of women mention that their husbands do an increasing amount of representational entertaining at lunch in restaurants. Conversely, several say that at their present post the places to go out are limited and the quality poor.

Because almost a quarter of the wives at the Class 4 post which responded *en masse* are employed, they organized a special questionnaire which shows that 11 out of 13 spouses with jobs outside the home continue to entertain about the same amount when they start working. Seven of them are hiring more help for parties, six are not. Ten of their husbands help plan and prepare for guests at the same rate as they did before, but no idea is given as to whether or not the husbands help. Eight of the women spend about the same amount of money while four spend more "because the easiest dishes to prepare are the most costly". Twelve report that their type of entertaining has not changed because of their employment, although one reports

that "my job is at night and this makes entertaining difficult". Six report they do not choose to do less "representational" and more spontaneous entertaining with friends than they used to while four report that they do. One wife, employed outside the Mission, reports sharing entertaining work, expenses and guest lists with her husband. She pays and works when the guests are her contacts. He pays and does the major work when they are his. If she is not there, he entertains.

Being Officially Entertained

Attending functions to which one has been invited solely because of the employee's position is another traditional occupation of Foreign Service spouses. Two-thirds of the sample report spending between one and 39 hours (one work-week) a month at such functions. A quarter of the sample report between 40 and 119 hours (over one and less than three work-weeks). One response documents 135 hours in one month at official social functions. Half the respondents report attending functions two or three nights a week on an average. Many mention more than one function on a single evening. Those whose husbands have representational responsibilities suggest that three or four nights a week is a frequent pattern.

"I think", writes one wife, "the cruelest aspect of a Foreign Service woman's time is that which she must give in the evenings. I have children and housekeeping duties which take up most of my daily time and... any time that is for my enjoyment suffers for long periods of time because of the evenings. When we don't go out, we are so terribly exhausted we can only catch up on sleep. Some weeks we will go out 5 and 6 times... this is an occupational hazard and should not be thought of as something to remedy. I wouldn't want my husband to go to these functions without me. I think we should instead advise women how to deal with the panic — i.e., identify it, find other times in the day for themselves, don't expect too much from themselves, etc. Also, more important still, how to help husbands deal with this panic of no time."

Ambassadors' and Charges' wives average 58 hours 45 minutes attending official functions. "Not counting the time it takes to keep hair done and change clothes." None of these women reported less than two evenings out a week. "I tend to participate more actively as an Ambassador's wife than hitherto in the rounds...there is a kind of unwritten *quid pro quo* that propels us to each other's National Days."

The pattern varies considerably from post to post. One wife suggests that her present post is "quieter" than some of the others in the area. A woman in a Muslim country has stopped attending many functions because the local wives do not attend. In another Muslim post, however, diplomatic wives are expected to maintain a very active social schedule largely separate from their husbands. "Calling on royal family wives is expected".

One of the clear pictures this survey shows, then, is a large group of women whose evenings are not their own. They spend two or three nights or more out officially and maybe the same or slightly less entertaining officially at home.

One wife suggests "there is one other factor to be considered, call it 'minus time'... the time representational duties take away from small children. So many functions are 'early evening' and take the mother, especially, away from the dinner hour, bubble bath, story-time routine. Hired help is no substitute."

Official Activities

Spouses contribute to other areas of official functioning of Missions. They escort Codels and other visitors, conduct price surveys, up-date post reports, edit post and commissary newsletters, serve on commissary and school boards, respond to the Forum Report, prepare slides for the Overseas Briefing Center, organize the American booth for local charity bazaars and many other things. Less than half the total sample reported activities of this sort. This is also true of the two posts for which it is possible to establish profiles. Most of those who are involved in these official activities, however, find that they consume from 1 to 39 hours of their time (less than one work-week). Ambassadors' and Charges' wives average 28 hours per month. Very few women whose husbands do not have representational or leadership responsibilities report involvement in these activities; the few who do, with one exception, report less than 4 hours a month.

The most frequently mentioned activity is escorting visitors — taking them shopping and sightseeing. Codels are often mentioned separately from other visitors. Asked whether or not such activities are on a continuing or "one shot" basis, one wife responds "Each is 'one shot' but they keep coming". Such

escort duty can take from three to 15 hours a time. "Each visit usually takes my whole day. We use my car and my gas, and I drive". Other chores are also mentioned in relation to official visitors: mailing packages afterwards, checking airline reservations and, in some posts, putting them up. Escort duty falls primarily to the wives of the more senior officials.

Not all posts are on the visitor circuit. "My representational responsibilities here are negligible", reports the wife of a mid-level officer. "However, we were the only AID representatives at our last post and there was an average of two official visitors a week (often more) and only one hotel and restaurant in town. Obviously, my response would have looked quite different." Political circumstances change quickly and a post can suddenly be inundated. "At the time of my log, I had not been involved with escorting visitors. Since that time, I have spent a considerable amount of time with Senators visiting —, this month and last particularly. I did not record the hours but it would have been days, not hours."

Women at two posts report they are not asked to participate in this type of activity without remuneration. "For official visitors who require translators, the Embassy hires language experts among the wives". At another post, wives are given a training course and paid a flat fee for working a Congressional visit.

Although one wife reports that "All required surveys are paid for in ——" , doing price surveys appears frequently on responses as official time that is unremunerated. Usually they are reported as using only a few hours a month (only once or twice a year) but two women report spending 40 hours (one work-week).

Another category of official functioning which wives of senior officers, particularly Ambassadors' and Charges' wives, report involves traditional diplomatic wives duties — calling on the wives of local officials and other members of the Diplomatic Corps, or being called upon by them; attending the meetings of Diplomatic Wives and belonging to clubs of a binational nature. "The Ambassador's wife is always the honorary president of ——— so I feel I must." "The PAO's or CAO's wife is always asked to sit on the Arts Council Board."

One post which sent in five responses shows several women involved in the President's Wife's Charity Tea. Other posts report similar functions which, while they may occur only once a year or every other year, can take up to 60 hours of a person's time and involve many of the women at the post.

Entertaining "in-house" visitors is also mentioned by some women: "gave a dinner for the regional psychiatrist". Women at some constituents posts list house guests as an official time-consumer. "We are glad to do it but it is disruptive."

Other Official Time Consumers

The fourth question on the survey asked for "other time consumers which you consider official". There is considerable overlap in the responses to this question and the previous one (re official activities) on the survey form. Slightly fewer respondents list less hours than for the previous question. However, all but one of the Ambassadors' and Charges' wives list time in this category. They again average 28 hours. Other than these women, however, there is no predictable pattern as to who is involved and who is not. The underlying connection for women's responses to this question is tasks that they would not be undertaking except for the fact that they find themselves abroad as the wife of their husband.

One of the major areas involves Official Residence supervision, maintenance and repair and the supervision of Residence staff. This applies only to the wives of Principal Officers and their Deputies. "Inventory for Residence. 2 full days! At home, I would not have to inventory a vast hotel kitchen with pantries, attic full of guest glassware, 4th of July tables, etc." "I'm tired!! Is my time 'supervising' this official or not? I'd be in a much smaller place if it weren't for my husband's work." (She did not list the time for running the DCM's residence and it was not counted). "I also did not include traditional gifts (X-mas) to staff of Residence, drivers, agents, guards and all their children...80 people! I spent days on that. If this counts, add 35 hours (not counted). This has always been done, so I thought I should keep the practice which I'm sure these employees were expecting." (Hours a respondent listed in the blanks were counted — others, as above, mentioned in comments were merely noted.) "It took untold hours over nine months to get two bathrooms installed."

Another recurring category is secretarial and social secretarial functions. One Ambassador's wife, an FSO on forced leave of absence, spends an hour or so each morning in their office at the Residence helping her husband "because the Embassy is short-staffed". Guest and Christmas card lists are revised. A number of women list two or three hours a month spent "trying to reach people on the phone about official things".

In what may be a change from earlier times, only one response mentions "baking for a party at the Residence — 3 hours."

Time spent learning non-world languages is itemized by some. "I enjoy it but knowing — is particularly important so I can speak to my husband's contact's wives." Others teach English to local officials or diplomatic wives. Several wives cite use of their own professional skills: "36 hours per month/voluntary legal assistance work." "Lecturing on American education at the bi-national center."

Perhaps the most telling part of the answers to these questions is that the women responding consider what they are doing to be official whether others would do so or not.

Community Building

Three-quarters of the spouses responding contribute time to community building activities in one way or another. This includes attending Embassy or American Women's Clubs, children's Christmas and Halloween parties, Girl and Boy Scouts and above all, helping newcomers. For most women, this takes less than 20 hours a month (half of one work-week). Ambassadors' and Charges' wives average 18 hours, much of it in parties or other forms of welcome for newcomers.

Community building, however, is the only area covered by the survey in which massive time involvement bears no relation to the husband's job. The wife of a junior officer with no representational responsibility, for instance, lists 53 hours a month as chairman of the Welcoming Committee. A male dependent spouse lists 32 hours in Embassy Women's Association functions. Other than for those who note they are officers of Wives Clubs, large periods of time invested in community building seem to be seasonal — during the peak arrival times for newcomers or at the time of the annual Embassy bazaar or major post party for children or the local staff, or the 4th of July picnic.

The survey form suggested that time involved in community building might be of a different nature, perhaps less official, than other official functions. One Ambassador's wife thinks that for her, at least, it is no different from her other obligations as the wife of her husband. A number of women report supporting school functions or giving children's parties "even though I have no children".

Attitudes

The survey in no way addressed itself to the respondents' feelings about the work

they do or what they think about remuneration. On the whole, the responses are non-committal but cooperative, just as the cumulative picture the survey presents is of basically cooperative, wryly hard working women.

Yet not everyone is totally cheerful. Some, as already quoted, are tired. "I think what dismays me most of all", says another, "is that my contribution is neither recognized nor appreciated — whether it be marketing to have a dinner party or whatever. If you want good food you must go to various markets to buy it — one place for fish, another for meat, another market for fruit, flowers somewhere else, soft drinks at the supermarket. Sometimes it takes half a dozen trips. And no one really cares."

Several women remark that they feel specific jobs should be paid for. "I won't do (a price survey) again unless I'm paid." "If I were paid even minimum wage for the hours I put in, I could afford graduate school when we get home."

Just as clearly, there are those who feel the opposite. "I do not wish to be remunerated. Ambassadors' wives get plenty of appreciation, compensation enough — and too much attention!" Other women remark "I do what I do by choice". A substantial number of the respondents clearly, however, feel obliged by the circumstances they find themselves in to do what they are doing, and regard it as a contribution to official functioning of the Mission of which they see themselves a part.

Questions, Not Answers

In the final analysis, a survey such as this raises more questions than it suggests answers. The broad picture is clear enough. The survey bears out common knowledge that many spouses contribute to the official functioning of U.S. Missions around the world to a greater or lesser degree. The more responsible an employee's position in terms of representation and post-leadership, the more likely the spouse is to participate in

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official functions and the more time-consuming that participation is apt to be.

Yet, paradoxically — although the survey results merely hint at it — there is other evidence of a growing trend for some of these same spouses to want, or need, jobs of their own. Can, will the present degree of contribution by spouses to official functioning (between one and three work-weeks a month from a large number of people even more from others) be continued? If it is, or if it is not, what are the implications for the Foreign Service? For spouses?

Are these contributions a function of traditional social roles? Of the System's expectations of wives? Of wives' expectations for themselves? Of the local community's expectations of "Embassy Wives"? How dependent is the system on receiving them? What are the needs of the individuals who make them? What are the alternatives?

Both spouses in many Foreign Service marriages are contributing participants in that Foreign Service career or at least to the Foreign Service. What is the dependent spouse's economic share in that career? Is the dependent spouse contributing to the marriage-partner employee or to the Foreign Service or both? What are the appropriate forms of recognition for the many contributions being made by spouses? Is anyone obliged to care?

Ultimately, perhaps, the question is what is representation? Who represents? Why? What is effective? Necessary? A study of representation and the Department's needs in that regard has already been called for. This time-use survey and its documentation of hours, work-weeks, contributed further underscores the need for clarification of the representation issues.

Particular thanks for their help with this project are extended to Joan Wilson, Lynn Johnson, Janet Kennedy, Margaret Boeker and Bobbie Seligman.

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APPENDIX 6

LETTER AND ANNEX TO TESTIMONY FROM JOSÉ ARMILLA, VICE PRESIDENT OF THE FOREIGN AFFAIRS CHAPTER, ASIAN AND PACIFIC AMERICAN FEDERAL EMPLOYEE COUNCIL



APAEC

FOREIGN AFFAIRS CHAPTER

ASIAN AND PACIFIC AMERICAN FEDERAL EMPLOYEE COUNCIL

c/o EOP, Room 2664 NS, ATD Department of State
Washington, D.C. 20523

September 17, 1979

The Honorable Patricia Schroeder
United States House of Representatives
1507 LHOB
Washington, D.C. 20510

Dear Mrs. Schroeder:

We want to thank you for the unique opportunity and privilege to present a statement on the Foreign Service Act of 1979 before the Joint Subcommittees on September 6, 1979.

Your interest in listening to our testimony was clearly reassuring. Moreover, the questions you posed afterwards indicated a sympathetic concern for the situation of Asian American employees in the Foreign Service and Civil Service.

Attached are the documents that you have graciously allowed to be inserted as annex to our testimony; this annex should provide a fuller picture of the Foreign Affairs Chapter's on-going efforts to communicate with the management in the foreign affairs agencies.

In light of your question regarding the situation of Asian Americans in the Federal Civil Service, we are also enclosing article analyzing the cost of discrimination borne by minorities and women: Patricia A. Taylor, "Income inequality in the Federal Civilian Government." Professor Taylor of the University of Virginia is in the process of completing an analysis focusing on Asian Americans; we will be glad to forward these results to you.

Sincerely,

Jose Armilla
Vice-President
Foreign Affairs Chapter, APAFEC

Enclosures

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Asian American Foreign Affairs Employees Caucus
Washington, D.C.

June 16, 1977

Honorable Richard Moose
Deputy Under Secretary
for Management
Department of State
Washington, D. C. 20520

Dear Mr. Moose:

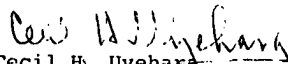
It was an especial pleasure for the Asian American Foreign Affairs Employees Caucus to be able to present its views and recommendations on equal opportunity employment to the Secretary's Task Force on Affirmative Action on June 16, 1977.

We look forward to a continuing dialogue with the Task Force on the implementation of our recommendations. Equal opportunity employment will be substantially advanced if these recommendations are carried out consistently, sincerely and continuously.

Enclosed is a copy of the Report by the Asian American Caucus to the Task Force.

We would like to reiterate what we stated in the Report, that the Asian American Caucus stands ready, and would appreciate any opportunity to cooperate with the Task Force or its subcommittees, to submit additional views and comments, and perhaps to formulate detailed procedures, if necessary, to meet the concerns and needs of the Asian American employees in the Department.

Sincerely,


Cecil H. Uyehara
Caucus Representative

Enclosure: a/s

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Report of the Asian American
Foreign Affairs Employees
Caucus
to
The Secretary's Task Force on
Affirmative Action

This report is being submitted to the Task Force in conjunction with the oral presentation made by the Asian American Foreign Affairs Employees Caucus to the Task Force on June 16, 1977.

At the outset we would like to express our strongest support of the objectives of the Affirmative Action Task Force created by Secretary Vance. To us, it is an expression of the Secretary's continuing support to the equal opportunity employment program in the Department of State, including State, AID and USIA.

The Asian American Foreign Affairs Employees Caucus (hereinafter referred to as the Asian American Caucus) notes with gratification and approval the Department's Equal Opportunity Plan for FY 1977 which states:

"It is the policy of the Department of State to promote equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to achieve equal employment opportunity in all personal operations through a continuing affirmative program."

We feel that Asian Americans, both in and out of the foreign affairs agencies, can, if given the opportunity, make a positive contribution

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to the conduct of U.S. foreign relations. We strongly believe that as important representational mirrors of our country, the foreign affairs agencies of the U.S. Government, e.g., State, AID, USIA, ACTION, must be models of equal opportunity employment. Thus, we are looking at the EEO issues in this report from the perspective of Asian Americans and also from the broad standpoint of U.S. relations.

In this report we plan to present our analysis of the employment situation in State and AID, making certain observations and concluding with a set of recommendations for immediate and future action.

At this point, we would like to describe briefly the Asian American Caucus and its objectives. The Caucus is open to all individuals who support greater participation of Asian Americans in foreign affairs. The bulk of its participants come from State and AID, with a few from USDA, ACTION, EEOC. This summer the Caucus anticipates becoming the Foreign Affairs Chapter of the Asian and Pacific American Federal Employees Council. The Asian American Caucus conforms with the FEA guidelines under OMB Circular A-46 regarding racial and ethnic categories. More specifically, the Asian American Caucus falls within the Civil Service definition of "Asian or Pacific Islander", which embraces persons originating in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, e.g., China, India, Japan, Korea, the Philippine Islands and Samoa. With the exception of Samoa, persons from all these countries

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are represented in the Asian American Caucus.

The objectives of the Asian American Caucus as stated in its recently adopted Constitution are as follows:

1. to gain fair representation and participation in Federal programs, legislation and employment for Asian and Pacific Island Americans
2. to secure equal and equitable treatment of Asian Americans in securing employment, obtaining promotions, and receiving assignments consistent with their qualifications and experience in the foreign affairs field.

The Asian American Caucus is not in favor of, and does not advocate, "reverse discrimination", lowered standards or "tokenism". But what it does seek is that Asian Americans, like other minorities and American citizens, be accorded equal opportunities for fair and equitable treatment on the basis of training, qualifications, merit and demonstrated ability.

The Asian American Caucus seeks to avoid conflicts and competition with other employees' groups and strives to work in harmony and cooperation.

The Asian American Caucus notes that Congress has enacted special legislation to assist Spanish-speaking persons in seeking benefits of equal employment. Special legislation has also been enacted to assist women.

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The Asian Americans have not been so favored. They feel that they are in the role of a minority within a minority, a "double-minority" if one might use that term.

According to the latest information and statistics available to the Asian American Caucus, there are at present a total of 147 Asian Americans employed in the Department as follows:

Department of State	100
AID	<u>47</u>
Total	147

The detailed breakdown of these totals are as follows:

<u>AID</u>		Total: 47			
<u>FSR and FSRL</u>		<u>FSS and FSSL</u>		<u>GS</u>	
1	0	1	0	16-18	0
2	0	2	0	15	1
3	7	3	0	14	1
4	6	4	0	13	0
5	6	5	2	12	4
6	0	6	1	11	2
7	0	7	6	10	1
8	0	8	0	9	1
Total	19	9	0	8	2
		10	0	7	1
		Total	9	6	3
				5	1
				4	2
				1-3	0
				Total	19

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<u>Department of State</u>				Total: 100	
<u>FSO</u>	<u>FSR(U)</u>	<u>FSS</u>	<u>GS</u>	<u>General Grade *</u>	
1 0	1 0	1 0	16-18 0	15 1	
2 1	2 1	2 2	15 1	14 0	
3 5	3 3	3 2	14 0	13 0	
4 2	4 4	4 7	13 0	12 0	
5 7	5 2	5 4	12 3	11 0	
6 3	6 3	6 5	11 2	10 3	
7 0	7 3	7 3	10 1	9 5	
8 0	<u>7 3</u>	8 2	9 2	8 4	
	Total 16	9 1	8 0	7 3	
Total 18		7 4	7 4	6 5	
		Total 26	6 3	5-1 0	
			5 1		
			4 2	Total 21	
			1-3 0		
			Total 19		

*Mainly employed by FSI

In summary, therefore, there are in State 60 Asian Americans in the Foreign Service Complement, 19 GS, and 21 GG; in AID, 28 Foreign Service and 19 GS.

In State, the latest information reveals that except for Assistant Secretary (OES), there are

1. No Asian American Deputy Assistant Secretaries
2. No Asian American Ambassadors
3. No Asian American Deputy Chiefs of Mission
4. No Asian American Principal Officers
5. No Asian American Country/Office Directors
6. No Asian American GS-16s to 18s (highest is one GS-15)
7. No Asian American FSO-1s (only one FSO-2)
8. A few Asian Americans in mid-level GS grades
9. A few Asian Americans in mid-level FSO grades
10. Few, if any, Asian Americans in the lower FSO grades

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In AID, these data reveal that there is/are

1. No Asian American Assistant Administrator
2. No Asian American Deputy Assistant Administrator
3. No Asian American Mission Director
4. No Asian American Deputy Mission Director *
5. No Asian American Office Directors
6. No Asian American FSR-1s and -2s; the highest is FSR-3
7. No Asian American GS-16s to GS-18s; the highest is one GS-15
8. No Asian Americans in the higher FSS levels

The Asian American Caucus recognizes that it takes many years of training, experience, hard work and demonstrated ability to reach the highest levels of appointments. The Caucus believes that some of these higher level positions could be filled by persons presently in State and AID and strongly believes that more people than just one person (Assistant Secretary, OES) with excellent qualifications could be found to fill the highest positions from among the several million Asian American population in the U.S. if a concerted, systematic, sincere and sustained effort is launched to find these people.

These statistics would also seem to reveal that greater attention needs to be paid to the qualified recruitment of Asian Americans interested in the foreign service, and to the career upward mobility of the middle level group in the foreign service and civil service. The Clarke Report of January 1977 underscored this point when it concluded that

* We understand the first Asian American Deputy Mission Director is under consideration for appointment from outside the Foreign Service or Civil Service.

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"Although the BEX [Board of Examiners] includes visits to schools with high American Indian and Asian-American enrollment, recruitment of these two groups does not appear to be as systematic or as focused as for the other groups." *

The Asian American Caucus agrees with President Carter who, commenting on employment opportunities for minorities during his visit to the Department of State on February 24, 1977, said:

"I think, to be perfectly frank, that the State Department is probably the Department that needs progress more than any other. And I am determined that this will be done."

The House Labor Subcommittee on Equal Opportunities of Federal Enforcement of Equal Employment Laws observed in its report of January 20, 1977 that

"In spite of (certain) gains, real progress still eludes the grasp of the majority of women and minorities." **

* Final Report, Minority Junior Officers Hiring Program of the Department of State by Clark, Phipps, Clarke and Harris, Inc. New York, February 1977 - page 34

** Staff Report of Investigation by House Labor Subcommittee on Equal Opportunities of Federal Enforcement of Equal Employment Laws

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The Subcommittee found a disappointing "NO" to the following questions:**

- "(1) Does the individual who has suffered discrimination, or who may so suffer in the future receive protection and relief? and
- (2) Are affirmative action policies and programs being implemented to bring about full utilization of women and minorities?"

The Subcommittee further found that "there is clear statistical evidence that a pattern of systematic employment discrimination against minorities and women persists throughout the Federal Government, and that there is an apparent unwillingness among Federal officials to develop effective methods of identifying discriminatory employment patterns and practices."

At this point we would like to discuss some organizational matters concerning equal opportunity employment.

We feel that the equal opportunity employment offices should more vigorously pursue the mandate given to these offices: to enhance equal opportunity employment for all minorities, including Asian Americans.

** Staff Report of Investigation by House Labor Subcommittee on Equal Opportunities of Federal Enforcement of Equal Employment Laws

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For this purpose, these offices in State and AID could be made more representative by employing Asian Americans in ranking positions in those offices. In AID, the office could be strengthened by elevating it to the Assistant Administrator level and by giving these offices a vote in the assignment boards. The authority and effectiveness of these offices, no matter what votes are given it, or apparent exalted administrative status they may have, will reflect only the determination of the Secretary or the head of an agency (e.g., AID, USIA) to carry out equal opportunity employment.

The other organizational point concerns the composition of the Task Force itself. While we emphatically laud the high objectives of this Task Force, the Asian American Caucus has serious reservations about its composition and representativeness. While we recognize the need to have high level executive officials on the Task Force from the several foreign affairs agencies, we also feel strongly that the several minorities and women should also be fully and formally represented on the Task Force. There is a great difference between making a presentation of views to the Task Force and actually participating in its deliberations and thereby influencing, together with other members, the outcome of the Task Force's conclusions and recommendations.

The Task Force at present includes several blacks, one Hispanic (as the alternate to a full member) and several women. While we recognize that in the first instance they represent their institutions they are naturally also able to present forcefully, directly, effectively and

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continuously the feelings of their own groups -- as they personally interpret them. Since, unfortunately, no Asian American has yet been appointed to any of the institutional positions selected for membership on the Task Force, the Asian Americans are at a particular disadvantage. Thus, the very Task Force whose objective it is to consider minority and women's interests, has no direct representation of these groups -- except indirectly for some groups. The Task Force membership should be enlarged so that the representatives of minorities, including Asian Americans, and women can participate fully, directly and continuously in all Task Force deliberations and operations.

Recommendations

We have divided our recommendations into those which we feel could be carried out now and those we feel could be carried out in the near future.

A. Immediate Action

I. Equal Opportunity Employment

- a. Launch a concerted, systematic AND sustained effort to find appropriate candidates from among present employees (FSOs, FSRs, GSs) and from the Asian American community at large to become:

in State: Assistant Secretary
Deputy Assistant Secretary
Ambassador and Deputy Chief of Mission
Country/Office Director
Principal Officer
Executive Level Officer (GS-16 to GS-18)

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in AID: Assistant Administrator
Deputy Assistant Administrator
Mission Director
Deputy Mission Director
Office Director
Executive Level Officers (GS-16 to GS-18)

- b. Groom selected, mid-level Asian Americans for higher level assignments and give indications to assignment groups about such selections of Asian Americans.
- c. Minority participation in formulation and execution of recruitment efforts - more balance needed in recruitment targets.
- d. Placement of Asian Americans on selection and promotion boards (e.g., State: BEX; AID: IDIs).
- e. Select Asian Americans in State, AID for participation in prestigious Senior training programs.
- f. Actively involve minorities, including Asian Americans, in various steps leading to formulation of annual Affirmative Action Plans in State, AID.
- g. Evaluate and give attention to performance ratings of Asian Americans in GS category the same as Foreign Service members.
- h. In reviewing employment profiles, particular attention to be given to the underrepresentation of Asian Americans among minorities in top level positions.
- i. Qualifications and performance ratings of existing employees in the Department be reviewed and be considered for promotion

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to higher level positions if found to be qualified on basis of qualifications, merit and demonstrated ability.

- j. Action be taken to determine whether Asian American employees in the Department (FSOs, FSRs, FSSs and GSs) have been denied equal employment opportunities, and if so, take remedial steps, or if not, create opportunities for training for promotion and upward mobility.

II. Equal Employment Opportunity Organization

- a. Substantial strengthening of these offices, e.g., in AID raise status to Assistant Administrator level and give vote to these officers in State and AID in their respective assignment boards.
- b. Employ Asian Americans in ranking positions in equal employment opportunity offices.
- c. Enlarge Task Force representatives so that minorities and women are formally represented.
- d. If c. is utterly and completely impossible and unattainable, then create a system to debrief minority representatives on Task Force (and its committees) activities and deliberations and pending decisions/votes.

B. Future Actions in Equal Opportunity

1. Emphasize greater utilization of middle level group in next AAP in addition to keeping/expanding present AAP objectives. This is particularly important in light of the present trends.

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2. Create a career counselling service, especially in AID.
3. Create a list in AID of upcoming vacancies which could be distributed world wide.

In conclusion, the Asian American Caucus looks forward to concrete results from the effective implementation of the Department's (including AID and USIA) existing or proposed affirmative action plans for equal employment. It hopes that the Task Force will take into consideration the views and comments submitted today.

The Asian American Caucus stands ready, and would appreciate any opportunity to cooperate with the Task Force or its subcommittees, to submit additional views and comments, and perhaps to formulate detailed procedures, if necessary, to meet the concerns and needs of the Asian American employees in the Department.

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APAE

ASIAN AND PACIFIC AMERICAN FEDERAL EMPLOYEE COUNCIL

P.O. Box 23125 L'Enfant Plaza Station Washington, D.C. 20024

March 27, 1978

Dear Mr. Secretary:

We, the Asian Americans of the Foreign Affairs Chapter of the Asia and Pacific American Federal Employees' Council, wish to express to you our thanks, gratitude and appreciation, first, for your comprehensive statement last November that all facets of employment in the Department should be free from the taint of discrimination based on an individual's race, color, religion, sex, national origin, age or handicap, and second, for your substantial agreement with the recommendations of the Executive Level Task Force on Affirmative Action. More importantly, we welcome and support your further action in directing the Task Force to remain in existence and to monitor the affirmative action program.

We believe that for the first time in the history of the Department, the cause of Asian Americans for equal employment opportunities has been justly recognized together with other minority group members and women. Because of your most commendable actions, the Asian Americans of the Foreign Affairs Chapter now have a strong and positive identification with the Department's affirmative action program and with President Carter's espousal of the human rights of all people in the global community.

At the present time, there are relatively few Asian Americans in all categories of the Civil Service and the Foreign Service in the Department. According to latest available information, the number of Asian Americans in the Foreign Service during 1976 has decreased by one to eighteen (18) and the number of FSRs has decreased by four to sixteen (16). The ranking Asian American Civil Service employee is a GS-15 and the ranking Foreign Service officer is a FS-02.

The Honorable
Cyrus R. Vance,
Secretary of State,
Washington, D. C.

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Consonant with the recommendations of the Executive Level Task Force, we look forward with optimism, high hopes and great expectations to a significant increase in the number of Asian Americans in the Department in all categories of the Civil Service and the Foreign Service through vigorous, constant and effective recruitment efforts in the implementation of the Task Force recommendations. We are convinced that there is a large number of Asian Americans both in and outside the Department who are well qualified, and who would meet the stringent requirements for service in the Department, from the threshold level to the senior executive positions. According to the Jensen studies at the University of California on American racial groups' proportional contribution to America's top twelve professions, Chinese-Americans stand more than three times higher than Caucasian-Americans, Jewish-Americans two and one-half times higher, and Japanese-Americans close to twice.

In regard to initial recruitment, the Foreign Affairs Chapter is prepared and willing to cooperate with the appropriate Department officers to disseminate information about employment in the Department among Asian American individuals and organizations. At the same time, we sincerely hope that new and existing career employees in all categories of the Civil Service and the Foreign Service in the Department be accorded equal opportunity for prestigious senior training programs and for upward mobility.

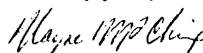
One of the recommendations of the Task Force which you have accepted and ordered implemented concerns the commitment of senior officers of the Department to appoint a more significant number of women and minority group members to executive level positions. In addition to the recruitment of new personnel from the outside, we sincerely hope that the records of existing career Asian Americans in the Department would be reviewed on the basis of qualifications, training, demonstrated ability and merit to determine whether they might have been the victims of past discrimination. If found to be so, we further hope that the Department would take remedial action to correct the meritorious cases.

We also believe that in the implementation of the Department's affirmative action programs, minority and women's group representatives be appointed to serve on the Department's EEO Oversight Board including Asian Americans, to serve as full members. Governor Gilligan, A.I.D. Administrator, has adopted this innovative approach to EEO by appointing such representatives to the A.I.D. EEO Oversight Board.

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In conclusion, we respectfully offer our services and full cooperation with the appropriate offices of the Department concerned with the implementation of the Task Force recommendations in translating the recommendations into action and fruitful results.

Sincerely yours,


Wayne W. P. Ching
Acting President
Foreign Affairs Chapter
Asia and Pacific American
Federal Employees Council

Executive Committee:

Cecil H. Uyehara, President
Wayne W. P. Ching, Vice President
Abraham Cheng, Secretary Treasurer
John Lee, Program Chairman
Frances Chan, Coordination Chairman
George Wakiji, Publicity Chairman
Thomas T. F. Huang, Legal Counsel
Elliott K. Chan, Chairman of Executive Committee

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APAEF

ASIAN AND PACIFIC AMERICAN FEDERAL EMPLOYEE COUNCIL

P.O. Box 23125 L'Enfant Plaza Station Washington, D.C. 20024

April 20, 1978

Mr. Frank Wisner
Deputy Executive Secretary
Executive Secretariat
Room 7224 New State

Dear Mr. Wisner:

You will recall that, at the meeting on February 27 with you and Mr. Lannon Walker and representatives of the Foreign Affairs Chapter of the Asia and Pacific American Federal Employees' Council, we agreed to provide you with names of Asian American organizations and media in connection with the work of your Subcommittee on Image/Publicity. I am pleased to enclose here-with two such lists which might be of assistance to your Subcommittee. While we have to the best of our ability culled these names from longer lists on the basis of general repute, we cannot, of course, assume responsibility for their cooperation, effectiveness or usefulness.

I should like also to thank you on behalf of the Foreign Affairs Chapter for the opportunity of having met with you, and to express our appreciation for your candor, sympathetic understanding and recognition of the concerns, needs and the just cause of Asian Americans for equal opportunities for employment in the Department from the threshold to the senior executive levels.

In case you have not yet seen it, I am also taking the liberty of enclosing a copy of a letter dated March 27, 1978, sent by the Foreign Affairs Chapter to Secretary Vance concerning the Department's affirmative action program for minorities, which is self-explanatory. As you can see, this letter also contains matters which are of related concern and interest to your Subcommittee in its work on image and publicity. At the risk of redundancy, I should like to recite what we believe are some central matters.

We support wholeheartedly the efforts of the Subcommittee to reach Asian Americans in order to develop a favorable image and to encourage them to apply for employment and service in the Department. In general, the image of the Department is very good, to say the least. In fact, there is even some admiration and awe from afar because of the belief that service and employment in the Department is hard to expect on account of the stringent requirements and racial discrimination. The cliché


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that one does not stand a "Chinaman's chance" is most applicable!!! As we stated previously at the meeting, we know that there exists a large body of well-qualified Asian Americans both in and outside the Department who can meet the Department's stringent requirements. According to the Jensen studies at the University of California concerning American racial groups' proportional contribution to America's top 12 professions, Chinese Americans stand more than three times higher than Caucasian Americans, Jewish Americans 2-1/2 times higher, and Japanese Americans close to twice as high.

As also stated previously at the meeting, the Department should engage in vigorous, constant and effective recruitment efforts in the implementation of the Executive Level Task Force recommendations to recruit significant numbers of Asian Americans for service at all levels in both the Civil Service and the Foreign Service. At the same time, in order to avoid disillusionment, opportunities for upward mobility should be made available for the newly recruited Asian Americans, as well as for the Asian American employees who are already in the Department. According to latest available information, the ranking Asian Americans in the Department are one each of GS-15, FSO-2 and FSR-2. More importantly, a meaningful gesture which would immediately raise the prestige and improve the positive image of the Department in the eyes of the Asian Americans would be for the Department to review the records of existing permanent career Asian American Employees in the Department on the basis of qualifications, training, demonstrated ability and merit to determine whether they might have been victims of past discrimination. If found to be so, remedial action should be taken to correct the situation in meritorious cases.

To assist your Subcommittee in creating a more positive image, Asian American members of the Foreign Affairs Chapter are prepared to assist and participate in recruitment efforts and visits to various parts of the country should you think that their services might be helpful. In addition, if there is any other action that we might take in the implementation of the various recommendations of the Executive Level Task Force, we respectfully place our services and full cooperation at your disposal.

Sincerely yours,


Wayne W.P. Ching
Vice President
APAFEC-FAC

DEPARTMENT OF STATE
 MINORITY EMPLOYEES -- BY PAY PLANS AND SUB GROUP
 AS OF 12/31/78

	Total Pop.	Total No.	Total %	MINORITIES *				ASIAN AMER. No.
				BLACK No.	HISPAIC No.	NATIVE AMER. No.	ASIAN AMER. No.	
SENIOR LEVEL								
CA								
CM								
F50/R/RU-1 & GS/GG-18/17	38	1	2.6					
-16	445	12	2.7	5	1.1			
-2	562	16	2.8	10	1.8		3	0.5
Sub Total Senior Level	1,048	29	2.8	16	1.5		3	0.3
MIDDLE LEVEL								
F50/R/RU-3, F550-1, & GS/GG-15/14	1,260	58	4.6	38	3.0		11	0.9
-4	1,494	94	6.3	66	4.4		9	0.6
-5	1,574	179	11.4	122	8.2	2	19	1.2
-3	4,328	331	7.6	233	5.4	2	39	0.9
Sub Total Middle Level								
JUNIOR LEVEL								
F50/R/RU-6, F550-4, & GS/GG-11/10	1,743	237	13.6	190	10.9	1	19	1.1
-5	1,790	384	21.5	311	17.4	4	22	1.2
-8	1,846	315	17.1	268	14.5	3	12	0.7
-6/7	5,379	936	17.4	769	14.3	8	53	1.0
Sub Total Junior Level								
SUPPORT LEVEL								
F55-B & GS/GG-6	773	241	31.2	205	26.5	17	19	2.5
-9	643	239	37.2	226	35.1	8	3	0.5
-10	622	274	44.1	260	41.8	9	6	1.0
-4/3/2/1	2,038	754	37.0	691	33.9	32	28	1.4
Sub Total Support Level								
GRAND TOTAL FS & GS	12,793	2,050	16.0	1,709	13.4	205	13	1.6

*Due to rounding, the sum of the Sub Group percent figures may not equal that of the Total Minority percent figures on all lines.

SOURCES: PER/WGT/OS Quarterly Summary of Employment and FADEC Computer Run (Excluded are non-career Chiefs of Mission, FS/GS Unclassified, Consular Agents, Resident Staff, Wage Board, WAE, and Contract).

M/EEO 2/79

	Total Pop.	MINORITIES -- 12/31/78													
		Total Minorities No.	BLACK No.	HISPANIC No.	NATIVE AMER. No.	ASIAN AMER. No.	Other	Total Minorities %	BLACK %	HISPANIC %	NATIVE AMER. %	ASIAN AMER. %			
CA															
CM	38	1	1	2.6											
FSO/R/RU-1	440	12	5	1.1	7	1.6									
-2	543	16	10	1.8	1	0.6								3	0.6
Sub Total Senior Level	1,021	29	16	1.6	10	1.0								3	0.3
-3, FSSO-1	1,059	40	23	2.2	8	0.8								9	0.8
-4	1,336	74	49	3.7	17	1.3								8	0.6
-5	1,397	139	92	6.6	28	2.0								17	1.2
Sub Total Middle Level	3,792	253	164	4.3	53	1.4								34	0.9
-6	1,390	121	87	6.2	21	1.5									
-7	1,184	118	79	6.7	29	2.4									
-8	749	59	34	4.5	17	2.3								10	0.8
Sub Total Junior Level	570	31	23	4.0	9	1.6								7	0.9
FSS-8	3,893	332	223	5.7	76	2.0								31	0.8
-9	310	26	19	6.1	4	1.3								3	1.0
-10	108	8	6	5.6	1	0.9									
Sub Total Support Level	37	2	2	5.4											
TOTAL FS	455	36	27	5.9	5	1.1								3	0.7
TOTAL FS	9,161	650	430	4.7	144	1.6								5	0.1

	Total Pop.	Total Minorities		BLACK		HISPANIC		NATIVE AMER.		ASIAN AMER.	
		No.	%	No.	%	No.	%	No.	%	No.	%
CA	38	1	2.6	1	2.6						
CM	335	9	2.7	5	1.5	4	1.2				
FSO-1	315	8	2.5	3	1.0	3	1.0			2	0.6
-2	688	18	2.6	9	1.3	7	1.0				0.3
Sub Total Senior Level											
-3	683	18	2.6	10	1.5	3	0.4			5	0.7
-4	773	36	4.7	26	3.4	9	1.2			1	0.1
-5	613	71	11.6	48	7.8	14	2.3	1	0.2	8	1.3
Sub Total Middle Level	2,069	125	6.0	84	4.1	26	1.3	1		14	0.7
-6	486	18	3.7	12	2.5	4	0.8			2	0.4
-7	160										
-8	657	18	2.7	12	1.8	4	0.6			2	0.3
Sub Total Junior Level											
TOTAL FSO	3,414	161	4.7	105	3.1	37	1.1	1		18	0.5
FOREIGN SERVICE RESERVE (FSR)											
FSR-1	49	2	4.1			2	4.1				
-2	149	6	5.0	5	4.2	2	1.2			1	0.8
Sub Total Senior Level	188	8	4.8	5	3.0	2	1.2			1	0.6
-3	178	12	6.7	8	4.5	3	1.7			1	0.6
-4	270	13	4.8	6	2.2	4	1.5			3	1.1
-5	430	41	9.5	29	6.7	8	1.9			4	0.9
Sub Total Middle Level	878	66	7.5	43	4.9	15	1.7			8	0.9
-6	476	52	10.9	37	7.8	9	1.9	1	0.2	5	1.1
-7	592	81	13.7	59	10.0	16	2.7			6	1.0
-8	130	14	10.8	7	5.4	6	4.6			1	0.8
Sub Total Junior Level	1,198	147	12.3	103	8.6	31	2.6	1	0.1	12	1.0
TOTAL FSR	2,244	221	9.8	151	6.7	48	2.1	1		21	0.9

	Total Pop.	MINORITIES -- 12/31/78						
		Total Minorities No.	BLACK No.	HISPANIC No.	NATIVE AMER. No.	ASIAN AMER. No.	ASIAN AMER. %	ASIAN AMER. %
FOREIGN SERVICE RESERVE UNLIMITED (FSRU)								
FSRU-1	56	1	--	1	1.8	--	--	--
-2	109	2	1.8	--	--	--	--	--
Sub Total Senior Level	165	3	2	1.2	0.6	--	--	--
-3	146	8	5.5	4	2.7	2	1.4	2
-4	191	20	10.5	15	7.9	2	1.0	3
-5	173	11	6.4	8	4.6	2	1.2	1
Sub Total Middle Level	510	39	7.6	27	5.3	6	1.2	6
-6	183	26	14.2	22	12.0	3	1.6	1
-7	98	16	16.3	13	13.3	2	2.0	1
-8	8	1	12.5	1	12.5	--	--	--
Sub Total Junior Level	289	43	14.9	36	12.5	5	1.7	2
TOTAL FSRU	964	85	8.8	65	6.7	12	1.2	8
FOR-IGN SERVICE STAFF (FSSO/FSS)								
FSSO-1	52	3.8	1	1.9	--	--	--	1
-2	102	4.9	2	2.0	2	2.0	--	1
-3	181	8.8	7	3.9	4	2.2	1	0.6
Sub Total Middle Level	335	23	6.9	10	3.0	6	1.8	6
-4	245	25	10.2	16	6.5	5	2.0	4
-5	334	21	6.3	7	2.1	11	3.3	3
-6	600	44	7.3	26	4.3	11	1.8	6
-7	570	34	6.0	23	4.0	9	1.6	2
Sub Total Junior Level	1,749	124	7.1	72	4.1	36	2.1	15
FSS-8	310	26	8.4	19	6.1	4	1.3	3
-9	108	8	7.4	6	5.6	1	0.9	--
-10	37	2	5.4	2	5.4	--	--	--
Sub Total Support Level	455	36	7.9	27	5.9	5	1.1	3
TOTAL FSSO/FSS	2,539	183	7.2	109	4.3	47	1.9	3

GS/CG-ic	Total Pop.	MINORITIES -- 12/31/78																			
		Total Minorities No. %	BLACK No. %	HISPANIC No. %	NATIVE AMER. No. %	ASIAN AMER. No. %	ALL CIVIL SERVICE (GS/CG)														
-17	2	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
-16	3	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
Sub Total Senior Level	22	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
-15	101	11	10.9	9	8.9	1	1.0	2	2.0	1	1.0	1	1.0	2	2.0	1	1.1	2	2.0	2	2.0
-14	100	7	7.0	6	6.0	1	1.0	2	2.0	1	1.0	1	1.0	1	1.0	1	1.1	1	1.0	1	1.0
-13	158	20	12.7	17	10.8	2	1.3	1	0.6	1	0.6	1	0.6	1	0.6	1	0.6	1	0.6	1	0.6
-12	177	40	22.6	37	20.9	1	0.6	1	0.7	1	0.7	1	0.7	1	0.7	1	0.7	1	0.7	1	0.7
Sub Total Middle Level	536	78	14.6	69	12.9	1	0.7	1	0.7	1	0.7	1	0.7	1	0.7	1	0.7	1	0.7	1	0.7
-11	285	95	33.3	87	30.5	4	1.4	4	1.4	4	1.4	4	1.4	4	1.4	4	1.4	4	1.4	4	1.4
-10	68	21	30.9	16	23.5	2	2.9	2	2.9	2	2.9	2	2.9	2	2.9	2	2.9	2	2.9	2	2.9
-9	361	149	41.3	132	36.6	8	2.2	8	2.2	8	2.2	8	2.2	8	2.2	8	2.2	8	2.2	8	2.2
-8	245	117	47.8	100	40.8	10	4.1	10	4.1	10	4.1	10	4.1	10	4.1	10	4.1	10	4.1	10	4.1
-7	527	222	42.1	211	40.0	6	1.1	6	1.1	6	1.1	6	1.1	6	1.1	6	1.1	6	1.1	6	1.1
Sub Total Junior Level	1,486	604	40.6	546	36.7	30	2.0	30	2.0	30	2.0	30	2.0	30	2.0	30	2.0	30	2.0	30	2.0
-6	463	215	46.4	186	40.2	13	2.8	13	2.8	13	2.8	13	2.8	13	2.8	13	2.8	13	2.8	13	2.8
-5	535	231	43.2	220	41.1	7	1.3	7	1.3	7	1.3	7	1.3	7	1.3	7	1.3	7	1.3	7	1.3
-4	332	130	39.2	119	35.8	5	1.5	5	1.5	5	1.5	5	1.5	5	1.5	5	1.5	5	1.5	5	1.5
-3	175	96	54.9	93	53.1	2	1.1	2	1.1	2	1.1	2	1.1	2	1.1	2	1.1	2	1.1	2	1.1
-2	70	42	60.0	42	60.0	1	1.4	1	1.4	1	1.4	1	1.4	1	1.4	1	1.4	1	1.4	1	1.4
-1	8	4	50.0	4	50.0	1	1.7	1	1.7	1	1.7	1	1.7	1	1.7	1	1.7	1	1.7	1	1.7
Sub Total Support Level	1,583	718	45.4	664	41.9	27	1.7	27	1.7	27	1.7	27	1.7	27	1.7	27	1.7	27	1.7	27	1.7
TOTAL GS	3,632	1,400	38.5	1,279	35.2	61	1.7	61	1.7	61	1.7	61	1.7	61	1.7	61	1.7	61	1.7	61	1.7

	Total Pop.	MINORITIES -- 12/31/78					
		Total Minorities No.	BLACK No.	HISPANIC No.	NATIVE AMER. No.	ASIAN AMER. No.	
CIVIL SERVICE (GS)							
GS-18	2	--	--	--	--	--	--
-17	3	--	--	--	--	--	--
-16	22	--	--	--	--	--	--
Sub Total Senior Level	27	--	--	--	--	--	--
-15	91	10	9	1	--	1	1.1
-14	90	7	6	1	1.1	--	--
-13	144	20	17	2	1.4	1	0.7
-12	166	40	37	1	0.6	2	1.2
Sub Total Middle Level	491	77	69	4	0.8	4	0.8
-11	272	93	87	2	0.7	4	1.5
-10	55	17	16	1	1.8	--	--
-9	333	139	131	4	1.2	3	0.9
-8	212	104	98	2	0.9	1	0.5
-7	485	217	202	5	1.0	1	0.2
Sub Total Junior Level	1,357	570	541	14	1.0	9	0.7
-6	344	190	180	7	2.0	3	0.9
-5	500	227	220	4	0.8	3	0.6
-4	329	130	119	5	1.5	5	1.5
-3	175	96	93	2	1.1	1	0.6
-2	69	42	42	--	--	--	--
-1	8	4	4	--	--	--	--
Sub Total Support Level	1,425	689	658	18	1.3	12	0.8
TOTAL GS	3,300	1,336	1,268	36	1.1	25	0.8

	Total Pop.	MINORITIES -- 12/31/78							Total Minorities %	CIVIL SERVICE (CG)
		BLACK No.	HISPANIC No.	NATIVE AMER. No.	ASIAN AMER. No.	%	%	%		
CG-18	--	--	--	--	--	--	--	--	--	--
-17	--	--	--	--	--	--	--	--	--	--
-16	--	--	--	--	--	--	--	--	--	--
Sub Total Senior Level										
-15	10	--	--	--	--	--	1	10.0	1	10.0
-14	10	--	--	--	--	--	--	--	--	--
-13	14	--	--	--	--	--	--	--	--	--
-12	11	--	--	--	--	--	--	--	--	--
Sub Total Middle Level	45	1	2.2				1	2.2	1	2.2
-11	13	2	15.4				2	15.4		
-10	13	4	30.8				1	7.7		
-9	28	10	35.7				4	14.3		
-8	33	13	39.4				8	24.2		
-7	42	5	11.9				1	2.4		
Sub Total Junior Level	129	34	26.4				16	12.4		
-6	119	25	21.0				6	5.0		
-5	35	4	11.4				3	8.6		
-4	3	--	--				--	--		
-3	--	--	--				--	--		
-2	1	--	--				--	--		
-1	--	--	--				--	--		
Sub Total Support Level	158	29	18.4				9	5.7		
TOTAL CG	332	64	19.3				25	7.5		
							1	0.3		
							27	8.1		

	Total Pop.	MINORITIES -- 12/31/78					
		Total Minorities No.	BLACK No.	HISPANIC No.	NATIVE AMER. No.	ASIAN AMER. No.	%
<u>SUMMARY BY PAY PLAN</u>							
<u>FOREIGN SERVICE</u>							
CA	38	1	1	--	--	--	--
CM		2.6	2.6	--	--	--	--
FSO	3,376	4.7	104	37	1.1	18	0.5
FSR	2,244	9.8	151	48	2.1	21	0.9
FSRU	964	8.8	65	12	1.2	8	0.8
FSSO/FSS	<u>2,539</u>	<u>7.2</u>	<u>109</u>	<u>47</u>	<u>1.9</u>	<u>24</u>	<u>0.9</u>
TOTAL FOREIGN SERVICE	9,161	7.1	430	144	1.6	71	0.8
<u>CIVIL SERVICE</u>							
GS	3,300	40.5	1,268	36	1.1	7	0.2
GG	<u>332</u>	<u>19.3</u>	<u>11</u>	<u>25</u>	<u>7.5</u>	<u>1</u>	<u>0.3</u>
TOTAL CIVIL SERVICE	3,632	38.5	1,279	61	1.7	8	0.2
GRAND TOTAL	12,793	2,050	1,709	205	1.6	13	0.1

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FOREIGN AFFAIRS CHAPTER

ASIAN AND PACIFIC AMERICAN FEDERAL EMPLOYEE COUNCIL

c/o EOP, Room 2664 NS, ATD Department of State
Washington, D.C. 20523

May 4, 1979

Honorable Cyrus R. Vance
Secretary of State
Washington, D.C.

Dear Secretary Vance:

First, we wish to express our appreciation for the Department's sponsorship of a foreign affairs special briefing on May 7 for interested Asian American organizations and leaders. We sincerely hope this will be the beginning of a dialogue involving Asian Americans and will result in a meeting between yourself and Asian American leaders later this Fall. We truly appreciate the hard work, enthusiasm and support of Assistant Secretary Hodding Carter and his staff in preparing for the special briefing.

When you created the Task Force on Equal Employment Opportunity two years ago, we strongly supported its goals. We spoke before the Task Force on June 16, 1977 and submitted a special report on Asian American employment in State and AID. Later when you announced that more appointments for Deputy Assistant Secretaries of State should be appointed from among minorities (including, we assume, Asian Americans) and that a special employees council on equal employment would be created, we again applauded these actions in a letter to you.

We explained to the Task Force that despite the contributions that Asian Americans could make at the policy-making level, especially for Asia and the Pacific Basin, they are excluded from foreign policy-making positions. This is highly regrettable since Asia has become the major focus of U.S. foreign policy. As a result there seems to be an invisible line--generally at the GS-15 (FSO/R/10-3) level--above which Asian Americans do not rise.

We would like to emphasize that no Asian Americans have been selected for long-term training by State, AID or ICA for at least the past six to seven years--training which is generally a stepping stone to higher responsibility.

Time-in-grade for Asian American employees is substantially longer in almost all grades in AID; there is no reason to believe that the

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situation in State or ICA is any different. Data on this matter are urgently needed.

As we recommended in 1977, we cannot over-emphasize the need in 1979 for State, AID and USICA to launch a systematic, sustained and concerted recruitment program to attract a greater number of competent Asian Americans at all levels to serve in the several U.S. foreign affairs agencies.

We pointed out to the Task Force in June 1977 that no Asian Americans held any high level positions either in State or AID (except for Patsy Mink who later resigned), and we called for, among other actions, a concerted, systematic and sustained effort to find and appoint appropriate candidates from among present employees (FSSs, FSPs, GSs) in State and AID and from among the Asian American community at large to selected executive positions.

To date we have not received any response to our letter mentioned above and based on available data no major senior appointments of Asian Americans have taken place in foreign affairs. Thus, after two years there are still:

A. State

1. No Asian American Assistant Secretaries (except for Patsy Mink who later resigned in 5/78)
2. No Asian American Deputy Assistant Secretaries
3. No Asian American Ambassador and Deputy Chief of Mission
4. No Asian American Principal Officers
5. No Asian American Country/Office Directors (Dr. Luke Lee's Office Directorship was abolished in 5/79)
6. No Asian American GS-16-18s--highest is GS-15
7. No Asian American FS-1s (only one FSO-2)
8. A few Asian Americans in mid-level GS grades
9. A few Asian Americans in mid-level FSO grades.

B. AID

1. No Asian American Assistant Administrator
2. No Asian American Deputy Assistant Administrator
3. No Asian American Mission Director/Deputy Mission Director
4. No Asian American Office Director with supergrade rank
5. No Asian American FSR-1, 2s; highest is FSR-3
6. No Asian American GS/AD-16-18s; highest is GS-15
7. No Asian American in the higher FSS levels.

C. ICA

1. No Asian American Assistant Directors
2. No Asian American PAOs
3. No Asian American FSIO-1, 2s; highest is FSIO-3
4. No Asian American GS-16-18s; highest is GS-15.

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Mr. Secretary, can it truthfully be said that not one of the Asian American employees is suitable for senior positions and none can be found in the community at large? Until this inequitable situation is remedied it cannot be asserted as the President does in his Proclamation for the Asian/Pacific American Heritage Week that

We have succeeded in removing the barriers to full participation in American life

The Asian/Pacific American Heritage Week, May 4-10, 1979, is now being observed throughout the U.S. We call upon you, the Secretary of State, together with the AID Administrator, the Director of USICA and Mr. T. Erlich, to make a special effort to rectify this inequitable situation. For this purpose we would like to hold quarterly meetings with you or your designee to establish specific goals and to assess the progress being made in changing the Asian American profile in the foreign affairs agencies.

We look forward to a continuing dialogue with you.

Yours sincerely,

Wayne Ching, Chapter President

Executive Committee
Jose Armilla, ICA
Elliott Chan, State
Frances Chan, AID
George Wakiji, ACTION

cc:

Senator Frank Church
Senator Daniel Inouye
Senator Spark Matsunaga
Senator Alan Cranston
Representative N. Mineta
Representative Robert Matsui
Representative Daniel Akaka
Representative Cecil Heftel
Ambassador J.E. Reinhardt
Mr. T. Erlich
Mr. Robert Nooter
Ms. Laura Chin, President, APAFEC

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DEPARTMENT OF STATE

Washington, D.C. 20520

July 16, 1979

Mr. Wayne Ching
c/o Mr. John Welty
A. I. D.
Room 3643, N. S.

Dear Mr. Ching:

Secretary Vance has asked me to reply to your letter of May 4, 1979 regarding employment of Asian Americans in the Department. I regret the delay but recent weeks have been a particularly busy time for my office. My reply is necessarily limited to the Department as we do not keep minority data on other departments and agencies. I suggest, therefore, that you write directly to AID and ICA for details on their programs.

We share your concern about the lack of representation of Asian Americans in the Department and the Foreign Service. In a recent meeting with the Executive Level Task Force on Affirmative Action the Secretary reaffirmed his strong support for the goals of the EEO program. This includes his keen desire to see more minorities serving as Deputy Assistant Secretaries. It is still too early to see the results of this policy.

The Department recently concluded an agreement with the American Foreign Service Association on the recommendation of the Secretary's Executive Level Task Force on Affirmative Action dealing with the assignment of minorities and women. We expect the new procedures to improve assignment opportunities for these employees. Again, it is too early to gauge the results, but we will be monitoring implementation of the recommendations. I am enclosing a copy of the revised recommendation for your information.

We need, and want, the help of your organization in our two Affirmative Action Hiring Programs: the Junior Officer Program for minorities and the Mid-Level Program for minorities and women. Twelve of our Asian American officers entered the Department as Reserve Officers through the Junior Officer Program. Five of them have been commissioned

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as Foreign Service Officers. The remaining seven will become eligible for Foreign Service Officer appointments upon successful completion of the lateral entry examination. Most of them do not have enough service to be eligible at this time. Minority employees hired under the Affirmative Action Junior Officer Program since January 1, 1979 will not be required to take a lateral entry examination.

Two Asian Americans have entered the Department under the Mid-Level Program. They will be eligible for appointments as Foreign Service Officers upon successful completion of the lateral entry examination. We could certainly use the assistance of your organization in publicizing both of these programs in the Asian American community. I am enclosing a copy of the latest announcement of both programs for your information (Tab B).

I am also enclosing for your information an analysis of time in class for Asian American employees in the Department - both Foreign Service and Civil Service (Tab C).

I would be pleased to meet with you and representatives of your organization. If you will give me a call on 632-9294 we can set up a mutually agreeable date.

I hope this information will be helpful to you. If I can furnish any additional data, please let me know.

Sincerely,

John A. Burroughs, Jr.
Deputy Assistant Secretary for
Equal Employment Opportunity

Enclosures:

1. Tab A - Revised Recommendations
2. Tab B - Junior Officer and Middle-Level
Program Announcements
3. Tab C - Analysis

cc: Honorable Alan Cranston
United States Senate
Washington, D. C. 20510

✓ Mr. Elliott K. Chan, President
Office of International Narcotics Control
INM, Room 7811, N. S.

SECRETARY'S EXECUTIVE-LEVEL TASK FORCE ON AFFIRMATIVE ACTION

<u>Recom No.</u>	<u>Text of Recommendation</u>
65.	<p>ELTF: (as originally stated)</p> <p>Give "stretch assignments" to Foreign Service persons in EEO categories.</p> <p>ING: (revised wording, if any)</p> <p>Assure that qualified Foreign Service personnel in EEO categories be reviewed with special consideration for "stretch assignments" to make certain that these groups are not excluded by criteria based on discriminatory, non-job related factors.</p>
65. - 67.	<p>Revision agreed to by the Department and AFSA through mediation assistance of the Disputes Panel:</p> <p>Concerted efforts will be made to assure that Foreign Service personnel in EEO categories are afforded equitable consideration for all vacancies for which they are equally qualified, notably career-enhancing positions.</p>

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SECRETARY'S EXECUTIVE-LEVEL TASK FORCE ON AFFIRMATIVE ACTION

Recom No.	Proposed Implementations	Responsible Office (s)	Target Date (s)
65. - 67.	(a) PER/FCA and CCA career development officers must inform themselves fully concerning the identity, skills, performance and onward assignment preferences of EEO category counselees. All EEO category personnel must be made aware of the identity of their career development officer and must be urged to make their skills, training and assignment preferences known. This is particularly important for FSR, FSRU and FSS personnel who may have had less contact with the counseling system.	PER/FCA PER/CCA	Ongoing
	(b) Assignment officers in cooperation with career development officers will identify forthcoming assignments, including career-enhancing assignments, for which an EEO candidate is currently or potentially qualified after comparison of requirements with candidates' qualifications, desires and aptitude for training, and assignment preference.	PER/FCA	Ongoing
	(c) In discussing with a bureau or post the proposed assignment of an EEO category Foreign Service employee, an assignment officer may so identify that employee if (1) the assignment would be to a career-enhancing position, or (2) that bureau has very few EEO category Foreign Service personnel in the category or at the level under review. All qualified personnel, including EEO category personnel, should be proposed together to the assignments panel or responsible assignment officer.	PER/FCA	Ongoing

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SECRETARY'S EXECUTIVE-LEVEL TASK FORCE ON AFFIRMATIVE ACTION

<u>Recon No.</u>	<u>Proposed Implementations</u>	<u>Responsible Office (s)</u>	<u>Target Date (s)</u>
65. - 67. (con't)	(d) PER/FCA and PER/CCA Office Directors are charged with insuring that career development officers and assignment officers identify qualified and interested EEO category personnel. However, first-line responsibility for this effort must rest with career development officers. When candidates are deemed unqualified for assignments due to insufficient education or training, the career development officer should advise the candidate accordingly, and suggest training which would enable the candidate to upgrade his/her level of competence and performance and thereby enhance his/her qualifications for more demanding assignments.	PER/FCA PER/CCA	Ongoing
	(e) M/DGP and M/EEO will review assignments with assistant secretaries annually to ascertain the degree to which minorities and women have received equitable consideration for assignments, including those to career-enhancing positions. M/EEO will report the findings to the Under Secretary for Management. A copy of the report will be provided to AFSA.	M/DGP M/EEO	Annually
	(f) For GS employees only: Since movement of a GS employee to a new position requires that the individual apply for the position, it is essential that position vacancies receive extensive publicity: bulletin boards, circular notices to offices, and contacts by counselors with EEO and other category candidates.	PER/CCA	Ongoing

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TIME-IN-GRADE STATISTICS FOR CURRENT ASIAN AMERICAN EMPLOYEES

AS OF 5/31/79

PAY PLAN FSO (Foreign Service Officer)*

TIME IN GRADE	GRADE / CLASS																	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1 YR OR LS			1		1													
3 MO.					1													
6 MO.																		
9 MO.																		
2 YR						1												
3 MO																		
6 MO																		
9 MO																		
3 YR																		
3 MO																		
6 MO						1												
9 MO																		
4 YR																		
3 MO			1		1	1												
6 MO																		
9 MO				2														
5 YR						2												
6 YR						2												
7 YR																		
8 YR							1											
9 YR																		
10 YR																		
11 YR				1														
12 YR																		
13 YR																		
14 YR																		
TOTALS (16)		1	4	1	8	2												

*Excludes appointments since 1/1/79

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TIME-IN-GRADE STATISTICS FOR CURRENT ASIAN AMERICAN EMPLOYEES

AS OF 5/31/79

PAY PLAN FSR/FSRU (Foreign Service Reserve Officers)*

TIME IN GRADE	1	2	3	4	5	GRADE / CLASS					11	12	13	14	15	16	17	18
						6	7	8	9	10								
1 YR OR LS			3		2	2	5											
3 MO.							1											
6 MO.				1	1	1	1											
9 MO.			1	2	1	1	1											
2 YR						1												
3 MO						1												
6 MO																		
9 MO				1	1	1												
3 YR																		
3 MO				1														
6 MO					1													
9 MO				1														
4 YR																		
3 MO																		
6 MO																		
9 MO																		
5 YR																		
6 YR				1														
7 YR																		
8 YR																		
9 YR																		
10 YR																		
11 YR																		
12 YR																		
13 YR																		
14 YR																		
TOTALS (31)		1	3	7	5	6	9											

*Excludes appointments since 1/1/79

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TIME-IN-GRADE STATISTICS FOR CURRENT ASIAN AMERICAN EMPLOYEES

AS OF 5/31/79

PAY PLAN FSS (Foreign Service Staff)*

TIME IN GRADE	GRADE / CLASS																	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1 YR OR LS			2			2	1	1										
3 MO.						1	1	1										
6 MO.																		
9 MO.								1										
2 YR																		
3 MO	1																	
6 MO																		
9 MO				1														
3 YR																		
3 MO		1		1	1													
6 MO																		
9 MO																		
4 YR																		
3 MO					1	2												
6 MO																		
9 MO							1											
5 YR																		
3 MO			1		1													
6 MO				1	1													
9 MO																		
6 YR																		
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9 MO																		
14 YR																		
3 MO																		
6 MO																		
9 MO																		
TOTALS (24)	1	1	4	4	3	6	2	3										

*Excludes appointments since 1/1/79

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TIME-IN-GRADE STATISTICS FOR CURRENT ASIAN AMERICAN EMPLOYEES

AS OF 5/31/79

PAY PLAN GS (Civil Service)*

TIME IN GRADE	GRADE / CLASS																	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1 YR OR LS				1	3	1	5		3		8	1						
3 MO.				2		4	1				1		1					
6 MO.						1		1										
9 MO.						1												
2 YR						1			1									
3 MO				1		1					1							
6 MO						1												
9 MO						1												
3 YR																		
3 MO						2												
6 MO																	1	
9 MO																		
4 YR																		
3 MO												1						
6 MO																		
9 MO								1										
5 YR							1											
6 YR						1			1									
7 YR																		
8 YR																		
9 YR												1						
10 YR																		
11 YR											1							
12 YR																		
13 YR																		
14 YR																	1	
TOTALS (51)				1	3	3	13	7	2	5		11	3	1		2		

*Excludes appointments since 1/1/79

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September 12, 1978

Mr. Robert H. Nooter
Deputy Administrator
Agency for International Development
Washington, D.C. 20523

Dear Mr. Nooter:

For three successive Affirmative Action Plans there has been one target that could be unequivocally measured: the appointment of women and minorities to selected executive positions. For three successive years the Asian American group has been treated differently from other groups. One might now be tempted to call it "a pattern of discrimination." This is further underscored by the lack of any Asian Americans selected for long term training for the past six years at least, and the declining numbers of Asian Americans employed by AID.

In the FY 77 AAP, Asian Americans were the only group whose executive level targets were limited by the word "or" -- all other groups were additive -- i.e., Mission Directors and -- not or -- Office Directors. We were assured by the previous Administrator that every effort would be made to overfulfill the target. Result: one Asian American was appointed Deputy Mission Director -- less than half fulfillment of the target.

In the FY 78 AAP this pattern was repeated and in addition "demoted" to Deputy Mission Director or Office Director. Again, the only group stigmatized by "or". This Chapter sent a letter to the Administrator on March 27, 1978, protesting this pattern, but to date we have not received an answer or an acknowledgement of receipt of our letter. The draft FY 79 AAP reports that while several other executive targets were overfilled, the Asian American target was again unfulfilled. In the FY 79 AAP, though only a draft, the FY 77 pattern is again repeated for the third time.

While the targets for other groups are overfulfilled, the Asian American group now has not even one appointment at the senior level. While FSR-3s and even an FSR-4 were and are appointed to executive level positions, none of the Asian American FSR-3s, of which there are seven, and a GS-15 who was recently sent to senior management training have been so appointed -- notwithstanding the FY 78 AAP objective to fill positions, whenever possible and appropriate, with on-board employees (particularly minorities and women) in preference to outside hire. (4.2.1.8).

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In light of the lack of past fulfillment of Asian American targets, we request the appointment

1. in FY 1978 of one Asian American as Deputy Mission Director or Office Director, and
2. in FY 1979
 - a) one Mission Director or Deputy Mission Director, and
 - b) one Office Director

from among the Asian Americans now in AID. In light of past experience, we feel this request is readily achievable, modest and minimal. We hope that this minimum request can be overfulfilled in the same way that some targets of other groups were overfulfilled in FY 1978!

We look forward to hearing from you.

Sincerely yours,

Wayne Ching
Chapter President

cc:
Ms. P. Johnson, Director, EOP
Ms. Juanita Lott, President, APAFEC
Senators: D. Inouye
 S. Matsunaga
 A. Cranston
Representatives: N. Mineta
 D. Akaka

INCOME INEQUALITY IN THE FEDERAL CIVILIAN GOVERNMENT*

PATRICIA A. TAYLOR

Sweet Briar College; University of Virginia

American Sociological Review 1979, Vol. 44 (June):468-479

An analysis of income inequality by race and sex within the federal civil service yields three findings of importance for income attainment and human capital research. First, large differences in salary between minority/sex groups remain after occupational stream and a number of employment-related variables are controlled. Second, institutionalized discrimination explains only one-half of these salary differences. Finally, within the federal civil service, the pay structures of minority and nonminority women are more similar to each other than are the pay structures of any other two groups of employees.

The federal civil service, this nation's largest employer, has maintained by law a merit system of employment since the passage of the Civil Service Act in 1883. The initial impact of this legislation was to remove 10% of government jobs from political patronage and to establish a civil service in which employees were to be hired and promoted on the basis of job-related qualifications and merit. As of 1977, approximately 93% of all federal civilian employees were subject to merit regulations. A large body of executive orders and public laws now require that personnel actions in the federal civil service be free from discrimination on the basis of race, religion, national origin (Executive Order 8587, 1940; Executive Order 11478, 1969; and Public Law 92-261, 1972), sex (Executive Order 11478, 1969; and Public Law 92-261, 1972), and age (Public Law 93-259, 1974).

Given this long history of regulations

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The author wishes to acknowledge the helpful criticisms of two anonymous reviewers at the *ASR*; the comments of Nathan Kantrowitz, Murray Milner, Robert Stump, and Paul Wilken; the programming assistance of Dale Child and Paul Twohig; and the preparation of the manuscript by Gail Wooten Votaw. Part of this research was conducted under NIE-G-78-0005, a research grant from the Department of Health, Education, and Welfare. The findings and opinions expressed are those of the author and should not be construed as representing the opinions or policies of any reviewer, or any agency of the federal government.

prohibiting employment discrimination, as well as the role of the federal government as a model employer (Mosher, 1965: 170-1), we would expect that the federal civil service would show less income inequality between minority/sex groups than the private sector, and some limited research tends to support this expectation (Smith, 1976). Moreover, as the federal bureaucracy is the instrumental organ for the implementation of federal laws and regulations, it is more sensitive to both congressional scrutiny and public criticism than the private sector, and thus more likely to enforce nondiscrimination laws. Finally, a number of federal services such as the biennial census, income tax collection, interstate commerce regulation, etc., are provided by no other organizations. Therefore, agencies of the federal government cannot argue that discriminatory clientele would go elsewhere if the agencies should hire and advance minorities and women. Thus, equal employment opportunity should be implemented in the federal civil service, if anywhere.

This paper examines data on the federal civil service to address three questions of major importance in studies of income inequality: (1) within one employment context, how much income inequality by race and sex exists; (2) what amount of income inequality might be attributed to employer discrimination; and (3) how much income inequality by race and sex remains after placement into job streams is controlled?

Income Inequality in Employment

Numerous studies in human capital analysis and in the status attainment literature have pointed to the importance of education, years of work experience, and other labor market variables as determinants of income attainment (Becker, 1957; Becker and Chiswick, 1966; Duncan, 1969; Mincer, 1970; Kluegel, 1978; Oaxaca, 1973; and Smith, 1976). Generally, three underlying themes have emerged from studies of income inequality.

First, there is an assumption that different rewards given to different race, sex, or ethnic groups for equal amounts of education, experience, etc., may be prima facie evidence of the failure to apply the principle of achievement in a universal manner. Adherence to the principle of achievement rather than ascription requires that workers be evaluated on the basis of their productivity rather than on the basis of race, sex, or other ascribed characteristics. Hence, human capital analysis as formulated by Schultz (1961) and Becker (1964) has received widespread attention not only because of its theoretical and methodological parallel to analyses of physical capital, but also because of its intuitive appeal to an egalitarian argument in studies of income inequality. A growing body of research in this area has found, for example, that blacks receive a lower return to education than do whites (Becker, 1966; Weiss, 1970; Harrison, 1972; Jencks, 1972; Welch, 1973; and Kluegel, 1978); that women receive a lower return to education than do men (Malkiel and Malkiel, 1973; Oaxaca, 1973); that, net of education and other job-related variables women and blacks receive lower salaries than do men and whites (Suter and Miller, 1973; Smith, 1976); and that the quality of schooling may not account for much of the difference in returns to education (Weiss, 1970).

The issue of achievement versus ascription has undergone increasing scrutiny by a number of researchers (cf. Butler, 1976), especially when the concept of structural and/or institutional discrimination is invoked to explain income inequality. Explanations of inequalities among groups

often make use of the concept of institutional discrimination, as distinct from individual racism, sexism, or the like (see Benokraitis and Feagin, 1974; Yetman and Steele, 1971, for reviews). A common feature of such explanations is the argument that inequality is, to a considerable extent, a result of the equal application of universalistic criteria to groups that meet these criteria unequally (Jones, 1972; Yetman and Steele, 1971: 363-7). Black students denied admission to college because of low scores on standardized tests, women earning lower salaries than men because they have less on-the-job experience, and Hispanics who are passed over for employment or promotion because they lack the educational requirements of the position—all these might be viewed as instances of institutional discrimination through the use of merit standards universally applied.

Recently, Butler (1976) has criticized this view of inequality, while suggesting that the universalistic criteria of educational level and aptitude test score do not account for the observed differences in promotion time between black and white enlisted men in the U.S. Army. He concludes that "the black enlisted man is subject to inequality which is not the result of failure to meet universalistic criteria, i.e., indirect impersonal institutions, but rather a result of the direct racist actions of real life people" (Butler, 1976:817). The continuing discussion of black-white and male-female differences in the socioeconomic achievement literature attests to the importance of such an issue (cf. Hauser, 1978; Butler, 1978).

These studies have relevance for merit employment in a civil service system. For example, if education is used to assign level of work which in turn determines salary, then equal levels of education should produce equal salaries for each minority/sex group, *ceteris paribus*. In short, the economic returns to education, work experience, and other employment-related variables for various minority/sex groups may be compared to determine the extent to which a merit employer adheres to stated principles of equality of opportunity.

A second emergent theme of studies of income inequality is that the structure of labor markets may influence the avenues of mobility, monetary returns to education, and so forth (Bowles and Gintis, 1976; Kaysen, 1973; Kluegel, 1978). Therefore, assessment of discrimination is difficult since differences between employers may mask important effects. For example, work experience within one firm may not be fully credited toward salary in another firm; years of schooling may be more important to one employer than another; and positions of authority may vary in the exercise of control. Unless specific attention is given to these differences, studies across various employers may be misleading.

Doeringer and Piore's (1971) concept of the internal labor market directs attention to just such issues (see also Caplow, 1954, on the bureaucratic labor market). In an internal labor market, employees and the employer are to some extent shielded from direct economic influences of the external labor market (whether national, regional, or local) by the stability of established personnel practices and worker/management relations. The internal labor market has clearly defined ports of entry, specifiable career ladders for advancement, and regulations governing entry and progression. In short, the ideal-type internal labor market is a rationalized economy in which personnel regulations are made explicit and are applied in a universal manner.

To the extent that an internal labor market can be identified, a number of confounding effects in studies of discrimination can be eliminated.

A third, but no less important theme of income inequality studies, is that job placement may be of critical importance in discerning possible discriminatory patterns. For example, the concentration of employees by race (or sex) into trade occupations which have especially protective unions may affect studies of income inequality (cf. Ashenfelter, 1972; Snyder and Hudis, 1976). Race differences in the general allocation of occupations may alter the relationship of salary, education, and occupational placement (Duncan, 1969). To the extent that career lines exist

within occupations or groups of occupations which have different earnings, an employee's salary is limited in no small measure by occupational placement (cf. Spilerman, 1977).

The mechanism by which minorities and women become concentrated in particular occupations is not well understood (Snyder and Hudis, 1976). However, within one internal labor market we would reason that the employer has considerable control over the placement of individuals into particular job streams. That is, the employer allocates applications for employment to specific hiring pools, such as job registers categorized by type of work and level of expertise. Once hired into a particular job stream, internal staffing regulations may "track" employees for the duration of their career with the employer. Such tracking may operate to segregate women into low-paid clerical occupations, for example, or minorities into technical occupations. Should such occupational placement occur, then some of the salary differences between minority/sex groups may be attributed to employer discrimination rather than institutional discrimination.

However, the separation of institutionalized discrimination (i.e., employee characteristics) from employer discrimination (i.e., job placement, supervising positions, etc.) is rarely made. Employment data within one internal labor market would provide the basis for such an analysis. Recent data on federal civilian employees made available by the U.S. Civil Service Commission allow for a study of possible minority/sex differences in salary within one labor market.

Data and Method of Analysis.

A one-in-one hundred sample of the full-time white-collar federal civilian work force was drawn from the U.S. Civil Service Commission's automated data files. The salaries of active white-collar employees as of June 1977, were analyzed by regression analysis.

Approximately 70% of the 2.5 million federal civilian employees are included in the white-collar work force, the remaining

employees are in the wage grade. The personnel policies which affect these employees derive from a long history of congressional legislation, Executive Orders, and Civil Service Commission regulations which require: (a) equal pay for substantially equal work (Classification Act, 1949); (b) personnel actions free from discrimination; and (c) federal pay systems commensurate with private pay systems (Pay Comparability Act, 1970). These laws along with regulations issued by the Civil Service Commission through the *Federal Personnel Manual* generate in effect a single (albeit large and heterogeneous) internal labor market (cf. Doeringer and Piore, 1971). Although there may be different job streams and career lines; the standards for job classification by type of work, difficulty of work, etc., are set by law and Civil Service Commission policy, so that across occupations or career lines, jobs of equal levels of difficulty, responsibility and so forth should receive equal remuneration. Therefore, analysis of the white-collar workers in the civil service holds constant various influences which might otherwise confound a study of employment discrimination.

Salary in dollars is the dependent variable for this analysis. Additional variables which may affect the salary of an employee and/or the operations of the internal labor market are given below.

Education is measured by the number of years of schooling completed and varies from 4 years of schooling to 22 years for postdoctoral work. *Supervisory status* is used here as a dummy variable, with the value of 0 for a nonsupervisory position, and 1 for a supervisory position. *Age* is determined by year of birth and varies from 18 to 70. *Years of federal service* varies from 0 to 50 years of experience in the federal government. This variable also includes years of military service, and as such, would tend to bias upwardly the years of work experience for men as opposed to women, since men are far more likely to have spent time in the military. As both age and years of work experience are known to have a nonlinear relationship with earnings (Becker, 1964:7-8; Mincer, 1974), squared terms for both age and

years were used in this analysis as additional controls.

Three additional variables are of particular importance to the federal labor market. First, *Position* occupied is entered as a dummy variable and indicates whether the position currently held by an employee is in the competitive (1) or excepted (0) service. Excepted service positions are specified by laws and regulations, and although most excepted positions fall under some merit system, these regulations differ somewhat from those covering the Civil Service Commission's competitive service. Excepted service employment is noteworthy in that an incumbent earns no reinstatement eligibility and both appointment to and removal from office are easier in the excepted than in the competitive service. Veteran status is also included by the use of two dummy variables. *Disabled veterans* are those persons who have a compensable or service-related disability. *Other veterans* are those persons who served in the armed forces; who are the spouse or mother of a veteran with a service-connected disability; or who are the widow, widower, or mother of a deceased wartime veteran. Veteran status is important in the federal civilian service as those who qualify for a veterans' preference receive preferential consideration in hiring when competing from a civil service register and at times during reduction-in-force. To control for region, a dummy variable for location of employment (*D.C.*) is used to identify those who are employed in the District of Columbia and its surrounding area, or in the field. As the heads of federal agencies are located in D.C., as well as other highly graded staff positions, location in D.C. may be related to higher salaries.

Finally, four minority/sex groups have been identified by crossing sex with minority status. Those persons who are identified as Negro, Spanish-surnamed, Oriental, American Indian, Aleut, or Eskimo are classified as minority employees; any other employee is classified as non-minority.

There are four steps in this analysis. First, in order to assess the additive relationship of minority/sex groups to salary with job stream controlled, a regression

analysis is performed within five occupational groups of the white-collar work force—professional, administrative, technical, clerical, and other. Second, differences in pay structure across minority/sex groups are examined through regressions performed within minority/sex categories. Next, differences in predicted salary for the four minority/sex groups are obtained from the latter regression analyses by systematically varying the assumptions that might plausibly be made about pay structures and mean values. Finally, the decomposition of differences in salary due to different group characteristics and different pay structures is presented.

Results

The results of the first data analyses are presented in Table 1. For each occupational group, a regression analysis was performed using salary as the dependent variable. Ten independent variables were introduced to control for factors which might affect the relationship of minority/sex status and salary. After the independent variables were entered, dummy variables for nonminority females, minority males, and minority females were entered into the analysis. As nonminority male is the deleted category among the minority/sex groups, the unstandardized regression coefficient for each of the other minority/sex groups represents the salary differences between nonminority males and a specific minority/sex group.

As shown in Table 1, the explained

variance for the regression analyses ranges from $R^2 = .456$ for administrative to $R^2 = .793$ for clerical workers, for federal employees as of June 1977. These relatively large R^2 's suggest that most of the variation in salary has been statistically explained by the variables used here.

The total regression analysis includes all white-collar employees as specified earlier. With variables such as age, years of federal service, and education controlled (as well as a number of other employment-related variables), there exist considerable salary differences between nonminority males and other minority/sex groups. On the average, minority males earn \$1,994 less than nonminority males; nonminority females earn \$3,476 less; and minority females, \$3,970 less. When occupational groups are analysed, separately there are still notable differences as between minority females and nonminority males in the professional category where minority females earn \$5,172 less than nonminority males. Even though differences between the four groups diminish in the case of some occupational groups (as, for example, among clericals), no minority/sex group surpasses nonminority males in average salary.¹

¹ A significant obstacle to an analysis of inequality within one segment of a labor force is that (to paraphrase Hauser, 1978) there is no closure in the civil service population with respect to movement out of the Civil Service. That is, if termination of federal employment varies by minority/sex groups, especially if this outflow also varies by qualifications and/or ability, then estimates of inequality will be misstated.

Table 1. Cost of Discrimination among Federal Civil Servants, for Active Employees, 1977

Occupational Group for Active employees, 1977	N	R ²	Net Economic Detriment in Dollars ^a		
			Nonminority Females	Minority Males	Minority Females
Professional ^b	2,690	.557	-5,156	-831	-5,172
Administrative ^c	3,321	.456	-3,909	-1,519	-4,862
Technical ^c	2,924	.542	-1,587	-1,673	-2,320
Clerical ^c	6,705	.793	-396	-623	-695
Other ^d	272	.540	-480	-524	-1,107
Total ^e	15,912	.603	-3,476	-1,994	-3,970

^a Regression b's for each minority/sex group are net of age, square of age, position occupied, D.C. or field, supervisory status, disabled veteran, other veteran, years of federal service, square of years of federal service, and educational attainment.

^b All coefficients and the model are significant at the $p \leq .001$ level, except for minority males, $p \leq .112$.

^c All coefficients and the model are significant at the $p \leq .001$ level.

^d None of the minority/sex coefficients obtained statistical significance, although the model itself was significant at the $p \leq .001$ level.

Actually, the salary differences between nonminority males and other groups are likely to be larger than those presented in Table 1, since the different groups may have not only different mean values of education, work experience, and so forth, but also different pay structures, or rates of return. The regression equations in Table 1 represent the best-fitting *joint* pay structure, with only the additive effects of minority/sex group considered. In order to assess the pay structure of each minority/sex group separately, economic inequality will be analyzed using a method of indirect standardization discussed by Althauser and Wigler (1972), and variously employed by Duncan (1969), Smith (1976), and Kluegel (1978), among others. Basically, we are asking the following question: What part of the salary differences for active employees between nonminority males and other groups is due to the fact that each group has different levels of education, etc., and what part may be due to different pay structures? For example, the human capital model of returns to schooling would suggest that if nonminority males had higher levels of education, they would be more productive workers, and therefore, would receive a higher salary (Welch, 1973). To the extent that the various minority/sex groups have similar levels of education (as well as other characteristics) but receive different salaries, then the groups must have different pay structures. The existence of different pay structures which are determined by the employer may be evidence of the failure to

To assess the possible differences between the active population and the terminating population, a regression analysis of the outflow population from June, 1975, to June, 1977, was undertaken. The amount of salary disparity between nonminority males and the three minority/sex groups is substantial for the total sample of terminators, although the differences between minority/sex groups are not quite as large as in the active population. Among terminators, minority females earn approximately \$2,658 less than nonminority males; minority males earn \$1,762 less; and nonminority females, \$2,750 less. Similar results are also obtained when terminating employees are analyzed separately by occupational group. Therefore, the impact of differential rates of termination by ability and minority/sex group should have little impact on further analyses of salary differences.

apply standards of merit in a universal manner.

Two regression models predicting salary are presented in Table 2. The first model contains variables common in human capital analyses: age, square of age, years of federal service, square of years, veterans' preference, location in D.C., and level of education. Model II includes the above variables and adds those employment attributes over which the employer exercises considerable control: supervisory status, position occupied (competitive or excepted), and occupational group (entered as a set of dummy variables for administrative, technical, clerical, and other groups with the professional as the omitted category). These last three variables are of special interest, for by controlling these three factors, we are assuming that placement into job streams has been made without regard to minority group or sex.

While the analysis presented here is not directed toward assessing the returns to particular employment characteristics, some brief comment on the results presented in Table 2 is in order before proceeding to the decomposition of salary differences into institutional and employer discrimination.

First, consistent with the findings of studies cited earlier, the monetary returns to age, education, years of federal service, and employment in the D.C. area are all higher for nonminority males than for any other group in both Model I and Model II. The more negative coefficient for nonminority males on the disabled veterans variable compared to the coefficients for the other groups may indicate that the "handicaps" of race, sex, and physical disability are not strictly cumulative in their effect on salary. The other veterans dummy variable also has a negative impact on salary. This result may suggest that the veterans' preference, applied at entry to the federal service, places individuals of lower ability into jobs for which they would otherwise not qualify, while subsequent promotions are affected more by ability than by the veterans' preference. If so, then the larger absolute value of the coefficient for nonminority males may mean that the salary return to a given

Table 2. Unstandardized Regression Coefficients from Two Models Predicting Salary for Four Minority/Sex Groups, 1977

Regression Variables	Minority/Sex Group							
	Nonminority Males		Nonminority Females		Minority Males		Minority Females	
	Model I	Model II	Model I	Model II	Model I	Model II	Model I	Model II
Age	605.7	422.0	228.7	143.2	513.9	316.6	251.6	140.4
Age ²	-5.9	-3.8	-2.7	-1.8	-4.8	-3.0	-2.9	-1.5
Years	571.1	523.0	418.5	415.2	343.8	378.3	417.6	383.7
Years ²	-8.9	-8.9	-5.8	-7.0	-6.7	-7.4	-7.8	-7.7
Disabled vet	-2364.3	-1665.1	-1575.1	-1398.8	-1299.0	-548.2	-2245.7	-1451.1
Other vet	-905.6	-757.0	48.4	-308.9	-865.4	-370.1	-169.7	-209.3
D.C.	4685.9	4022.8	2207.0	2144.9	1567.7	1352.7	698.7	952.4
Education	1516.1	743.6	1110.5	550.2	1353.9	577.9	956.8	506.2
Supervisory		2340.0		1601.7		2858.5		2356.0
Position		-1219.1		-1893.3		-2179.6		-2263.0
Administrative		-1190.8		124.5		-2351.2		-34.7
Technical		-6190.1		-3293.8		-7778.0		-3396.1
Clerical		-7467.8		-4309.8		-8637.0		-3961.2
Other		-7426.7		-4625.3		-8566.5		-5425.1
Regression Constant	-23.600	-3.775	-10.694	3.385	-18.339	3.803	-9.035	4.056
R ²	.518 ^a	.644 ^a	.459 ^b	.642 ^c	.419 ^d	.615 ^d	.415 ^e	.638 ^e
N	8.461	8.461	4.326	4.326	1.557	1.557	1.568	1.568

^a All variables significant at $p \leq .001$.

^b All variables except disabled vet and other vet significant at $p \leq .001$.

^c All variables except disabled vet, other vet, and administrative significant at $p \leq .001$; disabled vet significant at $p \leq .05$.

^d All variables except disabled vet and other vet significant at $p \leq .001$; disabled vet significant at $p \leq .05$; other vet significant at $p \leq .01$.

^e All variables except disabled vet, square of age, and administrative significant at $p \leq .001$; square of age significant at $p \leq .01$.

level of ability is larger for that group than for the other three groups. The remaining results from Model II indicate that differences in the returns to supervisory status and occupational stream are generally greater between males and females than between the two ethnic groups within either sex. Finally, the salary advantage of employment in the excepted service is greater for minorities and women than for nonminority males. It should be reiterated, however, that excepted positions, while carrying a net salary advantage according to these findings, are also subject to fewer employment safeguards. The resultant job insecurity may or may not fall equally on members of different minority/sex groups.

In summary, then, the results of the separate regression analyses in Table 2 suggest that each minority/sex group has a substantially distinct pay structure which, in part, contributes to different average salaries for the four groups.

The separate regression analyses just

discussed permit the decomposition of salary differences by minority/sex group into institutional and employer components. The method to be used involves predicting salary for each of the minority/sex groups while systematically varying the mean values and pay structures as in Table 3 (cf. Malkiel and Malkiel, 1973; Kluegel, 1978). When salary is predicted for each group using its own pay structure and own mean values for the independent variables, considerable differences are apparent. Nonminority females earn only 62.6% of the salary of nonminority males; minority males earn 80.6%; and minority females earn 62.3%. Even when occupational group is controlled as in Model II, there remain substantial salary differences between nonminority males and the other groups.

Part of these salary differences are due to the fact that each group has different levels of educational attainment, supervisory status, age, and so forth. In fact, if all groups had the same mean values as

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Table 3. Predicted Salary (in Dollars) for Four Minority/Sex Groups in Two Models (Varying Pay Structure and Mean Values)

Model	Minority/Sex Group						
	Nonminority Males	Nonminority Females		Minority Males		Minority Females	
Model I for Salary Predicted From:	A	B	B/A in %	C	C/A in %	D	D/A in %
(1) Own Pay Structure and Own Mean Values	18,508	11,593	62.6	14,917	80.6	11,539	62.3
(2) Own Pay Structure and Nonminority Male Mean Values	18,508	14,083	76.1	16,139	87.2	13,397	72.4
(3) Nonminority Male Pay Structure and Own Mean Values	18,508	15,242	82.4	17,233	93.1	15,363	83.0
Model II for Salary Predicted From:							
(1) Own Pay Structure and Own Mean Values	18,411	11,718	63.6	15,642	85.0	10,908	59.2
(2) Own Pay Structure and Nonminority Male Mean Values	18,411	14,896	80.9	17,872	97.1	13,731	74.6
(3) Nonminority Male Pay Structure and Own Mean Values	18,411	13,884	75.4	16,162	87.2	13,681	74.3

nonminority males, the salary differences would be substantially reduced as the data on line (2) suggest. From the substitution of nonminority male mean values into the regression equations for each of the minority/sex groups, we can obtain an estimate of what each group would receive in salary if all groups had levels of educational attainment, years of federal service, etc., equal to nonminority males. The estimates in Table 3 show that minority women would earn less than three-fourths of the salary of nonminority males, while minority males would earn 87.2% of the average nonminority male salary. However, if all groups were compensated at the same rate as nonminority males (i.e., all groups had that pay structure), the salary differences between nonminority males and the other groups also would be reduced considerably as indicated in line (3). The computations in line (3) compared with those of line (2) suggest that pay structure has a substantial impact on the salary differences between minority/sex groups. If all minority/sex groups had the identical pay structure as nonminority males, the salaries would more nearly approximate nonminority males than if their mean values were equal to nonminority males but their own pay structure was intact.

The data presented for Model II are of note in that, first, minority males come

very close to parity with the salary of nonminority males when placement variables have been controlled. However, both groups of women appear to fare even worse under the assumption of equality of job placement, although this pattern is not completely consistent.

In important respects, differences due to employee's mean values may be taken as analogous to the concept of institutionalized discrimination whereas differences due to pay structure may correspond to employer discrimination. Table 4 compares the percentage of the salary differences due to different characteristics with the percentage due to different pay structures, using the method of indirect standardization employed by Malkiel and Malkiel (1973) and Smith (1976). To obtain the entries in Table 4, we performed the following computations on the data presented in Table 3:

$$\begin{aligned} \text{Gross difference in mean salary} \\ (\text{nonminority females}) &= (1)A - (1)B; \\ \text{Difference due to different mean values} \\ (\text{nonminority females}) &= (3)A - (3)B; \\ \text{Difference due to different pay structures} \\ (\text{nonminority females}) &= (3)B - (1)B.^2 \end{aligned}$$

² There is an index number problem presented in this method of analysis since there are two sets of regression equations and two sets of mean values by

Table 4. Analysis of Salary Differences between Nonminority Males and Other Minority/Sex Groups (Assuming Minimum Differences Due to Pay Structure)

Source of Salary Differences in:	Minority/Sex Group					
	Nonminority Females		Minority Males		Minority Females	
Model I	Dollars	%	Dollars	%	Dollars	%
Gross Difference in Mean Salary with Nonminority Males	6,915	100.0	3,591	100.0	6,969	100.0
Difference Due to Different Mean Values	3,266	47.2	1,275	35.5	3,145	45.1
Difference Due to Different Pay Structures	3,649	52.8	2,316	64.5	3,825	54.9
Model II						
Gross Difference in Mean Salary with Nonminority Males	6,693	100.0	2,769	100.0	7,503	100.0
Difference Due to Different Mean Values	4,527	67.6	2,249	81.2	4,730	63.0
Difference Due to Different Pay Structures	2,166	32.4	520	18.8	2,773	37.0

The findings reported in Table 4 make it clear that a considerable portion of the salary differences between nonminority males and other groups may be due to different pay structures. Looking only at

which to standardize. That is, we could perform the following computations and obtain decomposition estimates:

$$\begin{aligned} \text{Difference due to mean values (nonminority females)} &= (2)B - (1)B; \\ \text{Difference due to pay structure (nonminority females)} &= (2)A' - (2)B. \end{aligned}$$

These computations would yield smaller estimates of salary differences due to mean values and larger estimates due to differences in pay structure, especially for both groups of women. The percentage entries for Table 4 would be as follows:

	Non-minority Females	Minority Males	Minority Females
Model I			
Difference due to different means	36.0	34.0	26.7
Difference due to different pay structures	64.0	66.0	73.3
Model II			
Difference due to different means	47.5	80.5	37.6
Difference due to different pay structures	52.5	19.5	62.4

The actual amounts of salary disparity which are due to differences in mean values and pay structures fall somewhere between these figures and those presented in Table 4; the latter were selected for discussion in the text since they give the more conservative estimate of employer discrimination.

Model I we find that minority males, on the average, make \$1,275 less than non-minority males due to their different characteristics. However, another \$2,316 (or nearly two-thirds of the total salary difference) is due to different returns to their investments. For the two groups of women, we find that over half of their salary differences with nonminority males is due to different returns when level of investment has been held constant.

If we examine Model II, which controls for placement into job stream, salary differences due to different pay structures are lowered considerably. Nonetheless, differences in salary due to pay structures vary from 18.8% for minority males to 37.0% for minority females. This finding is partially consistent with Spilerman (1977), who argues that occupational placement is a key element in the determinants of earnings. That is, if placement into job streams is performed using only merit criteria universally applied, then income inequality should always be assessed "net of" job stream (assuming there should be different pay for different jobs). If, however, sex and/or race is used to determine job suitability, then job placement itself becomes a suspect personnel decision and contributor to income inequality.

Discussion

The findings presented in this paper make possible several observations on

race/sex income inequality. First, salary differences between minority sex groups are considerable with a large number of employment-related variables controlled. Even when placement variables are controlled, these differences remain.

What can explain these salary differences? It may be too facile merely to argue that individual racism and sexism are the causes of all differences in the pay structures found here. There is, for example, no direct measure of ability used here. Furthermore, we have no estimate of work experience in the private sector. However, entry into the federal service is generally accomplished through a standardized test on which all persons must perform well before they can gain employment, and most of the effects of private experience should be captured in the controls for age and the square of age.

Moreover, the variables used to control for differences between the minority/sex groups are implicitly assumed to operate in a nondiscriminatory manner. Yet the very opposite may be true. For example, supervisory status has been shown to have an effect on salary and to vary by minority status (Kluegel, 1978). If supervisory positions are allocated in a discriminatory manner in the federal government, then by controlling its effect, we have eliminated one nonmerit source of income disparity due to pay structure. Similarly, differences in salary may occur through discriminatory placement into occupational streams as noted earlier. However, our purpose in this research was to make as strict an examination of salary differences as possible. In this manner, we can be relatively certain that we would not overstate the presence of employer contributions to salary disparities. That is, this method allows for the possibility of group preferences or dispositions toward particular work situations (i.e., it might be possible that women *prefer* clerical jobs to others; that minorities prefer *not* to be supervisors, etc.). It is more likely, of course, that placement into job stream is a function of both the employer's decision regarding an employee's ability, and a preference expressed by an employee. Therefore, the amount of pay disparity due to differences in pay structure prob-

ably falls somewhere between the estimates from Model I and Model II.

We have also seen that the standardized salary difference between nonminority and minority women is considerably smaller than the difference between any other two groups. That is, minority women resemble nonminority women more closely than minority women resemble minority men, although the pay structures of the two groups of women are less similar when job placement is controlled. Nonetheless, minority women receive lower returns to education as well as a lower percentage of the nonminority male salary than any other group. At a pragmatic level, these findings are of obvious importance to equal employment opportunity efforts, as well as being instructive with respect to the ascriptive nature of our society.

Third, these findings can be related to the private sector of the economy and the presence of possible minority/sex discrimination there. As noted earlier, some limited evidence (Smith, 1976) and considerable plausible conjecture would suggest that discrimination by race and sex in the private sector substantially exceeds that reported here for the federal service.

Finally, these data bring indirect evidence to the debate surrounding returns to education and quality of schooling. The results of studies of returns to education by minority groups show such large differences between blacks and whites that we might wonder whether black education should be discounted two to three years if it is of poorer quality than white education (see Stolzenberg, 1975). However, we know of no conventional wisdom that claims that the quality of minority male education is substantially higher than the quality of minority female education (and similarly for nonminority males and females). Yet the returns to schooling vary more by sex within one minority group than within either sex group. While this pattern may be affected by particular occupational placement, the fact that both groups of women have lower returns to education than do either group of men does itself raise questions regarding the quality of schooling argument.

Conclusions

In general, this research has confirmed the existence of minority/sex disparities within an employer which has a long history of attempts to manage its personnel system in a meritorious manner. Such salary disparities exist thirteen years after the passage of the 1964 Civil Rights Act, and eight years after Executive Order 11478. While employers are required to do little with regard to individual characteristics a worker brings into the labor market, the results in this study suggest that as much as one-half of the salary disparities between minority/sex groups could be eliminated in future cohorts of employees by changes in employer practices alone.

In particular, this study lends strong support to the contention that the concept of institutional discrimination should be carefully reexamined. To be sure, there are situations in which the concept is straightforward—as, for example, in the proper use of standardized aptitude tests for employment selection. However, when universalistic criteria must be applied according to the discretion of an individual decision maker, as is often the case in personnel actions, the evidence presented in this research suggests that what is called institutional discrimination may be an unexamined pretext for employer discrimination.

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APPENDIX
MEANS AND STANDARD DEVIATIONS OF ALL INDEPENDENT VARIABLES FOR REGRESSION ANALYSES (TABLE 2)
BY MINORITY/SEX GROUP

Independent Variables	Minority/Sex Group							
	Nonminority Males		Nonminority Females		Minority Males		Minority Females	
	Mean	S.D.	Mean	S.D.	Mean	S.D.	Mean	S.D.
Age	44.1	11.3	40.4	13.2	42.2	11.3	37.5	11.2
Age ²	2072.9	989.7	1802.0	1095.5	1908.6	957.5	1534.1	900.4
Years	16.9	9.8	10.6	8.6	16.4	9.7	10.8	8.2
Years ²	383.4	371.2	186.0	264.2	363.4	348.9	183.0	255.2
Disabled vet	.10	.30	.004	.06	.06	.25	.003	.05
Other vet	.59	.49	.07	.25	.63	.48	.04	.20
D.C.	.12	.32	.14	.35	.16	.37	.24	.43
Education	14.4	2.6	13.3	1.9	13.6	2.2	13.1	1.6
Supervisory	.17	.37	.07	.26	.10	.30	.06	.23
Position	.63	.48	.83	.37	.50	.50	.79	.41
Administrative	.27	.45	.13	.34	.17	.38	.10	.31
Technical	.17	.38	.19	.39	.19	.40	.22	.41
Clerical	.30	.46	.57	.50	.49	.50	.61	.49
Other	.02	.14	.004	.06	.04	.20	.006	.08

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APPENDIX 7

LETTER FROM ROBERT L. BERRA, VICE PRESIDENT FOR PERSONNEL,
MONSANTO CO., TO HON. DANTE B. FASCELL, CHAIRMAN, SUBCOM-
MITTEE ON INTERNATIONAL OPERATIONS, GIVING A CRITIQUE OF THE
PROPOSED LEGISLATION TO RESTRUCTURE THE FOREIGN SERVICE PER-
SONNEL SYSTEM

Monsanto

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September 26, 1979

Mr. Dante B. Fascell, Chairman
Subcommittee on International Operations
Congress of the United States
Committee on Foreign Affairs
House of Representatives
Washington, D. C. 20515

Dear Mr. Fascell:

Thank you for giving us the opportunity to review the proposed legislation to restructure the Foreign Service personnel system.

The material has been reviewed by several of our staff people as well as the International Division Personnel Department. While we are not familiar with the current legislation, nor with many of the procedures, we will be happy to give you our reaction to specific items, as viewed from the private sector.

In general, the objectives are clearly stated and the distinction between groups of personnel in the service is helpful, as well as the distinction between non-career appointments and career appointments.

In the area of compensation, it appears logical to establish salary rate schedules which are consistent with the General Schedule. Equity will be achieved as well as ease of administration.

By definition, "Performance Pay" is incentive payment for outstanding performance. We would ask why this should be limited to Senior Foreign Service personnel only. A similar incentive program for career officers below this level might merit consideration. We also question the limitation of the Performance Award to only 50% of the Senior Foreign Service personnel. This results in forced ranking which could exclude some personnel whose performance may be equal to that of personnel selected for the Performance Pay.

No mention is made of provision for cost of living allowances to off-set the high cost of living in many countries. We realize that foreign service employees may have access to government commissaries and military post exchanges, however, they must also make a significant number of purchases on the open market. Shelter allowances are also not mentioned. Therefore, we assume that housing is provided, in most cases, at government expense.

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Continuing in the area of compensation, there appears to be no hardship pay for service at hazardous or unhealthful posts. We are aware that the State Department publishes schedules of recommended foreign post differentials for hardship conditions. Are Foreign Service personnel not entitled to this premium? While no mention is made of such a premium, we find it interesting to note that extra credited service is provided for service at "unhealthful posts."

Mandatory retirement age is stated as being age sixty, subject to certain exceptions. Is this not inconsistent with current legislation which permits employees to work to age seventy?

We have no comments about Chapters five through nine; however, we offer the following comments on Chapter ten, "Labor - Management Relations". On page 73 of the section by section analysis, under the definition for "employee," it is felt that former members terminated improperly should be excluded if a settlement is reached or they do not accept a reinstatement offer.

On page 75, under Foreign Service Labor Relations Board (FS LRB), it appears that appointment of public members is for life. Their impartiality would be a concern.

On page 77, "Exclusive Recognition", the choice of "no union" should clearly be an option.

On page 78, "Resolution of Implementation Disputes", we are not familiar with the review procedures under 5 U.S.C. 7122; however, review of third party arbitration awards is not normally provided for in private sector union/management contracts.

On page 79, under "Unfair labor practices by the Department", it should not be an unfair labor practice for management to discourage union membership if a unit is currently unorganized.

Page 81, "Definition of Grievance" - in the private sector, grievances, and especially arbitration, are normally limited to disciplinary action and "interpretation or application" of the terms of the contract. The proposed language includes any "service of concern or dissatisfaction."

Page 82, "Freedom of Action" - protection should be limited to "good faith" processing of grievances.

Page 83, "Time Limitations" - three years time to present a grievance is excessive. Thirty days is common in the private sector

Page 85, "Board Procedures", third paragraph, management should have the authority to implement the separation or discipline. The Board should be able to "make the employee whole" such as by making reinstatement with back pay if they find management's action to be in violation of the law or contract.

We intend our comments to be constructive and hope the subcommittee will find them helpful in their deliberations.

Sincerely,

MONSANTO COMPANY



R. L. Berra

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APPENDIX 8

STATEMENT OF HON. JAMES T. BROYHILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA, ON THE FOREIGN SERVICE ACT OF 1979

Mr. Chairman:

I want to thank you for the opportunity to comment on the State Department's mandatory retirement program for Foreign Service officers.

This situation was recently brought to my attention by a constituent who was forced to retire at 60 years of age after 12 years of service. Had she been allowed to continue service until 1980, her retirement income would have been increased from \$11,500 which she now receives to \$13,500. (Based on the three year base period used for figuring retirement income.)

She describes her forced retirement as one of the "most humiliating experiences" she has faced. After years of service to her country, she was told, in effect, that her experience and professional ability were no longer needed or necessary.

There is no question that Foreign Service, or public service in any sense, can be taxing. However, these government officials are not your typical "senior citizens." They have undergone rigorous Foreign Service physical exams as well as proficiency screening.

In the statement of Holbrook Bradley during the Hearing before the Subcommittee on Equal Opportunities of the Committee on Education and Labor, it was stated that "between the years 1970 and 1976, 209 Foreign Service employees were retired for

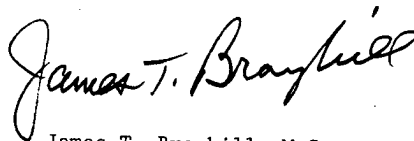
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medical reasons. Of those, 49 were below the age of 50 and approximately 63 between the ages of 50 and 55. It is evident that rigorous Foreign Service physical exams together with the yearly system of rating an individual's proficiency thoroughly screen all officers. The process of selection out together with medical retirement means that approximately 2 percent of the Foreign Service employees reach the age of 60."

To assume that because a person reaches 60 his mental and physical capabilities cease to exist is unfair. Additionally, it is a waste of human talent and expertise.

Fortunately, my constituent will be able to pursue her life of service as a Member of the Peace Corps. I wonder how many others have become bitter and have let their talents go to waste because their humiliation has left them with a feeling of uselessness?

I hope this information will be helpful to the Subcommittee during their consideration of this issue. Thank you.

A handwritten signature in cursive script that reads "James T. Broyhill".

James T. Broyhill, M.C.

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APPENDIX 9

STATEMENT OF LOUIS CLARK, DIRECTOR, AND DEBORAH K. BURAND, OF THE GOVERNMENT ACCOUNTABILITY PROJECT, INSTITUTE FOR POLICY STUDIES

GOVERNMENT ACCOUNTABILITY PROJECT
Institute for Policy Studies
1901 Que Street, N.W., Washington, D.C. 20009

(202) 234-9382

October 31, 1979

The Honorable
Dante B. Fascell, Chairman
Subcommittee on International Operations
Committee on Foreign Affairs
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

On behalf of the Government Accountability Project, we want to thank you for requesting our testimony on H.R. 4674. The bill would restructure the Foreign Service personnel system, purportedly to "strengthen and improve" the Foreign Service. Our testimony will concentrate on §§ 205 and 1101-1131, establishing an office of Inspector General and restructuring the grievance process, respectively.

The Government Accountability Project (GAP), a project of the Institute for Policy Studies, is a non-profit public interest group formed in 1975 to help restore and maintain confidence in the federal system by making public officials accountable for their activities. In pursuit of these goals, GAP works to broaden public understanding of the role of the federal employee in preventing illegal government activities.

GAP has been especially concerned about civil servants whose careers are destroyed for having spoken out against governmental wrongdoing. Through public education, personal counseling and selective legal action, GAP works to protect the right of all federal employees to initiate criticism without fear of retaliation, and to provide these men and women with vital support. See, e.g., GAP's publication, A Whistleblower's Guide to the Federal Bureaucracy (1977).

I. PREMISES:

From GAP's experiences with personnel systems throughout the federal government, we have found several premises which are essential for the efficient, productive, and equitable management of all employees. Each of these premises emphasizes the need for personnel mechanisms which are allowed

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to operate independently of the Agency in which they are involved. GAP has examined H.R. 4674 in light of these premises, determining if the proposed legislation will provide:

1. A guarantee of due process, enforced by an independent office, for participants in the system.
2. An adequate structural safeguard to protect against reprisals for those employees who disclose abuses or participate within the grievance system.
3. Meaningful sanctions against supervisors and managers who impose such reprisals.
4. An independent mechanism to examine the substantive issues raised by whistleblowers, allowing them a place to make confidential disclosures of wrongdoing.
5. An effective judicial review for challenging Agency actions that adversely affect whistleblowers.
6. Maintenance of employees' high morale and resulting productivity, through concrete protection of their rights.

H.R. 4674 is alarmingly deficient in each of these categories, making the possibility of a strong and efficient Foreign Service personnel system a dream rather than reality. Because of the blatant disregard of these essential premises within this proposed legislation, implementation of H.R. 4674 would be actually a step away from efficient management of employees. While the sponsors of H.R. 4674 correctly assert that the strength and competence of the Foreign Service rests upon its personnel system, the proposed legislation itself would do little to correct the well-known inequities of that system. Following closely in the footsteps of the Foreign Service Act of 1946, H.R. 4674 embraces many of the shortcomings found in the earlier legislation. Two areas where H.R. 4674 continues to be sorely lacking, as is existing law, are in the provisions for the office of the Inspector General, and the grievance system. The Foreign Service personnel system will continue to be inefficient and inequitable until the essential premises for a balanced system are incorporated in two areas. Any meaningful personnel system must provide for the establishment of--

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- 1) an Inspector General operating independently of the Secretary of State, and
- 2) a grievance system guaranteeing due process to grievants.

III. ANALYSIS OF LEGISLATION:

A. Inspector General--Chapter 2, Section 205:

In December of 1978, the Comptroller General reported to Congress that "Essential changes must be made in the Foreign Service Act of 1946, as amended, if the State Department's Office of the Inspector General, Foreign Service, is to have the flexibility it needs to improve its evaluation processes." Section 205 provides for the establishment of the Office of the Inspector General. However, it falls short of providing for an Inspector General with the independent operating authority he needs to discharge his duties effectively.

One change proposed, (Section 205(a) of H.R. 4674), would extend the maximum time period between inspections from two to three years, as recommended by the Comptroller General. This change was intended to alleviate the burden of inspections placed on an inspection staff that is "sometimes spread too thin to do a thorough analytical job."¹ However, cutting back on the number of evaluations made by the Inspector General would not necessarily lead to more thorough analysis.

Instead a positive approach is needed to increase the efficiency of the Inspector General, such as the provision of increased staff and resources. A benefit from this increased staff and resources would be the formulation of a clearer mandate and stronger support for the functions of the office. The evaluation and review functions of the Inspector General should be central to the process of strengthening the Foreign Service and its personnel system, particularly by identifying inappropriate acts and procedures. To reduce the amount of required inspections, as done in Section 205(a), in the interest of "flexibility" is to sacrifice the Inspector General's much needed oversight capabilities.

Another major impediment to an active and objective Inspector General is the large involvement of the Secretary of State in the Inspector General's activities. The Inspector General's independence is severely limited by the influence of the Secretary's management offices, which not only approve the

¹Comp. Gen. Report, State Department's Office of Inspector General, Foreign Service, Needs to Improve its Internal Evaluation Process, 1(1978).

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budget and operations of the Inspector General, but also decide on the suitability of his recommendations. Throughout Section 205, the Inspector General is tied even closer to the Secretary, bound again and again to "the direction of the Secretary." This clause could easily be used to subvert every mandate of authority given to the Inspector General and runs contrary to the very principles of objective evaluation and oversight as expressed by Congress in the Inspector General Act of 1978. This act, while not binding on the State Department, can be viewed as the voice of Congress supporting the necessary independent movements of an Inspector General. It is worth noting the observable differences between Section 205 of H.R. 4674 and the Inspector General Act of 1978.

Section 205(b) implicitly limits the Inspector General as to what programs and activities can be evaluated by virtue of the "under the direction of the Secretary" stipulation. In allowing the Secretary the authority to guide the direction of the Inspector General's inspections, the effectiveness and objectivity of these inspections are severely compromised. By implementing the words "under the direction of the Secretary" Section 205 runs contrary to the Inspector General Act of 1978 Section 3(a) which states:

"The Inspector General reports to, and is under the general supervision of the head of the Agency. However, the head of the Agency may not prohibit, prevent or limit the Inspector General from undertaking and completing any audits and investigations which the Inspector General deems necessary, or from issuing any subpoenas deemed necessary in the course of such audits and investigations." (Emphasis added).

Section 205(c) also affords the opportunity for a misuse of authority by giving the Secretary "blank check" authority to dismiss any Foreign Service Inspector, or to suspend from duty any member of the Service other than a Chief of Mission. Characteristically, in the Department of State, such authority is actually exercised by the management officials whose activities would be most susceptible to criticism by a truly independent Inspector General. So any unchecked authority given to the Secretary can be presumed to be unchecked authority delegated downward to those who would be least in favor of the independent operations of the Inspector General.

Finally, Section 205 omits a key and vital component of the Inspector General Act of 1978. This is Section 5(b) of the Act which serves to maintain the independent behavior of the Inspector General by guarding against any alteration or deletion

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of the Inspector General's evaluation comments by an Agency head--in this case, the Secretary. A comparable statement to that of the Inspector General Act of 1978, Section 5(b), should be included within Section 205 of H.R. 4674 reading as follows:

"The head of the Agency may submit his own comments along with the Inspector General's report, but may not generally prevent the report from going to Congress or alter or delete the report."

With these recommended changes in Section 205, the Inspector General would be better equipped to pursue the vigilant and independent course of action designated by Congress. Thus the Inspector General would be allowed to direct remedial attention to improper, inefficient, inequitable, or illegal conduct wherever it may be found within the scope of the Inspector General's investigations.

We do not perceive any valid reason to deny Foreign Service employees an independent Inspector General. While the State Department often engages in sensitive assignments Foreign Service whistleblowers are not excluded from coverage of the Office of the Special Counsel under the Civil Service Reform Act. Foreign Service employees are subject to merit system principles and protected from prohibited personnel practices. It would be unfortunate for the Special Counsel to become overburdened with complaints from the Foreign Service as a result of the absence of an independent office at the State Department.

B. Grievances--Chapter 11:

The urgent need for a fair and equitable grievance system within the Foreign Service has been a recurrent issue before this subcommittee since 1971. Representative Lee Hamilton of Indiana, testifying before a House Subcommittee, stressed "Unless all employees believe that the grievance system is fair and impartial, no grievance system will work." Under the proposed legislation of H.R. 4674, the grievance system continues to suffer from a "credibility gap," a gap which seriously impedes the airing and resolution of grievances within the system. The problems of the Foreign Service grievance system continue and promise to continue as long as the guarantee of due process is sidestepped. Throughout Chapter 11 of H.R. 4674, provisions are qualified and the language is couched in terms which evade the guarantee of due process to grievants. We urge the subcommittee to adopt, in place of these inadequate provisions, a more comprehensive guarantee of due process as formulated in H.R. 9805 which was introduced on September 24, 1975.

1101. Definition of Grievance:

Within Section 1101, as contained in this draft legislation, the definition of grievance is so narrow that many very serious grievances are excluded, such as promotions, assignments, discrimination and selection-out. In effect, this section handcuffs the system to a position of very limited jurisdiction. A much

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more inclusive definition of grievances is needed within this legislation to replace the exclusive nature of the present wording. One such inclusive and more appropriate definition of grievance can be found in H.R. 9805.

"(B) 'grievance' shall mean a complaint against any claim of injustice or unfair treatment of such officer or employee arising from his employment or career status, or from any actions, documents or records, which could result in career impairment or damage, monetary loss to the officer or employee, or deprivation of basic due process, and shall include, but not be limited to, actions in the nature of reprisals and discrimination, actions related to promotion or selection-out, the contents of any efficiency report, related records, or security records, and actions in the nature of adverse personnel actions, including separation or cause, denial of a salary increase, (in-step increase in salary), written reprimand placed in a personnel file, or denial of allowances."

Section 1103(b) Freedom of Action:

Under this section, 1103(b), the union becomes the exclusive representative for grievants within the bargaining unit. Several serious problems stem from this provision:

First, individual members of the bargaining unit would thereby be deprived of the right to choose their own representative for presenting their positions to the Grievance Board. Besides putting undue demands upon an organization that lacks suitable resources, this also places a large amount of authority within the union. Operating under this stipulation, the union as the exclusive representative becomes a determining factor in who and what is allowed access to the Grievance Board. In lieu of these shortcomings of Section 1103(b), it is our recommendation that the wording of this passage be amended as follows:

"The grievant has the right to a representative of his/her own choosing at every stage of the proceedings." H.R. 9805.

Section 1112 Board Procedures:

This section outlines the regulations and procedures under which the Grievance Board operates. Again, the language includes too many reservation and qualifiers to allow the

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Grievance Board to perform its functions adequately. Section 1112 (1-2) and Section 1112 (8) are the major trouble spots.

Section 1112 (1) delineates the circumstances under which the Board could hold a hearing. Section 1112 (2) follows this by describing the circumstances under which the hearing could be open to others. These two sub-sections, 1 and 2, give the Board arbitrary authority. The question of whether or not to hold a hearing is fundamental to the grievance process. To allow the Grievance Board discretionary authority to determine the worthiness of a grievance, i.e., the necessity of a hearing, is to invite misuse of this power. However, this potential misuse of authority could be avoided if the Board were required to conduct hearings whenever the grievants request them. Likewise the operation of these hearings should be assumed to be open unless the Board determines for good reason that they should be closed. Again, this openness would reinforce the guarantee of due process within the grievance system. H.R. 9805 addresses these two points in a more evenhanded manner.

"The Board shall conduct a hearing in any case filed with it. A hearing shall be open unless the Board for good cause determines otherwise."

Section 1112 (8) Suspension of Action:

Section 1112 (8) also poses some serious problems in its attachment of a stipulation to its Suspension of Action passage. Again, the purpose of this provision is thwarted by the qualifications and reservations placed on it. The ideal provision would suspend any and all departmental actions which are related to or may affect a grievance pending before the Board until such a time that a ruling is made. This would in effect protect the grievant from any reprisals made by the Department until the Grievance Board has ruled on the case. However, within H.R. 4674 the head of the Agency, or the Chief of Mission, or principal officer is allowed to exclude the grievant from the premises or relieve him from his functions before the Board comes to any ruling. Thus the grievant is stripped of this protection from reprisals pending a decision from the Grievance Board. To amend this passage,

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a more equitable provision would be written as follows:

"If the Board determines that (a) the Department is considering any action (including, but not limited to, separation or termination) which is related to, or may affect, a grievance pending before the Board, and (b) the action should be suspended, the Department shall suspend such action until the Board has ruled upon such grievance." H.R. 9805.

With this amended wording, the authority to suspend action rests in the Grievance Board's hands rather than in the hands of those who are very likely the source of the grievance. This seems to us to be a much wiser appropriation of authority.

1113 Board Decisions:

One of the major weaknesses of the whole grievance system is to be found in this section. The Grievance Board's lack of authority to make binding its own rulings undermines its raison d'etre. By only being able to recommend a remedy to the Agency head, the Grievance Board is rendered fairly impotent. If the Grievance Board is to be more than a kangaroo court, it must be able to back its rulings with some authority. As it reads in Section 1113, the Agency head may choose whether or not to follow the Board's recommendation according to an ambiguous definition of the ruling's compliance to "the needs of the Service." To allot the Grievance Board authority in regards to its rulings would be to issue a vote of confidence in the grievance system itself. However, to hold back on this transfer of authority from the Agency head to the Grievance Board is to diminish the value of the grievance system as a whole. It is for this reason that we strongly urge that Section 1113 be amended to make the decisions of the Grievance Board binding. A provision as found in H.R. 9805 could be used in place of the current wording.

"The Board's recommendations are final and binding on all parties, except that the Secretary may reject any such recommendation only if he determines that the foreign policy or security of the United States will be adversely affected. Any such determination shall be fully documented with the reasons therefore and shall be signed personally by the Secretary, with a copy thereof furnished the grievant."

After completing his review of the resolution, recommendation, and Record of Proceedings of the Board, the Secretary shall return the entire record of the case to the Board for its retention. No officer or employee of the Department participating in a proceeding on behalf of the Department shall, in any manner, prepare, assist in

preparing, advise, inform, or otherwise participate in, any review or determination of the Secretary with respect to that proceeding."

Section 1141 (d) Judicial Review:

This current lack of the Grievance Board's authority to make compliance to its ruling binding, when translated into practical terms, poses a real dilemma to the grievant. For under Section 1141 (d), the grievant who is so unfortunate as to be caught in this power play between the Grievance Board's ruling and the Department's refusal to comply is refused the right to judicial review. Refusing to allow a grievant the opportunity for judicial review constitutes a blatant violation of due process. For these reasons we believe this Section 1141 (d) should be eliminated from H.R. 4674.

IV. MINIMUM PRINCIPLES FOR AN EFFECTIVE SYSTEM:

Any legislation which promises, as does the Foreign Service Act of 79, to strengthen and improve the personnel system must provide a safe mechanism for the disclosure of agency misconduct. However, it is increasingly obvious that the Foreign Service Act of '79 fails to institutionalize effective protection for Foreign Service Officers who disclose agency abuses. It is ironic that legislation which proposes to increase "compatibility between the Foreign Service and Civil Service" actually contributes to a growing disparity between the two systems. The Civil Service Reform Act includes Foreign Service employees under the umbrella of the Office of the Special Counsel. But in terms of internal Foreign Service personnel policy, H.R. 4674 represents a major step away from the "governmental self-cleansing mechanism" established by the Reform Act. At a minimum an effective Foreign Service personnel system should include--

- 1) an explicit commitment to pursue merit system principles (5 U.S.C. 2301) and to guard against prohibited personnel practices (5 U.S.C. 2302).
- 2) establishment of structural guarantees to insure the independence of the office of the Inspector General from agency interference and pressures. The Inspector General should be appointed by the President, with the advice and consent of the Senate. But only the President should be authorized to remove the Inspector General, and only for inefficiency, neglect of duty or malfeasance. While the Inspector General Office would be formally a part of the State Department, it should present a separate budget annually for congressional approval. This would build congressional oversight into the system.
- 3) a mandatory duty to investigate any allegation of reprisal against a Foreign Service employee to determine whether the whistleblower's disclosure

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was based on a reasonable belief that illegal or improper activity had occurred, and whether there are reasonable grounds to believe the reprisal was linked to the disclosure. Whenever these conditions are met, the Inspector General should have the authority to issue recommendations for agency action to neutralize the retaliation. If the Secretary does not comply within a reasonable period, the Inspector General should have the authority to request the Merit System Protection Board to order compliance.

4) authority for the Inspector General to investigate confidential disclosures from Foreign Service employees or former employees, and order the Secretary to investigate and report on any disclosure, if the Inspector General determines that there is a substantial likelihood the information discloses violations of any law, rule or regulation, mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to the public health and safety. The Inspector General should work with the whistleblower to evaluate the adequacy of the Secretary's investigative report and corrective action. Both the report and the evaluation should be available to the public, with appropriate deletions mandated by the Privacy Act and the FOIA.

5) Authority for the Inspector General to issue a complaint to the Merit Systems Protection Board recommending disciplinary action against any official responsible for an illegal reprisal against a Foreign Service whistleblower.

6) establishment of judicial review for decisions of the Inspector General.

7) a requirement for the Inspector General to submit semi-annual reports to Congress summarizing the activities of the audit, investigative and inspection units of the Foreign Service. These reports should include instances of significant wrongdoings or patterns of wrongdoings as determined by the Inspector General; a summary of matters referred for prosecution and the results of such prosecutions; and a statistical summary of audit and inspection records completed during the reporting period. Under no circumstances should the Secretary of State be permitted to alter or delete the contents of any Inspector General reports.

8) modification of the proposed grievance system to incorporate broad jurisdiction, the employee's right to a representative of his/her choice, the right to an open hearing; Board authority to suspend contested personnel actions during pending investigations, Board authority to issue final decisions and meaningful judicial review.

We appreciate the opportunity to submit this testimony. Please do not hesitate to request our further assistance.

Sincerely,



Louis Clark,
Director



Deborah K. Burand
Intern

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APPENDIX 10

LETTER AND STATEMENT OF BREWSTER C. DENNY, DEAN, GRADUATE
SCHOOL OF PUBLIC AFFAIRS, UNIVERSITY OF WASHINGTON, COMMENT-
ING ON H.R. 4674, THE FOREIGN SERVICE ACT OF 1979

UNIVERSITY OF WASHINGTON
SEATTLE, WASHINGTON 98195

Graduate School of Public Affairs

September 24, 1979

Representative Dante B. Fascell
Chairman, Subcommittee on International Operations
Committee on Foreign Affairs
U.S. House of Representatives
Washington, D.C. 20515

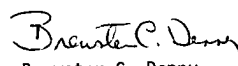
Dear Representative Fascell:

Thank you very much for your letter of August 13 asking for my comments on H.R. 4674, the Foreign Service Act of 1979. I am attaching a detailed analysis of the Bill as I see it. Overall, except for some concerns I have expressed about the closed nature of the system and some issues I have raised with respect to labor-management relations, I think it is necessary and acceptable legislation which moves in the right direction. If it can also induce top management in the State Department for years to come to devote much more attention to personnel matters than has ordinarily been the case since 1952, it will have served the public well.

Judging by the examples of its weaknesses in lateral mobility, its virtual silence on recruitment, its ignoring of the resources of higher education, I wonder if the bill may well be missing a great opportunity to take the broadest possible look at how this nation staffs its foreign operations. The recodification of the statutes affecting the foreign service necessitated by career civil service reform and other stimuli offer a great chance for the Congress and the American people to show their respect for the able men and women who have represented this country so well in the past and to establish clearly the high priority we place as a nation on assuring a high quality professional foreign service. The Rogers Act signaled that. This Act needs to do so as well. Morale in the foreign policy establishment of the U.S. is not very high at this time. The spirit and intensity of the consideration of this legislation as much as the details of the statute can make an important contribution to the future of the professional service on which so much depends.

I would welcome an opportunity to help this Committee further with this vital subject. Thank you for the opportunity to comment.

Sincerely yours,


Brewster C. Denny
Dean

BCD:pw
Enclosure

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Comments on H.R. 4674, the Foreign Service Act of 1979

by Brewster C. Denny
Dean, Graduate School of Public Affairs
University of Washington

In the main, I think the proposal is in the right direction. For the most part my comments will be confined to some specific suggestions on particular provisions of the draft law. I do wish, however, to make two brief observations on two general issues: (a) the closed nature of the system; and (b) the labor-management provisions of the proposed law.

The Closed Nature of the System

It is a well established fact that one reason the Department of State has failed to live up to its central responsibility as principal orchestrator of the full-range of American foreign policy has been the closed and often isolated nature of the personnel system which comprises the foreign service. Much progress has been made in dealing with this phenomenon and many brilliant and able career persons have worked to overcome these unfortunate features. The United States, indeed, has a superb career foreign service. But it has often been closed, tight, a little clubby and unrepresentative, tentative and defensive in its leadership. Its frequent periods of demoralization have also closed the system. Virtually all of this has been caused by forces beyond the department's control including waves of hysterical witch-hunting, periods of secretarial virtuosity and ignoring of the department, and strong and aggressive leadership by and deference to career professionals in other departments of the government. The department, moreover, has often been as undermanned and undersupported as have its bureaucratic competitors for foreign policy leadership-- Defense and CIA--been overstaffed and superbly supported. These factors far more than the structure of the personnel system have profoundly affected the foreign service.

The present bill moves some way to meet those aspects of this larger problem which such a statute can meet, but not far enough, in my judgment. I see no need to change the basic rationale of the bill to meet this need, but I have suggested throughout a number of places where the bill can provide even more support for the notion of treating the foreign service as a truly professional service which is representative of the whole government and the whole society and which is assigned the lead role in the development and conduct of American foreign and military policy.

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I recommend that the entire draft be reviewed to improve lateral mobility. Lateral entry into the foreign service by foreign affairs professionals at all levels should be specifically encouraged in this act.

In its weaknesses on lateral mobility, its virtual silence on recruitment, its ignoring of the resources of higher education, the bill may well perpetuate the closed and isolated nature of the personnel system without any appreciable improvement in the morale and status of the foreign service.

Labor-Management Relations

Let me first make a very personal statement. I do not believe that any unit of government should take action to deny the right of Americans employed by that unit to organize and bargain collectively.

The labor-management section may be the very best that can be devised under the circumstances and I am not expert enough at that subject to comment. It appears to keep the number of issues that are part of collective bargaining to those most legitimately subject to that process and apparently draws upon the federal experience in labor-management relations, which, by comparison with the experience of local and state government, at least, has been a good one. Furthermore, explicit provision for employee representation does recognize the unique need for a foreign service that has for some time been very frustrated to find a legitimate vehicle for organized expression of its professional interests.

But, I have several caveats. Let me state them quite bluntly.

There is so far as I know no case in the governmental, non-profit or academic sector where professionals of substantial rank (i.e. teachers, professors, managers, senior generalists, musicians, scientists, etc.) have been organized in the classic private sector model to the benefit of both the employees and the public good. There have been successes--considerable ones--at public sector collective bargaining, but none where as in this case very senior professionals are involved and the adversary private sector model is copied. It simply will not work.

You cannot mix a system in which all the principals operate at times in a collegial mode with common objectives and stakes, participate together in the evaluation of their own work and use a peer system for professional review and then graft on top of it an adversary us-versus-them system based on the private sector management-labor model.

I recommend that you go back to the drawing board and design a system that is designed to serve professional foreign service officers rather than to provide jobs for professional labor negotiators and consultants. The system must give the officers themselves every opportunity to express themselves and press their interests not assign their concerns to an artifi-

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cially constructed adversary process. This system will not work, although through skillful administration it could be rendered harmless, I suppose. But this case presents a really great opportunity to design a professional employee relations system which will work. I believe the foreign service may be a very ripe candidate for a first success story.

Detailed Comments

p. 2, line 6. Change "discipline" to professional. The word professional better characterizes the nature of this service.

p. 3, line 15. This statement of purpose correctly proscribes the use of age as a factor for entry into the service, but much of the system developed here works against lateral entry and therefore favors youth over middle-age.

p. 3, lines 22 and 23. What does "through their elected representatives" mean? A U.S. citizen's elected representatives are Senators and Representatives. If labor organization officers are meant, a different form should be used. Incidentally, if Section 101, (b), (4) is meant to express the basic philosophy of the employee relations section of this bill, I applaud it and hope that it can be used as a starting point for the redraft of the labor-management section.

pp. 7-8. Section 10A. Functions. This Section offers an excellent opportunity to state statutorily that under our scheme of government and management of foreign affairs, the foreign service are the principal professional colleagues of the President and the Secretary of State in the development of American foreign and national security policy and in the guidance and representation of the entire executive branch in foreign policy matters viewed broadly. Perhaps language of this broad scope should be included in the list of Findings and Objectives under Section 101. I think the Congress should make it absolutely clear that it understands the central role of the professional officers of the Department of State not only in representing the United States abroad but in policy development and leadership in the full range of foreign and national security policy. This is no threat to the position of other foreign policy professionals. In fact, such a statement would be congruous with the long-established traditions of the military and intelligence services which at their best have always overtly recognized that a principal arm of the civilian control over their foreign policy activities is the professional staff of the Department of State. Several Presidents have issued clear directives to this purpose. This legislation should do no less.

p. 9. Section 203. This section comes close to recognizing the long-established principle that the Ambassador is head of the "Country Team." But, it falls short. I assume that the phrase "except for personnel under the command of a United States area military commander" is

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a phrase of art designed to exempt only operational military units formally deployed in the country. But even those forces and that commander should not always be totally exempt from the responsibility of the Ambassador. Perhaps an additional phrase could be added: "Nothing in this section shall be interpreted as preventing the President from subordinating military commanders to the civilian authority of his appointed Chief of Mission when in the President's judgment such a command arrangement is in the interests of the United States."

If military area authority is also a word of art to exempt the CIA, I suggest it be further amended. This is a tricky and sensitive area, but I'm sure the Congress wants to support fully the country-team principle and a technical review is essential to be sure this language does. I'm not sure that is the case at present.

Sec. 204, Sec. 205, and Sec. 603. I believe that the Inspector General and the Director General should not be mandatorily chosen from the service. Most often he or she should be, of course, but I think it is a bad mistake to formally tie it down as an in-house job. The same point applies to selection boards. Several sections (604-611; 614-620) are missing and perhaps they contain the details as to how the selection boards shall be constituted. I hope that they are not made up solely of foreign service officers. I believe that is the present practice, but I think it should be explicit.

Section 206. I recommend that the Board of the Foreign Service should by statute have one or more public members.

Do Section 302(2) and 302(3) effectively prevent the President from giving the temporary personal rank of Ambassador to a person not from the Senior Foreign Service? The President should be free to do this to any U.S. citizen subject to such notification and or confirmation as the Congress should by statute provide. I recognize the desire here to clear up a previous gray area, but hasn't a new gray area been created?

The Act wisely attempts to create a Senior Foreign Service compatible with the newly established Senior Executive Service. Adopting the five percent provision from the Senior Executive Service may have the effect in this case of very severely limiting lateral temporary and permanent entry into the Senior Foreign Service. While I am in full agreement with keeping the number of flat-out political appointments down, the Senior Foreign Service needs to be able to draw upon the reservoir of foreign affairs professionals which can be found outside the Senior Foreign Service itself, not alone elsewhere in the federal government, but in universities, corporations and the professions. The effect of the manner in which the Senior Executive Service concept is adapted to the foreign service combined with some of the residuals of the old system may be an undue hamstringing of the President's and the Secretary's ability to build the Senior Foreign Service.

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Sec. 333, p. 19. Elsewhere in the Act (p. 48 (section 705) and p. 161, Section 26) excellent provision is made for attention to the career opportunities of foreign service spouses, a key problem in today's foreign service. But perhaps in the more general language of Section 333 a general requirement for the Secretary to develop policies recognizing the importance to the service of professional employment opportunities for foreign service spouses and other family members might be appropriate.

Sec. 511(b) (1). Generally this act is quite weak on mobility and exchange provisions and lateral entry, a very severe defect. In this section, for example, it takes a far weaker position on this than the Intergovernmental Personnel Act. Why can't foreign service positions be filled by people from state and local government, colleges and universities and the private sector? Are they a less relevant source than the domestic departments of the federal government? An express provision for the encouragement of lateral entry is necessary.

p. 31, Section 521(3) and (4). Why cannot colleges and universities be explicitly named as appropriate places for assignment of foreign service officers? With nonprofit institutions, commercial firms, public schools, community colleges explicitly named, why are colleges and universities excluded? Why does Section 521 apparently restrict assignment abroad for development or mobility purposes except to international organizations or other U.S. agencies? This section should be redrafted to be sure it contemplates full mobility.

Section 612(b). In listing the "precepts" for selection boards, I believe that character and integrity and an understanding of and faithfulness to the Constitution and the American system of government should be included. In para (a) of the same article, the sources of data on the officer should be expanded to include the opinions of qualified observers of the performance of the officer. Are you sure you don't mean criteria and not precepts?

Sections 641 and 642. I find the language here a little muddy. I suspect it is a weakening of the "up or out" provisions of the present foreign service system. To the extent that the effect of this language permits the careful establishment by rule and experience of an improved and flexible approach to the use of "up-or-out" I support it. But if the effect is merely to extend the average tenure and the expectation of tenure without systematic review, then I think the section must be redrafted. Perhaps the language here would be adequate with an additional general statement of policy that the selection system is designed to retain in the service until normal retirement age only those foreign service officers whose outstanding performance has resulted in their regular upward progression through the ranks and who have unique and special qualifications for such continued service.

Chapter VII is very weak on the use of colleges and universities

for the education and training of foreign service officers. Nor does this section seriously contemplate any support or encouragement by the government of the capacity of American colleges and universities to contribute to the study of foreign affairs. The closest it comes to even acknowledging the existence of higher education is a fleeting reference to the need to correlate training and instruction with courses given at other Government institutions and at private institutions which furnish training and instruction useful in the field of foreign affairs (which I think excludes all colleges and universities) and to "gratuitous assistance to nonprofit institutions operating in any of the programs under this chapter."

This omission is a very severe one. To be sure, there are only a dozen or so colleges and universities which at the present time offer research and education programs of the quality and scope needed by the Department of State. It is also true there is no need for any expansion in the number of these programs or for an increase in graduates trained in foreign affairs. Furthermore there is need for major improvements in existing programs in universities. But, the present exigencies of foreign affairs and the weaknesses of the present foreign service in several fields which only academe has the resources to remedy (economics, science, technology, and international affairs, area and language studies, multilateral programs in resources and science, policy analysis and the administration of foreign affairs programs) demand the use by the department of these resources and their systematic improvement. Responsible relationships between the Foreign Service Institute and these dozen or so colleges and universities should be mandated by the legislation. It should also not be overlooked in this legislation that a much wider number of institutions of higher learning than the few with significant programs in foreign affairs produce the vast majority of the persons who aspire to foreign service. I really don't quite know how to make specific recommendations for the redrafting of this section until I understand the thinking behind the ignoring of the vital role of higher education in the education of foreign service officers. Is it possible that the drafters of this act are waiting on the results of the work of the Perkins Commission? Much improvement and considerable redirection of university based research and graduate professional programs for foreign affairs is needed but the universities are, quite frankly, unlikely to do this unless encouraged to do so especially given the limited job opportunities in the field. The approach in this act not only doesn't encourage them, but appears to let them off the hook for any responsibility at all.

While the Bill makes some very useful moves in the direction of increased mobility and interaction with the larger society which the foreign service serves, it does not overall appear to do this in sufficient measure.

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APPENDIX 11

LETTER FROM ROBERT S. FOLSOM, FOREIGN SERVICE OFFICER, RETIRED,
TO VIRGINIA SCHLUNDT, COUNSEL, SUBCOMMITTEE ON INTERNATIONAL
OPERATIONS, CONCERNING THE FOREIGN SERVICE REORGANIZATION
BILL

7640 Tremayne Place #112
McLean, Virginia 22101
August 30, 1979

Ms. Virginia Schlundt
Special Sub-Committee on International Affairs
Room B 358, Rayburn Building
Washington, D. C. 20515

Dear Ms. Schlundt:

I refer to our telephone conversation of this morning regarding that portion of the Foreign Service Reorganization Bill formerly included in HR 2857.

First, I wish to express my wholehearted support for the principle that divorced spouses of Foreign Service Officers should receive a pension. Wives during the period of my active service (1941-1970) almost without exception contributed greatly to the success (or failure) of their husbands' careers and fully deserve a pension, if divorce later separates the couple.

In detail, however, I have reservations:

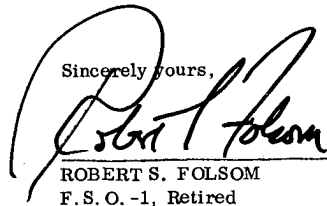
- A. The Bill as it now stands calls for a divorced spouse to receive half of the officer's pension, if she was with him for his entire career. This I regard as a bit excessive:
 1. If the wife remarries, her new husband provides her support; if ~~an~~ officer (and most retired officers are males) remarries, he is expected to support his new wife. (I realize that in younger segments of society women expect to pay their own way; this is not true nor possible for most women in the age bracket of retired officers (i. e. 60 years of age and above)). (See Congressional Record March 13, 1979, remarks of Rep. Patricia Schroeder on HR 2817, 2818 and HR 2857 regarding retirement income for spouses).
 2. It was the officer, who invested time and money in college and graduate school education to enable him to pass the Foreign Service Examinations.
 3. It was the officer's knowledge and personality, which enabled him to pass the oral examinations.
 4. It was the officer's background and character which permitted his security clearance to enter the Service.

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5. It was the officer's abilities which enabled him to stay in and advance in the Service, and which kept him from "selection out". He could have had the finest wife in the Service and still have been "selected out", had his performance been sub-standard. (Performance Evaluations were not equally weighted on performance of officer and wife. In fact, only one very small section was devoted to the wife and family and this was usually filled in with innocuous phraseology, as any fair review of pre 1972 Performance Evaluation Reports will reveal).
 6. In brief, I would consider a pension for spouses of one-third the officers' pension as both fair and generous. (To my knowledge private industry does not provide any pension for its employees' divorced spouses, nor does Congress, though in many cases, wives of executives in government and industry and wives of Senators and Congressmen contribute greatly to their careers).
- B. The Bill, as it now stands, provides the same benefits for divorced spouses who did nothing to aid their husbands' careers as for those who did much.
1. Prior to 1972, Foreign Service wives were expected to accompany their husbands abroad and to contribute to their careers. These wives should receive pensions.
 2. Since 1972, Foreign Service wives have been freed from all obligations to assist their husbands' careers. Some still help, of course. Others accompany their husbands to all or some posts, but pursue their own careers. Some do not even accompany their husbands abroad.
 3. By failure to differentiate on these facts, the current Bill gives post-1972 wives (unearned in many cases) the benefits earned by their predecessors.
 4. In brief, if the wives of active Foreign Service Officers are to receive the benefits of the legislation, they should henceforth be required by the Department of State to earn these benefits as did their predecessors, otherwise, the rationale behind the Bill is vitiated.
- C. As it now reads, the Bill provides that if a former spouse of a Foreign Service Officer remarries prior to age 60, she does not share in his pension. I suggest that this will simply result in delay of remarriage by former spouses until they attain that age. Share in pension should cease with remarriage of ~~the~~ former spouse regardless of age. (Why should retired Foreign Service Officers be singled out of American society to support the husbands of their former wives?)

I understand and expect from our telephone conversation that this letter will be entered into the Hearing process.

Sincerely yours,



ROBERT S. FOLSOM
F. S. O. -1, Retired

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APPENDIX 12

LETTER FROM HON. MARTIN F. HERZ, FORMER U.S. AMBASSADOR TO BULGARIA, TO VIRGINIA SCHLUNDT, COUNSEL, SUBCOMMITTEE ON INTERNATIONAL OPERATIONS, ELABORATING ON HIS TESTIMONY BEFORE THE SUBCOMMITTEE.

MARTIN F. HERZ
4100 CATHEDRAL AVE., N.W.
WASHINGTON, D.C. 20016

September 14, 1979.

Virginia Mona Schlundt, Esq.
Committee on Foreign Affairs
Subcommittee on International Operations
B-358 Rayburn House Office Building
Washington, D.C. 20515.

Dear Ms. Schlundt:

I probably share with other witnesses the feeling, after their testimony, that some of the "most important things" went unsaid. If you don't mind, I would like to say them now.

I am against politicizing the Senior Foreign Service because, if it becomes a layer that is uniformly subservient to a new Administration, sloughing off all those who might not be so subservient (or congenial), we would have lost a major national asset -- our country needs senior people in the Foreign Service who will make the inconvenient counter-argument, etc. I am not sure that Ms. Schroeder understood the dividing line that I was trying to draw in that respect between the Foreign and the Civil Service.

The Foreign Service is our first line of defense. It can get us into, or out of, enormous trouble. To have the entire Senior Foreign Service facing in one direction is a thought that terrifies me. To the extent that Congress can do so, it should assure that the full range of views and options is available from the Senior Foreign Service to those who formulate our foreign policies. To create, however unintentionally, the prospect that people with unwelcome views on foreign policy might simply be retired, is dangerous to our national security.

In any case, uniformity in administrative patterns, which has some advantages, is not an important end in itself. However, the merit principle, which is written into the Civil Service Act of 1978, should certainly be also applicable to the Senior Foreign Service. As you will note, one of my proposals below would extend that protection against political manipulation also to the Senior Foreign Service.

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Now, what to do if the sub-committee is sufficiently impressed by my concerns -- which I assure you are not just my own but are shared by quite a few active and retired senior Foreign Service officers -- to want to amend the bill?

Proposal No. 1: Send it back to the State Department with the request that they come up with safeguards against political abuse of the limited tenure of Senior Foreign Service officers.

Proposal No. 2: Strike the words "and prospective" from Section 612 (a) which, as I pointed out, constitute an invitation to abuse and arbitrariness.

Proposal No. 3: Give the Board of the Foreign Service (Section 206), which under the proposed legislation is an empty shell, some responsibility in connection with retention of members of the Senior Foreign Service. The present bill makes it a mere vestigial remnant of a onetime watchdog against abuse of the career principle. Give it a substantial minority of Senior Foreign Service members. And give it a role in certifying the Secretary's decisions with respect to non-renewal of SFS appointments. Suggested legislative language (I'm not very good at drafting such language, but the idea may be clear enough):

The Board of the Foreign Service shall review the group of senior officers not approved for retention under Sections 602, 603, and 641, and shall certify that they have been so designated from the lowest ranking in the lists prepared by the selection boards. The Board of the Foreign Service shall report its findings to the Secretary, the Merit Systems Protection Board, and the employees exclusive representative.

Proposal No. 4: Create a legislative history establishing that the words "as the needs of the Service may require" in Section 641 (a) and "and the needs of the Service" in Section 641 (b) are intended to preserve the normal flow pattern from junior through middle to senior ranks of a pyramidal Service, and are not intended to introduce political criteria, especially at the beginning of a new Administration; and that it is the sense of the Congress that a well-diversified Senior Foreign Service, in terms of outlook and mind-set of its members, is desirable as a safeguard against uniformity.

Proposal No. 5: Create a legislative history that Section 641 (b) is to be interpreted, and is understood in that sense by the Congress, that "the needs of the service" will apply to numbers (as defined under the preceding heading) and not in the sense that "the needs of the Service" apply to one kind of orientation in Senior Foreign Service officers and not to another -- i.e., that the recommendations of the selection boards could be implemented by sloughing off the lowest-ranking officers (in terms of performance) and not selected individuals who might be displeasing to an Administration.

Proposal No. 6: Amend Section 602 (b) of the proposed Act to make it read:

Decisions by the Secretary on promotion into and retention in the Senior Foreign Service shall take into account (1) the needs

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of the Service to provide for the admission of new members and for effective career development and career opportunities; and (2) the need of the Senior Foreign Service for a substantial minority of officers with ample experience, accumulated skills, and mature judgment derived from variegated assignments to positions of responsibility.

Proposal No. 7. Finally, somewhere the Act should provide, perhaps in the same Section 602 (b), for some anchoring of the merit principle established in the Civil Service Reform Act. Perhaps something like this would help:

In accordance with the merit principles set forth in 5 USC 2301, the Secretary shall assure that decisions and procedures for both promotion into and retention in the Senior Foreign Service provide a climate conducive to a free flow of ideas. The Secretary shall issue regulations protecting SFS members from political manipulation, favoritism, or intimidation which inhibit their contribution to the development and execution of United States foreign policies.

Ms. Schlundt, I was embarrassed not to have a ready reply to the Congressman who asked me whether a Senior Foreign Service officer might not be a "dud". My response that such a dud was not likely to have surmounted all the hurdles that got him there met with a certain hilarity that I can well understand, having come up against an occasional ass even in very high ranks of any hierarchy.

The answer that I should have given is that, as the Foreign Service Journal once put it in an editorial (in the writing of which I had a certain role), it is safer for our country to have an occasional ass in a high-ranking position than to have a whole lot of ass-kissers. (The Journal put this as "xxx-kissers", being at that time run by some rather prissy individuals. They even preceded this by saying, "As Rabelais might have said...")

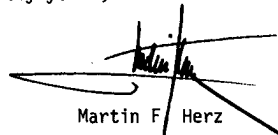
Diversity at the top, having a goodly number of experienced hands who might be inconvenient to have around or politically "embarrassing" to a new Administration, is a national asset when questions are discussed that might involve our national survival.

And I assume that Mr. Fасcell, for whom I have enormous respect, was saying things for the record when he remarked that we surely must have fair-minded and reasonable men and women at the top of the State Department and in the White House and in charge of the administration of the Foreign Service. He must know that I did not suspect the present Administration of being up to any hanky-panky with the Senior Foreign Service. But neither he nor anyone else can guarantee that the witch-hunting that took place under Secretary of State John Foster Dulles and his Deputy Under Secretary Scott McLeod might not be repeated in some other form under some future Administration whose political imperatives we cannot now foretell.

As I explained in my testimony, I believe sound public policy should not purchase relatively minor advantages at the cost of possible major future abuses; and I believe most reasonable men and women can agree -- and act -- on that principle.

If any of these thoughts can be reflected in the pending legislation, I think it would be greatly improved, and the sub-committee, even at the cost of some minor delay, would have rendered a major public service.

Sincerely yours,



Martin F. Herz

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APPENDIX 13

STATEMENT OF MIRIAM CHRISLER HILLIKER, OFFICE OF LEGISLATIVE
AFFAIRS, WOMEN'S DIVISION, BOARD OF GLOBAL MINISTRIES, UNITED
METHODIST CHURCH, ON H.R. 2857

My name is Miriam Chrisler Hilliker. I am employed by the Office of Legislative Affairs Women's Division, Board of Global Ministries, United Methodist Church. My statement is in support of H.R. 2857 which would amend the Foreign Service Act of 1946.

The Women's Division of the United Methodist Church has focused its efforts for over 100 years on the special needs of women and children. It has worked diligently in the fields of justice for women including equal pay for equal work, employment and training opportunities, better working conditions, the needs of Displaced Homemakers and the ratification of the Equal Rights Amendment.

It is no accident, therefore, that I have been asked to submit this testimony on behalf of the Women's Division as well as for my self, personally. For 25 years I was a foreign service wife. After 36 years of marriage and at almost 60 years of age I am facing an unwanted divorce. In spite of the fact that I spent years assisting my husband in his foreign service career, I will now be left with an uncertain income, no pension, no social security and totally inadequate health insurance. Due to his career and my decision to work as a homemaker, I have no recent job experience. I was fortunate to find part-time employment using my volunteer skills developed through United Methodist Women and the League of Women Voters. The income from this employment would be insufficient to support me if the proposed alimony suddenly ceased.

My plight is the same as that of such well known ex-wives of FSOs as Jane Dubs and Joanne Vaughan. It is also the same as that of numerous, literally unknown, ex-wives.

The pay of the Foreign Service Officer is not such that the average Foreign Service family builds up large real estate holdings or large scale investments of any sort.

This means that great reliance is placed on the Foreign Service pension and health insurance, especially in the later years, by both the officer and the spouse.

There is a joke common in the Department of State that the Department gets two employees for the price of one when an officer is commissioned in the Foreign Service. This has become a very bitter joke to those of us who have put in years of dedicated service both at home and abroad and now are cast off like old shoes, not only by the spouse, but by the Department as well.

Unfortunately, this happens, all too often, when the wife is too old to start in pursuit of a meaningful career of her own.

In any case, where the career has been shared for many years, the fruits of that career, on which the wife depended, should certainly also be shared. Instead ex-wives are prevented by law from having one dime as a survivor though the court may have awarded substantial alimony. The state court order is simply abrogated.

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As wives of federal employees we are not eligible for Social Security, nor for hospitalization under Medicare at 65. In most cases, even if we were to be awarded all other assets of the marriage, (and this is practically never the case) our income from what we could put into investments would not begin to equal the loss of 55% of the pension which goes to a surviving spouse if the Foreign Service Officer has deigned to so designate.

I would plead for a favorable response by members of this committee to H.R. 2857 introduced by the Honorable Patricia Schroeder of Colorado. It automatically gives to former spouses and surviving former spouses a share of the annuity directly from the funds. It is based on the time the former spouse or surviving former spouse was married to the Foreign Service Officer while he pursued his career and therefore, is eminently fair.

It is my hope and that of the Women's Division that it will be a model of legislation dealing with the same problems of wives and ex-wives whose spouses are participant in other federal pension funds as well as such funds in the private sector.

H.R. 2857 recognizes the contribution made by the wives of FSOs. It recognizes the plight of wives suddenly faced by the financial trauma of divorce. H.R. 2857 gives the Congress the opportunity to rectify a policy that is detrimental to families of FSOs. If this government is sincere in its efforts to support the family, now is the time to demonstrate it by passing H.R. 2857.

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APPENDIX 14

LETTER FROM ROGER W. JONES, CHAIRMAN, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, WASHINGTON, D.C., TO HON. DANTE B. FASCELL, CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL OPERATIONS, STATING VIEWS ON THE PROPOSED REORGANIZATION OF THE FOREIGN SERVICE

**NATIONAL ACADEMY
OF PUBLIC ADMINISTRATION**
1225 Connecticut Avenue, N.W. Washington, D.C. 20036
202/828-6500

October 18, 1979

The Honorable Dante B. Fascell
Chairman
Subcommittee on International Operations
House of Representatives
B-358 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for requesting the views of the National Academy of Public Administration on the proposed legislation to restructure the Foreign Service personnel system. The Academy welcomes this opportunity and considers it a natural follow-on to its interest in and support of the Civil Service Reform Act and its continuing appraisal of the operation of that Act.

The Academy develops and takes positions through Panels of its members. A Sub-Panel of the Panel on Civil Service Reform Implementation and Evaluation was appointed to respond to your request and it is as Chairman of that group that I write. A complete list of the members of the Sub-Panel is attached. While some of the persons listed have been contacted individually by your committee and have responded to your request, this report represents a consensus of views of all the members of the Sub-Panel.

In the processes of developing this report, the Sub-Panel has consulted with Ambassador Carol G. Laise, former Director General of the Foreign Service and with Rufus Miles, former Assistant Secretary for Administration in the Department of Health, Education, and Welfare. They were not members of the Sub-Panel and this report does not necessarily reflect their views on the legislation.

The Sub-Panel feels the proposed legislation is desirable and should be enacted into law. The significant aims of the legislation are to (1) improve management in the State Department, (2) simplify legislation relating to the Foreign Service, and (3) improve the Foreign Service personnel system. A brief comment on each of these follows.

Improving Management in State. There are a number of aspects of the legislation that will help improve management in State. The creation of the Senior Foreign Service; the emphasis on including policy and executive leadership considerations in precepts for promotion, rewards, and retention for the Senior Foreign Service; performance pay for the Senior Foreign Service; the stress on performance as a basis for promotion, pay, and retention for all members; the providing of additional increases of salary in the range based on performance for those not in the Senior Foreign Service; and the establishment of a clearer delineation between managers and others through a statutory system of labor management relations -- all have great potential for improving management in the Department.

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Simplifying Foreign Service Legislation. The draft bill puts virtually all legislation affecting the Foreign Service in one place. In addition, it greatly reduces the amount of detail in legislation, as is appropriate. The Sub-Panel's concern is that the draft legislation does not go far enough in this direction. The legislation should provide a broad base for the Department and not be an administrative manual. Provisions dealing with the role of the Inspector General (Sec. 205 - Page 11), employment of family members (Sec. 333 - Page 19), and Grievances (Chapter 11, Pages 131-145) are examples of detail in legislation that could appropriately be simplified by giving the Secretary powers to act under broad guidance from the Congress.

Improving the Foreign Service Personnel System. The proposed legislation improves the Foreign Service personnel system by making a clear distinction between the systems applicable to those expected to serve overseas and those who are expected to serve only or primarily in the United States. Changes brought about by the Civil Service Reform Act make this change possible. In addition, the legislation reduces and consolidates the number of categories under the Foreign Service personnel system -- a needed improvement.

Finally, the Sub-Panel feels that the direction of the legislation toward achieving compatibility among the various personnel systems -- the Foreign Service and Civil Service, and the systems developed under this legislation for State, AID, and ICA -- is highly desirable.

The Sub-Panel has identified a few major issues that it would like to bring to the attention of your Committee and these are contained in the paragraphs which follow. In addition, there are some details that require attention and these are listed in the attachment to this letter.

Management Officials. Section 1002 (10) of the Chapter on Labor-Management Relations contains a very restrictive definition of "management official." Unlike the private sector or the Civil Service (under Title VII of the Civil Service Reform Act), the number of management officials in the State Department under this legislation would be very small. Most supervisors and managers would be in the bargaining unit. The Sub-Panel recognizes the differences between the Foreign Service personnel system and other personnel systems both in the public and private sector; nevertheless, the Sub-Panel feels that the definition should be expanded to include anyone who serves in a management position over a period of time (e.g., a normal assignment of three years), directing an organization in achieving its goals, and who is responsible for the utilization of resources in that organization - i.e., personnel and dollars. Examples of persons to be included as management officials under this definition would be Deputy Chiefs of Mission, Principal Officers, Office Chiefs, Chief Political Officers, Chief Economic Officers, etc.. It is recognized that it would be possible for an officer to be a management official in one tour and in the bargaining unit in the following tour. This may seem to be an awkward provision but it is workable and desirable in that it safeguards the rights of management and of employees through its operation. An option which would be easier to administer although

not as desirable as the above, would be to consider all those in the Senior Foreign Service to be management officials and therefore not eligible to be in the bargaining unit.

Management Training. If State is to emphasize management in the future, it must do a great deal more in the way of providing management training for its executives and potential executives. This means that more should be done to provide training and development experiences. In the Department this includes utilizing the Foreign Service Institute; outside the Department, it means greater use of training opportunities in other parts of government, in academic institutions, and in other non-government entities. While additional language beyond that proposed in the legislation is unnecessary, the Sub-Panel recommends that the legislative history indicate that emphasis should be placed on management training and development in the future.

Performance Pay for Senior Foreign Service. The present language of the bill suggests that performance pay for the Senior Foreign Service would begin upon enactment of the legislation. Experience in the rest of government indicates that it takes time and effort to develop and put into place a performance pay system for senior executives. Accordingly, the legislation should provide for a period of at least one year before the system is fully implemented.

Selection Boards. A key to the effectiveness of the proposed system will be the Selection Boards and how they operate. The precepts given the Boards and the extent to which they follow the precepts are crucial. The Department has used public members on Selection Boards in the past and this has been done administratively. The importance of having new perspectives and understandings brought to the Boards and of insuring that persons with experience in management and performance evaluation gained outside of the Department take an active role in Board activities suggests that the public member role should be given a statutory base. The Sub-Panel recommends that at least two public members be provided by legislation for each Board, particularly for the Senior Foreign Service. Such persons should be selected for their potential contributions to the Boards on the basis of their experience and maturity and without regard to political affiliation, and should be paid a substantial per diem (e.g., as much as \$200 or the daily rate for an FSO-1).

Comparability of Personnel Systems. Chapter 12 of the proposed legislation creates a framework that could provide for an ever growing consistency in personnel systems for personnel assigned to overseas missions and posts. Implementation of this Chapter will require careful and continuous evaluation by the Executive Branch and the Congress to insure that the desirable objectives spelled out in the Chapter are attained.

Family Services. The extent to which members of families are made an integral part of the Foreign Service overseas and are given preparation to play that part is an important ingredient to the ultimate success of the

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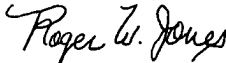
basic mission. The Sub-Panel feels that the Secretary should be given broad authority in the bill to assist family members in that role through orientation, language training, and related activities considered by the Secretary to be vital to the mission of the Department and to defray any personal expenses incurred by the family members in the process. Adequate controls can be maintained on expenditures connected with these activities through the normal appropriations process.

Foreign Service Schedule. The Panel notes that a proposed Foreign Service Schedule has not as yet been approved by the Administration and transmitted to the Congress.

Systems Oversight. The Congress may wish to consider having an outside group or groups review the operations of the personnel system established under this legislation and periodically report on the extent to which the system and the way it is being administered meets the objectives of the statute once enacted.

Again, the Sub-Panel appreciates the opportunity to comment on this legislation and would be pleased to be of any further assistance your Sub-Committee might request.

Sincerely yours,



Roger W. Jones
Chairman

Attachments

Detailed Comments HHR4675. 96th Congress, 1st Session

Sec. 203 (b), Page 10 - This Section should also apply to contract employees of U.S. agencies. Members of the Sub-Panel indicate that contract employees of U.S. agencies other than DoD military commands, have been and can be an embarrassment to the U.S. mission in a country due to their failure or refusal to keep the chief of mission fully and currently informed of their activities:

Section 302 (a) (3) Page 13 - The Sub-Panel feels that the word "all" in line 23 is bound to cause trouble. The language "relevant materials" should be adequate.

Section 311 (a) (2) and (3) Page 15 - The word "should" in both subsections should be replaced with "shall".

Section 333, Page 19 - The Sub-Panel is concerned that this section might carry with it an implied right for family members of employees overseas to government employment and the possibility that this proviso might be looked upon as compensation for loss of economic status for the family. "Another concern of the Sub-Panel is that employment of family members may impair employment opportunities for foreign nationals, a practice which is highly desirable. For these reasons, employment of family members should be used sparingly and the necessary economic assistance for families overseas should be dealt with directly and not through this provision."

Section 511, Page 30 - The fact that language requirements is an important factor in assignments should be included in this section by adding "And language requirements" in line 15.

Section 521 (b) (1) Page 32 - Change "may" to "shall" in line 10 to assure reimbursement of salaries and expenses of members of the service assigned to agencies, international organizations, and other bodies.

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Sub-Panel on Foreign Service Legislation

Roger Jones - Chairman

Mr. Jones has served in a variety of positions in the federal government over a period of forty years. Twenty of those years were spent in the Bureau of the Budget. He served as Chairman of the Civil Service Commission and Deputy Undersecretary of State for Administration. Mr. Jones has served in the public sector with most emphasis in the fields of personnel policy and labor management relations. He is currently a Member of the Board of the National Civil Service League and does various types of consulting.

Marshall Dimock

Mr. Dimock has served in various teaching positions at University of California, University of Chicago, New York University, University of Virginia, University of Michigan, University of Puerto Rico and others. He has served in senior administrative positions in the federal government and has done much consultant work in the public sector. Mr. Dimock has authored several books.

John Harr

Mr. Harr is a consultant in public policy to a variety of public and private organizations. Previously, he was an Associate of John D. Rockefeller 3rd in New York City. His former positions include Director of the Office of Management Planning in the U.S. Department of State, and Statewide Director of Communications Programs for the University of California. He also served as research associate for the Herter Committee on Foreign Affairs Personnel, and served overseas at U.S. embassies in Bonn and Tel Aviv. He is the author of The Professional Diplomat (Princeton University Press, 1969) and, with Frederick C. Mosher, of Programming Systems and Foreign Affairs Leadership (Oxford University Press, 1970).

Dwight Ink

Mr. Ink is the Director of the Office of Sponsored Research and Continuing Education at the American University. Prior to this position he has held positions as Executive Director of President Carter's Personnel Management Project, Deputy Administrator of GSA; Assistant Director of the Office of Management and Budget; First Assistant Secretary for Administration of the Department of Housing and Urban Development; Assistant General Manager, Assistant to Chairman as well as Management Assistant in U.S. Atomic Energy Commission.

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Herbert Jasper

Mr. Jasper is presently serving as Executive Vice President of the Ad Hoc Committee for Competitive Telecommunications. He has served in numerous administrative federal positions including Congressional Research Service, Senate Committee on Labor and Public Welfare, Special Assistant to the Assistant Comptroller General, Bureau of the Budget, Consultant on Congressional Budget Reform, and the Navy Department.

James Mitchell

Mr. Mitchell is presently Senior Staff Associate at The Brookings Institution and a management consultant. He has been Director of the Advanced Study Program of Brookings since 1959. He has served as management consultant, personnel officer and administrator in various levels of federal, state and local government. He was a member of the Civil Service Commission from 1948 to 1953, from 1953 to 1955 he was Deputy Assistant Secretary of Defense, and from 1955 to 1959 he served as Associate Director of the National Science Foundation.

Melbourne Spector

Mr. Spector is a consultant principally in the field of international public management. Since his retirement as a Foreign Service Officer he served as a member of the Foreign Service Grievance Board. During his federal service he divided his experience almost equally between the foreign assistance agencies and the Department of State where his positions were mainly in the managerial and administrative fields. He served as the U.S. Executive Director of the U.S.-Mexico Commission on Border Development and as Executive Director of the American Revolution Bicentennial Commission.

David Stanley

Mr. Stanley is presently engaged in studies and consulting on governmental matters. He was formerly a Senior Fellow of The Brookings Institution conducting research and writing on personnel management, criminal justice, public finance, and general administration. He has served as Director of Management Policy, Office of the Secretary, Department of Health, Education, and Welfare. Mr. Stanley has held senior positions in the Public Health Service, Atomic Energy Commission, Department of Defense, and the Veterans Administration while serving in the federal government for twenty-two years.

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APPENDIX 15

LETTER FROM ROBERT D. KRAUSE, PRESIDENT, INTERNATIONAL PERSONNEL MANAGEMENT ASSOCIATION, WASHINGTON, D.C., TO HON. DANTE B. FASCELL, CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL OPERATIONS, EXPRESSING VIEWS ON PROPOSED RESTRUCTURING OF THE FOREIGN SERVICE



International
Personnel
Management
Association

1850 K Street, N.W., Suite 870
Washington, D.C. 20006
(202) 833-5860

October 19, 1979

Mr. Dante B. Fascell, Chairman
Subcommittee on International Operations
House of Representatives
Rayburn House Office Building, Room B-358
Washington, D.C. 20515

Dear Mr. Fascell:

Thank you for the opportunity to express the views of the International Personnel Management Association (IPMA) on the Foreign Service Act of 1979, to restructure the Foreign Service personnel system. The research and care that went into the drafting of this bill are apparent and the objectives (particularly consolidating categories of Foreign Service employees, establishing a single Foreign Service salary schedule, establishing of Senior Foreign Service equivalent to the Civil Service's Senior Executive Service, and increasing compatibility between the Foreign Service and the Civil Service) are sound in terms of effective and efficient personnel management. The implementation of these objectives should enhance the ability of the Foreign Service to recruit and retain a high calibre workforce that is fully representative of the American people, and can effectively carry out this nation's foreign policy.

IPMA particularly commends the Subcommittee for its full consideration of the Civil Service Reform Act of 1978 in drafting the Foreign Service Act. IPMA was a strong supporter of Civil Service Reform and we are pleased to see the inclusion in the Foreign Service Act of the provisions that we considered to be the most essential to Civil Service Reform: the strong statement of merit principles; the move toward the use of merit pay provisions; and the creation of a Senior Foreign Service (SFS). This Association also supports the Administration's current initiative to reform federal compensation practices, and we are therefore pleased to see contained in the Foreign Service Act the use of the pay comparability principle (Section 421) and the requirement that compensation plans for foreign nationals be based upon locally prevailing rates and practices to the extent consistent with the public interest (Sec. 451 (a)(1)). This concept is a sound one that should do much to avoid the problems associated with the under or overpayment of such personnel.

We would like to caution the subcommittee that there may be need for more flexibility in the newly consolidated Foreign Service. The existing terms of Foreign Service Officer, Reserve Officer and Staff Officer have created invidious distinctions that have created morale problems. Nevertheless, any system that would create an inflexible rigidity for all foreign activities of the United States may be counter-productive.

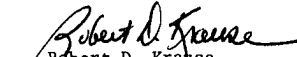
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There are clear differences in mission between the State Department and the other foreign service agencies. These require different processes for the selection and advancement of generalists and specialists at all levels of the foreign service.

We would also suggest that a strong affirmative action mandate may be appropriate in the Act. We are aware of the fine program now being administered by the Department of State. Nevertheless, the obvious need for such a program throughout the United States foreign service agencies suggests that a legislative provision would be beneficial.

You will find attached more specific comments on other sections of the bill. The Association hopes that the Subcommittee will find these remarks helpful as it proceeds to mark up the legislation. Please contact Ms. Deborah Shulman, Director of Governmental Affairs, IPMA, at 833-5860, if the Association can be of further assistance.

Sincerely,


Robert D. Krause
President

RDk:km

Enc.

Foreign Service Act: Comments

Chapter 3: Appointments

- Sec. 311(a)(2): IPMA agrees strongly with the prohibition on according the position of Chief of Mission as a reward for political contributions.
- Sec. 311 (a)(3): Similarly, IPMA supports the provision that Chiefs of Mission be appointed from the ranks of the career Foreign Service to the extent practicable.
- Sec. 321 (Senior Foreign Service):
Since this Section is analagous to the Senior Executive Service created under the Civil Service Reform Act, the Subcommittee is already well aware of the advantages of such a corps, and hence, the reasons for IPMA's support. The limitation of non-careerists to 5 per cent of the total number of SFS positions should definitely be retained as a safeguard against undue politicization of the upper levels of the Foreign Service.

Chapter 4: Compensation

- Sec. 421: IPMA supports the provisions that pay rates be based on comparability principles as established under 5 U.S.C. 5301-5308, which also applies to Civil Service employees. We point out, however, that this section may need to be amended at some point, either prior to or after the passage of the Foreign Service Act, depending on the outcome of the Federal Employee Compensation Reform Act now being considered by the Congress.
- Sec. 441: While we support the concept of authorizing the granting of salary bonuses to career members of the SFS for outstanding performance, the criteria for making such awards will need to be clearly delineated to avoid political and other abuses. Such criteria can be either legislated or accomplished administratively through implementing regulations. The law, as a minimum, should provide enough guidance for drafting adequate regulations.
- Sec. 442: As noted in the comments on Section 441, when performance and pay are related to each other, the need for certain safeguards arises: While the concept of granting or denying step increases on the basis of performance is a sound one, there is a concomitant need for the careful definition of performance standards for all positions covered as well as guidance on how these standards are to be applied to assure that selection boards will not act inconsistently or arbitrarily in evaluating relative performance.

Chapter 6: Promotion and Retention

We are not convinced that the Foreign Service is sufficiently unique to override the policy of the Congress previously expressed in the Age Discrimination in Employment Act. We believe that forced retirement of persons at the peak of their capacities is a burden that is unfair both to the individual employee and to the Government. We would suggest amendments that would comport with statutory provisions applicable to other employers.

Chapter 10: Labor-Management Relations

While it is apparent that there are differences between collective bargaining in the Civil Service/private sector (with which we are familiar), and the Foreign Service, we believe these differences are not substantial enough to warrant the inclusion of supervisors in the bargaining unit. Although it is true that strikes will be illegal under this legislation, thus eliminating the problem of supervisors striking with staff, it is still essential that supervisors consider themselves part of, and work in behalf of management. The advisability of placing supervisors in the same bargaining units as those whom they supervise should therefore be very carefully examined, as doing so would tend to isolate supervisors from management.

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APPENDIX 16

STATEMENT OF C. A. MCKINNEY, DIRECTOR OF GOVERNMENT AFFAIRS,
NATIONAL CAPITAL OFFICE, NON COMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES

MR. CHAIRMAN: The NCO Association represents more than 150,000 noncommissioned and petty officers of the United States armed forces. These NCOs and Petty Officers are on active duty, retired, in the national guard or reserve, or in a veterans' status.

These men and women make up the membership of the largest quasi-military association for career enlisted personnel. They oppose House Bill, H. R. 2857, that will "amend the Foreign Service Act of 1946 to provide for annuities to former spouses and surviving former spouses of Foreign Service Officers, if such former spouses were married to such officers during the period of creditable service."

On the surface, the proposal appears to be a justifiable vehicle that, if enacted, provides for the well-being of a former wife of a government employee who is destitute by virtue of the mechanics of an unfavorable divorce. The former wife, it is assumed, was not awarded alimony or support payments by an unsympathetic magistrate.

However, underneath the innocent provisions of H. R. 2857 lies a deep-rooted reason for the bill's existence. It appears the proposal is an attempt to establish a precedent in legislation. Once adopted by Congress, proponents will move to other areas of government employment; i.e. - civil service and the armed forces.

The NCOA believes this bill should not be approved by this panel or Congress for the following reasons:

1. - The separation and divorce of two citizens should be a matter for the local courts. Any settlement of private and/or personal properties as a result of the courts' findings should have been determined by that court and not by any legislative process. For Congress to adopt a law favoring former spouses appears to be a blanket effort to ignore any fault perpetrated by these former spouses, and points the finger of blame for the separation and divorce at the government employee - in this case, the Foreign Service Officer. It further appears that Congress may be stepping out of its traditional role as a legislature and assuming new powers of jurisprudence - the right and authority to apply the law.

2. - Former spouses certainly have redress through a formal court of law. Any favorable decree on behalf of such spouses may be applied to federal retired pay. Pursuant to Public Law 93-647, pensions of federal employees can be garnished for alimony or child support if ordered by a court following the refusal of the spouse to pay.

MR. CHAIRMAN: As the Association views it, particularly in light of Public Law 93-647, there is absolutely no need for the passage of this legislation. Therefore, the NCOA seeks disapproval of the bill, H. R. 2857.

Thank you.

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APPENDIX 17

LETTER FROM RUFUS E. MILES, JR., SENIOR FELLOW, THE WOODROW WILSON SCHOOL OF PUBLIC AND INTERNATIONAL AFFAIRS, PRINCETON UNIVERSITY TO HON. DANTE B. FASCELL, CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL OPERATIONS, GIVING A CRITIQUE OF H.R. 4674

Princeton University WOODROW WILSON SCHOOL
OF PUBLIC AND INTERNATIONAL AFFAIRS
PRINCETON, NEW JERSEY 08540

September 5, 1979

The Honorable Dante B. Fascell
Chairman, Subcommittee on International Operations
13-358 Rayburn House Office Building
House of Representatives
Washington, D.C. 20515

Dear Congressman Fascell:

This is in response to your letter of August 13, inviting me to write a critique of H.R. 4674, "The Foreign Service Act of 1979."

While neither my detailed knowledge of the operation of the Foreign Service nor the time that I have available permit me to write a critique of the bill as a whole, I have one specific recommendation stemming from my long observation of the operation of the commissioned corps of the Public Health Service when I served as Assistant Secretary for Administration of the Department of Health, Education, and Welfare.

I feel sure that one similarity between commissioned corps personnel systems is that they are dominated by senior careerists whose knowledge and perspectives may not include important recent concepts in either evaluation techniques or in other skills that may be important in a changing world. As a result, the Public Health Service commissioned corps became so ingrown in the 1950s and 1960s as to create a serious deficiency in its capacity to recognize its own problems and correct them. The Public Health Service was even more handicapped than some other organizations by its failure to have any public members of its selection boards. Such members might have helped them to recognize that their corps did not contain sufficient numbers of persons with the wide variety of skills needed for the rapidly changing missions of the Public Health Service. For certain purposes and certain positions, they needed either to fill the posts from outside the corps or undertake an extraordinary program of mid-career training for some of its most promising members.

I realize, of course, that selection boards of the Foreign Service do include public members, but I am concerned that such a practice has not been institutionalized by giving it a statutory base. As things now stand, a single Secretary of State could end the practice with the stroke of a pen. A statutory base would give the public members of the selection boards a clearer and stronger voice than some of them now feel. I am not suggesting that they should ever become the dominant voice on the selection boards, but they should know that once appointed they have both the opportunity and the responsibility to speak their minds clearly and firmly. They should know that on any matter about which they feel strongly, views will be transmitted, if they request it, to the Secretary of State.

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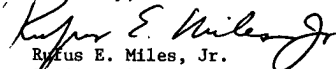
This reasoning leads me to recommend that the bill be amended to include language somewhat as follows:

Not less than one fourth of the membership of each Selection Board shall be public members who shall be appointed for overlapping terms of three years, with a limit of two terms per public member. The selection of public members shall be on the basis of breadth of understanding of the variety of missions and responsibilities of the Foreign Service and the agencies served by the Foreign Service, experience in management and evaluation of individual performance, and maturity of judgment, without regard to political affiliation. Public members may not be selected from among full-time employees of the United States Government, but may include persons from state or local government, non-profit agencies, and private employment. Public members shall be paid at a per diem rate equal to

Each Selection Board shall make its report to the Secretary of State (and to the head of the agency to which each Foreign Service officer is assigned, if it is not the Department of State). In the event any member not in agreement with the report wishes to attach a dissent, it shall be transmitted to the Secretary of State by the Chairman of the Selection Board.

Apart from this, I have no suggestions. The bill looks good to me and I would hope that it will be enacted.

Sincerely,


Rufus E. Miles, Jr.
Senior Fellow

REM/lpf

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APPENDIX 18

STATEMENT OF DONALD H. SCHWAB, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES, WITH RESPECT TO PENDING LEGISLATION TO APPORTION ANNUITIES OF FOREIGN SERVICE OFFICERS

V F W

VETERANS OF FOREIGN WARS OF THE UNITED STATES

NATIONAL LEGISLATIVE SERVICE

Office of Director

WASHINGTON, D. C.

SEPTEMBER 7, 1979

MADAM CHAIRWOMAN AND MR. CHAIRMAN:

Thank you for the privilege of presenting to this Joint Subcommittee the views of the Veterans of Foreign Wars of the United States with respect to pending legislation.

My name is Donald H. Schwab and it is my privilege to serve the 1.85 million men and women of the Veterans of Foreign Wars as their National Legislative Director.

Among the pending legislation is H.R. 2857, introduced by the Honorable Patricia Schroeder, Chairwoman of the Subcommittee on Civil Service of the House Committee on Post Office and Civil Service. The stated purpose of this legislation is to apportion the retirement annuities of Foreign Service officers between existing and former spouses of the retiree, unless the former spouse remarries before becoming 60 years of age.

It is incumbent upon me at the outset to call to your attention the fact that this bill, H.R. 2857, does not stand alone. No, it is a companion bill to

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H.R. 2817 referred to the Armed Services Committee and H.R. 2818, referred to the Committee on Post Office and Civil Service, introduced again by the Honorable Mrs. Schroeder, to apportion the retired pay and survivor annuities of Armed Forces and Federal Civilian retirees between former and present spouses under certain circumstances.

In view of the foregoing, the voting delegates to the 80th National Convention of the V.F.W., held in New Orleans, Louisiana, August 17 through 24, 1979, passed the following resolution which is herein quoted in toto:

"Resolution No. 303 ..

"APPORTIONMENT OF ARMED FORCES AND CIVIL SERVICE RETIRED PAY
AND SURVIVORS ANNUITIES

"WHEREAS, there has been introduced in the Congress of the United States proposed legislation that would take away up to 50 percentum of the annuity earned by an individual who gains retirement eligibility through Federal military service, Civil Service or foreign service; and

"WHEREAS, such legislation would allow apportionment of said retirement annuity, under certain conditions, to the former spouse of the retiree without regard to the circumstances and/or personal fault actions which caused the dissolution of the marriage; and

"WHEREAS, such legislation would permit a grossly errant former spouse to receive up to one half of the annuity earned by the military, Civil Service, or foreign service officer retiree; and

"WHEREAS, such onerous provisions would be applicable only to these Federal retirees, not to individuals entitled to an annuity under Congressional, state, or private retirement systems, and as such, are patently discriminatory against military, Civil Service or foreign service officer retirees; now, therefore

"BE IT RESOLVED, by the 80th National Convention, Veterans of Foreign Wars of the

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United States, that we oppose in the strongest possible terms the passage of any such legislation apportioning Armed Services, Civil Service, and foreign service retired pay, and survivors annuities."

The thrust of the instant legislation, H.R. 2857, and its companion bills, in our view, is an attempt to place in the category of vested property rights for former spouses the earned retired pay and elective survivor annuities of the retirees in question. Germane to this issue, in our opinion, is the Supreme Court of the United States case, *Hisquierdo v. Hisquierdo*, Docket No. 77-533, argued November 1, 1978, and decided January 22, 1979. In this case, the Supreme Court overruled the California Supreme Court and held that Railroad Retirement Act benefits may not be divided under the Community Property Law. To do so, the Court said, would deprive Mr. Hisquierdo of a portion of the benefit Congress indicated was designed for the railroad employee alone. The court also held that an offsetting award of a portion of the expected value of Mr. Hisquierdo's retirement was also barred. In view thereof, it would appear precedent has been established to support the position that earned retired pay and elective survivor annuities should not be considered community property.

Domestic relations, and that is, indeed, the real issue at hand, have historically fallen within the purview of the judicial system in our democracy. It is inconceivable that the legislative branch would presume to substitute its collective wisdom for that of judges in the several states who decide divorce cases and awards upon the merits thereof. The fact that this legislation would apply only to those who become former spouses after date of enactment of the bill makes it no more palatable.

In view of the foregoing, we ask these joint subcommittees to summarily reject the instant legislation and be not a party to advancing patently discriminatory legislation.

Thank you.

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APPENDIX 19

STATEMENT OF JOHN P. SHEFFEY, EXECUTIVE VICE PRESIDENT,
NATIONAL UNIFORMED SERVICES, ON H.R. 2857

Mr. Chairman, Gentlemen, I am John P. Sheffey, Executive Vice President of the National Association for Uniformed Services (NAUS). Our association's membership is drawn from all the seven uniformed services of the United States; active duty, retired, reserves, veterans, and their spouses or survivors. Our mission is to uphold the security of the United States by supporting activities that preserve and improve the attractiveness of service careers and sustain the morale of the uniformed services. We work on the "people things" such as pay, retirement, survivor benefits, and the traditional entitlements that make a service career a way of life rather than just a job.

I have requested permission to testify on H.R. 2857 because it is one of three House bills for the same purpose introduced by Representative Schroeder of Colorado. Her other bills, H.R. 2817 and H.R. 2818, aimed at the uniformed services and the civil service, have not had hearings as yet. They are all three highly objectionable, and I urge that the Committee on Foreign Affairs reject H.R. 2857 as a precedent for the committees that must deal with the other bills.

H.R. 2857 would provide that the divorced spouse of a Foreign Service Officer who had been married to the officer for ten years or more would have a vested interest in his retirement annuity proportionate to the years the marriage endured in relation to the total years of the officer's service.

The reasoning is that the spouse contributed to the officer's career and hence should share in the economic benefits of that career. No measure of the divorced spouse's contribution is required. She could have been a hindrance to the officer's career, as some spouses are, but it would make no difference. The marriage could have endured ten years or more only to provide a home for very young children of an officer who had no other recourse, but it would make no difference. The spouse could be wealthy or have a higher earned income

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than the retired officer, but it would make no difference. The spouse could have terminated the marriage against the wishes of the officer, but it would make no difference. Regardless of the countless different circumstances that create broken marriages, the spouse would always be entitled to a share of the officer's annuity and survivor benefits.

It is particularly ironic that the reasoning behind H.R. 2857 is that spouses of Foreign Service Officers are forced to participate in the officers' work in representing the United States overseas. This philosophy was specifically rejected by the Department of State many years ago at the demand of the officers themselves and their spouses. The officers did not want their qualifications for promotion to require participation in their activities by their spouses, and the spouses wanted an official ruling that they were not obligated to do so. State Department regulations now reflect this policy.

The impact of the policy proposed in H.R. 2857 could be even more harmful were it applied to the uniformed services as proposed in H.R. 2817. In the uniformed services, family separations are far more frequent than in other government service. This leads to many marriage breakups in which the wives who remain home when their husbands are ordered overseas find other men and divorce their husbands. In the military services, there are also many husbands who have no choice but to accept outrageous behavior by their wives because they cannot take care of young children alone. The policy proposed in H.R. 2857, H.R. 2817 and H.R. 2818 would add a crippling financial burden to the burdens such husbands already have to bear until their children are old enough that divorce is possible.

Our society has changed drastically from earlier days when divorced spouses were nearly always at great economic disadvantage. Most women today can find work at any age. Fully half of married women work - including a very large percentage of the wives at whom H.R. 2857, H.R. 2817 and H.R. 2818 are aimed. We also have a large and growing number of career female employees in all government departments, including the Foreign Service. A survey of female uniformed services career personnel by NAUS found them fully as opposed to sharing their retirement incomes with divorced spouses as were the males. Second wives and widows who were second wives, of course, oppose the concept.

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A further complication is the frequent situation in which both husband and wife are career government employees. If the proposed equity in retirement and survivor income is established, do they exchange benefits? What happens when one retires and the other does not? What happens to survivor benefits when one has more than the other; when one dies on duty and the other in retirement?

The three bills would create enormous problems for thousands of people who are innocent of any wrongdoing in marriage for the sake of a tiny handful of aged divorcees who may have been treated unfairly by their government employee spouses. It interjects the federal government in an area where it does not belong.

It is particularly obnoxious that H.R. 2857, H.R. 2817 and H.R. 2818 are directed only at employees of the Federal Government. No similar proposal has been made for the vast majority of U. S. citizens in other employment. The bills are also offensive in that causes of divorce are not taken into consideration. A spouse who had been an enormous handicap and burden to the government employee or service member would nevertheless share his or her hard-earned retirement income. Individual means are ignored. A wealthy divorced spouse would still share the retirement income of an impoverished retiree.

The military services already have enough disadvantages that discourage enlistment and retention of the high quality personnel needed. Establishment of the policy proposed in H.R. 2857 for the uniformed services as proposed in H.R. 2817 would add another.

Divorces and related property settlements are matters that should be left to the states and their courts. NAUS urges you to oppose H.R. 2857.

Thank you.

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APPENDIX 20

LETTER FROM HON. ELMER B. STAATS, COMPTROLLER GENERAL OF THE
UNITED STATES TO HON. DANTE B. FASCELL, CHAIRMAN, SUBCOM-
MITTEE ON INTERNATIONAL OPERATIONS, ANALYZING PROPOSED LEGIS-
LATION TO REFORM THE FOREIGN SERVICE PERSONNEL SYSTEM



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

July 24, 1979

B-180403
FPC-96-1-19

The Honorable Dante B. Fascell
Chairman, Subcommittee on
International Operations
Committee on Foreign Affairs
House of Representatives

Dear Mr. Chairman:

We are pleased to respond to your request that we analyze a draft of proposed legislation to reform the Foreign Service personnel system. You suggested that this analysis should include a description of perceived strengths and weaknesses, as well as possible alternatives to the solution advanced by the legislation.

According to the State Department, the last comprehensive revision of Foreign Service legislation was contained in the Foreign Service Act of 1946. The Secretary of State said that a new Foreign Service Act is needed to provide a personnel system which takes account of significantly changed circumstances.

The Secretary said that although the Foreign Service was exempted from many of the basic provisions of the Civil Service Reform Act passed by the Congress in 1978, the Department had the opportunity to draw from the features of that act where they were applicable to the unique requirements of the Foreign Service. He said that the proposed legislation would

--link the granting of career tenure, promotions, compensation, incentive pay, and retention in the Service more closely to the quality of performance;

--restore an effective "up or out" policy essential to attracting and keeping the most qualified people;

--create a new Senior Foreign Service with incentive provisions modeled on the Senior Executive Service provisions of the 1979 act;

--recognize the clear distinction between the Foreign Service and the civil service, limiting Foreign Service career status only to those people who accept the discipline of service overseas;

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- improve the management and efficiency of the Service by reducing the number of personnel categories from more than a dozen to two, with a single pay scale for both;
- place employee-management relations on a firmer and more equitable basis, establishing a new Foreign Service Labor Relations Board and a Foreign Service Impass Disputes Panel;
- mitigate the special hardships and strains on Foreign Service families, and advance equal employment opportunity and fair and equitable treatment for all;
- improve the economy and efficiency of government by promoting maximum compatibility and interchange among agencies authorized to use Foreign Service personnel; and
- foster greater compatibility between the Foreign Service and civil service.

In its analysis of the proposed legislation the Department said that, in completing its study of the Foreign Service personnel system, it took into account the pattern and direction of civil service reform incorporated in the Civil Service Reform Act of 1978 (Public Law 94-454). We supported many of the provisions which not only were included in that act but also are included in the proposed legislation to reform the Foreign Service personnel system.

The June 9, 1979, draft of the proposed legislation which we analyzed is comprehensive and should achieve its objectives. However, we believe some clarification and modification should be considered.

Section 201 designates the Secretary of State, under the direction of the President, as the single authority for prescribing regulations and delegating functions to carry out the act. Section 101(b)(9) states the objective to increase efficiency and economy by promoting maximum compatibility between the Foreign Service and the civil service. Section 1103(a)(5) of title 5 of the United States Code, as amended by the Civil Service Reform Act of 1978, vests in the Director, Office of Personnel Management, functions of executing, administering, and enforcing civil service rules and regulations of the President and laws governing the civil service. The relationship of the Secretary to the Director, Office of Personnel

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Management and their respective responsibilities for resolving conflicting personnel policies and practices in the two Services should be defined in this legislation.

Section 203 places in the chief of mission to a foreign country full responsibility for direction, coordination, and supervision of all Government officers and employees except for personnel under the command of a United States military commander. GAO, an arm of the Congress, cannot be directed or supervised by the chief of mission if we are to maintain our independence. In order to perform our work unencumbered and without risk of compromise, we suggest this section be amended as follows:

Page 10, line 12:

after "commander" add "and the United States General Accounting Office"

Page 10, line 19:

after "commander" add "and the United States General Accounting Office"

Page 11, line 5:

after "commander" add "and the United States General Accounting Office"

Page 11, following line 7:

add the following section: "(c) The United States General Accounting Office having officers and employees in a foreign country shall keep the chief of mission to the country informed of its activities and the conduct of its officers and employees shall be governed by the chief of mission's guidance."

Section 205 designates an Inspector General of the Foreign Service, who shall be appointed from among the career members of the Senior Foreign Service. In our December 6, 1978, report to the Congress on "State Department's Office Of Inspector General, Foreign Service Needs To Improve Its Internal Evaluation Process" (ID-78-19), we said that

"On the one hand, the Foreign Service Officer has extensive experience in the foreign affairs area,

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but on the other hand, this same experience could lead the officer to accept the present operating methods without raising questions that might occur to independent observers. The likelihood and the awareness that an inspector will later become one of the inspected officers in a new role as an Ambassador, deputy chief of mission, * * * could constrain him from reporting as candidly as he otherwise might."

In this report we also said that evaluations at each post at least biennially hampered to some extent the Inspector General's efforts to do a thorough analytical job.

We suggest that this section be amended as follows:

Page 11, lines 22 and 23:

delete the words "from among the career members of the Senior Foreign Service"

Page 11, line 25 and page 12, line 1:

delete "the work of each Foreign Service post at least every 3 years," and insert "the work at each Foreign Service post as he deems appropriate based on the nature and extent of activity at each post"

Page 12, lines 20 through 23:

delete, because of the above changes, the sentence "If the member so suspended is a principal officer, the Secretary may authorize a Foreign Service inspector to serve in the place of the suspended officer for a period not to exceed 90 days."

Section 441 authorizes the Secretary to determine the amount and make distribution of performance pay to members of the Senior Foreign Service. While the proposed legislation does not provide for performance pay to members to be covered under the new Foreign Service Schedule, Section 442 does provide authority for denial of step increases on the basis of a selection board finding that a member does not meet the standards of performance for his or her class. We support the concept of pay for performance, and in a July 1978 report to the Congress on "Federal Compensation Comparability: Need

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for Congressional Action" (FPCD-78-60), we recommended that a method be developed for granting within-grade salary increases based on merit for employees under the General Schedules.

Section 451 authorizes the Secretary to establish compensation plans for foreign national employees of the Service. We have issued a series of reports in recent months which showed that the Departments of State and Defense had separate pay scales in certain locations. In March 1975 we reported on "Holiday Administration Overseas: Improvements Needed To Achieve More Equitable Treatment Of Employees" (ID-75-42) and in December 1977 we reported on our continued concern about the need for improving holiday administration (ID-78-7). We suggest that this section be amended as follows:

Page 27, line 9:

after "for foreign national employees of the Service"
add "in consultation with other Government agencies including personnel under the command of a United States area military commander,"

Page 27, line 18:

delete the line "plans established under this section may include" and insert "plans established under this section should include a consideration for the number of holidays authorized and may include"

Section 451, together with Section 333, authorizes the Secretary to employ family members of Government personnel overseas and pay them in accordance with local compensation plans or the Foreign Service Schedule. The Department's analysis does not discuss the circumstances which would warrant paying family members under either plan. Also, the Department of Justice expressed the view that a similar Department of Defense dependent-preference hiring program to be in violation of the Veterans Preference Act.

Section 705 authorizes the Secretary to provide professional career counseling, advice, and placement assistance to members and former members of the Service to facilitate their transition from the Service. We have not found this assistance to former members authorized in the present act, and the Department has not discussed it in its analysis of the proposed legislation.

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Chapter 8 restates, without any major changes, the current provisions of the Foreign Service Retirement and Disability System. In considering the proposed legislation, we believe the Congress should review the need for continuing a separate retirement system for Foreign Service personnel.

In our December 29, 1978, report to the Congress on "Need For Overall Policy and Coordinated Management of Federal Retirement Systems" (FPCD-78-49), we noted that the Foreign Service retirement system differs from the civil service retirement system primarily in lower age and service requirements for voluntary retirement. Under the Foreign Service system a member may retire at age 50 after 20 years' service and receive an annuity equal to 40 percent of his or her high-3 years' average salary. In contrast, under the civil service system a member with 20 years' service must be at least age 60 to be eligible for voluntary retirement and would receive an annuity equal to 36.25 percent of his high-3 years' average salary.

The Foreign Service's 50/20 retirement provision was introduced by the same legislation that established a "selection-out" system for service members. Basically, the selection-out system (as it exists today and as continued in Sections 641-651 of the proposed legislation) requires the involuntary separation of members who fail to be promoted within prescribed periods or who fail to meet established standards of performance. According to legislative history, the 50/20 retirement provision was made necessary by the selection-out system. The reasoning was that allowing members to retire after 20 years' service would lighten the pressure of the selection-out system.

In our report cited above we questioned whether the selection-out system justifies the early retirement provision. We suggested that those selected out could be accommodated by the involuntary retirement provisions (eligibility at age 50 with 20 years' service or at any age with 25 years' service) that now exist under the civil service retirement system.

Section 901 authorizes the Secretary to pay certain travel, leave, and other benefits to which members of the Service and their families are not now entitled. For example, Section 901(15) would provide travel and relocation expenses of members of the Service, and members of their families, assigned "within" the United States. However,

the Department's analysis states that this covers relocation expenses on assignments "to or within" the United States. This would include reimbursement for certain real estate expenses of Service members transferred to the United States from a foreign area in which entitlement to Government quarters or quarters allowance should offset entitlement to reimbursement for real estate transactions. The Department did not comment, in its analysis, on several other substantive points contained in Section 901 which would liberalize entitlements or ease restrictions in the current law.

In our September 9, 1974, report to the Congress on "Fundamental Changes Needed To Achieve A Uniform Government-wide Overseas Benefits and Allowances System for U.S. Employees" (B-180403), we discussed differences in the types of benefits and allowances provided to civilian employees overseas in various agencies and within the same agency. It appears that entitlements included in Section 901 of the proposed legislation could result in perpetuating non-uniformity.

To provide benefits consistently to all overseas employees and their families, we suggest that Section 901 be amended as follows:

Page 106, line 9:

delete "of members of the Service and their families" and insert "of members of the Service, except locally-hired personnel, who are citizens of the United States, and their families, benefits consistent with those paid employees of all other Government agencies assigned to posts in foreign areas"

Chapter 10, Labor-Management Relations, closely parallels Title VII, Federal Service Labor-Management Relations of the Civil Service Reform Act of 1978. Section 1011 creates a Foreign Service Labor Relations Board of three members, to be chaired by the Chairman of the Federal Labor Relations Authority established under the Civil Service Reform Act. Section 1012(b) provides that, in the exercise of its responsibilities, the board shall give such considerations as it deems appropriate to the decisions of the Federal Labor Relations Authority.

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Subject 2201(a)(4), "Sec. 27 Use of Vehicles," provides that the Secretary may authorize any principal officer to approve the use of Government owned or leased vehicles at the principal officer's post for transportation of United States Government employees and their families when public transportation is unsafe or not available. We suggest that this section be amended as follows:

Page 183, line 2:

after "unsafe or not available." add "The Department will charge the employee an appropriate fee for this service."

Section 2202(a) amends the Peace Corps Act. In our February 6, 1979, report on "Changes Needed for A Better Peace Corps" (ID-78-26), we said that a high staff turnover rate had been a problem to Peace Corps, and we believed that the 5-year rule was responsible for a large percentage of the turnover. Consistent with the recommendation we made in that report, we suggest that this section be amended as follows:

Page 192, line 7:

after "one year on an individual basis:" add "provided, however, that the Director, Peace Corps, make a study of the 5-year rule to determine if the rule is desirable and report his findings to the Congress within 1 year of the effective date of this act; and"

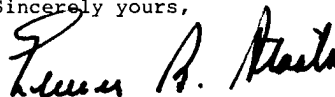
The Department's section-by-section analysis of Title II states that:

"* * * in section 2106, heads of other agencies employing Foreign Service personnel are authorized to perform any of the functions of the Secretary with respect to Foreign Service Personnel in their agencies, and to consult with Secretary in doing so."

We read Section 2106 of Title II as requiring, as opposed to authorizing the specified heads of agencies to consult with the Secretary of State in the exercise of the subject functions. In addition, we believe this example is indicative of general imprecision in the statutory language delegating authority to the specified agency heads which is compounded by the Department's inconsistent interpretation of such delegations.

I trust this letter will meet your needs.

Sincerely yours,



Comptroller General
of the United States

APPENDIX 21

STATEMENT OF BERNARD WIESMAN, PRESIDENT OF THE FOREIGN AFFAIRS
EMPLOYEES COUNCIL, AMERICAN FEDERATION OF GOVERNMENT EM-
PLOYEES, ON THE PROPOSED REWRITING OF THE FOREIGN SERVICE ACT

Foreign
Affairs
Employees
Council

P.O. Box 19443
20th Street Station
Washington, D.C. 20036

Affiliated with the American Federation of Government Employees, AFL-CIO

9 July 1979

The Secretary of State has asked Congress to enact a new Foreign Service Act and to complete the task this year. He did so on June 21 when less than six months of Congressional deliberation are possible and even then he was unable to present to the joint committees any final agreed-upon text from the Executive Branch.

The Foreign Service Act of 1924, while often amended, has been rewritten only once and that was in 1946 when World War II had dramatized the extreme inadequacy of the pre-war diplomatic machinery.

If a similar emergency exists today, revision should indeed become a top priority for this Congress. No such hypothesis should be accepted, however, without clear proof: first, of actual emergency; secondly, of persuasive evidence that the specific legislative changes are required; and thirdly, of plausible argument that the requested revision would actually produce beneficial results.

I submit that no showing of real urgency has been offered. I suggest that the inability of the Executive Branch to agree upon a basic text prior to June 21 indicates inadequate study, inconclusive discussion, and cut-and-paste draftsmanship. I believe that some of the proposed changes would be more destructive than constructive.

As the Commission on the Organization of the Government for the Conduct of Foreign Policy ("Murphy Commission") concluded in June, 1975 after an intensive study of State's personnel, "the problem is not statutory!"

The asserted purpose of the Secretary's presentation is to correct trouble in the Foreign Service which was created not by statute but by management fiat. It can be corrected as easily by administrative regulation. In fact, much of the Secretary's text would

Serving employees of the Department of State, International Communication Agency, Agency for International Development, Arms Control and Disarmament Agency, and Overseas Private Investment Corporation

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constitute a Congressional repealer of a personnel system concocted under the mantle of previous Secretaries by bureaucratic assertions of statutory authorization. To those of us who spent time and money in protracted effort to prevent the original abuse, the Department's present proposals seem both sanctimonious and farcical.

We are indeed eager to achieve some minor amendments of the Foreign Service Act, but we see great danger in any hasty rewriting of a 55-year-old statute which is broad enough to encompass by competent management almost all the provisions which the Secretary asks you to engrave into the U.S. Code. As for any ^{such} legislation, careful research and discussion should be a prerequisite to your consideration. Delay will be far less dangerous than any premature tinkering with an intricate system.

Let me demonstrate the prudence of my advice by a summarization of the recent personnel history of the Department of State and the International Communication Agency (formerly U.S. Information Agency) where I was employed from January 1 of 1945 until my voluntary retirement as a GS-15 in 1970 and in which I have been an officer of AFGE 1812 since it was chartered in January 1, 1958. I shall mention A.I.D. only briefly because its system has been generally quite separate from State and I.C.A., but I do call attention to the fact that the same Executive Branch which sponsors most, if perhaps not all, of the Secretary's text has similarly endorsed a personnel plan for AID which is diametrically opposite the Department's proposal.

In sketching this history as briefly as possible, I urge your Committees not merely to accept my recital but to subject my comments to detailed study by your staffs or by the Library of Congress or the G.A.O.

ORIGINS OF THE PROBLEM

The Rogers Act of 1924 climaxed many years of effort to build a career service by combining the Diplomatic Service and the Consular Service into the Foreign Service of the United States. The aim was to create a highly professional corps of carefully chosen officers who would progress from junior officer even to ambassadorial rank and eventual retirement. It was to professionalize, to avoid politicalization of, the Foreign Service. The current proposal would at top grades reverse that commitment.

The Foreign Service Act of 1946 was framed as an outgrowth of the experience in World War II when the small corps of professionals had to

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be greatly augmented by experts from many fields. Under the Act, the Foreign Service Officer was to be the professional diplomat, the careerist for service abroad; the FS Reserve Officer was to be an expert appointed for a tour of not over 5 years to supply skills needed in the Foreign Service; FS Staff officers were to supply clerical or technical services abroad; Civil Service officers who might be appointed as FSR experts were to be assured resumption of GS status in the Government agency from which they had been recruited. Within the Department, the Civil Service Act continued to govern domestic staffing with the continuity customary in any agency. Only FSOs were originally covered by the Foreign Service Retirement and Disability System. Thus a Ralph Bunche, for example, who came in during the war as a G.S. officer to provide domestic guidance on dependent areas continued as such even when detailed to a series of international conferences.

The Foreign Service Act of 1946 set forth first as a purpose, and still does even after 34 years of amendments, "to enable the Foreign Service to serve abroad the interests of the United States."

Well, what Secretary Vance is asking now in effect is merely to reiterate that basic criterion of the Foreign Service and to end the distortion of the FS Reserve by which his predecessors had induced by stick and carrot so many hundreds of GS employees, new or old, into an obviously self-contradictory "domestic Foreign Service."

If an amendment to the law were needed to accomplish this reform, I would urge immediate action. But let us look at the record. In ^{USIA}, where a previous management had dutifully followed State's dictum and created an identical "Foreign Affairs Specialist" system, an intelligent leadership sat down with AFGE 1812 as the exclusive bargaining agent for both GS and FS and negotiated a simple and sensible formula to restore the 1946 principles to all future recruitment and staffing, making due allowance for the rights of those who had been induced to enter the FAS program. This course was ratified by the present Director of ICA, a career officer who had witnessed the abortive experiment.

Why can't State do likewise now, instead of asking Congress to put into rigid statute what management can do by regulation? I suggest that State's personnel management has for many years been exceptionally incompetent and evasive. For many years its people found the restrictions of the Civil Service uncomfortable. They longed for the so-called flexibil-

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ity of the Foreign Service where an officer could be moved about at will and controlled by the spectre of selection-out. Now, having been forced to operate the long-touted unified system, they seem unwilling to accept the responsibility of undoing their own concoction and, once again, prefer to dream up another grand plan to merchandise.

It has been almost routine procedure for many years to have special studies made as to how foreign affairs should be administered. Usually State has been well represented on the commissions created for this purpose.

The first Hoover Commission of 1949, the Rowe Committee of 1950, and the Wriston Committee of 1954 all assumed that the Departmental and Foreign staffs should be combined under Foreign Service. Hence from 1954 to 1957, "Wristonization" was the order of the day, with Civil Service officers facing orders to join Foreign Service or seek employment elsewhere. An PSO corps of some 1900 in 1954 became a Wristonized force of 3,700. Though once dogma in Foggy Bottom, the Wristonization program in retrospect is now generally admitted to have been a gross example of overkill.

Prior to Wristonization, relatively few PSOs were assigned to Washington duty but the Congressional directive that PSOs must be "reAmericanized" by a required tour of at least three out of the first fifteen years of duty ^{in expressed the number substantially} ~~For such assignments, PSOs had to demonstrate qualifications for whatever position they were given and had to be paid extra if the Civil Service position level exceeded the salary for the FS class of the assignee.~~

In 1960, to facilitate "reAmericanization" assignments to the U.S. and for the stated purpose of saving the estimated \$200,000 to \$300,000 added pay costs, the Department sought and secured an amendment to authorize the Secretary "notwithstanding the provisions of the Classification Act of 1949 as amended to classify positions in or under the Department which he designates as Foreign Service officer positions to be occupied by officers or employees of the Service" (Section 441B). Legislative history is sparse. The Department stated its need and the estimated savings; Congress enacted the provision, not to displace GS employees but simply to facilitate temporary placement of FS officers while on U.S. duty. No mention was made of FS Reservists who, after all, were to be hired only for temporary duty overseas and not to need "reAmericanization"

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The postwar proliferation of overseas functions for the Department of State and of domestic agencies with overseas involvements brought extensive use of reserve and staff appointments. The Marshall Plan was but one example of overseas staffing under separate administration. In 1953, when Secretary Dulles sought to concentrate the Department's energies on political and economic issues and avoid the distractions of other functions, the postwar overseas information and exchange activities were taken out of State and placed in a new agency, the U.S. Information Agency. Authorities were delegated to USIA for appointment of PSS and FSRs, both serving under the CS Retirement system.

Meanwhile, following another study, this time by the Herter Commission, Deputy Under Secretary William J. Crockett proposed to bring all overseas ^{civilian} officers under State's Foreign Service and to bring all domestic positions in State, USIA, and AID, even typists and messengers, into a new Foreign Service category. Other agencies balked at the plan and it was further modified after arrival on the Hill where it became the Hays Bill of 1965, endorsed by President Johnson and the Civil Service Commission. Sharp opposition by AFGE, AFL-CIO, and veterans groups almost blocked approval in the House and led to the designation of a special subcommittee in the Senate to examine the Bill and an accompanying proposal to appoint almost all ^{USA} "FS Career Reserve" officers as FS Officers. By late 1968, the Senate Committee on Foreign Relations effectively buried the measure.

Even though the Department had argued that passage of the Hays Bill was necessary in order to authorize the Foreign Service to take over the domestic staffing of State, AID, and USIA, Deputy Under Secretary Crockett blandly asserted that the Department could proceed by administrative action to accomplish what it had failed to win through legislation. He said the process would merely take more time. He proceeded to offer Foreign Service appointments to GS officers with salary increases of varying amounts and at the same time to announce that GS officers would have little chance of ever getting promoted.

State and later USIA negotiated an agreement with Civil Service whereby career FS officers with 3 years experience could receive GS career status within their areas of competence and GS careerists could get FS tenure. This simplified the Crockett operation even though it did not purport to legitimize FS displacement of GS staffing.

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Within USIA, a different course was being followed. The Senate had also refused to consent to the Rowan-Rusk agreement fostered by Crockett for appointment of veteran FSR-USIA officers to PSO status. The new Director, Leonard Marks, informed AFGE 1812 that he would make every effort to win career status for overseas staffers and invited the Local to cooperate by offering suggestions. #1812 responded with a full text, some of which Marks believed would never receive the required concurrence of State, where Crockett had been succeeded by a protégé, Idar Rimstad. A compromise was readily agreed upon. Marks, for example, promised to eliminate the secrecy of "development appraisal reports" within GS by his own authority and to work towards elimination within FS where State was in violation of the obvious intent of a statutory provision permitting officers to have access to their personnel records.

With Administration approval, a Bill to create a career FS system for USIA was introduced in early 1967, sponsored by Senator Pell. It conferred upon the Director of USIA the same authorities with respect to USIA FS personnel as those lodged in the Secretary of State for State's FS and brought FS Information Officers within the FS Retirement System. It also gave USIA FSS personnel the same FS retirement provisions as had a few years earlier been given State's. The Bill moved through the Senate but encountered delays in the House Subcommittee chaired by Wayne Hays.

After public hearings had been completed by that subcommittee in the spring of 1968, Chairman Hays called State and USIA management to conference with himself and his staff. He demanded that the USIA legislation amending the FS Act include a never-before discussed provision to grant tenure and FS Retirement coverage to FS Reserve officers after at least three and not more than 5 years of satisfactory service if State or USIA certifies a need for their services. If not so appointed as FSR with Unlimited Tenure, ^{or moved into FS or GS} the individual must be terminated. He asserted that State had abused the FSR authority and kept many officers dangling even after 15 or 20 years service, with the constant threat also that State's authority to extend the 5 year appointments dependent upon a waiver in the annual Appropriation bill where a single Member could eliminate it by a point of order (as had recently occurred temporarily). State's representatives accepted this far-reaching amendment with

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an alacrity which later seemed of possible significance. USIA and #1812 saw the new provision as not harmful to the career legislation and agreed. Chairman Hays directed his staff to draft the language, add it to the Bill and report the measure to the full Committee. The text was accepted without further hearing. With the same explanation offered on the floor by Chairman Hays, the amended Bill was approved at 12.05pm on August 2, 1968, reported to the Senate where the amendment was accepted and the Bill enacted at 1.40pm on the same day.

After the Bill had been signed, the leadership of AFSA called a public meeting on September 6 to demand that the new FSRU category be "frozen" until a number of steps be taken and until after the arrival of the next Administration. It was denounced as constituting a new career category, creating a drain on the FS Retirement Fund, and inviting politicization. AFGE responded by insisting that AFSA not interfere with USIA's implementation of its career legislation, and noting that AFSA had actually endorsed the amended measure prior to House approval.

Prior to September 6, USIA and AFGE had readily accepted a draft Executive Order which called for a minimum of 5 years overseas service for eligibility for FS Retirement. Later we learned that the draft EO had been shelved because State preferred the greater flexibility of a Departmental regulation. No such restriction was ever promulgated.

RISE AND FALL OF THE "PAS"

In November, 1968, the American Foreign Service Association unveiled a plan for reorganizing the Department of State and the Foreign Service along the lines of the repudiated Hays Bill. The lengthy text, entitled "Toward a Modern Diplomacy", produced under a foundation grant, prefaced by Ambassador Graham Martin, and highly publicized was never submitted to AFSA membership but, except when specific aspects were challenged, praised as an AFSA initiative. The plan would make USIA a unit within State, speed up promotions through greater use of selection out, and bring GS people into the FS system.

Management in State praised the initiative of its professional association. The new Deputy Under Secretary, William Macomber responded by setting up an elaborate apparatus with 250 professionals serving in 13 task forces to make recommendations on reorganization. They spent countless hours and produced a 610 page "Program of Management Reform for the Department of State" entitled "Diplomacy for the '70s"

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Extensively ballyhooed in the press as an example of self-analysis, admission of failures, and sweeping reform, the 500 recommendations were included in the November 30, 1970 report to the Secretary of State.

The central proposal was "that all officer-level positions in the Department and abroad be brought into a unified personnel system" by using the authority of Public Law 90-494 of August, 1968 (the USIA Career FS Act) which created the new category of Foreign Service Reserve Officer with Unlimited Tenure. The Report asserted that this authority would permit the establishment of a career system of "Foreign Affairs Specialists" (FAS) parallel to the FS Officer and FS Information Officer Corps.

In briefing critical AFGE officers, Department sponsors stressed the advantages of flexibility in assignments but acknowledged that their goals were to bring all officers under selection-out and under mandatory retirement at age 60. To achieve these goals, they asserted that the expenses due to the announced conversion scale, faster in-class promotions, and higher annuities would be well justified even if it might take 10 or 20 years to complete the conversion through the "voluntary" system.

The FAS program was introduced in State early in 1971 with GS, FSR and FSS personnel invited to apply for the financial advantages and promotional prospects. Non-volunteers were reminded that they could remain in GS and wither on the vine of professional stagnation.

In USIA where Deputy Director Henry Loomis had already been implementing a program of hiring or promoting only through FS wherever at all possible and of terminating FSRs at age 60, the FAS program was not formally initiated until late spring.

After futile expressions of opposition to management, Locals 1534 in State-AID and 1812 in USIA appealed to national AFGE for advice and assistance against the FAS plan and also against FS selections out without appeals procedure, due process, or fair hearing. The latter is discussed below.

Upon General Counsel advice that the FAS plan was a clear violation of the Civil Service law and unauthorized under PL 90-494, the AFGE Legal defense Fund went into court. In August, 1971 a preliminary injunction was issued by Judge Howard-Corcoran with a finding that the Government

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had failed to show how PL 90-494 could possibly justify the wholesale substitution of "FAS" for the Civil Service System. Instead of waiting for a hearing before Judge Corcoran, State went to the Appeals Court and shifted its argument around to the allegation that the 1960 amendment authorized the plan. The vagueness of that amendment, originally justified as needed for the temporary placement of FSOs in Departmental positions during their "reAmericanization" tours, enabled the Government lawyers to persuade the Appeals Court to modify the injunction and return the case to the District Court. This time Judge Corcoran again declared that PL 90-494 clearly permitted appointment only of FSRs after 3 years as FSRUs (FAS) and that GS, FSOs, PSIOs, FSS could not be appointed into immediate Unlimited tenure as FAS. The 1960 authority to designate Departmental positions for FS occupancy somehow seemed to him to justify the FAS innovation. While the issue of appointment of FSRs for domestic staffing had not been specifically raised, the judge volunteered the opinion that the advantages of a single system had been affirmed by various study groups and was an initiative within the prerogatives of management.

To the disappointment of the union, management decided to proceed with the plan, postponing for three years the date upon which FSRU appointments could be made for GS and FSS officers but urging employees to apply for FSR appointments with various safeguards including retreat rights to GS effective up to such time as the FSRU status could be granted. Those already labeled FAS were treated as FSRs from the date of appointment.

AFGE could not appeal the decision because of the Court's finding that PL 90-494 had been misused, but we continued to regard the use of FSRs for domestic staffing a violation of both FS and CS Acts. We protested to Congressional chairmen, CSC, and GAO and even the Civil Service Reform League and received no response. Because of the illness of original counsel, delay occurred until Lawrence Speiser was engaged to file a new suit specifically on the misuse of the FSR appointing authority. Judge Gerhard Gesell dismissed the second suit, agreeing with State's insistence that the issue was "res judicata."

Having spent nearly \$50,000 in legal costs and many months of unpaid labor, AFGE 1812 reluctantly advised members that, whatever our opinion might be, the modified FAS plan had been sanctioned by court decisions.

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and the tacit acceptance of other authorities and that accordingly they should accept or reject the FS appointments according to the specific advantages or disadvantages of their individual circumstances under management's clearcut commitments.

Experience with the FAS program proved disappointing. The alleged disadvantages of flexibility were largely illusory. Except where personnel had remained unchanged, professional expertise was impaired and morale suffered.

The extensive reports of the Stanton Panel on March 11, 1975 and of the Murphy Commission in June, 1975 not only examined the scope of the conduct of foreign policy but also drew attention to the shortcomings of the FAS system. No longer did the concept of a unified Foreign Service seem a panacea. Congress prodded State to report on it.

Deputy Under Secretary Eagleburger and Ambassador Carol Laise as Director General of the Foreign Service came to the conclusion that the FAS program had been a mistake and that Civil Service recruitment should be resumed. Formal decision as to the future of the FAS plan was suspended because of the change in Administration.

When State's decision to abandon the concept of a unified service was communicated to USIA, management arranged a two-day conference with AFGE 1812 officers to examine ways in which the FAS program could be dismantled to constructive advantage without abrogating the commitments of management, based on court decision and apparent Congressional acquiescence. Agreement was readily reached. Essentially it was decided that FAS in the future would be used for specialists who must serve overseas at least part of the time but no new appointments would be made for domestic staffing. Those domestic specialists who had enrolled before the effective date could either retain their FAS status or revert to GS. Through formal agreement, details as to interrelationship were defined. USIA (now ICA) moved promptly to implement the decision.

The Department of State, however, has not used the management prerogative to reorganize FAS even though it had found that prerogative sufficient to institute the program. Instead State comes to Congress to seek statutory definition on FAS but does so with a proposal for other change in the FS system.

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REFORMING STATE'S FS

The foregoing record of State's costly experiment with the FAS program is one indication of the fallibility of State's personnel administration. Another instance is its long-time abuse of FS personnel evaluation and selection-out.

While records of selection-out are difficult to ascertain, it was clear from the Herter Commission report that the number had increased substantially in the early 60's following the large increase in FS staffing through Wristonization and political appointments. What had been a rarely used device for inducing "voluntary" retirements had become a savage Reduction-in-Force operated under arbitrary decisions and no procedure for appeals, but with top management deciding behind closed doors which individuals should be spared. Even though Congress had provided that an officer must be allowed to see his personnel records, State adopted a system of "Development Appraisal Reports" held secret from the appraised officer but shown to selection boards as candid evaluations of individual potential and hence of major weight in deciding ranking for promotion or selection-out. An officer in the bottom ten percent in rankings for two out of the previous three years was in those days subject to selection-out, even though he might be a completely satisfactory officer. The star chamber character of the process also permitted abuse; removal of papers from the personnel folder, or insertion temporarily of others, is alleged to have occurred under at least one top official no longer in the Department.

In USIA a budget cut in 1970 forced the agency to slash its FS staff in late spring. Despite its pledge not to select-out until after at least two selection boards had ranked officers after the 1968 passage of the career legislation, management consulted with AFGE 1812 as to how the cut could be made. It was conceded that the selection-out process would be the fairest approach provided that a board of review would examine all prospective removals. This decision was facilitated by the coincidence that a long delayed cost-of-living adjustment of about 10 percent, which AFGE had been very instrumental in winning after long and futile effort by the Diplomatic and Consular Officers Retired(DACOR), would become available to those choosing to retire. However, the cut removed over 120 officers, over 10% of FSIOs and FSRUs, with significant concentration on the officers around age 60, and

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while the review process exempted a few from termination, it proved to be a makeshift device incapable of anything approaching due process.

Hence, when Local 1534 and Local 1812 appealed to the National Office on the PAS issue, equal time was devoted to discussing the inequity of existing selection-out processes. Executive VP Clyde Webber suggested that the two unions join in a Foreign Affairs Employees Council-AFGE and consider as a Council the setting up of a legal defense fund through which members and friends of the foreign affairs community could pool resources for defense of constitutional rights of employees and for handling issues of group concern. Both locals agreed and applied for a council charter which was promptly granted.

While the papers were being processed for the Fund, the tragic suicide of Charles William Thomas occurred. No case more graphically demonstrated the injustice of the Foreign Service personnel system as conducted by State. He had never been low ranked but primarily because highly commendatory evaluations had been erroneously filed in the folder of another officer of the same name, he had been passed over for promotion. And State then shortened the time-in-class requirement for selection-out. Repeated efforts to secure review simply led to a stiffening of Departmental attitudes against him, even to the extent of obstructing his efforts to secure other employment. Being only a Class IV officer and under 50, he was ineligible for any FS annuity until age 60. Heavily in debt he considered withdrawing his FS Fund contributions but instead committed suicide in order to win a survivors' annuity for his wife and two daughters. His action shocked the foreign affairs community where he and his family were widely and favorably known. The facts in his case are a matter of public record in the Senate report by which a posthumous award was voted and approved by President Ford.

Fund officers decided, with Mrs. Thomas' permission to name the new unit the Charles William Thomas Memorial Legal Defense Fund. Retired Ambassador Fulton Freeman, who had authored the misfiled commendation, acted as convening chairman of the National Advisory Committee for the Fund. Application for income tax exemption was filed and achieved after 1½ years' effort. The firm of Hogan and Hartson was retained to test the constitutionality of State's Foreign Service procedures.

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As an effort to secure reform and relief without litigation, Fund officers and counsel laid the draft papers before the Assistant Secretary and the Director General, including specific cases of inequity, and urged that selections-out be suspended while corrective measures were being considered. A moratorium was agreed upon and continued for about two years. Although State worked out settlements with some of the named plaintiffs, including reappointment of at least one who had been selected out, it refused to afford the remedies which the Fund deemed essential. The facts were presented, therefore, to the Federal Court in Lindsay v Kissinger on behalf of four named plaintiffs. Judge Gerhard Gesell agreed that Constitutional rights to due process and fair hearing had been violated and must be provided to the plaintiffs (Dec. 12, 1973: CA 1312-73). It is noteworthy that, despite failure to appeal the Court's decision, State evaded compliance with the order and left the plaintiffs dangling until the Fund went back to court almost one year later for a show cause order. Judge Gesell's oral comments to the Government attorney were so explicit as to cause both State and USIA to arrange hearings without further delay. All four plaintiffs were found to deserve retention despite the earlier selection-out orders.

The Fund's efforts to secure basic reform were being paralleled, meanwhile on Capitol Hill where the Senate Committee on Foreign Relations held special hearings on State's grievance procedure-or on the lack of it. In 1972 the Senate three times passed bills to set up grievance procedures in the Foreign Service, but each time State and Chairman Hays blocked House action. Sponsored by Senator Bayh, the Senate again acted in 1973 and '74 but the bills did not reach the House floor.

State had attempted to cope with the demands for reform by providing virtual assurance that Class V and IV officers would not be selected-out for time in class before age 50 when they would be eligible for retirement annuities. State also set up a FS Grievance Board for all three agencies even while resisting any statutory system. Soon, as the Board began to order relief in individual cases, the agencies sought to evade. Finally the Board decided that its credibility and effectiveness were being so impaired that the public members announced they would quit.

This led to State's acceptance of a statutory system but only after negotiating for AFSA's acceptance of a weaker Bill which was thereupon

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cleared through the House and enacted in the winter of 1975.

LABOR-MANAGEMENT

In addition to protection afforded by the grievance board system against prejudicially erroneous evaluations, substantial protection against arbitrary or unfair practices by management has been built up through procedures negotiated under EO 11636 and union-management relations even earlier.

Representation of personnel in the foreign affairs agencies is a relatively recent development, especially in the Foreign Service.

One of the first locals in the American Federation of Government Employees, AFL-CIO, was chartered in the Department of State in the early '30s but it remained a small and inactive organization. It was succeeded in the late '60s by Local 1534 which had been established during the early days of the Marshall Plan with both domestic and overseas members. #1534 played an outstanding role in rallying support for the maintenance of civil service standards and the independence of AID where it is the exclusive representative of civil service personnel, as it is in ACDA and some CS units in State and FSI.

Local 1812 in USIA was chartered on January 1, 1958 and readily recognized by the then Director, Ambassador George V. Allen who consulted with it on issues affecting its GS, WB, and FS members. This practice continued with succeeding managements (Larsen, Murrow, Rowan) until it gained formal recognition under E.O. 10988 on behalf of GS and FS members. It took a major role in the defeat of the Hays Bill in 1966 and shared with Director Leonard Marks in the drafting, submission and legislative support of the USIA Career Foreign Service legislation in 1967-68.

The FS personnel in State from junior officers to Ambassadors participated in the American Foreign Service Association as a professional and social organization, very influential on Capitol Hill as an alter ego voice for management, especially in securing the FS Act of 1946.

After Executive Order 11491 was issued, some FS and GS employees in certain units of State applied for exclusive recognition for AFGE 1534 within those units. State management and AFSA, whose then President was a senior official in one of the units, filed objections. Long delays and a series of hearings followed in the Department of Labor in January

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1971. A basic issue hinged on AFSA's eligibility to challenge in a labor-management certification proceeding, it being demonstrated that all of its officers occupied high level supervisory status. Not surprisingly, the Labor Department officials took the question into such deep consideration that no decision was ever issued. It became moot when Deputy UnderSecretary Macomber and White House Counsel Colson sought a formula to remove the Foreign Service from EO 11491. Admittedly, a weekend negotiation between Macomber and top AFSA officers headed by Wm. Harrop, later an Ambassador, resulted in AFSA's acceptance of the text which became EO 11636, issued in December, 1971 by Pres. Nixon as an "Employee-Management Relations" order. AFGE protested in vain but then took active part under Exec. VP Clyde Webber in the shaping of regulations as closely as possible to those under EO 11491 and the private sector.

Meanwhile, in May, 1971, AFGE 1812 won exclusive recognition under EO 11491 for all GS employees and WB relay station personnel in USIA.

In a contest under #11636, AFSA edged out AFGE 1812 for all FS personnel in USIA by a majority of four votes and it scored substantial majorities over #1534 in State and AID for FS personnel (#1534 having been certified for GS in AID, and in some domestic units of State and Foreign Service Institute). In April, 1976, three years later, AFGE 1812 displaced AFSA by a 60%-35% margin and is the current exclusive representative for FS personnel in what is now the International Communication Agency (ICA).

One distinction which State pressed in justifying its plea for a separate Executive Order was that all FSO and FSIO appointments and promotions are by the President with the advice and consent of the Senate. AFGE has held that this is no adequate justification and noted that FSR, FSRU, and FSS appointments and promotions are by the Secretary or Director.

AFGE 1812 has pressed for a statutory system and welcomed the prospect of inclusion under Title VII provided that the unique character of the rank-in-person and of rotational assignments are recognized through maintenance of the present unit. FS rank is not determined by specific function, but by annual study of personnel records and evaluations by selection boards and their recommendations by "rank-order" of officers for possible promotion or selection-out. Management under negotiated precepts must predetermine in a sealed envelop the number to be promoted in each class, and follow the boards' listing.

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Rotation is another distinctive feature of FS careers. Today's Consul General or Public Affairs Officer may tomorrow be a research officer, or an advisor, chief of some branch or division, or a student at the War College or FS Institute. His rank remains the same whether he supervises or is supervised. Even Class I officers may in fact have no supervisory function and have as much reason as any junior officer to scrutinize his personnel file and "grieve" over erroneous material. Assignments are not static. Change every two or three years is common; to stay more than two tours in any spot is most exceptional. An FS secretary can with confidence challenge the evaluation of a current supervisor, aware that their careers will soon separate in any event, - and the change can be hastened if relationships are unduly strained.

This is particularly true in ICA, where overseas support services requiring American personnel are essentially furnished by State and where local nationals supply all but the classified typing, clerical, technical, and professional assistance. In most posts, ICA has only one or two American FSS secretaries and they have local assistants. A ratio of ten local nationals to one American ICA officer is not unusual.

If rivalry exists, it obviously is among officers of the same class, since however superlative every officer in the class may be, the selection boards must somehow select from among the class the individual most outstanding, the next most qualified, etc down to a group of ten or twenty percent, as well as a bottom group. Under the system, if it were applied to the Supreme Court, one would be named for promotion and one named for selection-out, not on any allegation of incompetence or unsuitability but on the vague gauge of having failed to meet the competition of his class...and next year, the class having again been raised to nine by promotions into the group the same process would occur.

In such a situation, obviously, the criteria which apply under Title VII to unit definition are unsuitable. While AFGE might disagree with AFSA on the inclusion or exclusion of a few specific officials, the union finds within its unit no feeling of conflict of interest and it has represented secretaries with no more difficulty than in handling the grievance of senior officer members.

STATE'S DRAFT

It is hard to understand why State should have decided to propose a complete rewriting of the Foreign Service Act instead of merely complying.

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with the directive from Congress to propose ways to strengthen and simplify the Foreign Service personnel system. This paper has shown that the Department has on previous occasions sought drastic changes and even proceeded by regulation to do what it could not win Congressional authority to legitimize and that its venture was a costly failure.

We welcome State's plan to halt the misuse of the Foreign Service Reserve authority. Why not simply liquidate it by regulation? Is it because State wants to win authority to do other things now forbidden and seeks through subtle language to sneak it across? Remember the misuse of the 1960 amendment concerning the designation of "departmental positions for FSOs on home assignment! I note with particular concern the provision for maximum conformity in other agencies with State's personnel system. PL 90-494 specifically grants ICA's Director the same authorities over ICA personnel overseas as granted the Secretary over State's. Is this a way to foist a unified FS upon the agencies? Let us face the facts that State has been signally inefficient and wasteful, not only in FS but in the domestic service. The Civil Service Commission's last survey was a sweeping indictment of State's practices. The 1970 "Diplomacy for the 70's" was even advertised as a self-criticism of its FS personnel system. Why then should Congress accept a blueprint from such a source?

We hail one aspect of State's plan. By dismantling FAS, State repudiates its former eagerness for age 60 mandatory retirement. Those who opt to return to GS will no longer be forced out at 60. We hope, though hesitantly, that State will soon seek the elimination of the age 60 mandatory retirement for FS personnel. We suggest that the current Bill would be a suitable vehicle for the legislation proposed by Congressman Pepper.

We also urge that any measure enacted to amend the FS Act include the long sought relief for half a dozen former "BiNational Center Grantees" which AFGE and Senator Pell proposed, individuals who by court decision were actually Government employees but labeled "grantees" as a matter of diplomatic fiction which was once deemed necessary. Somewhat similar is the case of a group of former employees of Radio Free Europe and similar agencies which were under concealed Government operation. We also support the measure to assure wives a vested interest in annuities in the earning of which they shared the labors, difficulties and hazards of overseas service but who lack any right to compensation in the event of divorce.

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Finally may I comment on the proposals for a Senior Foreign Service. Without analyzing the provisions which are significantly more harsh than in the Senior Executive Service domestically, I point out that the Foreign Service today already provides almost all the advantages of flexibility, incentive, assignability, and removability which are the alleged virtues of S.E.S.. In fact one might argue that the Foreign Service is the model for the domestic system. When the so-called Civil Service Reform was enacted, the Foreign Service was deliberately excluded. Why now the eagerness to ape the system?

If I may express an opinion based on experience in both public and private sectors and in a position now personally as a retiree of being concerned only as a taxpaying private citizen, I would say that the two worst periods of State personnel management occurred under individuals who were in their heyday the apparent embodiment of the perfect manager envisioned in this measure. Unfortunately they were so determined to exercise their management prerogatives and so skilful in their manipulation of influence within both executive and legislative branches that they could and did foist upon the foreign affairs agencies costly vehicles which this proposal would now excise from the Foreign Service system.

And the issue of incentive pay is not new. It was once inserted into the Civil Service system with little notice until passed, and then touted as a great new way to reward the competent with "merit" step rate increases and to discipline the laggards by a withholding of periodic step increases. It happened back in the Federal Salary Reform Act of 1962. The supervisor needed only to find the latter had failed to meet "an acceptable level of competence", an undefined term which, however, was something higher than "satisfactory". Those thus deprived could only ask the supervisor to "reconsider" which he or she would do for a minute or two before deciding the decision was correct. In our agency over eight percent of the first batch were thus penalized as management pressed supervisors to use the new authority vigorously...and soon an extraordinary balancing of "quality" increases and withholdings developed. We protested. AFGE went to Congress. It was quickly corrected by the simple device of requiring justifications in writing and opportunity to appeal to a third person outside the immediate line of command. It had demoralized morale, created tensions, caused injustices...and as soon as it was amended to admit appeals, withholdings dropped from a high of 10 percent to less than half of one percent. I urge that this debacle not be repeated.

APPENDIX 22

"A PROFILE OF WOMEN IN AID," SUBMITTED BY THE WOMEN'S ACTION ORGANIZATION

I. INTRODUCTION

When WAO attempted to assess the probable impact on women of the proposed unified personnel system, based upon past experience under the Agency's foreign service and civil service systems, it became apparent that historical information and analysis of women's employment in AID is woefully inadequate. In a letter to the Deputy Administrator in March 1979, we urged that the Agency undertake immediately a study of its women employees, in order to lend an historical perspective on how women have fared under the dual system; to develop baseline data from which to make better judgments about the probable effect on women of the proposed unified system; and to provide a basis for recommending future actions which might improve women's employment status. While AID management agreed in principle to sponsor such a study and accepted WAO's offer to consult on the scope of the investigation, it does not appear that the study will be undertaken in the near future, ostensibly because there are no funds to support it.

Believing that the need for AID management to have this information is urgent, WAO has compiled from both official and unofficial sources a profile of women in AID. We used the best data we could obtain, fully aware that the information we have gathered has limitations. But even with these limitations, the picture revealed is: that women's overall position in AID is not improving; that at the higher levels in both civil and foreign service it is deteriorating; that civil service appears to have provided women better career opportunities than the foreign service; that women are lower graded in both systems than their male colleagues; and that women remain underrepresented in occupations other than those in which they have traditionally been found (e.g., secretarial/clerical, health, education). Regrettably, we are forced to conclude that the overall impact of affirmative action on the status of women has been, at best, marginal.

Analysis of the attached tables covering various aspects of employment will support these assertions.

II. HISTORICAL PERSPECTIVE ON NUMBERS AND PERCENTAGES (See Tables I and II)

A. Civil Service (GS)

The overall number of civil service employees dropped from 1971 to 1975 and began to increase again by 1978. The total number of women employed followed this same pattern: 1359 in 1971 (61%); 963 in 1975 (61%); and 1170 (64%) by December 1978. It should be

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noted that the greatest increase in the percentage of women came at grades GS-11 and below.

With the exception of 1 female GS-16 on board in 1975, there have been no women in GS-16, 17 or 18 positions.

The number of women at the GS-15 level dropped from 18 in 1971 to 10 each in 1975 and 1978, a decrease in percentage from 8% in 1971 to 6.7% in 1978. There has been a minor increase in women employed at the GS-14 level.

The only real improvement in the entire GS scale is at the GS-13 level, where the percentage of women increased from 27% in 1971 to 31% in 1975 and to 38% in 1978. Women continue to be found in greatest numbers at the GS-12 level and below.

Overall increases or decreases in the GS population seem to have had no effect on women's advancement. The status of GS women has failed to improve in either situation.

B. Foreign Service Reserve (FSR)

The total number of FSRs decreased substantially from 1971 to 1975 and further decreased by 1978. In these three years, the percentage of women FSRs was 5%, 5% and 8%.

The largest increase in the number of women came at the FSR-6, 7 and 8 levels: 7% in 1971, 16% in 1975 and 35% in 1978. At the same time that more women were being employed at the lower levels, the percentages of women at the FSR-1, 2 and 3 levels declined from 3% in 1971 to 1.6% in 1978.

The comparison of numbers of men and women employed at the three highest FSR ranks is especially striking: 827 men vs. 13 women (as of December 1978).

The percentage of women FSR-4's and 5's increased from 7% in 1971 to 10% in 1978; in December 1978 there were 85 women at these levels compared with 839 men.

C. Foreign Service Staff (FSS)

The overall number of FSS employees has steadily decreased over the years, and is now less than half of what it was in 1971. While the overall numbers decreased, the percentage of women increased: 93% in 1971, 97% in 1975 and 96% in 1978.

At the same time the overall percentage of FSS women was increasing, the percent of women in the top grade (FSS-3) declined from 71% in 1971 to 50% in 1978.

It is difficult for FSS employees to achieve the top levels, since the number of senior FSS overseas positions (i.e., FSS-5 and above) has decreased markedly in recent years, especially since 1975. Moreover, FSS employees have rarely been permitted to occupy equivalent senior administrative positions in AID/W because of the potential for blocking advancement of GS employees to these higher levels.

D. Administratively Determined Appointments (AD)

Only in AD positions have women increased in both numbers and percentages employed overall and at the higher grades. The overall percentage of women ADs was 18% in 1971 and 26% in 1975. When the number of AD employees increased to 93 in 1978, the overall percentage of women increased by only one percent, to 27%.

At the AD-15 level and above, there were 15 women in 1978, up from 1 in 1971, an increase from 2% to 21%. During this time the total number of appointments at AD-15 and above fluctuated from 61 in 1971, to 46 in 1975, to 70 in 1978.

While women ADs improved percentage-wise at the higher levels, they fell behind at the AD-12 to 14 levels: 36% in 1971, 33% in 1975 and 28% in 1978.

Women accounted for 77% of the appointments at AD-11 and below in 1971. By the end of 1978, AD appointments at these levels were 100% female.

III. WHERE WOMEN WORK IN AID AND THE COMPARISON WITH MEN (See Table III and IV)

While we do not have complete data on all occupations within AID, we find that the available statistics point to a concentration of women in a few traditionally female occupations; limited representation in the other fields, and a consistently lower average grade for women than their male colleagues in the same field.

As one would expect, the greatest numbers and the highest percentages of women in AID are found in the secretarial, clerical and personnel fields in both the civil service and foreign service. In the other occupations, civil service women are found in the higher percentages

in most fields than their female foreign service colleagues. The highest percentage of GS women, excluding clerical, administrative and personnel, are in education (50%) program (43%) and community and social development (38%). In the foreign service the highest percentages of females are found in health (25%), food for peace (11%) and community and social development (11%). Because of the areas where female IDIs are being selected, the IDI program will not improve to any extent the representation of women in the various foreign service occupations.

A noteworthy feature of all professions is the consistently lower average grades of women as compared with men. While this might be expected in the foreign service because of the increased number of women at the lower levels, we were surprised to find that it is also true in the civil service. In the GS Program Analyst category where 59 women are found (the highest number of women outside of the clerical area), the average grade for the women is GS-11.1 compared with GS-14.0 for men.

Only recently have women been appointed to be Mission Director and Deputy Mission Director positions in the foreign service. It is interesting to note that of the 3 women, who have been appointed Mission Directors to date only 1 came up through the foreign service system. The other 2 were converted from GS-15 to FSR-2. These women and those recently appointed as Deputy Mission Directors and AID representatives, come mostly from the program area in the foreign service. While some appointments of women have been made at these higher levels, there are few women either in GS or foreign service who have advanced sufficiently in rank to be considered for further higher level appointments.

IV. AGE (See Table V)

Another indication of inhibited advancement of women in AID is the striking difference between men's and women's ages in relation to rank achieved. A significant number of younger and middle-age women have been able to advance in the civil service, while the few foreign service women serving at comparable middle and higher grades are much older than their male counterparts.

Women in their 40's seldom have achieved the FSR-1, 2 and 3 levels. In contrast, even with the limitations on promotions in recent years, some younger men have been able to rise rapidly in the foreign service, as evidenced by the number of men in their 30's at FSR-3 and above.

Mandatory retirement at age 60 will have a devastating impact on the number of foreign service women in the senior ranks over the next few years, since there were (as of December 1978) only 3 women under the age of 50 at these levels.

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While women progressed in overall numbers and percentages in higher level AD appointments, there is a noticeable difference in the ages of men and women. Women have a much higher average age than men, and the low age for women at the AD-16, 17 and 18 levels is 23, 13 and 25 years higher than men's low age for the same grade levels.

Note: The age-grade data to which we had access is limited to white men and white women. If we were able to include the few minority women and men AD's in the statistics, it would only marginally affect the average figure, and might lower the low age for women ADs.

V. INTERNATIONAL DEVELOPMENT INTERNS (IDI) (See Table VI)

From the inception of the IDI program in 1968 to January 1979, the overall percentage of female IDIs was 18.7% or 80 out of a total of 428. From 1968 to 1976 few women were chosen to be IDI's. Only since 1976 has there been an increased number of women in the program. Fifty-four of 67% of the 80 female IDI's have been selected in the past three years.

Female IDI's are being selected principally in areas where women have traditionally been found in AID: 29% of the women IDI's are in Health/Population/Nutrition; 19% in Program; and 12.5% in Education. Health/Population/Nutrition and Education have accounted for approximately 41% of female IDI's. These are areas which have limited potential for promotion to the higher levels in the Agency.

Women in Capital Development, Agriculture (another area of limited promotion potential to the higher levels) and Economics are few in number and their limited numbers are not in any meaningful way increasing the representation of women in these occupations.

The retention rate for IDI's (excluding those currently in training) is 73% for females and 79% for males. To date we estimate that more women than men IDI's have converted to GS.

VI. RECRUITMENT (See Table VII and VIII)

AID's Office of Personnel and Management (PM) does not keep longitudinal statistics on its employees and cannot find out, except by reviewing individual personnel folders, when a person was hired, at what grade, and how fast he or she has risen in AID. What does exist is data on all present employees by year hired and their present grade. By reviewing who was hired since 1976 and who was still on board in July 1979, some useful information can be obtained on AID recruiting patterns.

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The most dramatic statistic is that AID has not hired women for any position above the FSR-4 level, at least not in the past ten years. In the foreign service we find that women are being hired predominantly in health, nutrition, education, and population, while men are hired in the complete range of occupations. It is interesting to note that so far this year, 5 of the 14 men hired at the FSR-3 level were in health and population. One new area for women in the foreign service is that of Housing Advisor.

The percentage of GS women hired in 1978 and to July 1979 was 40% (15 out of 37) and 32% (11 out of 34). In marked contrast, it was 10% (15 out of 144) and 14% (17 out of 123) in the foreign service. There were 3 women out of a total of 19 AD appointments during the same time frame.

While AID's hiring of women, in overall percentage terms, is much better in the civil service, even GS women are consistently hired in much greater numbers in the lower grades. In contrast to the foreign service, GS women hired at grades GS-12 and above are found in a wide range of occupations.

VII. PROMOTIONS

Our statistics on promotion presently cover only the foreign service. AID only published the names and grades of the FS promotions and no analysis is made of the promotions as in done by the Department of State.

Last fall, the promotions included 6 FSR-3s to FSR-2. Of the 6 promoted, 1 was a woman. The ages for the men were 39, 41, 42, 46 and 53. The woman was 55. In the spring 1979 promotions, 6 FSR-3s were promoted to FSR-2. All 6 were men whose ages ranged from 41 to 43 and had been in grade from 8 to 11 years.

Of the 25 FSR-4s promoted to FSR-3, 1 was a woman aged 49, in the program area. The average age for the men was 45. Eleven of the men were under the age of 40 and 1 was 31. Ten of the promotions were in the program category, 4 in capital development, and 3 each in personnel/administration, population, and controller/audit. Four were promoted with three years in grade, 3 with four years in grade, 3 with six years, 4 with seven years, and 3 with nine. The woman was six years in grade.

From the FSR-5 to FSR-4 level, there 50 promotions, including 7 women. We have information on 6 of the 7. Two women were age 33, 1 was 37, 1 was 50, and 2 were 59.

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As these statistics show rapid advancement has been possible for men, but not for women in the foreign service.

VIII. OTHER

There are a number of other aspects of women's employment which need to be analyzed. We do not know the number of GS women who have converted from FS to GS. This information needs to be compared with the number of FS men who have converted to GS as well as those who would like to convert. We know of several GS women who have sought conversion to FS for overseas assignments without success apparently because there were no jobs. Most have been in the program field.

We do not know the number of GS women who already have overseas experience. In reviewing the GS women who have been hired at GS-12 and above, we found many who appear to already have overseas experience.

Although the number of FS jobs overseas appear to be remaining stable or decreasing slightly, the Agency is requiring that a GS employee cannot convert to FS unless there is an overseas job for immediate assignment. Thus, there will be few conversions. GS women, already with FS and overseas experience, who cannot be subjected to world wide availability of service, will be eliminated from any career with AID.

There has been a growing number of GS women who work part time. Of the 196 GS women from GS-12 to GS-15, 15 or 7.6% are part-time. We have no information as to whether these women will ever wish full-time employment.

We do not know the exact number of married FS women with spouses in the foreign service or outside. However, the number is growing and unmarried women no longer predominate in the foreign service. While there is increasing concern and awareness of employment of spouses in the foreign service, WAO continues to find FS employees having great difficulties in finding employment for their spouses overseas.

Data and analysis are urgently needed to understand the full impact the unified system will have on the already low status of women in AID. However, there can be no doubt that foreign service women are far behind their female GS colleagues and that any decrease in the status of GS women will have a very damaging impact on the overall status of women in AID. It is clear that the unified system will dramatically lower the status of GS women.

Table I

EMPLOYMENT AND WOMEN IN A.I.D.
A COMPARISON
(FULL AND PART-TIME)

	1971		1975		1978		Percentage Female to Total		
	Total Female		Total Female		Total Female		1971	1975	1978
<u>CS</u>									
18	-	-	1	-	1	-	-	0%	0%
17	5	-	3	-	4	-	0%	0	0
16	9	-	8	1	4	-	-	12.5	0
15	223	18	138	10	149	10	8	7	6.7
14	196	35	164	27	195	37	18	16	19
13	195	53	164	51	185	70	27	31	38
12	145	76	127	56	155	79	52	44	51
11	149	95	100	66	95	66	64	66	69.5
10	4	3	12	12	17	12	75	100	71
9	211	149	113	78	127	97	71	69	76
8	49	44	64	54	62	54	90	84	87
7	298	247	194	171	189	160	83	88	85
6	227	205	204	185	255	239	90	91	94
5	262	226	179	161	241	221	86	90	92
4	182	147	92	78	133	107	81	85	80
3	65	50	14	12	16	15	77	86	94
2	15	11	1	1	4	3	73	100	75
1	1	-	-	-	-	-	-	-	-
	2236	1359	1578	963	1832	1170	61%	61%	64%
<u>AD</u>									
18	13	-	12	3	13	2	0%	25%	15%
17	14	-	5	-	9	2	0	0	22
16	13	-	14	1	25	3	0	7	12
15	21	1	15	3	23	8	5	2	35
14	4	-	3	-	8	1	0	0	12.5
13	5	3	5	3	5	2	60	60	40
12	2	1	1	-	5	2	50	0	40
11	4	2	-	-	-	-	50	-	-
10	-	-	1	1	-	-	-	100	-
9	9	8	4	4	4	4	89	100	100
8	-	-	1	1	-	-	-	100	-
7	-	-	2	1	1	1	-	50	100
6	-	-	1	-	-	-	-	0	-
5	2	1	2	-	-	-	50	0	-
4	-	-	-	-	-	-	-	-	-
3	-	-	-	-	-	-	-	-	-
2	-	-	-	-	-	-	-	-	-
1	-	-	-	-	-	-	-	-	-
	87	16	66	17	93	25	18%	26%	27%
<u>FSR</u>									
1	185	1	103	2	69	1	1%	1%	1%
2	500	11	287	5	252	5	2	1.7	2
3	1044	32	546	11	506	7	3	-	1
4	843	46	488	23	589	44	3	5	7.5
5	611	56	334	32	250	41	9	10	16
6	277	22	35	5	78	63	8	14	37
7	122	5	33	6	31	11	4	18	35.5
8	3	-	-	-	2	-	0	-	0
	3585	173	1826	84	1775	138	5%	5%	8%
<u>FSS</u>									
1	1	-	-	-	-	-	0%	-	-
2	-	-	-	-	-	-	-	-	-
3	7	5	5	3	4	2	71	60%	50%
4	28	23	23	20	12	10	82	87	83
5	76	69	58	58	42	42	91	100	100
6	144	139	90	86	74	70	97	96	95
7	184	173	120	119	56	56	94	99	100
8	99	94	-	-	3	3	95	-	100
9	8	7	-	-	11	11	87.5	-	100
10	5	4	-	-	1	1	80	-	100
	552	514	296	286	203	195	93%	97%	96%

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Table II

EMPLOYMENT AND WOMEN IN A.I.D.
A COMPARISON BY GRADE GROUPINGS
(Full and Part Time)

	1971		1975		1978		Percentage Female to Total		
	Total	Female	Total	Female	Total	Female	1971	1975	1978
GS 15-18	237	18	150	11	158	10	8%	7%	6%
12-14	536	164	455	134	535	186	31%	29%	35%
7-11	711	538	483	381	490	389	76%	79%	79%
1- 6	<u>752</u>	<u>639</u>	<u>490</u>	<u>437</u>	<u>649</u>	<u>585</u>	<u>85%</u>	<u>89%</u>	<u>90%</u>
Total	2236	1359	1578	963	1832	1170	61%	61%	64%
AD 15-18	61	1	46	7	70	15	2%	15%	21%
12-14	11	4	9	3	18	5	36%	33%	28%
7-11	13	10	8	7	5	5	77%	88%	100%
01- 6	<u>2</u>	<u>1</u>	<u>3</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>50%</u>	<u>-</u>	<u>-</u>
	87	16	66	17	93	25	18%	26%	27%
FSR 3- 1	1729	44	936	18	827	13	3%	2%	1.6%
5- 4	1454	102	822	55	839	85	7%	7%	10%
8- 6	<u>402</u>	<u>27</u>	<u>68</u>	<u>11</u>	<u>111</u>	<u>40</u>	<u>7%</u>	<u>16%</u>	<u>36%</u>
	3585	173	1826	84	1777	138	5%	5%	8%
FSS 3-01	8	5	5	3	4	2	63%	60%	50%
7-04	432	404	291	283	184	178	94%	97%	97%
10-08	<u>112</u>	<u>105</u>	<u>-</u>	<u>-</u>	<u>15</u>	<u>15</u>	<u>94%</u>	<u>-</u>	<u>100%</u>
	552	514	296	286	203	195	93%	97%	96%

WOMEN AND SELECTED OCCUPATIONAL CATEGORIES IN A.I.D.
1978

Occupation	Total Number of Women	Percent Female of Total	Women*		Civil Service**		Foreign Service**		Average Grade
			No. of CS	No. of FS	Male	Female	Male	Female	
Secretary	471	99	311	160	-	6.7	6.0	6.1	
Clerk Typist	111	85	111	-	-	3.9	-	-	
Clerk Stenographer	90	97	87	3	5.0	4.9	-	8.0	
Program Analyst	87	20	59	25	14.0	11.1	3.5	5.0	
International Cooperation	31	16	27	4	13.5	12.9	2.8	5.0	
Administrative Officer	25	34	19	6	13.2	11.0	3.4	6.0	
Accounting	22	11	18	4	12.5	10.0	3.7	4.5	
Personal Management	22	51	12	9	13.2	11.8	3.3	4.4	
Public Health Program	19	33	3	16	13.8	13.0	3.9	4.8	
Contract Procurement	22	28	22	-	12.9	11.3	3.1	-	
Economist	17	10	11	6	13.7	10.5	3.6	4.8	
Financial Analyst	17	9	5	12	13.8	11.6	3.5	5.0	
Social Science	17	25	9	8	14.6	12.6	3.5	4.3	
Computer Specialists	16	29	16	-	12.7	12.2	-	-	
Program Management	8	5	1	4	15.0	15.0	2.4	3.8	
Financial Management	5	8	-	5	15.0	-	2.9	6.2	
General Attorney	3	6	3	-	14.4	13.0	2.8	-	
General Biological Science	3	4	-	3	14.7	-	3.2	5.0	
General Engineer	2	3	-	2	14.4	-	3.1	5.0	

Table III

* Number of Civil Service and Foreign Service do not always equal total number of females. Difference is due to AD and EX females.
** Excludes FSA Limited (Ls) except where Ls are a major component of the total number.

Functional Distribution
Of Women in AID by Major Skill Area
Full Time
July 1978

		<u>FOREIGN SERVICE</u>		<u>CIVIL SERVICE</u>	
		<u>No. of Women</u>	<u>Percent of Total</u>	<u>No. of Women</u>	<u>Percent of Total</u>
<u>Executive Management</u>					
01	Executive Personnel	3	3	6	18
02	Program & Economic Officers	26	8	99	43
09	Program Management	8	6	1	50
20	Business and Finance	2	8	12	23
	Subtotal	<u>39</u>	<u>7</u>	<u>118</u>	<u>37</u>
<u>Program/Project Development and Implementation</u>					
10	Agriculture	4	2	4	18
15	Food for Peace	3	11	0	0
25	Engineering	1	1	2	12
50	Health	12	25	1	6
55	Population	3	6	2	3
60	Education	4	10	17	50
70	Public Administration	0	0	0	0
80	Community & Social Development	3	11	5	38
94	Capital Proj/Develop. Loans	5	4	8	24
95	Int'l Development Interns (IDI's)	35	31	0	0
	Subtotal	<u>70</u>	<u>10</u>	<u>39</u>	<u>27</u>

Table VI
Page 1 of 2

	<u>FOREIGN SERVICE</u>			<u>CIVIL SERVICE</u>		
	<u>No. of Women</u>	<u>Percent of Total</u>	<u>Total</u>	<u>No. of Women</u>	<u>Percent of Total</u>	<u>Total</u>
<u>Program and Project Support</u>						
03	Administrative Management	9	9	118	54	
04	Comptrollers	6	4	26	37	
06	General Service	3	6	3	43	
08	Administrative Management	0	0	6	15	
27	Equipment Operations & Maintenance/Com. Spec.	0	0	2	100	
85	Legal	0	0	6	19	
91	Participant Training	1	7	2	22	
93	Procurement	0	0	21	28	
	Foreign Service Staff	189	96	0	0	
07	Adm. Support - Sec. Sten., Admin.	0	0	224	69	
05	Adm. Support - Clerical, Mail	0	0	537	67	
	Subtotal	<u>208</u>	<u>32</u>	<u>945</u>	<u>70</u>	
	Grand Total	317	16	1102	61	

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Table IV
Page 2 of 2

Age Comparison of
White* Men and White*
Women in AID
December 1978

Grade	<u>Total</u>		<u>Average Age</u>		<u>Low Age</u>	
	Men	Women	Men	Women	Men	Women
GS-15	130	9	51.1	44.0	34	34
GS-14	148	70	47.0	46.9	31	29
GS-13	96	57	44.3	43.3	27	27
GS-12	54	41	40.1	44.0	27	28
AD-18	10	2	45.9	63.0	37	62
AD-17	7	2	44.1	52.0	37	50
AD-16	22	2	47.0	53.0	30	53
AD-15	13	7	43.8	46.0	32	35
AD-14	6	1	42.5	55.0	29	55
AD-13	2	2	34.0	32.0	34	31
AD-12	3	2	28.0	37.0	29	34
FSR-1	59	1	53.1	57.0	37	57
FSR-2	220	5	51.5	55.6	38	45
FSR-3	447	7	49.7	48.4	34	38
FSR-4	401	24	43.2	48.2	29	31
FSR-5	133	30	35.3	38.9	27	27
FSRL-1	2	-	56.0	-	57	-
FSRL-2	7	-	54.7	-	43	-
FSLR-3	26	-	48.3	-	36	-
FSLR-4	80	17	40.8	37.8	28	29
FSLR-5	43	3	37.1	41.7	30	28

* Includes all employees except Black, Hispanic, Native American and Asian.

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Table V

International Development Interns
 Female
 January 1968 to January 1979

<u>Field</u>	<u>Total Female</u>	<u>Percent of Total Female</u>	<u>On Board 7/79</u>	<u>Departed by 7/79</u>
Health/Population/ Nutrition	23	29	19	4
Program	15	19	13	2
Education	10	12.5	10	0
Capital Development	8	10	6	2
Agriculture/Ag. Economics	7	9	6	1
Anthropology/Sociology	6	7.5	4	2
Accounting/Controller	5	6	4	1
Economics	3	4	3	0
Administration	1	1	1	0
Science & Technology	1	1	1	0
Engineering	<u>1</u>	<u>1</u>	<u>0</u>	<u>1</u>
Total	80	100	67	13

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Table VI

Table VII

Present AID Employees by Year Hired and Present Grade

	1979*		1978		1977		1976	
	Total	Female	Total	Female	Total	Female	Total	Female
GS-18	-	-	-	-	-	-	-	-
17	-	-	-	-	1	-	-	-
16	-	-	-	-	-	-	-	-
15	6	1	6	1	4	-	10	-
14	6	1	9	2	19	3	14	5
13	17	5	14	8	18	3	4	2
12	5	4	8	4	15	4	6	1
	—	—	—	—	—	—	—	—
	34	11	37	15	57	10	34	8
AD-18	-	-	2	-	7	1	-	-
17	-	-	-	-	2	-	-	-
16	1	1	3	-	5	1	4	-
15	5	-	2	-	7	4	1	-
14	4	1	-	-	4	1	-	-
13	-	-	1	-	3	1	-	-
12	-	-	1	1	1	-	2	1
	—	—	—	—	—	—	—	—
	10	2	9	1	29	8	7	1
FSR-1	-	-	-	-	4	-	2	-
2	1	-	4	-	4	-	1	-
3	14	-	8	-	10	-	9	-
4	44	3	67	6	22	5	13	5
5	24	5	30	2	44	11	56	12
6	10	1	15	5	32	12	-	-
7	29	8	18	2	5	3	-	-
8	1	-	2	-	-	-	-	-
	—	—	—	—	—	—	—	—
	123	17	144	15	121	31	81	17

* to 7/19/79.

Table VIII

Percentage Female of
Overall Recruitment

	1979*	1978	1977	1976
GS-18	-	-	-	-
17	-	-	0	-
16	-	-	-	-
15	17	17	0	0
14	17	22	16	36
13	29	57	17	50
12	80	50	27	17
	<u>32</u>	<u>40</u>	<u>18</u>	<u>24</u>
AD-18	-	0	14	-
17	-	-	0	-
16	100	0	20	0
15	0	0	57	0
14	25	-	25	-
13	-	0	33	-
12	-	100	0	50
	<u>20</u>	<u>11</u>	<u>28</u>	<u>14</u>
FSR-1	-	-	0	0
2	0	0	0	0
3	0	0	0	0
4	7	9	23	26
5	21	7	25	21
6	10	33	38	-
7	28	11	6	-
8	0	0	-	-
	<u>14</u>	<u>10</u>	<u>26</u>	<u>21</u>

* to 7/19/79

APPENDIX 23

COMPARISON OF LABOR LAW PROVISIONS IN CIVIL SERVICE LAW AND LABOR LAW PROVISIONS IN THE PROPOSED FOREIGN SERVICE ACT

A. General

1. History of Labor-Management Relations

The history of organized labor in the Foreign Service is quite distinct from that of union activity in the rest of the Federal government. In the civil service, organizations of employees at the unit or facility level have been in existence for years. In 1962, President Kennedy issued the first basic Executive order protecting the right to organize and bargain collectively. The order was significantly strengthened in 1970. One of the effects of this order was to cause the consolidation of smaller bargaining units into larger ones, although only in rare cases did agency-wide units form. So, the civil service Executive orders can be seen as victories for labor, in that they safeguarded the right of organization, but also as a boon for management because they forced some consolidation on the myriad of employee organizations.

In the Foreign Service, the 1971 Executive order formalized the existing relationship between the American Foreign Service Association (AFSA) and the State Department. AFSA had been around for years serving as a professional association, as interested in boosting the Foreign Service as in pursuing the grievances of members. Only in the mid and late 1960's did the tenor of AFSA change. It was at that time that younger and more activist members were elected into leadership positions. And it was only after that time that AFSA started doing some of the things that traditional labor unions do, such as representing the interests of their members before the agency. Even today, AFSA has not entirely shaken off its history as a professional association. For example, many of the members of AFSA are ambassadors, chiefs of mission, or other management officials. These members vote in elections and are involved in the decision-making of the organization.

In 1978, Congress passed and the President signed the Civil Service Reform Act (CSRA). Title 7 of that law creates a new chapter 71 of title 5, United States Code, providing for statutory rights of organization and collective bargaining in the Federal sector. In the House, the drafting of this section was the most difficult in the whole Reform Act. The Administration was reluctant to go as far in the areas of scope of bargaining and arbitration of grievances as the Democrats on the House Post Office and Civil Service Committee wanted. The Senate committee, by and large, was adverse to major extensions beyond the Executive order. What finally passed bears all the hallmarks of a difficult compromise: it pleases no one, it is in places cumbersome, and it is sometimes unclear. The Foreign Service was specifically excepted from coverage under title 7, largely because both the department and AFSA wanted to be excluded.

This year, however, coverage under title 7 has been extended by the House Committee on Post Office and Civil Service to two groups not previously covered. First, all employees of the Panama Canal Commission, after October 1, will be covered by title 7, except that pre-existing units containing both supervisors and nonsupervisors are grandfathered. Second, the Committee recently reported out a bill establishing a separate personnel system for the General Accounting Office. In that legislation, the Comptroller General is mandated to issue regulations consistent with the provisions of title 7.

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2. Wording

Many of the provisions of Chapter 10 of the Foreign Service Act (FSA) are intended to be the same as the provisions of title 7 of the Civil Service Reform Act. They are drafted somewhat differently because, as one State Department lawyer pointed out, "We couldn't resist the temptation" to improve on the language in the civil service law. Although statutory and legislative history provisions can be written to tell courts to interpret these similar provisions identically, the basic rule of statutory construction is "If Congress had meant to say the same thing, it would have said it the same way."

This memo will not address the nuances of interpretation which redrafting might alter. Nevertheless, in consideration of the legislation, the committees must decide whether the same thing is meant. If so, it might be prudent to say it the same way.

B. Basic Similarities

In many ways, Chapter 10 of the Foreign Service Act, which is the first statutory enactment of labor-management relations in the Foreign Service, is similar to title 7 of the Civil Service Reform Act.

1. Employee Right to Organize

Section 1004 of FSA and Section 7102 of CSRA both safeguard the right of employees to form, join, assist, or refrain from any labor organization.

2. Collective Bargaining

Part and parcel of the right to organize is the right to bargain collectively over conditions of employment affecting employees in the bargaining unit. The duty to bargain is outlined in both bills to include the obligation to approach negotiations in good faith and with an intent to reach a settlement, the obligation to be represented by duly authorized officials, the obligation to meet at reasonable times and places, the obligation on management to provide data, and the obligation to commit any agreement to writing if one of the parties wants it.

3. Scope of Bargaining

The scope of bargaining is largely, although not entirely, the same. Basically, bargaining can be over conditions of employment which include personnel practices, policies, and matters affecting working conditions but not including the classification of positions, the Hatch Act (prohibiting partisan political activity by Federal employees), matters specifically covered by statute, agency mission, budget or organization, the number of employees, internal security practices, hiring, firing, promoting, suspending, assigning employees, contracting out work, and actions taken during emergencies. The biggest part of bargaining in the civil service is over the grievance mechanism. In the Foreign Service, this matter is more clearly defined by statute. (See attached memo on differences in the grievance mechanism for a further explanation.)

4. Representation Rights

Under both statutes, exclusive representation can be granted after an election procedure to a labor organization. Once that organization has a grant of exclusive recognition, it is entitled to act as the collective bargaining agent for the employees in the unit, whether they are dues paying members or not. Both provide that the union can be present at all investigations of employees and can be represented at any discussion between employee in the unit and management. Both provide

similar union rights at grievance procedures. (For more detail, see the memo on grievances.)

5. Substance of Unfair Labor Practices

The listing of what constitutes an unfair labor practice for both management and unions are virtually identical in the two documents. Management is forbidden from interfering with the right to organize, encouraging or discouraging membership by employment discrimination, sponsoring or controlling a union, taking reprisals against an employee who has filed a complaint or petition, refusing to bargain, failing to cooperate in impasse proceedings, or enforcing a rule in violation of a collective bargaining agreement. Labor is precluded from interfering with the right to abstain from participation in a union, discriminating against an employee, interfering with an employee's work, discriminating in union membership, refusing to bargain, failing to cooperate in impasse proceedings, calling or participating in a strike or slowdown, and improperly refusing membership in the union.

6. Standards of Conduct for Labor Organizations

Both CSRA and FSA provide that unions must be free of communist or totalitarian influence, democratic in organization, have periodic elections, avoid conflicts of interest, and maintain fiscal integrity. Furthermore, both require the Assistant Secretary of Labor for Labor Management Relations to receive evidence of meeting these standards. This language is largely derivative from the Landrum-Griffin Labor Disclosure Act. Furthermore, both provide that the labor board may revoke the exclusive recognition of a union for participating in a strike or slowdown.

7. Official Time

Both provide similar provisions for use of official duty time for certain union business, like negotiating collective bargaining agreements, and that nonduty time must be used for things like union elections. As in the CSRA, FSA provides that the number of union negotiators available for use of official time cannot exceed the number of agency negotiators.

C. Substantive Differences

1. Determination of Bargaining Units

In the Foreign Service Act, the determination of the appropriate bargaining unit is pretty straightforward: Section 1022 says, "The Department shall constitute a single and separate worldwide bargaining unit." The Civil Service Reform Act is a bit more complex. The Federal Labor Relations Authority (FLRA) determines, on a case-by-case basis, the appropriateness of bargaining units to assure the fullest freedom to employees in exercising their rights. The determination must assure a clear and identifiable community of interest among employees in the unit and must promote effective dealings with, and efficiency in the operations of, the agency. FLRA is specifically permitted to grant agency-wide bargaining. The employees organizations and the Department of State both agree on the need for a single unit.

2. Supervisors

Except for pre-existing units of supervisors only, the civil service law specifically forbids supervisors from being in the bargaining unit. Indeed, the following groups are excluded from being in the unit in CSRA:

- * Supervisors -- agency employees who have the power to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove

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employees, adjust their grievances, unless the exercise of that power is just ministerial in nature.

- * Management officials -- agency employees whose duties include formulating, determining, or influencing agency policies.
- * Confidential employees -- employees who act in a confidential capacity to an individual who formulates management policies in labor-management relations.
- * Employees engaged in administering title 7 of CSRA.
- * Professional employees in the same unit as nonprofessionals, unless the professionals separately vote for inclusion.
- * Intelligence, Security or Investigative Employees directly affecting national security.
- * Auditors and Investigators of internal agency security.

The Foreign Service Act has much more narrow exceptions, with no exception for supervisors. Those excluded from the unit are:

- * Management officials -- defined as chiefs of mission, Presidential appointees, employees occupying positions which the Secretary of State thinks should be exempt, deputies of any of the above, Foreign Service inspectors, and those engaged in the administration of labor-management law or involved in the formulating of personnel policies.
- * Confidential employees -- individuals who assist management officials (except clerks).
- * Employees engaged in personnel work other than in a clerical capacity.
- * Employees involved in criminal or national security investigations and internal auditors.

Those who like the civil service formulation argue that it is a conflict of interest for a union to represent both the grievant and his or her boss in a grievance proceedings. They point out that no real community of interest exists in a group which includes both the lowest clerk and senior level officials. They argue further that it is the lower status employees who are injured the most because the higher level officials tend to dominate union policy. Those who prefer the Foreign Service formulation argue that the nature of the Foreign Service means that employees will act as supervisors one day and nonsupervisors the next. They argue that, because of the size of missions, an enormous proportion of Foreign Service carries supervisory responsibilities. AFSA claims that fifty or seventy-five percent of their union could not be in the bargaining unit under the title 7 formula.

3. Powers of the Labor Board

The Foreign Service Act would create a new Foreign Service Labor Relations Board (FSLRB), which would have somewhat more restricted powers than the Federal Labor Relations Authority in the CSRA. The main powers that the FLRA has that the FSLRB would not -- determinations of bargaining units, granting of national consultation rights, determining compelling need for agency rules, and hearing exceptions from arbitrator's awards in grievances -- come from other substantive differences in the statutes.

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4. Composition of Labor Board

FLRA is an independent agency, with full-time, Presidentially-appointed members, and the power to hire and fire its own staff. FSLRB would be quasi-independent, with its own budget but reliant on the Department for staff. The Chair would be the Chair of the FSLRB. The other two members would be appointed by the Secretary of State after he or she received the consent of the exclusive representatives. If no agreement is reached a lottery would be held to determine whose nominees, the Secretary's or the union's, would get on the Board. All administrative support for FSLRB would come from the State Department.

5. General Counsel; Prosecution of Unfair Labor Practice Complaints

In the civil service context, there is a statutory General Counsel who receives, investigates, and prosecutes complaints of unfair labor practices. Under clearly spelled out procedures, the General Counsel prosecutes unfair labor practices before the FLRA. No judicial review of the decision of the Authority is provided; however, the Authority itself can go to district court to seek temporary relief such as an injunction during the pendency of the proceeding. Only the General Counsel can present unfair labor practices to the Authority.

The Foreign Service Act does not provide for a General Counsel and provides little guidance as to how unfair labor practices are prevented. It appears that the parties present charges of unfair labor practices to the FSLRB directly which then hears and decides them. The power to issue cease and desist orders resides in the FSLRB and so temporary relief would be possible. Decisions of the Board on unfair labor practices are appealable to the U.S. Court of Appeals for D.C. While the FLRA goes to U.S. District Court to enforce its orders, the FSLRB must go to the U.S. Court of Appeals for the same type of relief.

6. Scope of Bargaining

The FSA limits the subjects of negotiation more than does CSRA. CSRA allows for the consideration of all personnel practices and policies. FSA limits negotiation to those policies which are within the discretion of the Secretary or agency head involved. CSRA excludes bargaining only over the classification of positions. FSA also prohibits bargaining over the designation of positions. CSRA excludes bargaining "to the extent" that the matter is specifically provided for by Federal statute. FSA excludes bargaining over any matter specifically provided for by Federal statute. FSA provides a new exception for matters relating to government-wide or multiagency responsibility affecting agencies other than those covered by the Foreign Service Act. In the management rights section, the Foreign Service Act adds two types of additional management rights. One is the unilateral power to set types and classes of employees. Another is the power to determine the need for uniform personnel policies among agencies covered by the Foreign Service Act. Such personnel policies can be made the subject of consultation, but not negotiation.

The Civil Service Reform Act provides that the FLRA determines whether there is a compelling need for a rule of government-wide application, which would therefore not be a proper subject of bargaining. Even if a compelling need is found for the rule by FLRA, it can grant consultation rights to an exclusive representative. What is meant by government-wide application is CSRA is unclear. Whether a single regulation covering two or three agencies would be immune from bargaining seems unlikely.

7. Impasses

The Foreign Service Act creates a new Foreign Service Impasse Disputes Panel, the members of which are designated by the head of the labor board. Two members must be Foreign Service members, one is from Department of Labor, one from Federal Services Impasse Panel and one is a public member. The Chair of the labor board decides the length of the member's terms. In the Civil Service Reform Act, the President designates at least seven members who serve terms of five years. In CSRA, the Federal Mediation and Conciliation Service is called upon to play a major role in the informal mediation of disputes. In FSA, no role is outlined for the Service.

In both, impasses in negotiation go to the Panel on the request of either party. In CSRA, but not in FSA, the parties can agree, with the consent of the Panel, to binding and final arbitration of the dispute. In CSRA, but not in FSA, the Panel is instructed to play the role of a mediator before it undertakes the formal responsibility of hearing and dictating a settlement to the impasse.

In the civil service context, the decision of the Impasse Panel is final and can only be changed if the parties themselves agree to something else. In the Foreign Service Act, the Secretary can veto the determination of the Panel if he or she finds that it "is contrary to the best interests of the Service."

8. Suspension of Labor Law

The head of any foreign affairs agency can temporarily suspend any provision of the labor law for any post, bureau, office or activity, domestic or foreign, when he or she finds that there is an emergency situation and that suspension is necessary in the national interest. In civil service, only the President can suspend the law and only in the case of foreign installations. The President must find it in the interest of national security to do so.

9. Basis for Disapproval of Agreement

In CSRA, the head of an agency can disapprove agreement only if it is not in accordance with applicable law, rule, or regulation. In FSA, the head of the agency can disapprove an agreement if it is inconsistent with law, rule, or regulation, or if it is inconsistent with the requirements of national security or foreign policy.

10. Implementation Disputes

In the civil service law, disputes over the implementation of a collective bargaining agreement are grievances and are processed according to the grievance system, including binding arbitration. (See grievance memo for further discussion.) In the FSA, implementation disputes are covered by whatever procedures are negotiated. The procedures are similar to CSRA grievance procedures but lead to an appeal to the Grievance Board and not to binding arbitration. Appeals can be taken from Grievance Board decisions to the Labor Board. In CSRA, awards of backpay are specifically provided. Not so, in FSA. In CSRA, decisions of the FLRA on exceptions from arbitrator's awards in implementation disputes are subject to judicial review, unless they involve unfair labor practices. In FSA, decisions of the labor board on appeal from the Grievance Board on implementation disputes are not subject to judicial review.

11. Picketing

In the civil service act, picketing is only an unfair labor practice if it interferes with the operations of an agency. Informational picketing is expressly protected. In FSA, only informational picketing which does not interfere with agency operations in the United States is protected. Furthermore, FSA, provides for the decertification of a union if it engages in prohibited picketing, while CSRA only permits decertification for a strike.

12. Dues Check-Off

Both provide that employees can voluntarily assign a portion of their wages as union dues. The one difference is that, while in CSRA only an employee in the bargaining unit can make such an assignment, in FSA any person can make the assignment. This provision is obviously to protect the current set-up of AFSA, where many non-bargaining unit individual are dues-paying members.

13. Representation Elections

Except for some wording changes, the basic provisions governing the elections for an exclusive representative are the same. One major exception comes in the area of elections where there are more than two choices on the ballot. In CSRA, the run-off election is provided. In FSA, preferential voting is provided, so that if no first choice receives a majority, a second choice might.

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APPENDIX 24

STATEMENT OF THE WOMEN'S EQUITY ACTION LEAGUE, ON H.R. 2857,
THE FOREIGN SERVICE RETIREMENT INCOME EQUITY ACT

We urge the passage of this legislation because:

THE PLIGHT OF FOREIGN SERVICE SPOUSES IS ONE OF THE MOST STRIKING
INEQUITIES IN THE CURRENT RETIREMENT SYSTEM

SHE FOLLOWS HER HUSBAND THROUGH A SERIES OF FREQUENT MOVES

SHE HAS LITTLE OPPORTUNITY FOR A CAREER

SHE RARELY ACCUMULATES RETIREMENT CREDITS IN HER OWN RIGHT,
AND IS DEPENDENT ON HER HUSBAND'S RETIREMENT BENEFITS FOR
SUPPORT

SHE IS INELIGIBLE FOR SURVIVOR'S BENEFITS IF SHE DIVORCES

SHE IS NOT ENTITLED TO SOCIAL SECURITY BENEFITS BECAUSE FOREIGN
SERVICE OFFICERS ARE NOT COVERED BY SOCIAL SECURITY

BACKGROUND:

Currently, the employee may waive survivor's benefits without consulting the spouse in order to get a higher retirement annuity. Also, the employee can withdraw medical insurance from a former spouse without notifying her. Hence, when the wife is widowed or divorced, she finds herself with no protection.

H.R. 2857 would make survivor's benefits MANDATORY, unless the spouse and former spouse (if any) agree in writing to opt out of the survivor's benefits plan in lieu of a higher retirement annuity.

In addition, this bill would provide the former spouse married at least 10 years, with a pro rata share of the retirement benefits. The exact amount of the former spouse annuity would depend upon the number of years of marriage that overlap with the credited years of service towards retirement. For example, someone married for 10 years to a Foreign Service employee who has 30 years of service would receive one-sixth of the employee's benefits.

WE URGE THE PASSAGE OF H.R. 2857:

Women's Equity Action League

United Presbyterian Church, U.S.A., Washington Office

Lesley Dorman, President, Association of American Foreign Service Women

B'nai B'rith Women

United Church of Christ, Office for Church in Society, Washington Office

Wider Opportunities for Women, Inc. (WOW)

52-083 0254

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Washington Office, Women's Division, Board of Global Ministries,
United Methodist Church

Office of Governmental Affairs, Lutheran Council in the U.S.A.

Washington Office, National Council of Churches

National Organization for Women (NOW)

National Council of Jewish Women

National Women's Political Caucus

Church of the Brethren, Washington Office

Rabbi David Saperstein

For further information: John Nichols, Women's Equity Action League,
638-4560

APPENDIX 25

QUESTIONS SUBMITTED IN WRITING TO THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AND RESPONSES THERETO

Question 1

Is there any reason for a separate Foreign Service? Could our government operate with a corps of world-wide available civil servants?

We believe that there is a need for a separate "Foreign Service" for those employees of our foreign affairs agencies whose profession and duty it is to carry out the foreign relations of our government by serving most of their careers abroad as representatives of the United States. We know that this kind of service demands a high level of discipline, mobility and competence and we think this can best be produced by a rank-in-person system and a personnel structure which is equipped and oriented to provide necessary support, training and compensation. We also understand that discipline, mobility and excellence have to be insured by special mechanisms -- stringent entrance requirements, world-wide assignment and rotation, promotion based on relative performance. Our concern is that differences not be erected where they have no justification, and that they not be used simply to deprive foreign service employees of rights and benefits in the name of preserving an "elite". We have therefore cautioned against "segregating" foreign service employees so completely that they cannot engage in meaningful labor-management relations, cannot fully enjoy merit principles and cannot be considered for other federal employment if their tenure in the foreign service is ended for reasons that would not disqualify them elsewhere. In answer to the second question, while it would be theoretically possible to operate the foreign affairs agencies with world-wide available civil servants, this would be impractical if rank-in-job principles were retained, and unfair if a requirement of world-wide service was suddenly made a prerequisite for employment in the civil service. It would still be necessary to separate out a group upon whom this added demand would be made -- you would then be coming full circle back to the notion of a "foreign service". This is a needless complication.

Question 2

Does this bill give the Director General of the Foreign Service powers over ICA which he does not now have? Is this bad?

Section 204, concerning the Director General, contains several changes from existing law. First, it provides that the Director General will be appointed by the President, with Senate confirmation, rather than simply by the Secretary. That change is evidently meant to give the Director General more authority and status, although there is no explanation given anywhere in the State Department analysis of the bill. The section states further that the Director General will assist the Secretary in management of the Service. Since Section 202 states that where reading "Secretary" in the

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bill, also read "Director", this means that the Director General is to assist the ICA Director in management of ICA Foreign Service employees. This is new. Yet, since Section 1205 gives the Secretary of State alone the right to direct the activities of the Director General, the Director of USICA will be "assisted" by someone over whom he has no control whatever. The ability of the ICA Director to resist any "assistance" not found to be helpful in carrying out the mission of ICA is open to question, especially when the "assistant" is a Presidential appointee. Furthermore, the Director General is specifically assigned to perform functions "under chapter 12" which the Secretary alone will prescribe. Chapter 12 is the portion of the bill mandating the achievement of "maximum compatibility" between the agencies and authorizing the Secretary to consider the consolidation of personnel and administrative functions. It would be perfectly consistent with the above arrangement, therefore, to have the Director General, under guidance of the Secretary of State "assist" the Director of ICA in conforming his/her personnel policies with that of the Department of State, or to consolidate personnel functions, such as training, labor relations, operation of selection boards, etc. At the present time, the Director General has no authority to intervene in ICA personnel matters, nor does the Secretary have the authority to order such intervention. We think this is entirely consistent with the independent status of USICA. A decision by Congress to enact the new provisions would represent a departure from recent manifestations of Congressional intent with regard to the status of USICA and AID. Public Law 90-494, approved July 12, 1976, provides that one of its purposes is to "give the Director [of USICA] the full range of personnel authority necessary to establish and administer the Foreign Service Information Officer Corps". It states further that "Foreign Service information officers shall be under the direction and authority of the Director of the Agency. Authority available to the Secretary of State with respect to Foreign Service officers shall be available on the same basis to the Director of the Agency with respect to Foreign Service information officers except as provided in Section 11 of this Act". (Section 11 deals with the nomination of officers for commissioning as diplomatic or consular officers.) The proposed provision for the Director General will clearly impact on the authority of the heads of USICA and AID over their personnel and result in their having less authority in this regard than that possessed by the Secretary over State Department personnel. We believe this would be "bad" and refer you for our reasons to the response to question number 29.

Question 3

What is the function of the Board of the Foreign Service under this bill?
Won't other bodies handle most employee complaints?

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We do not know what function the Board is intended to carry out. Clearly, it will have no role in hearing "employee complaints". The duty of hearing appeals from separations-for-cause is transferred by the Bill to the Foreign Service Grievance Board. The only other type of "complaint" presently under the Board's jurisdiction, i. e. in the area of labor-management relations, is also transferred -- in this case to a labor relations authority. Thus, no adjudicatory or hearing function will remain with the Board. We assume that what is envisioned is that the Board will continue to serve solely as an advisor to the Secretary of State, the Director of USICA and the Administrator of AID in the development of personnel policy for Foreign Service employees, both reviewing subjects submitted to it by agency management, and taking up issues on its own. As an advisor to management, we have no objection to the Board but feel that realistically, the advisory role will be meaningless unless the Board is given some independence from the management of the State Department by an assurance of support services and an executive secretary.

Question 4

Do you support the findings of Hay Associates in relation to Foreign Service pay? Are Foreign Service officers underpaid in comparison to their Civil Service counterparts?

We have not completed our study of the Hay Associates study on Foreign Service pay. We do agree with what we take to be the general finding that linkage to civil service pay needs to be adjusted to reflect more direct and realistic correlations and agree that FS-3 (new class 1) should be linked at at least to the GS-15 level. We do believe that present Foreign Service pay does not adequately compensate for the hazards, demands and additional financial burdens of overseas service. Thus we have proposed a fifteen percent allowance on top of base pay as explained in more detail in our testimony. As we have also proposed, we believe that Foreign Service retirement should be computed at 2 1/2 percent for the first 20 years.

Question 5

Do you support the establishment of a system of performance pay for the Senior Foreign Service? Who should administer it?

When the proposals for introducing performance pay into the Foreign Service were first circulated, we expressed our belief that implementation of such a system would be much more difficult in the

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Foreign Service than in the Civil Service due to the wide variation in assignment (i. e. an assignment to a private organization, or a small and peaceful country versus an assignment to a large and influential or an unstable but strategic country), the isolation of officers at many overseas posts, the inducement this would provide for "cronyism" and the difficulty of administering such a system through the selection board process. Nevertheless, the proposal for performance pay went forward. We find it difficult to argue that top level Foreign Service officers should not have the opportunity to make as much money as their counterparts in the Civil Service, but persist in having misgivings about assigning the role of recommending performance pay to the selection boards for the reasons provided in Appendix 1 to our testimony: in addition to performance pay awards, selection boards will be deciding on promotion and retention for which the criteria and factors will be different than for performance awards. The fact that we have been unable to arrive at an acceptable workable alternative supports our basic feeling that implementation of such a provision will be extremely difficult.

Question 6

Do you think the use of a Merit Pay-type system for middle level Foreign Service officers is a good idea?

As our answer to Question number 5 indicates, we have real misgivings about how performance and merit pay can be implemented in the Foreign Service and the concerns expressed for performance pay at the upper ranks apply with even greater force to middle level employees. At the middle ranks there is the additional difficulty that an officer is very likely still going to university, language and other types of training during which time there could be no realistic expectation of earning merit pay. But more importantly, performance of middle level officers is extremely difficult to compare because the positions to which a middle level officer can be assigned are enormously varied. A class 4 officer can be an assistant information officer in Paris, or a public affairs officer (the highest level ICA position at post) in a small African country. It would be virtually impossible to fairly distribute performance awards because of this. As a result of the many serious objections that were raised to this provision, the proposal for merit pay was dropped by the State Department at an earlier stage of the development of this Bill. We would not want to see it resuscitated.

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Question 7

The Foreign Service has a loose system of selection boards for promotion and retention. Has this system worked effectively to reward merit and punish incompetence?

The selection board process can accurately be called subjective, but it is not "loose". The convening of selection boards is an event planned months in advance, first by the nomination of individuals for membership, whose names are both solicited from and submitted for review by, the exclusive representative. Following this, union-management agreement must be reached on the lengthy precepts which are the guidelines used by the Boards, which describe factors to be considered by the Boards, material to be reviewed, and include the current criteria for selection out for performance. Any special instructions for the Boards are also drafted and reviewed. Before the Boards convene, the union takes part in the rituals mandated by the "promotion safeguards" agreement by which predetermined promotion numbers are delivered for safekeeping with the Board of the Foreign Service. They are retrieved and opened in the presence of union representatives only after the Boards have finished their work and their rank order listings, so as to prevent tampering with the promotion lists. No one, and certainly not we, would maintain that selection boards operate flawlessly. They have worked best in identifying the truly outstanding achievers and the really incompetent. They have been much less successful in distinguishing between the vast majority of officers who fall inbetween. As the committees are aware, much of the blame lies with the evaluation process. In recent years, USICA has with the cooperation of the AFGE endeavored to encourage more candor in the evaluation process. In addition, under a union-management agreement, in USICA all reports are examined by special review panels prior to submission to selection boards to insure conformance with the instructions governing preparation of reports, and the absence of impermissible comments.

With the flaws, we accept the role of the selection boards, as do the members of the Foreign Service, but we think there is room for improvement. We would like to see USICA adopt a system similar to that which now operates in State, where promotions are apportioned between members of each class depending on the time spent in class. This has not occurred because such a system presumes the existence of a career candidate program and USICA has been unable to begin such a program due to the refusal of the State Department to assure that junior USICA officers will be accorded the same diplomatic status given to their State counterparts. We also rely for the prevention of abuses and correction of errors, on our safeguards agreement, our ability to participate closely in the selection of board members and the preparation of precepts, and our right to present grievances where grievable

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errors take place. On the other hand, we think it is appropriate, and we welcome the provision of the Bill that will permit agencies to identify certain groups of Foreign Service employees who would be eligible for promotion without selection board review, solely on the basis of satisfactory performance.

Finally, with regard to retention, one point should be made. While it is within the sole purview of the selection board to rank order employees on the basis of performance and identify employees for selection-out for relative poor performance, agency management retains and has always retained the right to initiate, on its own, separations for cause based on unsatisfactory performance. Thus, the burden for removing "incompetents" has not rested exclusively on the selection boards.

Question 8

After how many hours a week should a Foreign Service Officer be entitled to overtime pay?

We believe that junior and middle level officers in the Foreign Service should be entitled to overtime compensation on the same basis as other government employees, that is, after forty hours of work per week.

Question 9

Do you support the establishment of a window entry into the Senior Foreign Service? How long should that window be?

We do not support the idea of a "window" for entry into the Senior Foreign Service. An officer in Class 1 should be eligible for movement into the SFS for as long as the officer remains in that class. This is the only way in which performance in Class 1 can be continually rewarded and motivated. The "window" idea seems to assume that an officer performs at a constant or ever-rising level. In real life, this is not always true. Personal circumstances, illness, lack of congeniality with superiors at a particular post, may cause an isolated "slump" for a single year or tour of duty, only to be followed by return to a level of excellence. Furthermore, additional experience, training or changed political circumstances overseas may make an officer suddenly very desirable for the SFS who was not considered so, a few years back. With all the reasons for leaving eligibility for the SFS open, we have heard no persuasive ones for making it limited to a few years. In

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our earliest comments on this Bill we opposed what was then proposed as a five year window, and were happy to see this provision dropped. We continue to favor a period of eligibility for the SFS which coincides with the period for which an officer is permitted to remain in Class 1.

Question 10

Why is a "parachute clause" needed for Foreign Service officers who are not selected into the Senior Foreign Service?

A parachute clause is not needed for those who never go into the SFS, but we think it is justified for those who enter the SFS but are removed, very possibly for reasons in no way reflecting upon their ability to perform. The very nature of the SFS is that membership will depend not only on the quality of performance, but upon the management's assessment of the need for one's services. The fact that one is not "needed" for the highest level positions where political considerations are bound to be a factor, does not suggest that one is not needed at the threshold level, Class 1, where one has a proven ability to perform. Our proposal for a "parachute" clause is not just an effort to seek comparability to the SES but is a recognition that non-performance factors will play a role at the SFS level, creating additional risks for those entering, and that an optional "fall back" to Class 1 for remaining time-in-class is a reasonable trade-off and insurance against arbitrary or politically motivated action.

Question 11

Would not the reestablishment of a mandatory retirement age help your members win faster promotions? Why do you oppose mandatory retirement?

We do not deny the fact that attrition in the form of mandatory retirement creates promotion opportunities by opening positions at the higher ranks, but we might dispute just how significant that number is. After mandatory retirement was reinstated this year following the Supreme Court decision in Vance v. Bradley, the agency informed the union that no additional promotions would be available this year, next year or in the predictable future. Other factors such as the reclassification of overseas posts, were acting to reduce promotion opportunities. But accepting the proposition initially stated, we nevertheless oppose mandatory retirement because we believe that it is discriminatory and unconstitutional. We are unwilling to gain opportunities for one group of employees by sacrificing the legitimate interest of another.

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In our view, retention in the Foreign Service should be based on merit alone because that is the one basis upon which all can compete equally. One could as easily say that promotions would be faster if there were no affirmative action for women and blacks, a proposition we would not consider justifying the abandonment of affirmative action.

Question 12

Do you think a separate Foreign Service Labor Relations Board is needed? Why can't FLRA be used?

As we indicated in our testimony of July 9, we do not believe that a separate Foreign Service Labor Relations Board is necessary. The State Department proposal will require establishment of a body that will be administratively redundant and inferior to the new Federal Labor Relations Authority. Creation of a labor relations authority truly independent from the Office of Management and Budget, the Civil Service Commission, etc., with members removable only by the President for cause, was an important goal of AFGE in seeking a labor management statute for the Civil Service. This was achieved in the FLRA. The special Foreign Service board that is proposed in the Bill would not be similarly independent since its members would be removable by the Secretary of State, and the Secretary would be responsible for providing administrative services to the board. In addition, the separate impasses panel that is proposed is not given final order authority -- Chapter 10 of the Bill proposes to let the agency head decide if the panel's order is consistent with the best interests of the Service. As a practical matter, the precedents established under Executive 11491 have been followed where applicable in decisions under Executive Order 11636. The same could be expected under a statutory authority, especially since the head of the board would be the chairman of the FLRA. Whatever special attributes of the Foreign Service are relevant to a particular case can be imparted to the FLRA by the parties, as is done for the judge or jury in any court action. In our view, encompassing the Foreign Service within the jurisdiction of the FLRA is clearly to the advantage of employees and their representatives. Just as clearly the administration proposal is contrary to their interests.

Question 13

Do you think an agency-wide bargaining unit is appropriate? Are not conflicts between high-level and low-level employees likely?

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The present bargaining units, which are both agency-wide (covering all departments and geographical locations of the agency) and inclusive of "supervisors" and "non-supervisors", are appropriate and have proved to be workable in our experience under Executive Order 11636. We realize they are an anomaly but believe that they reflect the peculiarities of the rank-in-person and world-wide available nature of the Foreign Service. Under the rank-in-person system, an individual is not tied to any one position, but is reassigned with regularity, every two, three or four years. Reassignment involves constant movement in and out of "supervisory" positions. It is important to comprehend that "supervisors" do not exist in the Foreign Service in the same manner in which they do in most personnel systems. Even at the highest rank, a Foreign Service officer does not exercise normal supervisory authority since he or she has no right to rank, promote, or assign a subordinate. These powers are exercised by the agency Director, centralized personnel authorities or selection boards and it is with these entities that the problems and abuses of management reside, not with the immediate supervisors. Against their action all Foreign Service employees, from the "high" to the "low", required similar protection. The issues that must be addressed by an exclusive representative of Foreign Service employees, are relevant to all members of the Service alike -- conditions of work overseas, assignment policies, operation of selection boards, payment of allowances, suitability and disciplinary actions, etc. The traditional exclusion of supervisors from collective bargaining units containing non-supervisors is based on the assumption that the supervisors share a community of interest only with the management and not with non-management personnel and that supervisors have a highly distinct community of interest among themselves. This assumption is simply not borne out in the Foreign Service because of the commonality of personnel issues, because of the mobility with which officers move into and out of "supervisory" jobs, because of the centralization of personnel authority, and because of the collegiality that is created and required by life overseas. The broadly inclusive bargaining units reflect the reality of the Foreign Service and we do not believe that any other formulation is workable.

Question 14

If there is an agency-wide bargaining unit, would not the union find itself in the position of representing both sides of a grievance?

First of all, the question is not whether the unit is "agency-wide" (i. e. covering all departments and locations of the agency) but whether it will include "supervisors" and non-supervisors. The answer to the question is no. When an employee files a grievance, the other party before the

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Grievance Board is not an individual, but the agency. A representative of the agency, either an attorney or grievance staff member, presents the agency's case in opposition to the grievance, and defends the actions of its employee's agents which form the basis of the grievance. For example, in a grievance concerning an evaluation report, the author of the report does not have to come forward and, with the aid of a representative of his or her own, defend against the grievance. Rather, the agency itself serves as the "representative" of the author and is the real opposing party in the dispute. Thus, the literal situation about which the question asks, cannot occur. On the other hand, it may be that the question is intended to ask whether the union is not put in the situation of "prosecuting" a grievance where the person whose action is alleged to be illegal, arbitrary, etc. is a member of the bargaining unit and could, as the result of the grievance, suffer some loss of status or even discipline. This could, and does arise, but not solely in the Foreign Service. A Civil Service employee may grieve the failure to receive a promotion on the ground that the supervisor exercised favoritism in pre-selecting another employee, and seek cancellation of the promotion and removal of the employee from that position. If the union represents the grievant, is there not a conflict of interest with regard to the selected employee if that employee is also in the bargaining unit? Is this qualitatively different, than the situations arising in the Foreign Service? In addition, many grievances of Foreign Service employees involve the decisions of centralized personnel or administrative offices, not those of immediate supervisors. Even with regard to grievances involving immediate supervisors, by the time the grievance is heard, the supervisor may be reassigned, and no longer a supervisor, and the grievant may have assumed such a position. The present bargaining unit reflects the oddities of the rank-in-person system and analogies to other personnel systems simply do not work. In the years since issuance of Executive Order 11636, to our knowledge, allegations of conflicts of interest in grievance cases from our unit members have not arisen. We rely on that experience and on the availability of a labor relations authority to hear any such complaints, in anticipating no serious problems in the future.

Question 15

Do you have a problem with permitting the granting of limited extensions for those whose time-in-class has expired?

We do not oppose extending time-in-class after a person has served the permissible limit. Our concern with the notion of the "limited extension" is that a person in such a status is extremely vulnerable to management pressures and with reason will feel that he or she serves at the whim of

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management. It is true that selection boards will recommend extensions but as to whether the agency is bound by the rank ordering of those recommended, there is serious question since testimony given by the State Department was contradictory. It is as combined with a variable time-in-class that we foresee the potential for abuse in the "limited extension". If time-in-class can be set as short as desired, even one year, tenure will, realistically disappear. The limited extension is not really objectionable if the bill makes perfectly clear that time-in-class periods will be set for classes of employees, not individuals, that the length of time-in-class will be negotiable with the employee representative, and if the bill includes a provision for a parachute clause.

Question 16

Does AFGE oppose the section of the Bill requiring that the union invoke the grievance mechanism? Why do you oppose this?

We oppose the proposed Section 1103 by which the State Department would make the union the sole representative before the Foreign Service Grievance Board for members of the bargaining unit. The reasons for our opposition become clear after consideration of the ways in which the Foreign Service grievance procedure varies from the normal negotiated grievance procedure in which exclusive union representation is considered advantageous and necessary. First of all, a contract grievance procedure is, by its nature, available only to members of the bargaining unit. The Foreign Service procedure, on the contrary, is available to all members of the Foreign Service regardless of their inclusion in the bargaining unit. Thus, whether or not represented by the union, a non-unit employee will have access to the Grievance Board. Therefore, one interest that is served by allowing only the union to invoke arbitration under a negotiated procedure, that of controlling the precedents and uses of the system, will not be served here by the State Department proposal. Second, the proposed section would have the effect of granting a right to non-unit members (the right of free choice of representative) that is not available to unit members. This would not enhance the stature of the union or suggest advantages to union representation. Third, normal negotiated grievance procedures cover only disputes regarding the application or interpretation of the union-management contract. The jurisdiction of the Foreign Service Grievance Board is not so limited -- it extends to many subjects which are not and/or cannot be covered by labor agreements. It is important to understand that the jurisdiction of the Foreign Service Grievance Board includes many subjects which, in the Civil Service system, are "adverse actions" and subject to appeal under either the negotiated grievance

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procedure or the statutory procedures of the Merit System Protection Board. Thus, for appealing important adverse actions, a Civil Servant in a union bargaining unit always has the election of using the non-union, statutory appeal procedure. In contrast, under the proposed scheme, since Foreign Service employees are not covered by the adverse action sections of the Civil Service Reform Act, and the Foreign Service Grievance Board is the sole appeal procedure for such things as separation for cause, employees would be forced to gain union sanction of their appeal. Thus, the State Department proposal would result in Foreign Service employees having fewer due process rights than their Civil Service counterparts. We cannot sanction such a result. Clearly, the State Department proposal is not intended to benefit either employees or the union -- it is aimed at overtaxing the resources of the unions and reducing the number of grievances. We firmly believe that freedom of choice with regard to representation before the Foreign Service Grievance Board is most consistent with the nature of the Foreign Service grievance process. We hope that you will consider the alternative language we propose in our testimony.

Question 17

Is there any reason for continuing a separate Foreign Service information officer corps after this bill is passed?

Yes. One of the first reorganizations undertaken by President Carter after assuming office was the combining of USIA and the State Department Bureau of Cultural Affairs into the new International Communication Agency. This represented a decision to establish an agency independent from the State Department with the distinct responsibility of carrying out our government's overseas information and cultural activities. An understanding of the mission assigned to USICA in our view requires recognition of the need for a corps of specialists in international communication. Foreign Service information officers are highly trained and experienced specialists in the art and techniques of communication. They are not economic, political or consular officers. This difference is recognized in the recruiting and examining process for individuals interested in the foreign service, and in training, and assignments. Overseas, FSIO's function differently than State Department officers -- they are much more a part of the community to which they are assigned. The libraries, bi-national centers and information services for which they are responsible depend for their success on the degree to which contacts and relationships can be established with members of the foreign community. The special contribution of the Foreign Service information officers has been repeatedly noted by the United States Advisory Commission on Information.

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Thus, we feel it is vital that the FSIO corps survive passage of this Bill. The legislative history should clearly affirm the need for a separate FSIO corps and the Bill itself should be modified along the lines suggested by our testimony to insure that a separate Foreign Service personnel system under the control of the Director of USICA can be maintained.

Question 18

Should any protections be added to the bill to prevent the possibility that the Foreign Service will become politicized?

Due to the nature of the work, it is impossible to completely insulate members of the Foreign Service from the political implications of what they do. But we believe that to the extent feasible it should be made clear that the faithful carrying out of one's duties for one administration is not going to damn one when the next administration takes over, and that dissent and disagreement in the proper channels is to be encouraged not punished. That kind of admonishment does not lend itself to legislation. On the other hand, the proposal we have made to provide for a "parachute clause" for members removed from the SFS is directly addressed to the problem of politicization and is designed to provide a degree of protection to an officer whose only error is to be a holdover from a previous political climate. We think that this is an important protection which should be added to the bill. The other protection is to insure that matters such as the length of time-in-class are made negotiable with the employee representative.

Question 19

Does the collective bargaining agreement between ICA and AFGE expire on June 30, 1981? If not, what happens on that day?

June 30, 1981 does not represent the expiration date of any collective bargaining agreement. In December, 1977, AFGE Local 1812 and USICA management reached agreement on the outlines of a revised personnel system which would phase out the FAS program, treat domestic Foreign Service like Civil Servants for purposes of promotion and assignment, and permit voluntary conversion of FAS employees to the Civil Service. The outlines of the system and procedures for conversion were reduced to written form and initialed by the Local President and the Director of Personnel. It was the intention of both parties that the terms and conditions set out in the written circular would remain in effect indefinitely unless and until changed

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at some later date after new negotiations. Many aspects of the circular have since been incorporated into Agency regulations. During negotiations on procedures for voluntary conversion, management representatives of USICA pointed to certain problems they perceived in letting the period for voluntary conversion remain open-ended; they therefore proposed that a fixed period be set at the end of which employees would be "frozen" in their current status, be it GS or FS. Conversion to GS after that would only be with the agency's permission under terms set at that time. The union agreed to end the period on June 30, 1981. Therefore, what was expected to "happen" on June 30, 1981, under the terms of the agreement, was that FAS employees who had not converted to GS would lose the right to convert, and remain in the Foreign Service as "domestic specialists". Of course, this agreement was made without anticipating that superior authority such as legislation might intervene to prevent the carrying out of its terms.

Question 20

Do you think that there is a need for comprehensive legislation rewriting the Foreign Service Act?

While we agree that a thorough study and overhaul of the Foreign Service is called for, we do not believe that this bill represents a satisfactory effort, although we appreciate the time that has been devoted to developing it. What disturbs us is that one of the major situations it seems to be addressing, that of "impaction" at the senior ranks of the Foreign Service, is not a serious problem at ICA as persuasively argued by the ICA Director in a letter to Ben Read in March of this year (attached). And the other situation, that is, the anomaly of a domestic foreign service, has been proved to be resolvable by administrative means.

Question 21

What is your position on the bill's provision allowing for the withholding of or doubling of merit step increases?

We support this provision as being far preferable to the proposal for middle level merit pay, so long as it is clear that the merit step increases are to be denied only when performance is below the standards of the class and not simply when funds are desired for giving double increases to others as was suggested in State Department testimony.

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Question 22

How do you justify preserving Foreign Service retirement benefits for domestic-only Foreign Service employees who never have, and never will serve abroad?

Implicit in this question seems to be an assumption that entitlement to Foreign Service retirement is dependent on one's having served abroad in the Foreign Service. This is not explicitly required by the present law. Nevertheless, we raised this issue in a court of law, when the FAS program was first instituted and State Department and USIA management proposed to incorporate into the Foreign Service individuals for whom they had no expectation of overseas service. Our argument that creation of a "domestic" Foreign Service was illegal, was fought by the United States government and eventually rejected by the federal court. After this, it was quite reasonable for our employees who entered the apparently "vindicated" FAS program to accept as a legal commitment the promise of the government that after three years in FAS and achievement of "unlimited" reserve status, they would be entitled to Foreign Service retirement. It now appears that the government has changed its mind about the propriety of a "domestic" Foreign Service and that some are questioning the basis for permitting retirement under the Foreign Service retirement system for domestic employees. We say it is too late. Hundreds of employees accepted the government's commitment, many not willingly, and now have a vested interest in their retirement benefits. They should be permitted to retain that interest, whatever prospective changes are made with regard to the Foreign Service personnel system.

Question 23

In the Civil Service, ten percent of Senior Executives will be non-career. Why should the figure be 5% in the Senior Foreign Service?

We understand from State Department testimony that the 5% figure was chosen as representing the actual average percentage of non-career personnel in executive level positions during the last several years. On the assumption that this is correct, we believe that the 5% should be retained and that the Bill should not double the number of positions available for non-career appointments. Maintaining a proper balance between so-called political appointees and career employees in senior jobs has been a difficult and controversial issue in the Foreign Service, impacting on promotion and assignment opportunities, although more so in the State Department than in AID or USICA. We would not favor tipping the balance so heavily in favor of increasing non-career appointments.

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Question 24

Should Foreign Service employees be allowed to picket a U. S. embassy abroad if it is dissatisfied with some management action?

We are quite sensitive to the problems and the embarrassment to the United States government that could result from the picketing of U. S. overseas establishments by American personnel. We have some difficulty envisioning a situation when Foreign Service employees would be motivated to do this, since the management at the post level is rarely responsible for the types of personnel decisions and actions which could give rise to a protest situation. In addition it is hard to conceive of a motivation to communicate internal grievances to a foreign public who would have no ability or opportunity to bring pressure to bear on the management of the foreign affairs agencies. Picketing on non-personnel issues, i. e., on foreign policy issues, would certainly not be appropriate and would not be sanctioned by the union in any situation. On the other hand, we do not favor the kind of legal bar which is incorporated in the Bill, preferring to let these matters be decided by the Federal Labor Relations Authority.

Question 25

Should the length of the window for entry into the Senior Foreign Service be a negotiable issue?

Yes. We have already indicated our disagreement with the notion of a "window" for selection into the SFS, but if the Bill is passed with this feature, it should provide for the negotiability of this issue. This would assure to the extent possible that the authority to set and change the threshold window will not be used arbitrarily.

Question 26

Should the number of employees considered for selection out for substandard performance be a negotiable item?

We do not believe that setting a number quota for selection-outs for performance is appropriate -- the process must have a rational basis and bear some relation to performance. Therefore we have never suggested to management or tried to negotiate setting a fixed number of removals and we would not consider it appropriate to do so now. What we have negotiated and would want to continue to negotiate, is the formula or criteria which

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must be met to warrant selection-out for relative performance. Over the years this set of criteria has varied in ICA, the elements being a percentage of officers in each class that must be placed in the "low rank zone" by selection boards, the number of times and frequency with which this "low ranking" must occur, and any additional finding required by the selection board that selection-out is actually warranted, or that the performance is considered to be actually below the standards of the class. Having this aspect of selection-out for performance subject to negotiation with the union is a vital protection for employees to insure that separations have some rational basis.

Question 27

Why have women and minorities done so poorly in the Foreign Service?

It is not clear to us that women and minorities have done any worse in the Foreign Service than in the rest of the federal government service. Certainly in ICA and AID the number of GS supergrade women and minorities does not significantly outnumber counterparts in the Foreign Service. There are specific historical reasons for the lack of women and minorities at the higher Foreign Service ranks. Overt discrimination ended only within the last decade. Women were hardly going to be attracted to a Foreign Service career when marriage was taboo. Efforts in recent years have focused on affirmative action to try to overcome these historical patterns. In ICA we have fully supported the affirmative action undertaken by the agency in recruitment, placement and assignment and the result has been an overall increase in the number of women and minorities. It is going to take time before this is fully reflected in the senior levels. From our perspective, the kind of overt discrimination in assignment that once existed has been eliminated but no one can deny the operation of more subtle biases. Equal opportunity in assignment is really the key to promotion and advancement.

Question 28

Do you support legislation to provide that former spouses of Foreign Service officers receive part of the annuity after the officer dies, if married for ten years?

Yes. We support this measure because it recognizes the significant contribution and sacrifice of the Foreign Service spouse. A decade of Foreign Service life most probably represents a decade of not only direct service to the government, but also loss of earnings and career development as a result of the need to be, along with the officer, world-wide available.

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Question 29

What is the proper relationship between the State Department and ICA and AID? Does this bill provide for the appropriate relationship?

The appropriate relationship between these three agencies has been decided in recent years by Congress and the Administration. One of the first Presidential reorganizations was the creation of the International Communication Agency by consolidating the small State Department Bureau of Cultural Affairs with USIA. The new agency is an autonomous one, independent from the State Department and assigned sole responsibility for the mission of communicating with other countries, both giving and receiving information about our different political and social systems, and conducting our government's cultural exchange programs. In the years just prior to that, Congress considered and rejected the recommendations of the so-called Stanton Panel and Murphy Commission that USIA be dismantled and most of its functions transferred to the Department of State. AFGE and the AFL-CIO vigorously opposed those recommendations. Recently Congress also affirmed the independence and integrity of the Voice of America, a part of USICA, by approving its first charter. With regard to AID, the President's reorganization plan establishing the International Development Cooperation Administration (IDCA) evidences a commitment that international development should be carried out by an independent agency. Our continued support for the independence of the "junior" foreign affairs agencies is rooted not just in a concern for the rights of employees, but in a conviction that the missions of these agencies can be carried out successfully only if the agencies are viable and autonomous organizations, and that independence is a reality only if the head of the agency has the authority to direct, and determine the working conditions of, the personnel of the agency. We do not suggest that the foreign affairs agencies do not require close working relationships -- of course they do. Nor do we suggest that a degree of compatibility between their personnel systems is not desirable -- we realize this is necessary to permit the exchange of personnel and the reasonable administration of overseas posts. The necessary degree of compatibility is prescribed by existing law and procedure. In certain matters, such as allowances, leave, retirement, etc., members of the Foreign Service in all three foreign affairs agencies are already governed by uniform regulations. To the extent that the proposed Bill represents a departure from the existing situation and existing relationships we consider it objectionable. As we have explained in our testimony and in answer to a previous question, the Bill increases the degree of control over the USICA and AID personnel systems by the Department of State (in the person of the Director General) and introduces the requirement of "maximum compatibility", a concept that we believe is designed to produce pressure for conformity for its own sake. There are many personnel policies for which uniformity is not justified. For example, the length of time-in-class is rational only if set after considering the number of individuals in each class, the current promotion rate, the number of positions existing at particular levels, budgetary considerations, etc. All of these factors will vary from one agency to another. A most graphic illustration of this is contained in the USICA Director's letter of March 26, 1979 to Under Secretary of State Ben Read, quoted in part from our testimony and attached here. And there are other interests at stake. Given the size and influence of the State Department and the natural biases there, a loss of autonomy for AID and USICA will inevitably mean a loss of standing and status for the Foreign Service employees of those agencies.

APPENDIX 26

QUESTIONS SUBMITTED IN WRITING TO THE DEPARTMENT OF STATE AND
RESPONSES THERETO

- A.1. Question: Please report on the pilot project for employment of dependents in Foreign Service National positions.

Answer: The pilot project for employment of dependents in foreign national positions has been in effect since March of this year. The delay in getting the pilot project off the ground resulted primarily from difficulties in developing a single program which would meet the special needs of the several foreign affairs agencies.

Currently, there are two American dependents employed against foreign national positions at the 15 pilot posts. Because of the paucity of responses to the program thus far, we have expanded the pilot program to make it available to all posts. We anticipate that this expansion will permit us to get a large enough sample of positions filled to make an effective analysis of the program.

- A.2. Question: Please comment on the results of the Hay Associates study on Foreign Service pay comparability.

Answer: The pay study adds significantly to the Department's ability to understand the relationship of its pay policies to those practiced elsewhere in Government and in the private sector. The study suggests a number of actions are necessary to bring our pay policies into line. Specifically, there is a clear justification for modifying the linkages of the Foreign Service pay system and the Civil Service pay system, and a need to reexamine certain of our classification policies. Since pay comparability, both among federal systems and between the latter and the private sector are long-established, government-wide, legislated policy goals, adaptations can be accomplished by administrative action. The pending bill effects only one specific change in this area: consolidation of two into one Foreign Service pay scale.

The Hay study -- the first comprehensive look at Foreign Service pay policy in many, many years -- is useful and helpful. We will seek to implement its findings.

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- A.3. Question: How does the draft legislation submitted to Congress differ from that submitted by the Department to OMB for clearance?

Answer: In the long process of developing the draft legislation, numerous changes and refinements were made as a result of consultations with the other foreign affairs agencies, OPM, OMB, individual employees. This process was followed by formal OMB review and employee representative organizations. In what follows, only the OMB changes in the final draft submitted by the Department of State on June 9, 1979, are listed. It should be noted that OMB comments and suggested changes reflect not only its own concerns, but its central role in the Administration's clearance process for legislation, in that some of the changes had their origins in the concerns of other agencies.

The OMB changes fall into two groups: (A) those which were made as a result of discussion of a draft submitted for interagency clearance on June 9, and (B) subsequent changes which were made after the June 20th version of the bill had been submitted to Congress, but prior to the opening of hearings on June 21. These latest changes were submitted separately, but subsequently incorporated in the June 21 draft which the two subcommittees have now.

(A) Changes made June 9-20 as a result of OMB comments:

- Section 311(a)(3) was changed from:

"To the extent practicable, chief of mission positions should be occupied by career personnel of the Service."

to

"To the extent practicable, career personnel of the Service should be given consideration for appointment to chief of mission positions."

- Section 463, which was derived from existing law (section 14 of the Basic Authority of the Department of State), dealt with the death gratuity to be paid to any member of the Service who dies as a result of injuries sustained in the performance of duty outside the United States. OMB preferred to leave it as a part of the Department's Basic Authority rather than re-enact it in this bill.

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A.3. (Continued)

- Section 703(6) - the adjective "esoteric" is in existing law as delineating the languages for which special incentives can be paid for developing and retaining high competence. Given the increasing need for greater competence in a wide variety of languages, the Department had originally drafted this provision to allow broader coverage, but OMB's position was that the existing provision should be followed.

The draft bill originally contained a provision, following court order, for survivor benefits to a divorced spouse. (Existing legislation permits assignment, in like circumstances, of retirement annuities to divorced spouses, but no survivor benefits, under the Civil Service Retirement System.) OMB preferred that the proposed expansion of current law be severed from the Bill and instead presented for clearance as a separate proposed Bill. This has been done, and OMB comments are awaited. Section 864 of the Bill is consistent with existing law for the Civil Service.

(B) Changes made on June 20, 1979 as a result of of OMB comments (references are to June 21 revised draft):

- Section 212(a) on page 9, line 3, strike out "may" and insert in lieu thereof "shall".
- Section 212(b) on page 9, strike out prior language on 9 through 14 and insert in lieu thereof the following:

"shall be deemed, with respect to the personnel and functions of the International Communication Agency, the International Development Cooperation Agency, and other agencies authorized by law to utilize the Foreign Service personnel system, to be references to such agencies and to the heads of those agencies,".

- Section 704 on page 54, line 5, and also line 10, strike out the comma and "functional".
- Section 901 on page 106, line 16, strike out the comma and "including".
- Section 931 on page 115, line 6, strike out "(including expenses of family members)".
- Section 1001(3) on page 116, line 16, immediately after the period insert the following sentence:

"The provisions of this chapter shall be interpreted in a manner consistent with the requirement of an effective and efficient Government."

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A4' Question: Describe in brief how at present a candidate for appointment as a Foreign Service officer in the Department of State or as a Foreign Service Information officer in the International Communication Agency is appointed through the regular examination system.

Answer: The competitive selection process by which a candidate for FSO or FSIO appointment is brought into the Service begins with the FSO/FSIO written examination, which is given annually in December. Candidates must file applications by late October to take the 4½ hour examination, which is designed and administered by the Educational Testing Service (ETS), a private contractor. The written examination, which is conducted in some 150 cities throughout the US and in some 250 posts abroad, consists of the following: the Functional Background (general background) Test, an English Expression Test and a Function Field (with questions in the political, economic, administrative, and consular functions) Test, plus a written essay. State candidates pass or fail on the basis of their Functional Background and English Expression scores, with Functional Field Tests scores used only for placement. For ICA candidates, however, all three tests constitute pass/fail elements, with the ICA Functional Field Test composed of information/cultural work questions.

Candidates are notified by mail in late January of their written examination scores. Those who achieve passing scores are invited to come forward for the next stage of the competitive selection procedure -- the day-long assessment process (which this year replaced the traditional one-hour oral examination). Examining panels that administer the assessment process visit some 12 cities throughout the US from about March through June in addition to maintaining continuous operation in Washington and to the extent possible candidates are examined in accordance with their site and time preference. Typically about 20% of those who are eligible to advance to the assessment stage do not choose for various reasons to participate.

The assessment process requires candidates to complete an In-Basket Test and a 45 minute writing sample and to participate in a series of exercises and simulations. An individual interview involving one assessor and one candidate is conducted on the results of the In-Basket Test, on matters of foreign affairs interest and on personal characteristics of the candidate. In the group exercise each candidate makes a presentation before his/her colleagues. After all presentations are made the group then discusses and interacts to the views and problems presented. Each candidate is

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observed and rated by each of three examiners and the overall scores for each candidate is based on the combined judgement of the three examiners. The ratings on the knowledges, skills, abilities and personal characteristics measured in the assessment process thus determine whether the candidate is to be further processed. When all data, including the scores on the In-Basket test are in, the applicants are notified by mail (usually in about three weeks) whether their candidacies are being continued.

Those who have been found competitive then enter the final selection and appointment stage. A background investigation is conducted on each successful candidate; this usually takes from six to nine months to complete. A medical examination is also given to each candidate and to any dependent who will accompany the candidate abroad. When the results of the investigation and examinations are in, a final review panel then weighs the candidate's qualifications against those of others based on all relevant information available, including all examination results, educational and work background, and the results of the medical and background investigations. The panel assigns a numerical score for each candidate. Each FSO candidate file then is sent to another office in personnel where the file is again reviewed in its entirety for the purpose of deciding in which functional cone the candidate is best qualified to serve. The candidate is then notified by letter of the functional cone designation and is given the opportunity to discuss this placement. The FSO candidate then is placed on one of four functional rank order registers -- administrative, consular, economic/commercial or political. A single register is maintained for FSIOs. Candidates are considered for appointment on the basis of their rank order standing on the appropriate register. Being placed on the register does not guarantee a candidate employment, since appointments depend on personnel needs and budget limitations. Every effort possible is made to advise a candidate of the prospects and timing of appointment. A candidate on the register who is not appointed within 30 months after taking the written examination loses his/her eligibility. (Beginning this year under a new eligibility rule, candidates will have 18 months of eligibility from the time their names are entered on the register.) Candidates who are not successful in any phase of the selection process may participate again by taking the written examination in December. A number of candidates who are already on the register but whose standings are relatively low have in fact taken the examinations again in an effort to improve their standings.

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- A4. Question: What is the history of changes in the weighting of components of the Foreign Service Officer Examinations in recent years? Why were they made and how does this effect the validity of the examination?

Answer: The Foreign Service Officer selection system has two main examination components -- the written examination and the oral examination (the latter replaced this year by the assessment procedure). Both components are designed to fit the concept of selecting the generalist/specialist, that is a Foreign Service officer who has the qualifications required for career entry and advancement in the Foreign Service but also has sufficient background in one or more of the functional areas, so that in the examining process the candidate's strengths and interests could be identified with one of these fields. In this way, the overall selection process has been expected to maintain a balanced intake of officers in line with the Department's needs.

The written examination which has been administered by the Educational Testing Service (ETS), a private contractor, functions essentially as a screen for reducing the traditionally large applicant pool ranging from some 10,000 to 13,000 persons each year, to a smaller and more administratively manageable group for the next competitive phase-- the oral examination or assessment procedure.

The component parts of the written examination (consisting of the Functional Background (general knowledge type) Test, the English Expression Test, and the Functional Field Test, have not changed in the last four years. However, beginning with the 1975 written examination, candidates were required to answer questions in all four conal areas of the Functional Field Test instead of choosing just one cone as was the case prior to 1975. In the 1977 written examination the pass/fail elements of the examination were reduced to only the English Expression and the Functional Background portions. The Functional Test portion, which in previous years had been a pass/fail element was used only for placement purposes. This change was taken because women generally did less well than men on this portion due to less exposure to subjects such as economics. Also the relative weight of the English Expression and Functional Background portions in the overall scoring was set in 1977 at 60 and 40 respectively, since women traditionally do better in English Expression. Since 1975 ETS, through a job analysis and with input of Foreign Service Officers in each functional field, has reviewed the knowledge and skill requirements for this generalist/specialist concept and formulated the composite test specifications by which each written examination has been prepared and utilized.

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On the oral examination there has been the formulation each year of a store of job-related questions in each functional area plus those for the Cultural and Americana areas by which three-member examining panels differentiate candidates in terms of a set of defined characteristics. These characteristics, called job elements, are derived through research conducted by ETS and are those judged to be essential to effective performance. The job elements are defined as knowledge, skills, abilities and personal characteristics and the premise is that those candidates who possess the characteristics will be more effective as an FSO or FSIO than those who do not possess them. Thus each candidate is measured or assessed for these characteristics and a score is given to indicate the degree to which the candidate demonstrates them. The oral examination was not a constant entity, because examination precepts were modified and improved upon from year to year. Also in 1977 the in-basket test was included in the State process for the first time (ICA has used this test since 1974) because certain skills judged as highly important were being measured only indirectly or not at all. The test has since been judged to be highly useful.

In 1978 it was decided that oral evaluation process using a modification of an assessment center type format designed by ETS would replace the one hour oral examination. This assessment process which incorporates the in-basket test, a 45 minute written essay, a one-on-one interview, a prepared presentation and a leaderless group discussion exercise, subjects the candidate to the observations of assessors or examiners for a total of about 3½ hours. The decision was taken because: the new process enables better assessment of candidates in that more information on the individual is available and the candidate is observed in more situations, with more of the key characteristics being measured directly; more information is available to those responsible for the placement function; there have been no challenges of adverse impact in relation to assessment programs-- women and minorities appear to do as well as others; and the new format from past research appears to be more acceptable to candidates because they feel they are given more opportunities to show their qualifications.

The weighting of the components of the selection process do not, per se, effect the validity of the process. The selection process is based upon a job analysis of the Foreign Service Officer occupation and was validated using a content validity model. That is to say, the content of the process has been carefully studied by a number of subject matter experts, and found to be representative of the content of the job of a Foreign Service Officer. As long as the content of the selection process remains representative of the content of the job, the process is valid. The overall effect of the relatively small changes in weighting referred to here should be minimal in terms of the validity and job relatedness of the Foreign Service Officer selection process.

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A.5. Question: Supply for the record a numerical summary of the Foreign Service, divided by category, grade level, male/female, and minority group members.

Answer: Please see tables, pp. 24 - 25.

A.6. Question: Supply for the record information on the promotion rates for male/females, and minorities compared to overall rate.

Answer: Please see tables, pp. 28 - 31.

A.7(A) Question: How much does the Foreign Service Retirement System cost?

Answer: Costs of retirement systems are usually expressed in two parts: normal cost and unfunded liability. In general terms, normal cost is the cost of benefits currently being earned and unfunded liability is the sum of obligations previously incurred for prior service and for new laws that have not been financed.

The normal cost of the Foreign Service Retirement System is currently 21.8 percent of the participant payroll or \$72.6 million. If this amount were deposited in the Fund annually, at interest, it would be sufficient to pay for benefits to be earned from this point forward at current benefit and payroll levels.

The current unfunded liability of the System is \$ 2 billion. This debt has arisen from several factors. One is that in the middle 1950's the Government made no contributions to the Retirement Fund, and not until 1977 did current employee and Government contributions cover the full Foreign Service normal cost. Another reason for the growth of the unfunded liability was that its very existence meant that the System was losing interest each year on funds that were supposed to be on deposit in the Fund. This loss, compounded over time, has been significant. This situation has now been corrected as indicated in the next answer.

The above cost figures are based on estimates made by the Actuary in the Treasury Department. The Treasury makes a formal actuarial evaluation of the Foreign Service Retirement System every five years. The next one is scheduled to be printed in July 1979. The Actuary updates estimates of the normal cost and the unfunded liability of the System every year or oftener as required.

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7 (B) Question: How is the System financed?

Answer: Money to pay benefits as they fall due is obtained from the following sources:

1. Money in the Fund not needed to pay current benefits is invested in Government securities which earn interest which is credited to the Fund. Currently, new investments of monies in the Fund are earning better than 9 percent annually.

*2. An amount equivalent to interest on the unfunded liability is paid into the Fund annually by the Treasury Department--\$104 million for FY 1980.

*3. The cost of benefits attributable to military service is paid into the Fund annually by the Treasury Department--\$8.8 million for FY 1980.

*4. Unfunded liability created by pay raises, benefit changes and expansion of coverage to new groups of employees is amortized in full over 30 years. Appropriations for this purpose are made annually to the Fund--\$45.2 million for FY 1980.

*NOTE: These financing arrangements (items 2, 3 and 4) are identical to those in force under the Civil Service Retirement System and were initiated in 1971 pursuant to Public Law 91-201. Payments under items 2 and 3 above are being phased in: 10 percent of the amounts due were paid in 1971 with increasing amounts paid in each year thereafter with the full amount becoming payable in 1980 and in each fiscal year thereafter.

5. The normal cost of the Foreign Service Retirement System is met by the contribution of 7 percent from the salary of every participant plus a matching amount from the employing agency (State, USICA and AID), with the balance, 7.8 percent of payroll, being met by direct appropriations to the Fund. This appropriation is made pursuant to section 865(b) of the Foreign Service Act added in 1976 by Public Law 94-350.

7 (C) Question: How does the Foreign Service normal cost and unfunded liability compare with the comparable Civil Service costs?

Answer: The Civil Service normal cost is approximately 14 percent and the Foreign Service normal cost is 21.8 percent of covered payroll. The Civil Service unfunded liability is \$124 billion which compares with a figure of \$2 billion for the Foreign Service. (Civil Service costs are based upon static economic assumptions while Foreign Service costs are based upon projections which assume continued inflation.)

7 (D) Question: Why is the Foreign Service normal cost higher than the Civil Service normal cost?

Answer: Apart from the different economic assumptions used in making the computations, the higher Foreign Service normal cost is attributable to the following differences between the Systems:

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1. Attrition Rate

The Foreign Service is a career service and many of those entering intend to remain in the Service throughout their careers. This is not true of many persons who enter the Civil Service. The result is that approximately six times as many persons who enter the Foreign Service at age 25 earn a retirement benefit as do persons entering the Civil Service Retirement System at age 25. When individuals withdraw from the retirement system without earning a retirement benefit, they receive a refund of their own contributions with a minimum amount of interest. The Government contributions made on their behalf remain on deposit in the retirement fund for the benefit of those who remain in the System. Government contributions to the Civil Service System benefit a much smaller proportion of the work force, and therefore, the average amount per employee that must be deposited is less.

2. Salary Progression

The Foreign Service salary progression ratio (entrance to highest salary for a typical career) is over twice that for the Civil Service. Therefore, the employee contributions made at the same rate in the two Systems represent a smaller proportion of benefits received in the Foreign Service System. However, many in the Civil Service, such as management interns and similar appointees have a career advancement pattern similar to that in the Foreign Service. Such personnel in the Civil Service have their retirement costs averaged with many others with low career advancement rates, and thus the average cost, or normal cost, of the large heterogeneous Civil Service Retirement System is lower than the comparable Foreign Service cost.

3. Early Retirement and 2% Multiplier

The average retirement age for participants in the Foreign Service Retirement System is about two years younger than in the Civil Service System. This is attributable to the Foreign Service selection out system, to the early voluntary retirement age and to the mandatory retirement age of 60. In addition, Foreign Service retirees live, on the average, one year longer than Civil Service retirees. The result is that the average Foreign Service retiree receives an annuity three years longer than the average Civil Service retiree and this contributes to a higher average retirement system

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cost. Also the Foreign Service annuity equals a straight 2 percent times average salary which is slightly higher than provided by the general Civil Service annuity computation formula, although it is identical to the formula used under the CIA retirement system and is less generous than the formula used for the FBI and other law enforcement personnel, fire fighters, and Secret Service personnel.

7 (E) Question: When employees transfer between the Foreign Service and Civil Service Retirement Systems, why not transfer Government contributions as well as employee contributions?

Answer: The transfer of Government contributions would have no practical impact on Government fiscal operations and would be purely a bookkeeping transaction. Considerable administrative expense would be incurred in computing and transferring these funds. Under present procedures, when an employee transfers, it reduces the unfunded liability of one System and increases it in the other. Consequently, the Treasury pays a correspondingly smaller amount of interest to one System and a larger amount to the other System. This works satisfactorily and entails no administrative expense.

Most of the domestically oriented Foreign Service employees now under the Foreign Service Retirement System to be converted to the Civil Service under the proposed Foreign Service Act of 1979 were originally under the Civil Service Retirement System. When they transferred to the Foreign Service, the Government contributions made to the Civil Service Retirement System on their behalf remained in the Civil Service Retirement System. So have the Government contributions that were made on behalf of many employees originally appointed under the Civil Service Retirement System and who have, over the years, converted and retired under the Foreign Service Retirement System.

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A. 8. Question: Please provide details on the operation of the EEO Junior Officer and Mid-Level Programs.

Answer: (a) EEO Junior Officer Program: This program for minority candidates began in FY 1968. Under the program, minority candidates have been appointed as Foreign Service Reserve Officers and, up to January 1, 1979, have been required to pass the lateral entry examination prescribed by the Board of Examiners for the Foreign Service in order to convert to FSO status. Since January 1, 1979, minority candidates have been given four-year FSR appointments and will be evaluated for commissioning as FSOs on the same basis as Career Candidates entering via the BEX written examination under Section 516 of the 1946 Act, as amended in 1977.

Since 1968, 220 FSR/JOs have been appointed up through May 1979. Of this number, 125 were hired in FY 1975 or earlier and have therefore met the age and length of service requirements to be eligible to apply for lateral entry. Of that group of 125 candidates, 67 or 54% have qualified for conversion to FSO. Another 35 or 29% have left the Foreign Service, of whom 12 left before they were eligible to take the lateral entry exam and another 3 converted to other employment in the Department. There remain 23 persons in pending status, of whom we believe at least 13 have solid prospects for successful conversion to FSO, which would raise the overall retention rate to 64% of those hired under the program.

We are determined to build on this respectable level of achievement and have increased our efforts to provide proper counseling and supervision of junior officer candidates, particularly the minority officers and Mustang Officers who face the additional hurdle of the lateral entry exam. There has been a general tightening and improvement in the junior officer selection process, as well as similar improvements in assignment, counseling and evaluation of Career Candidates. We are confident that the Service will benefit in coming years from a greater flow of qualified minority and women officers.

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(b) EEO Mid-Level Program: The Mid-Level Hiring Program for minorities and women was established in May, 1975. Under the program, minority and female candidates have been appointed as Foreign Service Reserve Officers at the -05, -04, -03 levels, and are required to pass the lateral entry examination prescribed by the Board of Examiners for the Foreign Service in order to convert to FSO status. To be considered, candidates must be at least 30 years old at the time of application, and 31 at the time of appointment. Applicants are screened by the Department's Office of Employment, an Applications Review Committee of Foreign Service Officers, and the Board of Examiners.

Since the Program's inception, 45 Mid-Level entrants have been appointed through June, 1979. As of May 31, 1979, an additional 14 applicants were awaiting examination by the Board of Examiners. Of the four officers who were appointed in June, 1976 or earlier and have thus met the length of service requirements for lateral entry, one has converted to FSO status. Two of the other three completed their three years just this month. Two of the 45 appointees have resigned.

The retention rate thus far in this relatively new program is high, and most of the Mid-Level hires who have worked long enough to establish a record are doing well. The record generally reflects well on the selection process, and we are increasing our efforts to provide additional training and counseling for Mid-Level minority and women officers.

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A9. Question: Please provide information on comparative pass rates for women/men/minorities on the FSO written and oral examinations.

Answer: The pass rates for the past four years are shown below.

	<u>Total</u>	<u>Men</u>	<u>Women</u>	<u>Min.</u>	<u>Non-Min.</u>
<u>December 1975 Exam</u>					
Applications	20,807	14,660	6,147		
Took Written	13,744	9,883	3,861		
Passed Written	1,508	1,347	161		
	(11%)	(14%)	(4%)		
Took Oral	1,094	965	129		
Passed Oral	330	289	41		
	(30%)	(30%)	(32%)		
<u>December 1976 Exam</u>					
Applications	18,760	13,486	5,274		
Took Written	11,814	8,673	3,141		
Passed Written	1,729	1,510	219		
	(15%)	(17%)	(7%)		
Took Oral	1,276	1,104	172		
Passed Oral	388	318	70		
	(30%)	(29%)	(41%)		
<u>December 1977 Exam</u>					
Applications	18,022	11,943	6,079		
Took Written	11,531	7,789	3,742	1,339	10,319
Passed Written	2,373	1,679	694	60	2,274
	(21%)	(22%)	(19%)	(4%)	(22%)
Took Oral	1,696	1,183	513	23	1,696
Passed Oral	353	279	74	8	353
	(21%)	(24%)	(14%)	(35%)	(21%)
<u>December 1978 Exam</u>					
Applications	17,094	11,296	5,798		
Took Written	10,123	6,804	3,319	1,382	8,803
Passed Written	2,370	1,735	635	89	2,195
	(23%)	(25%)	(19%)	(6%)	(25%)

The statistics for the assessment procedures for the 1978-1979 cycle are not yet complete. Based, however, on the first 971 candidates to be assessed, the statistics show an overall pass rate of 22%. The pass rate for men is 22.4%, while for women the pass rate is 21.3%. The pass rate thus far for all minority candidates (examination passers and affirmative action candidates) is 17%. The assessment pass rate for minority examination passers is 41.7%.

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A10. Question: Please describe the questions and procedures used in the oral examination and the rationale for them.

Answer: The answer to this question must be divided into two separate parts: one describing the questions and procedures used at the present time; and, those questions and procedures used in previous years.

In previous years the oral examination consisted of a one-hour interview of each candidate by a panel of three Foreign Service Officers. Approximately 8-10 questions were asked during this one-hour interview. The questions were drawn from each of the four conal areas, political, economic/commercial, administrative, and consular, as well as questions concerning the American way of life and American culture. They were designed to measure a number of knowledges, skills, abilities, and personal characteristics that were identified through an earlier job analysis. In addition, questions were asked of each candidate to determine his or her motivation toward the Foreign Service and to gain some insight into the candidate's interpersonal skills and personal characteristics. The questions posed to candidates were such that there was no right or wrong answer. The questions frequently involved hypothetical situations and the candidate was given the opportunity to analyze the situation and formulate a response to the problem. Follow-up questions bringing in new pertinent data or facts were frequently asked. Following the interview, the candidate was asked to wait in a reception area and each of the panel members voted privately to pass, fail, or discuss the candidate. Consensus was arrived at and a decision made as to whether the candidate had passed or failed the examination. The candidate was then brought back into the room by the chairperson of the panel and informed of the panel's decision. If the candidate so desired, he or she could discuss the results of the interview with the panel chairperson in order to determine specific areas of weakness. In addition, oral examination candidates also took a 1 1/2 hour in-basket test which was scored separately if the candidate was successful in the oral.

This year the panel interview has been replaced by assessment center procedures. Under these procedures each candidate spends a full day undergoing a series of exercises designed to measure those knowledges, skills, abilities, and personal characteristics found necessary for the job of Foreign Service Officer. The assessment day starts at 9:00 A.M. and ends at approximately 5:30 P.M. Six candidates are brought in at the same time to form an assessment module and three assessors are assigned to assess these six candidates. The

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assessors are experienced and trained Foreign Service Officers.

The first exercise for the candidates is an in-basket test. The candidates are given an hour and a half to respond to a number of problems which are presented to them. These problems take the form of memos, letters, and articles of various types, such as those that might typically be found in the in-basket of a Foreign Service Officer in a small consular post in a foreign country. Following the in-basket test, each candidate has a 45-minute interview with one of the assessors and completes a 45-minute writing sample. During the afternoon the candidate is given materials and time to prepare a short presentation to the rest of the group and the assessors on a particular project for which funds have been requested. Following the presentations of all six of the candidates, they, as a group, discuss each of the projects and decide which will be funded and in what amount. The amount of money available is insufficient to fund all the projects fully, and consequently, some element of negotiation enters into this final group discussion.

Each candidate is observed by each of the three assessors during one or another of the exercises during the assessment day. Following the group discussion in the afternoon, candidates are given an opportunity to comment on or ask questions about the assessment procedures. Unlike previous years, the candidates are not told at that time whether or not they have passed or failed the examination.

On the day following the assessment, the three assessors, having individually rated each of the six candidates, meet to assign a final consensus score for each of 17 dimensions for each of the six candidates. The average of the consensus scores on each of these 17 dimensions then becomes the candidate's preliminary assessment score. The in-basket test is sent to the Educational Testing Service in Princeton, New Jersey for scoring, and when the results arrive back at the Department these scores are averaged in with the scores from the assessment day. Candidates are notified by mail as to the results of their participation in the assessment process.

The rationale for both the oral interview used in previous years and the assessment process used this year is the same. Both look for specific knowledges, skill, abilities, and personal characteristics that have been determined through job analysis to be important for the work of a Foreign Service Officer. These judgments as to the importance, essentiality and discriminability of the dimensions were determined by groups of experienced Foreign Service Officers.

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- A.11. Question: Please provide the Equal Employment Opportunity Commission's comments on the Foreign Service Officer entrance examination, when received.

Answer: As mentioned at the June 21 hearing, the EEOC is beginning its review of the FSO written examination, and as soon as that review is completed, we will provide a copy of their comments.

- A. 12. Question: What is the future of the cone system and the changes proposed? If possible, please provide information on career development.

Answer: The present cone system of recruitment, assignment and promotion covers four functional tracks within the FSO Corps: Consular affairs, administration, political affairs, and economic/commercial work. This system of functional specialization, which has evolved since 1962, reflects a continuing concern about professionalism in the Foreign Service, as manifested in such studies as the Wriston Report of 1954, the Herter Report of 1962, the Macomber Reforms of 1970, and the Murphy Commission of 1975. A common thread in these studies was the recognition that the Foreign Service needs qualified professionals in many separate fields, largely at middle grades, but also needs an adequate flow of broad-gauged and versatile senior officers to provide policy guidance and program direction.

Until recently, the current cone system seemed to serve the Department tolerably well. It helped focus attention on and thereby improve the quality of work in the administrative, consular and commercial fields. It also provided approximately the right numbers of people with needed skills as broadly defined by the four cones.

There is now a clear consensus, however, that the cone system should be modified and administered so that our most promising officers will develop the breadth of knowledge and the variety of skills required at senior levels. The administrative and consular cones have traditionally provided opportunities for officers to develop one set of skills, especially managerial and interpersonal skills, while the economic/commercial and political cones have emphasized reporting and analytical skills and substantive knowledge of foreign affairs. While the Service will continue to need people with good qualifications in these separate areas, recent studies and our own experience confirm that career progression within any single cone will not reliably produce officers with the full range of skills and knowledge needed at the

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top. Accordingly, we are considering ways to establish mechanisms and policies for more regular interchange between cones through training and assignments, similar to the Dual Specialization System now being used by the US Army for its officer corps.

The two-track approach to Foreign Service career development would build on the salutary aspects of the present cone-based approach to workforce planning and selection of junior officers. It would also fit well with the more structured and accelerated program for development and evaluation of junior officers provided by the Career Candidate Program authorized by the Congress in 1977. The major change would be to encourage officers aiming at senior executive careers to develop a second functional area which would complement the skills associated with their cone of entry. That is, an officer selected for the administrative cone would, at mid-career branch out into, say, political-military affairs, so as to increase his or her range of skills and knowledge and to enhance his or her qualifications for selection for senior responsibilities. On the other hand, officers with career aspirations focusing on particular functional fields would be permitted to concentrate their assignments and development within such fields, with the understanding that their career progression would be defined principally by opportunities in those fields.

The importance and urgency of modification of the cone system is underlined by the proposed structural reforms for the Foreign Service, particularly the proposed Senior Foreign Service. In order to establish a Threshold process leading into the select and highly-qualified senior Foreign Service encisioned in the bill, we will need to have a well-thought-out and systematic program at mid-career under which officers will be aware of the Threshold requirements and will have reasonable opportunities to meet them. While other concepts might also offer advantages, our thinking at present is that we should move toward the two-track system outlined above.

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A.13 Question: Please provide a brief on how members of selection boards are chosen, and how the boards operate.

Answer: Under current practice, selection boards are convened annually by the Director General of the Foreign Service. They are made up of a majority of career Foreign Service employees, and of other agency representatives and public members.

The Foreign Service members must be of a rank at least one level higher than the members of the Service they evaluate, and have compiled records of superior performance. In the aggregate their selection must provide each board the depth and breadth of experience necessary to evaluate the work of the employees they review.

Other federal agencies concerned with the work of the Foreign Service, such as the Department of Commerce, Labor and Treasury, at the invitation of the Director General, name representatives of appropriate rank to serve on the boards. The Director General also invites for service on the boards public members who have distinguished records in business, education, labor or in non-government organizations with an interest in the Foreign Service.

By agreement, a list of candidates for board membership is sent to the employee representative for review 90 days before the boards convene. It is the Department's objective to have women and minority representatives on the boards in accord with the goals of the affirmative action program.

The criteria used by the selection boards for rank-ordering the performance of the employees they review have been established by the Department in consultation with the employee representative. The current criteria, introduced in 1978, are based on a 1977 study of the skills, abilities and knowledges required to do Foreign Service work well. They are grouped into five categories: substantive knowledge, and leadership, intellectual, managerial and inter-personal competencies. Selection boards are required to look for growth and accomplishment in these competencies in rank-ordering employees for promotion or review for selection-out.

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Selection Boards base their decisions on the employee's record of performance as contained in the official personnel performance file. Boards are not permitted to consider any information not properly part of this file. Boards are also charged to evaluate employees solely on merit and to ensure that no one is disadvantaged by reason of race, color, religion, sex, age or national origin.

The selection boards rank-order the performances of employees in competition categories established in consultation with the employee representative according to agreed procedures. Promotions are allocated by rank order among employees ranked in the top portion of these rank-order lists by the board and deemed qualified for promotion. Employees subject to selection out who are ranked at the bottom are considered in a separate review process for selection-out for substandard performance.

Each selection board has a designated chairperson who is responsible for the conduct of its work. The staff of the Department's Office of Performance Evaluation is responsible for training board members how to apply their decision criteria and how to use the required procedures in carrying out their tasks.

The composition and the work of the selection boards would not change significantly under the proposed legislation. However, the selection boards may be charged with some additional duties such as making recommendations for the award of performance pay to members of the new senior Foreign Service.

See also answer to Question F.1.

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A.14. Question: Inspector General - Why report to Secretary of State rather than to Congress, as is case for 12 other Departments (in which Inspectors General have recently been established)?

Answer: There are a number of differences in organization, authority and focus, between the Office of the Inspector General of the Department of State and those Inspectors General established by Public Law 95-452 for certain agencies. These differences stem from a basic difference in emphasis on the part of the Office of the Inspector General, which is charged with evaluating how well the Department and its overseas posts implement the foreign policy of the United States from that of the others, which are charged with audits that are primarily focused on preventing fraud and abuse, and with promoting economy and efficiency in the operations and programs of agencies administering large programs with heavy economic impact.

Inspectors do not assess foreign policy per se, but rather examine the process -- how that policy is established, coordinated within the Department and with other foreign affairs agencies, transmitted to posts overseas and implemented by the Ambassadors acting as the President's representative overseas. These assessments often involve candid evaluations of our relations with other nations. Accomplishing this mission requires professional assessments of all aspects of foreign policy management. For this reason, over half the Inspection Corps is composed of career Foreign Service Officers of demonstrated competence.

Inspectors' assessments of the implementation of foreign policy do include an evaluation of how efficiently and effectively specific implementation programs are managed. Even in this case, however, the focus is not exclusively on abuse, or fraud, or substantive effectiveness of the program, but on how well administrative procedures support policy implementation, and especially on how efficiently the Department uses its principal resource -- people. Specific assessments of management are woven into overall assessments of policy management.

The emphasis on foreign policy and the use of professional Foreign Service personnel are practices that have existed since the origins of the Inspection Service in the Act of April 5, 1906, which provided for the appointment of "Consuls-General at large" to inspect consular establishments overseas. This professional focus was maintained in the Rogers Act of

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1924, which extended the inspection function to cover diplomatic establishments and provided for the detail of Foreign Service Officers to carry out inspections. The principle was continued in the Foreign Service Act of 1946 and expanded internally in 1956, when inspections of domestic offices of the Department began.

In 1971, the Audit Staff of the Department of State was merged with the Inspection Corps, adding a group of Foreign Service Reserve Officers with professional competence and experience in auditing to the staff. Since that time, Inspectors have reviewed financial management controls and procedures in connection with every overseas and domestic inspection, but these also focus more on administrative processes and controls than on detailed financial audits.

While technical audits are therefore not a primary function of the office, auditors are assigned from time-to-time to audit particular programs, contracts or vouchers. Recently, for example, the Office of the Inspector General has audited FBO contracts and contracts with volunteer agencies who have helped resettle Indochinese refugees. The Office of the Inspector General also contracts with private accounting firms and other US Government audit agencies, such as the Defense Contracts Audit Agency to perform audits of particular programs or operations. These auditing activities are separate from the overall inspection function, as they seldom cover policy considerations, nor get into areas that could affect US relations with other nations.

The authority to conduct the investigative function in the Department of State is lodged in the Office of Security, not the Office of the Inspector General. Indications of specific abuses or fraud that come to the Inspector General's attention, whether from Inspectors, other Department employees or the public, are promptly turned over to the Office of Security for investigation. Inspectors on occasion participate in joint investigations with Security Officers, to provide accounting and auditing expertise, but Security Officers are trained as investigators and alone have the authority to take sworn statements or depositions. This separation of the investigative authority from the inspection function has proven effective.

The Inspector General reports to and comes under the general supervision of the Secretary and the Deputy Secretary. In addition, however, he also has a close working relationship with the Under Secretary for Management. Since the inception of the Inspection Service in the Act of April 5, 1906, Inspectors have been lodged with or been in close contact with Department management.

Inspection teams consequently act more like management consultants for Department management than auditors or investigators. Their recommendations are usually intended to elicit both specific and general changes in the management of foreign policy within the Department of State. The Inspector General's close connection with top management has ensured that Inspectors' recommendations are taken seriously by the posts and offices to which addressed. As a result of this connection, and the fact that the Inspection Corps provides management with its only objective view of operations, compliance with management recommendations made by the Office of the Inspector General, in both the policy and administrative areas, is unusually high.

The Inspector General administratively has another role in the Department of State which is incidental to his primary functions. The Inspector General has been designated by the Secretary to Chair the Department's Committee to Combat Waste, Fraud and Mismanagement, and thus coordinates all the Department's inspections and investigative activities. This Committee includes representatives of the major management offices, including the head of the Office of Security, and meets regularly to exchange information on cases of misfeasance or malfeasance, plan for investigations and recommend procedural changes to prevent recurrence of such abuses. In this capacity, the Inspector General also represents the Department of State on the President's Executive Group to Combat Fraud and Waste in Government, chaired by Deputy Attorney General Civiletti.

Inspection Reports as internal management reports are as direct a part of the deliberative process of the Department as reports from our posts abroad on substantive foreign policy developments. They are intended to make recommendations concerning changes in management and policy implementation. They are distributed in the Department only to the principal officers of the Department and those offices which must act on them. Distribution is limited in order to encourage frank, candid assessments by avoiding wide distribution of sensitive foreign policy judgments and personal assessments.

Audit Reports or other special evaluations that do not go into foreign policy areas are made available under different criteria. Audit reports are made available to GAO on request, as are the audit sections on consular and administrative operations in regular Inspection Reports. The Committee to Combat Waste, Fraud and Mismanagement is still relatively new, but the Inspector General has already decided on a policy of sharing reports of its activities with GAO, whenever requested.

A.15. Question: What are the historical steps the Department has taken to make the Foreign Service more representative?

Answer: See response to Question A.23.

A.16. Question: Please provide a copy of the medical examination.

Answer: See attachment:

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DEPARTMENT OF STATE - Office of Medical Services, Room 2906, Washington, D.C. 20520 Attachment to MEDICAL HISTORY AND EXAMINATION FOR FOREIGN SERVICE Question A16										
PRIVACY ACT OF 1974: This information is requested under authority of the Foreign Service Act of 1946, Title IX, Part I, Public Law 79-724 for the purpose of assisting the physician in determining your medical clearance status. Failure to provide the information could result in hampering the physical examination process. This information is used solely by the Office of Medical Services for medical and administrative purposes. No other agencies have access to the record and the information is released only upon the examinee's written authorization.										
TO BE FILLED OUT BY EXAMINEE (Complete all sections IN INK)										
1. NAME OF EXAMINEE (last name, first name, middle name)				2a. GRADE AND TITLE OF POSITION OF EMPLOYEE			3. DATE			
				b. SSN (Employee)						
				c. Agency						
4. DATE OF BIRTH		5. PLACE OF BIRTH		6. SEX <input type="checkbox"/> M <input type="checkbox"/> F		7. IF PASA, NAME HOME AGENCY				
8. MAILING ADDRESS (Medical Clearance Abstract will be mailed to listed Address)						9. PURPOSE OF EXAMINATION (Check one)				
a. Post (If Overseas)						<input type="checkbox"/> Pre-employment <input type="checkbox"/> In-Service				
b. U.S. (Mailing/Forwarding Address (Include Zip Code))						<input type="checkbox"/> Separation from Foreign Service				
Phone Number:						<input type="checkbox"/> TDY To _____ for _____ period				
c. Name of your Group Health Insurance Plan						<input type="checkbox"/> Direct Transfer from Post <input type="checkbox"/> Other				
d. Local (Washington area) telephone no.						10. POST OF ASSIGNMENT AND DATE OF DEPARTURE/ARRIVAL (Required for Med. Clearance Abstract Distribution To PER)				
11. IF DEPENDENT, FULL NAME OF EMPLOYEE (for Applicant)						Present Post: _____ EDD _____				
						Proposed Post: _____ EDA _____				
						<input type="checkbox"/> Post of Assignment Unknown				
12. FAMILY HISTORY DATA (If relative has a chronic disease, Specify)										
Relation	Age	State of Health	If Dead, Cause of Death	Age at Death	Dependents Covered by Medical Program (Give names)	Age	State of Health	If Dead, Cause of Death	Age at Death	
Father					Spouse					
Mother					Child					
Brothers and Sisters					Child					
					Child					
					13. HAS ANY BLOOD RELATIVE (Parent, brother, sister, children) HAD:					
					YES	NO	(Check Each Item)		Relationship	
							Allergy			
							Diabetes			
							Glaucoma			
							Heart Disease			
							High Blood Pressure			
							Cancer			
							Emotional Disease			
14. a. Patient's Statement (for evaluation) of Present Health:										
b. Medications currently Used:										
15. ANSWER ALL QUESTIONS (Do not use "PA" (Previously Answered))										
a. Have you been examined previously for State Dept. employment?					c. Developed any significant medical problem?			e. Do you know of any condition which would limit your assignment because of climate, altitude, isolation, or other?		
<input type="checkbox"/> Yes <input type="checkbox"/> No					<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> No <input type="checkbox"/> Yes (Specify)		
b. Since last examination have you been hospitalized or medically evacuated? Give diagnosis, date & hospital.					d. Any special examination or treatment indicated to present time?			f. Date of last examination		
<input type="checkbox"/> Yes <input type="checkbox"/> No					<input type="checkbox"/> Yes (Specify) <input type="checkbox"/> No					
DO NOT WRITE IN SPACE BELOW (FOR USE BY MEDICAL DIVISION ONLY)										
Clearance Action:		Clearance Action Taken:		Clearance Action:		Clearance Action Taken:				
Concur _____ date _____				Concur _____ date _____						
Reason:				Reason:						

OPTIONAL FORM 264 (Rev. 9-76)
(FORMERLY DS-1606)

50264-102

DEPT. OF STATE

YES NO		16. EXAMINEE WILL CHECK "Yes" or "No"		EXPLANATION (Indicate Question Number)				
		a.	Have you treated yourself for illnesses other than minor conditions? Specify condition and treatment.					
		b.	Have you had any significant illness or injury not noted elsewhere? (Specify condition and dates).					
		c.	Have you consulted, or been treated by clinics, physicians, healers, or other practitioners? (Name and address of doctor, hospital or clinic, and details).					
		d.	Have you ever had any operations, or been advised to have an operation by a physician? Give details.					
		e.	Have you ever been a patient in a mental hospital or sanitorium, or been treated by a psychiatrist or psychologist? Give date, name of doctor and/or hospital.					
		f.	Have you ever been denied life insurance? Give details.					
		g.	Have you ever been rejected for military service for any reason? Give details and date.					
		h.	Have you ever been discharged from military service because of advice of a medical officer? (If Yes, give date and reason).					
		i.	Have you ever received, or is there pending, or have you applied for pension, or compensation for an existing disability? Specify.					
17. EXAMINEE WILL CIRCLE APPROPRIATE ITEM ON MULTIPLE QUESTIONS ANSWERED "Yes" (Check each item at left)								
A) For Pre-employment Examinees: Do you have now, or have you ever had symptoms noted below?								
B) For In-Service Examinees: Do you have now or during the past 3 years, have you had symptoms noted below?								
ANSWER EVERY QUESTION COMPLETELY.								
YES	NO	(Check Each Item)	YES	NO	(Check Each Item)	YES	NO	(Check Each Item)
		Frequent or severe headaches			Stomach, liver or intestinal trouble			Malaria, amoebic dysentery or other Tropical disease
		Epilepsy, fits or fainting spells			Gall bladder trouble or gall stones			Stutter or stammer habitually
		Eye trouble or visual defect in either eye			Jaundice or hepatitis			Frequent trouble sleeping
		Skin disease			Rupture or hernia			Nervous trouble of any sort
		Ear, nose or throat trouble			Piles or other rectal disease			Depression or excessive worry
		Severe tooth or gum trouble			Blood in or on the stool, or black (Tarry) Stool			Attempted suicide
		Asthma			Frequent or painful urination			Any drug or narcotic habit
		Hayfever or other allergies			Kidney trouble, stone or blood in urine			Used hallucinogenic drug (as LSD) or marijuana
		Shortness of breath			Sugar or albumin in urine			Excessive bleeding after injury or tooth extraction
		Chronic cough			Diabetes			Any reaction to serum immunization, drug or medicine
		Coughing up blood			Rheumatic fever			Tumor, growth, cyst, or cancer
		Tuberculosis, or close association with anyone who had or has tuberculosis			Arthritis, rheumatism or joint pains			Do you use alcohol?
		Pain or pressure in chest			Painful or "trick" shoulder or knee			Are you a cigarette smoker?
		Palpitation or pounding heart			Bone, joint or other deformity			Do you use any medication regularly?
		Swelling of feet or ankles			Recurrent back pain; wear a back support or brace			
		High blood pressure			Recent gain or loss of weight			
		Frequent indigestion						
18. FEMALE ONLY								
During past 3 years have you had:			YES	NO	Specify any GYN surgery: Diagnosis if known:			
Normal								
a. Quantity of Menses:								
Scanty								
Excessive					d. Date of last Menses:			
b. Any Change in frequency/duration?					e. Any Complication of Pregnancy, Childbirth, or Post Partum? <input type="checkbox"/> Yes <input type="checkbox"/> No			
c. Any Female disorder?								
Please recheck all items for Completeness and Accuracy. DO NOT INDICATE "Previously Answered."								
Future Medical Benefits may depend on the accuracy of this record.								
I certify that I have reviewed the foregoing information supplied by me, and that it is True and Complete to the best of my knowledge.								
19. TYPED OR PRINTED NAME OF EXAMINEE				DATE		SIGNATURE OF EXAMINEE		
NOTE: For the Examining Physician: Please review the foregoing Medical History, and make Pertinent Comments on all positive historical data. You are requested to inform the Examinees of any abnormality which you have noted and/or which may require Medical Attention.								

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REPORT OF MEDICAL EXAMINATION FOR FOREIGN SERVICE TO BE COMPLETED BY THE EXAMINING PHYSICIAN			
20. EXAMINING FACILITY OR EXAMINER:	ADDRESS:	21. DATE OF EXAMINATION	
<input type="checkbox"/> Check here if Examination was done in Office of Medical Services.			
CLINICAL EVALUATION		NOTES: (Describe every abnormality in detail. Enter pertinent item number before each comment)	
Normal	Check each item as indicated. Enter "NE" if not evaluated.		Abnormal
	22. Head, Face, Neck and Scalp		
	23. Nose and Sinuses		
	24. Mouth and Throat		
	25. Ears - including otoscopic (auditory acuity under item 51)		
	26. Eyes - including ocular motility, pupillary reaction and ophthalmoscopic (visual acuity under item 50)		
	27. Lungs and Chest (include Breasts)		
	28. Heart (thrust, size, rhythm, sounds)		
	29. Vascular System (varicosities, etc.)		
	30. Abdomen and Viscera (include Hernia)		
	31. Anus and Rectum (Hemorrhoids, Fistulae, condition of Prostate)		
	32. Endocrine System		
	33. G-U System		
	34. Extremities (strength, range of motion)		
	35. Spine, Other Musculoskeletal		
	36. Identifying Body Marks, Scars, Tattoos		
	37. Skin, Lymphatics		
	38. Neurologic		
	39. Psychiatric (specify any personality deviation)		
	40. Pelvic (Papnicolou done <input type="checkbox"/>)		
	41. Sigmoidoscopic (if performed)		
42. SIGNIFICANT AND/OR INTERVAL HISTORY: (NOTE: The Examining Physician MUST comment on ALL items checked "YES" under #15, #16, #17 and #18b, c, e.) Make Notation of any Medications used.		Papnicolou Result Class _____ (gyn consult and/or repeat if abnormal)	

MEASUREMENTS AND OTHER FINDINGS (Abnormal findings should be repeated)					
43. RACE:	44. HEIGHT:	45. WEIGHT:	46. PULSE (Sitting, arm at heart level)	47. BLOOD PRESSURE (Sitting, arm at heart level)	
48. INTRAOCULAR TENSION (Over 40 yrs. & when indicated)		49. DISTANT VISION:		51. HEARING:	
Schiotz Weight used		Right 20/ Corrected to 20/ Left 20/ Corrected to 20/		Right WV /15 SV /15 Left WV /15 SV /15	
Scale Reading: Right _____ Left _____		50. PULMONARY FUNCTION TEST		500 2000 4000	
OR Conversion Right _____ Reading: Left _____		FVC _____ Pred _____ % FEV _____ FEV/FVC _____		Right _____ Left _____	
Applanation: Right _____ Left _____				Audiometer	
52. URINALYSIS:			53. HEMATOCRIT OR HEMOGLOBIN	54. WBC	
a. Specific Gravity		d. Microscopic (required)	_____ % _____ GMS		
b. Albumin		55. SEROLOGY (Specify test) (required for all pre-employment employees and Dependents over 12 years)		56. TUBERCULIN (Tine) TEST:	
c. Sugar				Date _____ Results _____ MM	
57. ECG (Over 40 yrs. or when indicated transmit all readings to A1/Med)			58. CHEST X-RAY (Over 18 years or when indicated)		
			Date _____ Results: _____ Film No. _____ Place _____		
59. STOOL EXAM FOR PARASITES		60. SMA-12 - LIST ABNORMALITIES		61. OTHER TESTS	
				Blood Sugar _____ Cholesterol _____ Uric Acid _____ Other _____	
62. SUMMARY OF DEFECTS AND DIAGNOSIS:			RECOMMENDATIONS:		
1. Historically Stable (Chronic)			Has the examinee been informed of abnormalities and recommendations? Yes <input type="checkbox"/> No <input type="checkbox"/>		
2. Historically Progressive (Chronic)					
3. New					
63. RECOMMENDATIONS - Specialty Examinations			DATE OF CONSULTATION	DATE REPORT SUBMITTED	
1.					
2.					
3.					
TYPED NAME OF EXAMINING PHYSICIAN		SIGNATURE:		DATE:	

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A.17 Question: Please provide a breakdown of the Foreign Service by age, including any information available on the number of individuals expected to leave each year, and the number of replacements.

Answer:

ACCESSIONS AND NET CONVERSIONS

	<u>Accessions</u>	<u>Net Conversions</u>	<u>Total</u>
FY 71	87	+ 14	101
72	83	+240 {	323
73	161	+309 {	470
74	146	+ 60	206
75	213	+ 26	239
76	192	- 2	190
77	160	+ 15	175
78	121	+ 18	139
79 (1st half)	64	+ 4	68
79 (2nd half)	136	+ 10	146
80	170	+ 14	184
81	170	projected + 14	184
82	170	+ 14	184
83	170	+ 14	184
84	170	+ 14	184

{ reflects a one-time conversion of Foreign Service Staff personnel and administrative officers to Foreign Service officer status.

SEPARATIONS

	<u>Mandatory Retirements</u>	<u>Other Separations</u>	<u>Total</u>
FY 71	9	102	111
72	11	114	125
73	11	151	162
74	11	181	192
75	5	170	175
76	14	140	154
77	12	166	178
78	0	130	130
79 (1st half)	0	125	125
79 (2nd half)	27	47	74
80	11	157	168
81	11	projected 156	167
82	11	156	167
83	11	143	154
84	11	143	154

01/06/79		PERSONNEL DISTRIBUTION REPORT			015	
PAYP-CLASS.	PERSONNEL	DISTRIBUTION	AV AG	AV YRS	AV TIC	
FO-CM	EXECUTIVE	14	56	28	06	
FO-CM	PROGRAM DIRECTOR	3	59	33	08	
FO-CM	ADMINISTRATION	0	00	00	00	
FO-CM	CONSULAR	0	00	00	00	
FO-CM	INFORMATION AND CULTURAL	0	00	00	00	
FO-CM	ECONOMIC AND COMMERCIAL	0	00	00	00	
FO-CM	POLITICAL	0	00	00	00	
FO-CM	SPECIAL PROFESS. & TECH.	0	00	00	00	
FO-CM	MISCELLANEOUS	0	00	00	00	
FO-CM	SUPPORT	0	00	00	00	
FO-01	EXECUTIVE	27	54	25	07	
FO-01	PROGRAM DIRECTOR	118	53	26	05	
FO-01	ADMINISTRATION	25	53	24	04	
FO-01	CONSULAR	9	54	27	04	
FO-01	INFORMATION AND CULTURAL	0	00	00	00	
FO-01	ECONOMIC AND COMMERCIAL	37	52	25	04	
FO-01	POLITICAL	53	52	24	04	
FO-01	SPECIAL PROFESS. & TECH.	1	50	20	09	
FO-01	MISCELLANEOUS	0	00	00	00	
FO-01	SUPPORT	0	00	00	00	

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01/06/79		PERSONNEL DISTRIBUTION REPORT		016	
PAYP-CLASS	PERSONNEL	DISTRIBUTION	AV AG	AV YRS	AV TIC
FO-02	EXECUTIVE	1	50	28	04
FO-02	PROGRAM DIRECTOR	51	51	24	04
FO-02	ADMINISTRATION	41	51	23	04
FO-02	CONSULAR	17	50	24	03
FO-02	INFORMATION AND CULTURAL	0	00	00	00
FO-02	ECONOMIC AND COMMERCIAL	94	50	23	04
FO-02	POLITICAL	106	50	24	03
FO-02	SPECIAL PROFESS. & TECH.	1	42	15	04
FO-02	MISCELLANEOUS	0	00	00	00
FO-02	SUPPORT	0	00	00	00
FO-03	EXECUTIVE	1	41	18	04
FO-03	PROGRAM DIRECTOR	10	48	21	07
FO-03	ADMINISTRATION	120	48	19	03
FO-03	CONSULAR	56	49	21	04
FO-03	INFORMATION AND CULTURAL	2	50	16	05
FO-03	ECONOMIC AND COMMERCIAL	195	46	19	04
FO-03	POLITICAL	299	45	19	04
FO-03	SPECIAL PROFESS. & TECH.	1	42	13	02
FO-03	MISCELLANEOUS	0	00	00	00
FO-03	SUPPORT	0	00	00	00

01/06/79		PERSONNEL DISTRIBUTION REPORT		017	
PAYP-CLASS	PERSONNEL	DISTRIBUTION	AV AG	AV YRS	AV TIC
FD-04	EXECUTIVE	0	00	00	00
FD-04	PROGRAM DIRECTOR	0	00	00	00
FD-04	ADMINISTRATION	122	45	17	03
FD-04	CONSULAR	114	41	15	04
FD-04	INFORMATION AND CULTURAL	0	00	00	00
FD-04	ECONOMIC AND COMMERCIAL	236	40	14	05
FD-04	POLITICAL	306	40	15	05
FD-04	SPECIAL PROFESS. & TECH.	0	00	00	00
FD-04	MISCELLANEOUS	0	00	00	00
FD-04	SUPPORT	0	00	00	00
FD-05	EXECUTIVE	0	00	00	00
FD-05	PROGRAM DIRECTOR	0	00	00	00
FD-05	ADMINISTRATION	111	39	12	03
FD-05	CONSULAR	162	38	10	03
FD-05	INFORMATION AND CULTURAL	0	00	00	00
FD-05	ECONOMIC AND COMMERCIAL	115	34	08	03
FD-05	POLITICAL	234	35	09	04
FD-05	SPECIAL PROFESS. & TECH.	0	00	00	00
FD-05	MISCELLANEOUS	1	42	01	01
FD-05	SUPPORT	0	00	00	00

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01/06/79		PERSONNEL DISTRIBUTION REPORT		018		
PAYP-CLASS	PERSONNEL	DISTRIBUTION	AV AG	AV YRS	AV TIC	
FO-06	EXECUTIVE	0	00	00	00	
FO-06	PROGRAM DIRECTOR	0	00	00	00	
FO-06	ADMINISTRATION	102	33	05	02	
FO-06	CONSULAR	136	32	05	02	
FO-06	INFORMATION AND CULTURAL	0	00	00	00	
FO-06	ECONOMIC AND COMMERCIAL	116	30	04	02	
FO-06	POLITICAL	136	31	04	02	
FO-06	SPECIAL PROFESS. & TECH.	0	00	00	00	
FO-06	MISCELLANEOUS	0	00	00	00	
FO-06	SUPPORT	0	00	00	00	
FO-07	EXECUTIVE	0	00	00	00	
FO-07	PROGRAM DIRECTOR	0	00	00	00	
FO-07	ADMINISTRATION	41	30	02	02	
FO-07	CONSULAR	56	29	02	02	
FO-07	INFORMATION AND CULTURAL	0	00	00	00	
FO-07	ECONOMIC AND COMMERCIAL	45	28	02	02	
FO-07	POLITICAL	19	29	03	01	
FO-07	SPECIAL PROFESS. & TECH.	0	00	00	00	
FO-07	MISCELLANEOUS	0	00	00	00	
FO-07	SUPPORT	0	00	00	00	

01/06/79		PERSONNEL DISTRIBUTION REPORT		019		
PAYP-CLASS	PERSONNEL	DISTRIBUTION	AV AG	AV YRS	AV TIC	
FO-08	EXECUTIVE	0	00	00	00	
FO-08	PROGRAM DIRECTOR	0	00	00	00	
FO-08	ADMINISTRATION	4	25	02	02	
FO-08	CONSULAR	6	24	02	02	
FO-08	INFORMATION AND CULTURAL	0	00	00	00	
FO-08	ECONOMIC AND COMMERCIAL	1	25	02	02	
FO-08	POLITICAL	0	00	00	00	
FO-08	SPECIAL PROFESS. & TECH.	0	00	00	00	
FO-08	MISCELLANEOUS	0	00	00	00	
FO-08	SUPPORT	0	00	00	00	

A.18. Question: What is the need for this legislation?

Answer: Basic structural deficiencies in the Foreign Service have become increasingly apparent in recent years: surpluses in senior ranks of many personnel categories have severely restricted intake as well as promotion and assignment opportunities; growing numbers of persons who have never and will never serve abroad have been given Foreign Service status, thus risking the integrity of the system and its special benefits intended exclusively for worldwide-obligated personnel; multiple personnel categories and pay scales with complex and changing rules have caused unavoidable inequities and resultant management difficulties.

Limited amendments to the present Foreign Service Act are not adequate to correct these basic deficiencies. What is needed is comprehensive new legislative authority.

The Foreign Relations Authorization Act for FY 1977 called on the Secretary to transmit to the Congress a "comprehensive plan" for the improvement and simplification of the personnel system. An interim report was submitted at the end of the Ford Administration. Failure to take such action to remedy the existing situation and some of its inherent inconsistencies invites less systematic or incomplete initiatives by others to do so.

The last Congress indicated its support for government reorganization efforts which provide greater rewards for outstanding performance, productivity and managerial efficiency, as evidenced most dramatically by passage of the Civil Service Reform Act of 1978. Passage of the pending bill is necessary to accomplish similar reforms for the Foreign Service.

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A.19. Question: One of the purposes of this bill is to bring the concept of performance pay into the Foreign Service. Why, then, was the notion of merit pay discarded for upper-level FSOs not in the SFS?

Answer: The bill takes a different approach to merit pay than does the Civil Service Reform Act, but supports the concept of relating a part of compensation to performance.

In the Civil Service, clear distinctions are possible between supervisors and other employees, and merit pay would be limited to supervisors at grades GS-13, 14 and 15. In the Foreign Service, individuals at many levels may be supervisors in one assignment and not in the next, or may be supervisors for some purposes but not others. This led us to the conclusion that merit pay would have to cover all members of a particular class, or none. Given this added complexity, Secretary Vance determined not to propose use of the CSRA merit pay system for members of the Foreign Service below SFS ranks where performance pay is provided.

For all such persons, however, Section 442 of the bill would authorize the Secretary to grant additional periodic step increases for outstanding performance and to withhold such increases for mediocre performance in accordance with the recommendations of Selection Boards.

922

A.20 Question: In the Civil Service Reform Act, individual employee performance is evaluated in relationship to critical elements of that employee's job, elements which are agreed upon between the supervisor and the employee. In the Foreign Service, what is the system for rating the performance of an employee? Is the system fair?

Answer: The current performance evaluation system, which has evolved under the authority of the 1946 Act, is explained generally in the answer to question A.32. Many of its features such as the agreement which must be reached between the supervisor and the subordinate concerning work requirements at the start of the rating period, parallel the system that will be required under The Civil Service Reform Act.

The Department's Office of Performance Evaluation, in consultation with the employee representative, is continually working to make the evaluative process more reliable and more efficient, and will continue this effort after passage of this new legislation.

The current system is considered fair by the consultants who have evaluated it, by the employees assessed by it who rate performance evaluation at or near the top of personnel practices in the Department, and by the selection boards who base their rankings and recommendations on it.

923

A.21 Question: The Foreign Service bases decisions on promotion, retention, pay and separation on the rank order of an individual employee in his or her class. What gives you confidence that the rank orderings made by selection boards are reliable enough to base such major decisions on?

Answer: The principal reasons for the Department's confidence in the system of rank-ordering by selection boards are stated in the answer to question A.32. Rank-ordering is a long-established procedure which, through experience and by constant effort by labor and management together, has evolved into a reliable and credible system.

Its credibility is confirmed by the Department's personnel management information system which feeds back to management the employees' opinions regarding personnel practices. The performance evaluation process, which includes the selection boards, rates at or near the top in employee approval.

The credibility of rank-ordering was recently confirmed by independent consultants, McBer and Co. of Boston. McBer studied the selection board process and found the system essentially fair and reliable. These same consultants also recommended improvements in the selection boards' rules of procedure, which have been adopted, to eliminate any statistical skewing effects in the rank-order process. For example, selection boards will now review files in random order. This will eliminate the tendency that might result, if they were reviewed alphabetically, of concentrating high or low scores at particular places in the alphabet.

The Department is satisfied that the current system is sound, but at the same time recognizes the necessity of maintaining the quality and experience of the selection board members and of perfecting the training given them in carrying out their tasks. The overall quality and reliability of their decisions and recommendations will depend as much on these factors as on the procedures they use in their work.

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and attitudes to merit promotion. In addition, the bottom ten percent of the rank-order list is forwarded to a separate review board to be considered for selection out for substandard performance. Boards also have the option to recommend that a periodic step increase in salary be withheld for unsatisfactory performance.

Under the proposed legislation, in addition to the above duties, those boards reviewing The Senior Foreign Service will be required to make recommendations for the award of performance pay within the limits established by Section 441. Selection boards will also have the responsibility of reviewing those members of The Senior Foreign Service who will be in their last year of the time allowed by the applicable time-in-class regulations, or who are in the last year of a limited career extension. This review is to determine which members of that group of officers to recommend to The Secretary for an offer or renewal of limited extension of career appointment as provided in Section 641(b) of the new act.

Outside the Senior Foreign Service, selection boards which review employees who have reached the highest levels of their pay category will also have the additional duty to review and recommend those members of these groups who should be given an initial or additional limited career extension.

Finally, selection boards may also be assigned additional functions such as recommending employees for more than one periodic step increase in recognition of especially meritorious service.

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A.22. Question: The question about whether the State Department should have a unified or dual personnel system never seems to be resolved. Why have you now decided that the dual system is right? What makes you think the Department won't be back up here in a couple of years to go back to a unified system?

Answer: There are two basic reasons. First, experience in both the Department and ICA in recent years has shown definitively that the goal of a unified system is unattainable, and that the attempts to reach it have led to inequities, unearned promotions, and managerial difficulties. Since the Foreign Service system was designed for individuals who rotate frequently, a rank-in-person approach is needed. In contrast, domestic employees often stay in the same positions for an extended period, and a rank-in-position personnel system suits best.

Second, the passage of the CSRA expected to lead to considerable improvements in the Civil Service system, with new provisions such as incentives of outstanding performance, greater management flexibility, and enhanced employee safeguards. With these changes, we think much of the internal opposition to the GS system has dissipated.

In short, we think the dual system is clearly the most logical approach to meeting all our personnel needs most effectively.

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- A.23. Question: Why does the Foreign Service have such a poor record in hiring women, blacks, and Hispanics? What are you doing about it?

Answer: In the past, the Department did not initiate programs to redress the serious underrepresentation of minorities in the Foreign Service until the 1960s. With respect to women, special recruiting efforts were undertaken even more recently.

The negative effects of this lack of past recruiting emphasis were aggravated by the following obstacles:

- a. The predominantly white male character of the Service tended to perpetuate itself.
 1. Minorities and women concluded that efforts to join and advance in the Foreign Service were not likely to be successful and they suspected that the Foreign Service would not be an hospitable employer.
 2. The written examinations have in the past tended statistically to exclude disproportionate numbers of minorities and women. The oral examinations were conducted by panels of white males for the most part.
- b. Talented and ambitious minority and women college students, the traditional group from which FSOs are drawn, often saw other professions -- law, medicine, and business -- as more attractive, i.e., more accessible, more stable, better paying, and less subject to discriminatory attitudes and practices..
- c. The history of the nation's educational system, which short-changed minorities and women, resulted in a relatively small pool of such persons with the comprehensive knowledge and particular abilities required for entry into the Foreign Service.

The need for a more representative work force has been recognized, and efforts to achieve this objective have been intensified. Beginning in

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1961 with the establishment of an Office of Equal Employment Opportunity in the Office of Personnel, the Department's strategy has been to intensify and broaden recruiting efforts, including overcoming the obstacles noted above, and to create conditions of true equality in the treatment of women and minority employees. The Department's dual goals have been:

- a. To promote the formation of a pool of young people who have the knowledge and skills necessary for success in the Foreign Service and who view the Foreign Service as a desirable career. To this end, the Department has greatly increased campus recruitment at colleges with predominantly minority and women student bodies; begun disseminating information about the Foreign Service as a career to magazines and periodicals directed at predominantly minority and women audiences; established liaison with 105 historically black colleges on the formation of foreign affairs curricula which will make their graduates more competitive; and increased the attendance at national minority conferences and conventions by the Secretary and other principal officers;
- b. To provide for all women and minority members of the Foreign Service fair opportunities for career development and progression.

Major initiatives taken to date include efforts to:

- establish a Retention and Career Progression Study Group
- increase and enhance training opportunities for these groups
- expand and improve counseling services and make concerted efforts to assure that they are afforded equitable consideration for all vacancies for which they are equally qualified, notably career-enhancing positions, and thus to improve their chances for retention and advancement.

Statistically, there has been an improvement in the representativeness of the Service. In terms of hiring for the career Foreign Service Officer corps, there has been a significant increase in the number of women and minority group members hired during the past three fiscal years. For example, in FY-76, 40 of 214 (19%) career conditional FSOs hired were either women or minorities; in FY-77, 56 of 188 (30%) were women or minorities; and in FY-78, 81 of 168, or 48% of those hired as career conditional FSOs were either women or minorities. These figures include those persons hired under the Department's two Affirmative Action hiring programs.

928

A.24. Question: In light of the Dubs case, do you see any need for legislation to protect former spouses of FSOs? Does the Department of State have a position on H.R. 2857, to provide annuity rights for former spouses?

Answer: The Department believes former spouses of Foreign Service employees should have protection. To this end, we welcomed the passage last fall of P.L. 95-366 which authorizes a court during a divorce settlement and division of property to award any portion of an employee's annuity to a former spouse. This is incorporated as Section 864(b)(1) of the proposed Act.

In the same vein, since that Act provides no survivor benefits for former spouses, the Department has submitted draft legislation to OMB for Executive Branch clearance, which would provide comparable protection to surviving former spouses. We realize that H.R. 2857 addresses the same issue, but prefer to have the views of Justice, OMB, and OPM before taking a position on H.R. 2857.

A.25. Question: Do you think FSO's are underpaid? Does the Department plan to do something about this?

Answer: The Hay study points out that FSO's are paid less at certain grades than their Civil Service counterparts.

The Department is participating in a working group chaired by the Office of Management and Budget to review the findings of the Hay study and to determine an Administration position on implementation. The Department will press for implementation at the earliest practical time.

929

A.26. Question: One frequent complaint I hear about the Foreign Service is that embassies abroad are too concerned about geopolitical matters to give attention to Americans with problems in the country. Does this Bill do anything to upgrade the importance and quality of consular work?

Answer: The proposed Bill is not intended, *per se*, to deal with the multiplicity of issues associated with the consular function. We believe, however, that significant positive steps have been taken over the past few years to make the consular function more responsive to the growing needs of the American public, both at home and overseas. For example, we are delegating as much authority as possible to Foreign Service posts in all consular activities to improve responsiveness and to reduce unnecessary work, thereby avoiding any unwarranted resource drain. Other concrete steps which have been taken, such as an expanded program of emergency assistance for destitute Americans in need of immediate medical attention or dietary assistance while abroad, new procedures governing the issuance of passports for applicants abroad who have lost their money, and a new travel advisory system to alert travelers to adverse circumstances they might encounter abroad, and improved training of consular officers, have contributed to a significant improvement in the quality of services that Americans receive overseas.

930

- A.27. Question: Do you agree with President Carter's statement that our embassies abroad are overstaffed?

Answer: Yes, but not with Foreign Service personnel. Currently serving under authority of U.S. diplomatic mission chiefs abroad are some 17,500 Americans and 20,000 foreign nationals. The staffing level for every program at every mission is reviewed at least annually at post and in Washington. Field reports regularly identify where ambassadors believe staffing to be excessive or inadequate, and we have an interagency procedure for making appropriate adjustments, up or down. During this Administration the profile overall has been found excessive. Some reductions have been accomplished, and more are envisaged.

While current field reports show certain programs or functions to be overstaffed -- even unnecessary -- at some locations, they show some are understaffed. State Department direct personnel are about 20 percent or less of the total Americans in diplomatic missions. Our reports, taking all missions into account, show that this core element is at best hard pressed to accomplish assigned duties. While we do regularly shift positions as priorities and workload shift, we do not consider the Foreign Service itself to be overstaffed.

931

A.28. Question: What is the State Department's Dissent Channel and how is it working?

Answer: The Dissent Channel exists to ensure that the Secretary of State and principal officers of State, AID, ICA, and ACDA have access to alternative or dissenting views and recommendations which may not reach them through other channels. Former Secretary of State Rogers established the Dissent Channel in 1971, in response to a "Diplomacy for the '70s" task force recommendation calling for greater openness and creativity within overseas missions. Any employee of State, AID, ICA, or ACDA may use the Dissent Channel. Users are encouraged to discuss issues with supervisors and show messages to them. Dissent Channel messages, however, require no clearance by superiors and it is not permissible to delay transmission of the messages or to penalize anyone using the Channel.

The Director of the Policy Planning Staff (S/P) has responsibility for handling and responding to messages, and the Chairman of the Secretary's Open Forum monitors the Channel's use. The S/P Director usually limits distribution of Dissent Channel messages to those offices directly concerned with the issue involved, as well as senior officers of the Department, including the Secretary as appropriate.

Use of the Dissent Channel varies, though it usually does not exceed two-three messages a month.

932

A29. Question: Why is a separate Foreign Service Labor Relations Board needed? Why can't the Federal Labor Relations Authority be used?

Answer: The Foreign Service labor-management relations program was administered separately from the Civil Service under applicable Executive Orders and the need for separate administration will continue under legislation. A separate Board is needed in order for its members to gain and maintain a thorough knowledge of the very different Foreign Service personnel system. The vast majority of negotiability determinations are inextricably involved with personnel policies and procedures. We believe it essential that the third party be intimately familiar with the distinctive features of the Foreign Service, namely:

a. Special conditions of employment, compensation and benefits tailored to the needs of the Service, including special legislative authority for training, medical care, travel, intra-service discipline and retirement;

b. Advancement only as a reward for demonstrated merit based on a rank-in-person system which places employees in competition with other employees in the same class;

c. World-wide assignments as the needs of the Service require with a high degree of mobility under a flexible assignment system.

We believe that the administration of a labor-management program totally outside the context of the Foreign Service system would not give adequate recognition to the distinctive and essential features of the Foreign Service.

Additionally, the Foreign Service is centrally administered in the Department, thus allowing the Secretary to initiate or revise personnel policies to meet the needs of the Service. As a result of this flexibility, we have successfully engaged in a form of "rolling negotiations" rather than fixed term negotiations more common to Civil Service agencies. This approach to negotiations places a premium on expeditious responses by the third party.

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Under a separate Foreign Service Labor Relations Board, we are confident that the 2 or 3 month response time, as currently experienced, would continue.

The Federal Labor Relations Authority in contrast to a separate Board, is attuned to the Civil Service personnel system. Additionally, the Authority is responsible for the adjudication of hundreds of cases flowing from thousands of bargaining units. As a result of this case load, cases can take more than a year before decision. Delays of this duration, given our strong preference for a different approach to negotiations, would severely restrict the Secretary's flexibility in managing the Service with its normal assignment rotation system.

A.30. Question: Has the Bill before us today been cleared by OMB? Has OMB been supportive of your efforts to send this Bill up?

Answer: Yes. See response to Question A.3.

A.31. Question: What justification is there for preserving early retirement rights for domestic only Foreign Service personnel who are being converted to Civil Service? They never have and never will have the hardships of worldwide service.

Answer: Management of State and ICA in past years sought to induce domestic specialists to enter the Foreign Service. The relative advantage to those individuals who did convert of being in the Foreign Service Retirement and Disability System was the principal inducement. These individuals are now in the Foreign Service Retirement System and, in the absence of legislation, would remain in that System. The issue is not whether they should have been offered the choice to join, but whether the bill should take away benefits they now have.

Having reconsidered the policy of a unified personnel system under the Foreign Service Act, the agencies now want to return domestic specialists to the Civil Service, but believe it would be unfair to force them to lose the benefits of the Foreign Service Retirement System. Many personal plans have been made in reliance on being in that system.

It would be inequitable to try to change the retirement system and ill-feeling and litigation could be expected were the agencies to try. If "domestic" Foreign Service personnel choose to remain participants in the Foreign Service Retirement and Disability System when they convert to Civil Service status, they will remain subject to all, not just some of its provisions.

934

A.32 Question: How can individual performance be objectively measured for the Foreign Service?

Answer: The Foreign Service system of performance evaluation, based on supervisor ratings and rank-ordering by selection boards, has been a feature of the Service since the 1946 Act. It has worked well for thirty-three years and during that period has been evolving and improving. Compared to Civil Service performance evaluation it is a relatively complex procedure, but, like the military services, The Foreign Service has found effective performance evaluation indispensable to the smooth functioning of its rank-in-person system of highly mobile employees serving in a variety of jobs throughout the world.

In the Foreign Service today each individual, his or her supervisor, and a more senior reviewing officer agree on the work requirements, goals and priorities at the beginning of each rating period. Performance in achieving these is reviewed at least twice during the year. The final annual evaluations by supervisor and reviewing officer are shown the rated employee who may rebut them on the same form if he or she disagrees with them.

In addition, performance characteristics for successful work in the Foreign Service have been elaborated through study of outstanding and less competitive officers. In agreement with the employee representative these are communicated each year to the entire service and incorporated in the decision rules, called precepts, which guide the selection boards in rank-ordering the performances of the people who compete together for promotions. The standards of performance against these precepts are relative since the employees are ranked by the selection boards in comparison with each other.

The Foreign Service is continually working in cooperation with the employee representative to refine, improve and make this evaluation process more effective and efficient. One problem, for example, is avoiding overly inflated ratings. However, the critical element in this system, as in almost any performance evaluation, is the skill and dedication of the first-line supervisors. The Service recognizes this and is taking every opportunity to train its supervisors as well as the members of the annual selection boards to ensure objectivity and effectiveness in their performance evaluation.

Employees who feel that the evaluation process may have improperly affected them have recourse to grievance procedures which in the Department's view are responsive and effective.

935

A.33 Question: Doesn't selection out for time in class result in the Foreign Service losing its most highly qualified members first, since they rise to the highest grade the quickest?

Answer: As is pointed out in the answer to question H.7, separation for excessive time-in-class is the heart of the up or out personnel system. It maintains the attrition and competition necessary to move Foreign Service officers through a series of jobs and experiences which prepare them to fill the Department's most responsible and difficult positions. This system is based on the concept that people who enter this career are selected with the potential, and come in with the objective of reaching most senior positions of responsibility. The best do; those who are substandard are selected-out and those whose performance does not merit continued advancement eventually are separated for extended time-in-class.

Among those who are the best performers and who go all the way to the top of the Service, some develop faster and move there more quickly. It is true that they may have less total time in the Foreign Service in lower grades than one who gets to the top by a slightly slower route. However, they would have the same amount of time at their level of highest productivity as the slightly slower-moving officer. Moreover, if their services are still required, the fast-rising officer can be retained after the expiration of time-in-class through the limited career extension mechanism provided in Section 641 of the proposed bill.

936

A34. Question: On what basis are the weightings of the various tests given in the Foreign Service Officer selection program changed; are the tests and their weightings validated for job performance?

Answer: The Foreign Service Officer selection program is under constant review and if necessary, revision, in order that the best possible candidates may be brought into the Foreign Service. At the same time, emphasis is placed on maintaining equal employment opportunity for all classes of candidates and to achieving the Department's Affirmative Action goals. In reviewing the selection process, changes are made as required to meet these objectives. Such changes may consist of changing the weighting of the English expression/functional background weighted score as was done in 1976 in order to bring more women through the written examination into the remainder of the selection process (See question 4). Other examples of such changes are the introduction of the in-basket test in 1977 and the dropping of the functional field test as a pass/fail element of the written examination. It should be emphasized, however, that before major changes are made the proposed changes are carefully reviewed by panels of senior Foreign Service Officers. These panels of subject matter experts must approve any change before it is implemented. Changes in weights such as that mentioned above are not subject to such review, based as they are on a simple statistical analysis of the written examination results. Such changes are administratively determined in conjunction with Educational Testing Service experts in order to bring in the number of people necessary to meet the needs of the service, and at the same time, maximize the number of women and minorities in the system.

As mentioned earlier in response to question 4, the validity of the selection process has been established based on a content validity model. The documentation of this validation has been reviewed by several experts in the field of personnel measurement. These experts have judged the validity of the Foreign Service Officer selection process to be established according to professional standards for content validity. The weightings of the various components of the selection process do not directly affect the validity of the overall process. It should be noted, however, that these weightings were established on the basis of the best judgment of a group of Foreign Service Officers.

937

- A35. Question: The data indicate that the Foreign Service Officer exam weeds out disproportionate numbers of women and minorities. Is this true? What is the Department doing about this problem?

Answer: (See questions 4 and 34) The Uniform Guidelines on employee selection procedures use the "80%" or "4/5" rule of thumb in determining whether or not adverse impact exists in a selection procedure. That is, if the selection ratio for one group is less than 4/5 or 80% of the selection ratio for another group then adverse impact is assumed to exist with regard to the first group. This rule of thumb will be assumed to define "disproportionate numbers" in the answer to this question.

In determining whether or not adverse impact exists in the FSO selection program it is important to state whether we are referring to the total selection process, or just a part, and if so, which part. Although we have been able to collect minority data for only two years, there is no question but that the written examination does have adverse impact on minorities. In addition, the 1978 written examination had statistical adverse impact on women although the 1977 examination did not, even though the pass rate for women was the same (19%) for both years. It should be noted, however, that the pass rate for women in 1977 and 1978 is much higher than in previous years. The 1977-78 oral examination cycle showed adverse impact on non-minorities in that 35% of the minorities who took the oral examination passed it, whereas only 21% of the non-minorities passed the oral examination. The same oral examination, however, showed adverse impact on women, in that 24% of the men who took the oral passed it while only 14% of the women who took it passed.

The Department is taking positive and aggressive action to minimize the adverse impact of its selection procedures. These include the changes in the written examination referred to in earlier questions (4 and 34), targeted recruiting for minorities and women, and the substitution this year of the assessment center process for the traditional panel interview. These changes have done much to reduce adverse impact against both women and minorities, and all aspects of the selection process are under continual scrutiny for ways to reduce adverse impact even further. In addition, the Department established affirmative action programs for minorities which do not require the passage of the written examination for participation.

938

- A.36. Question (a): What is the justification for a five-year window for entry into the Senior Foreign Service?

Answer: The senior threshold, patterned on the military practices for promotion to flag and general officer rank, is designed (1) to promote only the most competent officers to senior ranks, and (2) to give those officers not destined for promotion to senior ranks both an honorable opportunity for retirement and timely notice for seeking other careers.

The need for a rigorous senior threshold in the Foreign Service has long been recognized. It was also recognized, however, that as comprehensive and rigorous criteria and standards became established for the threshold, they would be increasingly satisfied by candidates moving to the threshold. Without additional requirements, the threshold selection board would, in time, become like other boards. The more limited period of eligibility was added to place greater importance on the board's judgment and decisions and to create at the threshold the most intensive point of competition for senior ranks. It is intended to have a substantial psychological, as well as practical effect.

The military now allows only two years' consideration for "flag rank" before "passover".

The period of five years represents roughly the average time spent in class by FSO-3's before promotion to FSO-2. This raises the presumption that an officer not promoted in five years is probably not meeting the performance standards as are his contemporaries, and consequently, that he should not be promoted in the face of that element of doubt. This is particularly relevant since members of the threshold class may determine when their periods of eligibility should start to run.

939

A.36. (Continued)

Question (b): Won't this result in the Service losing a lot of its top employees?

Answer: No. When officers reach the senior threshold candidate level, they will have compiled substantial records of performance and presumably will have met the formal criteria for the threshold. They will be considered by the threshold selection board on the basis of records comparable to or equivalent to their peers. If, under such conditions, an officer is considered by five annual selection boards and not promoted, the strong presumption is that his/her competitive ability was well tested and that the Department's requirement for high competence at senior levels dictates that the officer should not be considered further for promotion but should be retired. Given the average five years in grade before promotion in recent years, it does not follow that the proposed threshold procedure would result in significant loss of "top employees".

- A.37. Question: What percentage of each class is likely to be selected out for substandard performance each year? Will this number be pre-set?

Answer: As indicated in testimony in response to this question, we do not think it is appropriate to set advance quotas of those to be selected out for substandard performance. Section 642(a) of the Act provides that the Secretary will set standards of performance. When selection board review indicates that a member's performance does not meet these standards, there will be an administrative review of performance, with appropriate employee safeguards including the right to be heard. Section 642(b) provides for retirement based on substandard performance if the outcome of the administrative review confirms that a member has failed to meet the standards of performance of his or her class.

Thus, the number selected out depends on evaluation of individual performance, and not on a pre-set quota. Experience in most recent years indicates that the number identified for low performance is likely to be about 17 a year, and the number separated after administrative review about 10 annually. Since selection out for relative performance would be extended under the Bill after a 5-year transition period to cover about 1900 current members of the Foreign Service Staff Corps not now covered, this number could be expected to rise on a statistical basis if recent experience is projected forward, to perhaps 30 a year identified, and 15 who leave the Service due to selection out procedures.

- A.38. Question: Would employees who are denied within class step increases be entitled to any appeal from the decision of the Selection Board?

Answer: Section 1101(b)(2) provides that a grievance may not be filed with respect to the judgment(s) of a selection board established under Section 603. Accordingly, an employee would not be entitled to file a grievance with respect to the judgment of a selection board denying a within-grade step increase. An employee could, however, file a grievance regarding any alleged deficiency in the record on which the Selection Board's judgment was based.

941

A.39 Question: Does the State Department provide any placement assistance for career officers who face selection out?

Answer: The State Department has an active program of Alternate Career Counseling which is designed to facilitate transition for those employees who plan to resign or retire from the Foreign Service. The program has been in existence since December 1978. Continuation of the program is provided for in Section 705 of the bill.

The program consists of several modules, designed to accommodate differing objectives and circumstances.

1. Intensive Alternate Career Counseling

This module is designed primarily for Senior Foreign Service officers and is designed to facilitate voluntary retirement for officers whose careers essentially have "peaked" but who are not facing involuntary separation. Approximately 25 employees have been enrolled in this program.

2. Retirement Planning Seminar

This is a 3-day seminar available to all State Department employees approaching retirement or former employees who have recently retired. Approximately 100 employees have been enrolled in this module.

3. Job Search Seminar

This is a 3-day seminar available to all State Department employees interested in exploring employment options outside the Department. Approximately 100 current or recently retired employees have taken this seminar.

4. Correspondence Courses

We offer correspondence courses covering "Retirement Planning" and "Job Search" for those unable to attend seminars. To date about 25 people are enrolled in each of the two correspondence courses.

5. Modified Alternate Career Counseling

We are planning to add another individualized counseling module to our program which would fall somewhere between the Intensive Counseling module and the Job Search Seminar, both in terms of services provided and in terms of costs.

942

A40. Question: Why do you think agency-wide bargaining units are essential for the Foreign Service? Don't the communicators have very different interests from Foreign Service officers?

Answer: The Foreign Service functions within the context of a highly centralized and integrated personnel system. Its most essential features--promotions by selection boards, world-wide assignability, and special benefits--are applicable to all employees regardless of rank or occupation. Bargaining units embracing only a segment of the Service, whether on a functional, organizational or geographic basis would not possess sufficient stability of personnel to enable effective dealings or efficiency of agency operations. Questions of representation could arise frequently as different individuals were assigned to and from the bargaining unit.

Communicators, as well as political officers and secretaries do have slightly different interests primarily in the area of enhancing professional competence. These areas, however, are overshadowed by a broad band of commonality.

Moreover, a representative of employees in a bargaining unit consisting of only one segment of the Service could negotiate only on the very limited range of issues which are within the authority of the head of that segment of the Service. This would provide substantially less effective representation.

In our opinion, it would not serve the best interests of the employees or the Service to have the limited ranks of the Foreign Service fragmented along lines of rank, occupation, or geography. We believe the concerned labor organizations share this assessment.

B.1. Question: Why is this legislation needed?

Answer: See response to question A.18.

943

B.2. Question: Why do you need this legislation? Could you accomplish the same end through administrative reform and regulation?

Answer: Extensive legislation is required, not just administrative reform, in order to:

- (1) Affirm authoritatively the essential contemporary role of the Foreign Service (Sec. 101 Findings);
- (2) Convert to Civil Service status without loss of benefits Foreign Service personnel in State (600) and in USICA (900) who are obligated and needed only for domestic service (Secs. 2103, 2104);
- (3) Place labor-management relations on statutory basis (Chapter 10);
- (4) Create a Senior Foreign Service with rigorous promotion and retention standards closely related to performance with appropriate linkages with the Senior Executive Service and similar risks and benefits, including performance pay (Sec. 321, 441, 602, 641, 642);
- (5) Create a single Foreign Service pay scale (Sec. 411, 421);
- (6) Combine more than a dozen F.S. personnel categories and subcategories into two: FSO/FS (Chap. 3);
- (7) Provide similar requirements for granting tenure (Sec. 322), performance evaluation, promotions based on merit principles, and selection out for substandard performance for all members of the Service from top to bottom. (Sec. 642);
- (8) Recodify and consolidate major personnel legislation relating to the Foreign Service.

944

B.3. Question: Why do we need a separate Foreign Service?

Answer: A Foreign Service, separate from the regular federal personnel system, is needed for the following reasons:

-- The conduct of foreign policy differs in substance and form from almost all other aspects of federal policies and programs, thus requiring specialized assistance and advice for the President and the Secretary of State;

-- Such advice and assistance, to be of the degree of excellence and reliability due the leaders of the United States, depends on a specially-organized, professional body of people aware of the nation's interests, representative of its citizenry, with intimate knowledge of foreign cultures and languages and political and economic systems, capable of intricate analyses of other governments' policies and intentions, and experienced in the practice of diplomatic and consular activities in international affairs;

-- To represent the United States abroad requires a willingness to accept obligations different in nature and more extensive in personal and/or family considerations than in other federal civilian service, such as, being available for assignment worldwide, being prepared to accept possibly a dozen different assignments of two years or more during a typical career, accepting risks attendant upon living in locations of particular hardships for basic necessities of life, or possible physical danger in areas with high rates of crime or terrorist activities;

-- To attain the degree of flexibility and mobility needed for representing the government abroad requires a rank-in-person personnel system, similar to the military system, rather than a rank-in-job personnel system which is the basis for the regular federal personnel system;

-- To take advantage of historical experience in international affairs which has led almost all governments to create a special purpose organization and personnel system for the conduct of foreign policy and maintaining diplomatic relations with other governments.

NOTE: Personnel of other civilian agencies who serve overseas from time to time usually do so on a voluntary one-time basis.

945

- B.4. Question: Do members of the Foreign Service oppose or support the present bill?

Answer: During the last seven months there have been unprecedented and extensive discussions between the Department and members of the Foreign Service at home and abroad on the proposals in the pending bill. Increasingly detailed outlines, Q and A material, and status reports were circulated by cable and Departmental notice to all posts and places of domestic assignment.

Early objections and suggestions were taken into account as the proposals developed into early specific legislative drafts. Revisions were made by the Secretary as recently as the week before his departure for the Vienna Summit after extensive direct discussions with AFSA, AFGE, and other interested persons in the Department of State, AID, and ICA.

Broad majority consensus evolved in favor of many of the principal features of the Bill:

- Affirmation of essential contemporary role of the Foreign Service;
- Conversion to Civil Service status of Foreign Service personnel obligated and needed only for domestic service;
- Statutory labor-management relations;
- A single Foreign Service pay scale;
- Consolidation of multiple Foreign Service personnel categories and subcategories;
- New procedures to assure "up or out" principle which makes attrition and promotion more predictable and reliable and links promotion, compensation, and retention more closely to performance.

Opinions remain divided on certain features of the Bill, as is to be expected in a Service with several thousand persons serving throughout the world. Some features of earlier drafts which drew most opposition -- splitting of any class and merit pay -- were deleted. Widely sought objectives, such as comparability of pay between senior ranks of the Foreign Service and the

946

B.4. (Continued)

Civil Service, resulted in suggestions, differing from those in the Bill, which were deemed impractical. Others sought monetary benefits which the Department rejected in a time of budget constraints.

The representatives of the American Foreign Service Association played a constructive role in the process, and without attempting to describe their position on specific features of the Bill which they will do for themselves, many of their principal suggestions were adopted and the Bill strengthened as a result.

B.5. Question: What is the relationship proposed in this legislation between the Foreign Service and the Civil Service?

Answer: The Foreign Service is intended to be a distinct system, operating under separate legislative authority which reflects basically different conditions of service, in particular the need for frequent rotation from position to position and the consequent necessity for a rank-in-person system.

At the same time, when there is no reason for difference, the Foreign Service and Civil Service will continue to operate under identical or closely similar laws and regulations. For example the merit system principles of the Civil Service Reform Act already apply to the Foreign Service, as does the government-wide requirement for pay comparability with the private sector.

Our intention is to facilitate the possibility of interchange between the two systems, when it is in the interest of the government and of employees and agencies involved. This is one reason for making SFS and SES compensation, performance pay, and other provisions compatible, and for adopting a single Foreign Service pay schedule which will largely eliminate pay anomalies in conversion from one system to the other and in assignment employees across systems for limited periods.

In sum, the Foreign Service will be operating under different principles from the Civil Service when necessary to carry out its distinctive functions, but under common principles whenever appropriate.

947

B.6. Question: How would the conversion features of the Bill work?

Answer: Goal: To move such employees to the Civil Service system, if they are not obligated and needed for worldwide, rotational assignments, and to do so as quickly as possible; but at the same time, to guarantee the protection of individual rights and the preservation of existing benefits. (Secs. 2103, 2104)

Main features of the conversion plan include:

-- Current Foreign Service "domestic" employees with skills designated by the Secretary as needed abroad, and who are willing and otherwise qualified to accept true worldwide obligations could elect to remain in the Foreign Service system;

-- Other Foreign Service domestic employees would have a three-year period in which to accept conversion to the Civil Service system or to leave the Department. This three-year period would commence on the effective date of the Act for those persons (600) in State, and after July 1, 1981, for those (900) in USICA in light of an existing employee-management agreement governing conversion.

-- Conversion to the Civil Service would take place under the following conditions:

a. At SES or GS (including supergrade) level comparable to current grade, with no loss in salary, and with unlimited protection against downgrading as long as the employee did not voluntarily move to another position;

b. With the right to remain in the Foreign Service disability and retirement system (for those already members), or alternatively, to elect to move to the Civil Service retirement system. Those in the Civil Service retirement system now would remain members of it.

c. The kind of appointment offered on conversion would parallel that currently held -- career Foreign Service would receive career GS appointments; career candidates would receive probationary or career candidate appointments, and those on time-limited appointments would be offered GS time-limited appointments.

Together, we think these features meet the dual goals of rapid movement to "pure" GS and FS systems, and preservation of employee rights and benefits.

948

B.7. Question: Why is the Senior Foreign Service* needed?

Answer: A Senior Foreign Service is needed for the following reasons:

-- The growing complexity and diversity of international relations and changing diplomatic environment have placed broader and more demanding requirements on governments and, hence a greater premium on the quality and effectiveness of their principal diplomatic representatives;

-- A discrete Senior Foreign Service officer corps, paralleling the general and flag officer ranks of the military and the new Senior Executive Service, offers an established framework to foster greater development of leadership and policy-making capability at the national and international levels;

-- To ensure that only the most capable persons are promoted into senior ranks through the creation of a new, rigorous senior threshold performance review process, and that those not promoted receive earlier knowledge of their career prospects thus permitting them to seek other careers on a timely basis;

-- To achieve even higher levels of performance by senior officers through intensified competition, performance pay, increased opportunities for serving in positions of higher trust and responsibility, rapid advancement to senior ranks, and the opportunity for extended service so long as standards of excellence are maintained (but also separation procedures if they are not);

-- To control the size of senior ranks by performance standards rather than age-related procedures;

-- To facilitate interchangeability at senior levels with other departments and agencies thereby increasing efficiency and economy; and

-- To cultivate greater esprit de corps within the Foreign Service by the creation of a senior corps of officers of proven excellence to which all officers could aspire.

* SFS: Appointments, Sec. 321; promotion and retention, Sec. 602; separation procedures, Secs. 641-642; transition, Sec. 2102.

949

B.8. Question: How will the Senior Foreign Service* differ from present practices?

Answer: The Senior Foreign Service will differ from the present practice as follows:

-- It will utilize a senior threshold entry mechanism which will for the first time couple rigorous standards of evaluation with a relatively short time limit of eligibility for promotion, similar to the "passover" system long used by the military service;

-- It will place much heavier weight on performance, rather than seniority, for advancement and retention;

-- It will have initial short time-in-class limits, not more than five years, substantially shorter than limits hertofore imposed on senior officers;

-- It will initiate a procedure of limited career extensions, which may be renewed for officers who have reached the limit of time-in-class when selection boards recommend they be retained for the needs of the Service;

-- It authorizes the President to use appropriate titles to designate rank, rather than numbered grades;

-- It will provide the framework for awarding performance pay for outstanding performance comparable to the Senior Executive Service;

-- Its existence as a separate body with higher risks but greater rewards than previously offered should, over time, lead to a reputation for proven excellence and job opportunities such as to be a strong incentive for all officers in the Foreign Service; and

-- It will have multiple exit mechanisms so as to enhance orderly progression through entry, retention, and exit, thereby enabling more regular advancement both within the SPS (and in lower ranks).

*SFS: Appointments, Sec. 321; promotion and retention, Sec. 602; separation procedures, Secs. 641-642; transition, Sec. 2102.

950

B.9. Question: How will Senior Foreign Service performance pay work, and where will the funding come from?

Answer:

-- Performance pay for the Senior Foreign Service will be similar in amounts available to the Senior Executive Service of the Civil Service, but will be awarded on the recommendation of selection boards, taking into account the criteria established by the Office of Personnel Management for the Senior Executive Service as well as Foreign Service requirements. (Sec. 441)

-- As in the Senior Executive Service, no more than 50 percent of the members of the Senior Foreign Service may receive such awards in any one year. The awards may not generally exceed 20 percent of the member's base pay.

-- However, again like the Senior Executive Service, up to 5 percent of the Senior Foreign Service members may receive awards that exceed the 20 percent limitation by \$10,000 and one percent by up to \$20,000.

-- The total salary plus performance award may not exceed Executive Level I of the Federal Executive Pay Schedule or \$66,000, as in the Senior Executive Service.

-- The funding for Senior Foreign Service performance pay will come through the normal authorization and appropriation process as is the case for funding Senior Executive Service performance pay.

951

B.10. Question: What are the principal changes in the Bill affecting all members of the Service?

Answer: There are several important changes proposed in the Bill which would affect all members of the Service:

-- Selection out for substandard performance would be extended to all members of the Service, increasing professionalism and reducing Service distinctions. (Sec. 642)

-- All members would be covered by safeguards and benefits now applicable by statute only to Foreign Service officers and extended by regulation to other personnel, e.g. promotion through selection board rankings, periodic reassignment to the United States;

-- All members would be paid from a single pay scale. This would reduce unnecessary distinctions between Service elements and facilitate transferability and upward mobility within the Foreign Affairs agencies and between them and the Civil Service. A single pay scale would also help ensure that members received equal pay for equal work.

-- Labor-management relations would be placed on a statutory basis and grievances would be handled on behalf of members of the bargaining unit by the employees' exclusive bargaining agents. This should put labor relations on a more permanent and professional basis and therefore work to the advantage of the Government and employees. (Chapters 10 and 11)

-- All career candidates including lateral entry candidates would have to pass a tenuring board examination. (Sec. 322)

-- A clear distinction would be made between personnel obligated to accept service abroad and those not so obligated. Those not required to serve overseas would be transferred to the Civil Service but would keep their existing pay and benefits. (Sec. 2103)

-- The new system should provide a more predictable career for all through more effective career development and reliable promotion opportunities.

952

B.11. Question: Why is there no parachute clause provision for the Senior Foreign Service similar to that for the SES in the Civil Service Reform Act?

Answer:

-- The "parachute" clause in the Civil Service legislation which is not used for the SFS provides for SES retreat to GS-15 or senior specialist positions for members of the SES whose performance is not up to required standards but does not warrant separation for cause. Prior to the CSRA, Civil Service rank in position employees had virtually assured rights to retain position and status.

-- One of the basic principles which sets the Foreign Service apart from the Civil Service is the competitive "up or out" principle. A "parachute" provision would be inconsistent with that principle.

B.12. Question: Why is the Staff Corps being eliminated and what are the advantages of the new proposals for members of the Staff Corps?

Answer:

1. The Foreign Service Staff category is being merged with other Foreign Service categories to:

-- Eliminate unnecessary pay and promotion distinctions, which have sometimes been injurious to Foreign Service Staff Corps members (Secs. 322, 421);

-- Facilitate crossover to different occupations and upward mobility by eliminating the necessity to change pay plans for such moves (Secs. 322, 421);

-- Provide the opportunity for some FSS-1 Staff Corps members to move into the Senior Foreign Service (Sec. 321).

2. In addition to the above advantages, the Bill would benefit the Staff Corps in other ways:

-- It would help to alleviate the impacted situation in the senior Staff Corps grades which has limited Staff Corps promotion opportunities as much or more than in other categories in recent years (Secs. 641(b), 642);

-- Some junior members of the current Staff Corps would be eligible to receive double promotions in recognition of outstanding performance (Sec. 603(4));

-- It would increase professionalism since all FS personnel would be subject to separation for substandard performance, although current FS members would be exempted for an initial five-year transition period (Secs. 2104(e) and 642)

953

B.13. Question: Why does the Bill include a chapter on Labor-Management Relations to replace the existing Executive Order? And how does it differ from the latter?

Answer: The Bill includes Chapter 10 on Labor-Management Relations because:

-- The Executive Order states that the Foreign Affairs agencies should take into account developments elsewhere in the Federal Government;

-- It would be unfair to deny Foreign Service employees a legislated labor-management program which has been granted to over 2 million other Federal employees in the Civil Service Reform Act of 1978;

-- The chapter is an essential element of the Bill in that it adapts to the special needs of the Foreign Service the labor-management program provided for other Federal employees; and

-- It guarantees employees the right to participate in matters which have a direct bearing on their careers.

The chapter differs from the Order in the following areas which, for the most part, parallel the recently enacted Civil Service Reform Act:

-- It creates an independent Foreign Service Labor Relations Board consisting of the Chairman, Federal Labor Relations Authority, and two public members;

-- It excludes certain personnel, security, inspection, and audit officials from the bargaining unit;

-- It gives the exclusive representative the right to be present at formal meetings between management and employees;

-- It provides for judicial review of decisions by the Foreign Service Labor Relations Board;

-- It provides for the negotiation of an organizational disputes resolution mechanism;

-- In a related provision in grievance Chapter 11, the exclusive organization must represent or agree to representation in the processing of employee grievances. In addition, only the exclusive representative may invoke access to the Foreign Service Grievance Board.

954

B.14. Question: What is the justification for maintaining the Foreign Service Age 60 mandatory retirement provision?

Answer:

-- To manage and execute U.S. foreign policy, the President and the Secretary of State need a highly capable, mobile corps of dedicated personnel able and fit to assume a wide range of demanding duties, frequently under difficult and dangerous conditions, often at short notice, anywhere in the world.

-- The Congress determined in 1946 that Foreign Service personnel should normally retire no later than age 60. This reflects the fact that the Foreign Service, with the special nature of its mission and its unusual obligations and worldwide service, is much more analogous to the military services than to other civilian services of the government. In fact, it was the military model from which the Congress drew the provision for retirement in the Foreign Service, with mandatory retirement at age 60 being a central feature.

-- The Congress did, however, provide for two exceptions to that rule -- exceptions in line with the Service's basic, statutory personnel policy of "up or out." These exceptions permit the retention of extraordinarily capable officers past the time of mandatory retirement. (1) The Secretary may make an exception to the requirement when it is in the national interest to do so. (2) Career personnel serving in positions to which they have been appointed by the President (as Ambassador or Assistant Secretary) are exempted from the requirement while serving in such positions.

-- The conditions of service in the Foreign Service are unusually demanding and over time add to the normal debilitating effects of age. For example, at any given time 95% of Foreign Service personnel aged 21 to 29 are medically able to serve anywhere in the world. But only 68% of personnel aged 50 to 59 are able to do so, and less than half are available when family considerations are taken into account. This situation already limits the ability of the Secretary to assign personnel to appropriate posts. If mandatory retirement were to be eliminated or the age raised significantly, Service effectiveness would be further diminished.

-- In the Foreign Service Act of 1946, the Congress provided for rigorous attrition through its special retirement system and an "up or out" promotion system so that the Service would be especially vigorous and innovative.

-- As the Supreme Court stated in Bradley vs Vance: "Congress was intent not on rewarding youth qua youth, but on stimulating the highest performance in the ranks of the Foreign Service by assuring that opportunities for promotion would be available despite limits on the number of personnel classes and on the number of positions in the Service. Aiming at superior achievement can hardly be characterized as illegitimate, and it is equally untenable to suggest that providing promotion opportunities through the selection-out process and through early retirement does not play an acceptable role in the process."

955

B.15. Question: What is proposed in the Bill for family members and spouses? Is this merely a recodification of existing law or are there new proposals?

Answer: In addition to codifying existing provisions of law relating to family members and spouses (many of which are of recent origin such as expanded training and employment opportunities), the Bill would add explicit recognition of the special hardships of Foreign Service families in a number of important aspects:

-- First, the Bill establishes as one of the express objectives of the new Act the mitigation of special hardships, disruptions, and other unusual conditions of overseas service on family members (Sec. 101(b)(5)). This provision gives a new prominence to meeting these concerns as a central purpose of the new Act.

-- Second, the Bill provides expanded training opportunities for family members to assist them in securing overseas employment that will provide personal fulfillment and economic security (Sec. 701(b)).

-- Third, the Bill acknowledges the direct contribution made by Foreign Service spouses by granting them a vested right in a survivor annuity after ten years of accompanying a member of the Foreign Service on assignments (Sec. 821(b)(2)). In this regard, the Bill gives explicit recognition to the fact that opportunities for spouses of Foreign Service personnel to achieve economic independence and self-sufficiency are severely curtailed by the disruption of frequent reassignments and by the inherent limitations of service abroad on their own employment career development possibilities.

-- Fourth, the Bill provides that dissolution of a marriage should not automatically and immediately terminate the authority to provide medical care for an illness or injury incurred abroad while a member of a Foreign Service family (Sec. 921(e)).

956

B.16. Question: How will the Bill affect affirmative action efforts in the Department?

Answer: The Foreign Service Act of 1946 stated that the Service should be "broadly representative of the American people," but it contained no specific provisions relating to equal employment opportunity or affirmative action.

The bill retains a finding that the Foreign Service should be representative of the American people (Sec. 101(a)(3)). In addition, it states that one of its ten objectives is --

"to foster the development of policies and procedures which will facilitate and encourage entry into and advancement in the Foreign Service by persons from all segments of American society, and equal opportunity and fair and equitable treatment for all without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition."

The Bill thus gives legislative endorsement to the continued development and implementation of affirmative action programs in order to assure equality of opportunity in the Foreign Service.

The above-quoted statutory objective is drawn from the merit system principles contained in the Civil Service Reform Act of 1978 (5 U.S.C. 2301). These merit principles are made expressly applicable to the Foreign Service by section 102(7) of the Bill, and compliance with them is directed in connection with the appointment (Sec. 301(b)), assignment (Sec. 511(a)), and promotion (Sec. 601(a)) of Foreign Service personnel.

957

B.17. Question: What are the findings of the pay comparability study mandated by Congress last year? Do you plan to implement any of the recommendations?

Answer: The required study of Foreign Service compensation and linkage (conducted by the consulting firm of Hay Associates) has been forwarded to the Congress.

However, the findings of the study must be translated into a specific proposal for linkages of the single Foreign Service pay schedule with the General Schedule, as supported by the study. In order to do this,

-- AID and ICA must examine their positions to insure that the study is responsive to their situations and

-- An Administration position must be developed.

Recommendations which flow from analysis of the study will be presented to the Congress as soon as possible, but we believe specific funding requests should be considered separately from the proposed new Foreign Service Act.

See also response to Question A.2.

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B.18. Question: How will existing State-ICA-AID relationships be changed by enactment of the Bill? Do AID and ICA support the proposal?

Answer:

-- At present AID is an agency in the Department of State, and AID's personnel authorities flow through the Secretary of State. The Secretary has reserved authority to exercise any of the personnel (or other) functions delegated to the AID Administrator and only enumerated Foreign Service Act authorities are delegated to the Administrator. Compatability is implicit in this arrangement.

-- Under the International Development Cooperation Agency Reorganization Plan and eventual Executive Order, this direct authority would be transferred to IDCA. The IDCA Administrator will be directed by the President to coordinate with the Secretary before making substantial change in existing policies for use of Foreign Service Act authorities.

-- State and ICA are now under statutory direction to have compatible Foreign Service Officer and Foreign Service Information Officer personnel systems (Section 5 of P.L. 90-494), and both agencies (to a greater degree than AID) rely upon the same Foreign Service Act personnel authorities (Section 10 of P.L. 90-494).

-- State, AID, and ICA now have many common personnel regulations.

-- Under the Bill (Secs. 202, 206, 1203, 1204, and 1205) maximum compatability among agencies using the new Foreign Service personnel authorities (principally ICA and IDCA) would be a specific statutory objective. The Secretary is required to submit to the Congress a report on steps taken to achieve the objective within 18 months of passage of the pending Bill.

-- Director Reinhardt and Acting Director Nooter have testified directly on the position of their agencies.

959

B.19. Question: What are the projected costs of enacting this bill?

Answer:

-- There would be no net additional costs directly and immediately resulting from passage of the bill. There will be some miscellaneous implementation costs which the Department plans to absorb, such as the convening of an additional selection board and required modification of the data system.

-- Financing of SFS performance pay, as in the case of performance pay for the Senior Executive Service, will be determined on the basis of Administration decisions as to whether to seek additional funding in future authorization and appropriation requests and/or to require offsetting economies by the agencies;

-- Passage of the bill will not result in any automatic promotions or demotions;

-- The transition conversion features of the Bill will result in no additional costs;

-- The pay comparability study mandated by Congress and just completed will be implemented separately and its costs will be part of the regular authorization and appropriation process; and

-- The stress on performance in the Bill can be expected to result in long-term economies and efficiencies.

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C.1. Question: In Section 104, why do you refer specifically to the two Vienna Conventions, rather than including them within the term "international agreement"?

Answer: Since enactment of the 1946 Act, the United States has become a party to two major international agreements on the subject of consular relations and diplomatic relations -- the Vienna Diplomatic Convention and the Vienna Consular Convention, which are in force for most of the nations of the world today. While they could be considered as being within the term "international agreement", we think in view of their importance and as a matter of emphasis and specificity, they should be specifically mentioned.

C.2. Question: In the past, there has been discussion of the capacity of the Department to perform legal functions and the extent to which the Department must rely on the Justice Department. What provision is made in this legislation, and where, regarding the legal functions of the Department? Do you view this as sufficient for your needs?

Answer: There is only one relevant provision in the pending proposal. Section 2201(2) of the bill reenacts section 1031 of the Foreign Service Act of 1946, which is the current provision on this subject. The Secretary's authority is limited to procuring legal services overseas.

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- C.3. Question: How many years do you estimate that it will take to complete the transition from Foreign Service to Civil Service and vice versa for each foreign affairs agency?

Answer: The proposed legislation provides for a three-year conversion period for current Foreign Service domestic-only employees to be accepted as worldwide available (Section 2103), to convert to Civil Service status (with grade, pay, and benefits retained, as provided in Section 2104), or leave the Service. For State, Section 2103(a) provides that this three-year period will begin on the effective date of the Act; for ICA, that it will begin on July 1, 1981 (Section 2104(b)).

If the conversion in ICA should be on a voluntary basis, ICA estimates, as presented by Ambassador Reinhardt at the June 28 hearing, that it would take from 15 to 25 years to complete the process.

Neither ICA nor the Department of State visualizes any significant conversion from GS to FS, other than ongoing transfers in individual cases as provided for in the draft legislation.

AID's situation is different from that of State and ICA, in that it has no Foreign Service domestic employees. Under its regulations submitted as a consequence of the Obey amendment, however, it will be converting several hundred GS positions to Foreign Service over a period of years. This will be done voluntarily and by attrition, and does not contemplate any "domestic only" Foreign Service personnel. AID estimates that there will be a turnover of approximately 18% a year in the positions to be converted to the Foreign Service, which will permit all but 58 of the 350 positions in question to be filled by members of the Foreign Service after ten years (see accompanying chart).

For conversion from Foreign Service domestic status to the Senior Executive Service, individuals would have 90 days from the date an offer was made to accept or decline. This has not yet occurred for individuals in the Foreign Service retirement system who may be eligible for the SES, owing to a question of whether they could carry their Foreign Service retirement to the SES, but it is expected that this issue will be resolved and offers made during the next year. (See answer to Question D.5. for specifics of conversion process.)

AGENCY FOR INTERNATIONAL DEVELOPMENT

Movement of GS Employees
From FS-Designated Positions

Year	No. of GS in FS Positions	Normal Separation Rate 9%	Normal Conversion Rate 3%	Assumed Reassignment Rate 6%-3%	Assumed * Added Incentive Factor 1 1/2-2%	Total Movement**	No. of FS in Designated Positions End of Yr.
Start and First Yr.	350	34	11	21	4	70	420
Second	280	25	8	17	3	53	473
Third	227	20	7	14	2	43	516
Fourth	184	17	6	6	4	33	549
Fifth	151	14	5	5	3	27	576
Sixth	124	11	4	4	3	22	598
Seventh	102	9	3	3	2	17	615
Eighth	85	8	3	3	2	16	631
Ninth	69	6	2	2	1	11	642
Tenth	58	5	2	2	1	10	652

* The 6% applies to 1st 3 years.

** Note overall movement rate total is 18%.

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- C.4. Question: Section 101(b)(3) states the objective of simplifying and rationalizing the Foreign Service personnel categories and salary structure. The purpose is to eliminate inefficiencies and inequities which have resulted from overlapping personnel categories and pay schedules. Would you give us more specific examples of the problems in this area which you seek to solve?

Answer: In broad terms, the inequity is caused by employees doing the same or compatible work being subject to different conditions of employment and having different compensation and benefits. As a hypothetical example, you may have three officers at a post overseas serving as branch chiefs in one section. They are an FSO-5, an FSRU-5, and an FSSO-3. The first two are subject to selection out for performance, the last is not. The first two have only seven pay steps (which they get on July 1 each year), the last has ten (which he gets on the anniversary date of his grade). The first two are subject to selection out for time-in-class (TIC), but according to different time rules. The last is not subject to TIC. Until a year ago, if the FSSO had wanted to become an FSRU or FSO by the appropriate conversion process, he might have gotten a non-competitive promotion to FSO/R/RU-4 if he was in steps 8-10 of FSSO-3. Under the single pay scale, there will be steps 8-10 for all three categories, removing the necessity of choosing between a promotion or a loss in pay when converting from one pay plan to the other. This example could presently occur in the Department with the FSRU not being subject to world-wide availability for assignment, yet being entitled to the benefit of Foreign Service retirement.

Pay scale "linkage," has been a problem in several ways other than the conversion/promotion problem indicated above. At the lower grade levels, there is presently an almost impossible situation when attempts are made to link FSS-5, 6, & 7 to FSO/R/RU-7 & 8. If you link by pay, you come out with a pairing which has FSS-5 split between FSO/R/RU-6 & 7. If you use a downward approach it leaves FSS-7 dangling alone at the bottom. This was highlighted when we realized different linkage rules had been used for promotion competition from those used for FSS's converting to FSR.

At the lower level there is also the career ladder problem. Communications officers are hired as lower grade FSS employees. But, once they reach FSS-7 all the positions are FSR/RU. If they choose to remain FSS, they are out of phase with the system. With a single pay scale there would be a single, uninterrupted career ladder.

A final mechanical note: pay computations and periodic changes in the pay scale due to cost of living increases are much easier if there is only one scale, with more steps.

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C. 5. Question: How does the definition of "agency" in section 102(2) differ from current law (section 121(7) of the 1946 Act)? Why?

Answer: Section 102(2) of the bill defines "agency" by incorporating through reference the definition in 5 U.S.C. 551. That definition states that "agency" means each authority of the Government of the United States except:

(1) the Congress, the courts, governments of the territories or possessions, the government of the District of Columbia, and

(2) (except for Freedom of Information Act purposes) - agencies composed of representative parties (or organizations of parties) to disputes determined by such agencies, courts martial and military commissions, military authority exercised in the field in time of war or in occupied territory, and entities carrying out certain home insurance, termination of war contracts and property disposal functions.

No substantive change is intended; rather, the new definition will provide government-wide consistency on what is considered an agency.

C. 6. Question: Section 104(3) concerns the authority of Foreign Service personnel to perform functions on behalf of other agencies. Who pays for those services and where is that authority provided?

Answer: This provision is substantially the same as section 311 of the 1946 Act, and is intended to promote efficiency of Government operations abroad. In some cases, performing services for another agency under this provision will not result in additional costs. For example, a Foreign Service officer acting in a single case as a contracting officer for another agency may only incrementally add to what he is doing as contracting officer on State Department contracts abroad. Where expenses are incurred, reimbursement is made, as authorized by the Economy Act (31 U.S.C. 686), or by the basic authority of the other agency (e.g., section 632 of the Foreign Assistance Act).

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- C.7. Question: One of the findings made (Section 101(a)(3) states among other characteristics "that the Foreign Service should be representative of the American people, aware of the principles and history of the United States and informed of current trends in American life, knowledgeable of other nations' affairs, cultures, and languages". Mindful of affirmative action requirements, do you feel that the Foreign Service exam, as presently constituted, provides a fair basis for evaluation of applicants? Have any studies been done to determine whether the test as constituted is culturally or otherwise biased? Do you plan any changes in the exam.

Answer: See responses to Questions A.4', A.4., A.34., and A.35.

- C.8. Question: What effect will this legislation have on improving management flexibility and effectiveness in the State Department?

Answer: A number of the Department's current personnel problems are structural in nature and will require legislative action to correct. For example, the existence of different pay scales for FSO/R and FSS personnel has resulted in certain anomalies and "unearned" promotions for some employees seeking to change pay plan categories. The issue of Foreign Service personnel not obligated to serve abroad is, similarly, a problem which can only be resolved through legislative change.

Other features of the proposed bill, such as the extension of selection out for substandard performance to all Foreign Service personnel from highest to lowest ranks, limited career extensions for persons at the highest ranks of their occupational categories, and the establishment of a Senior Foreign Service with rigorous new entry criteria, will more closely link retention in the Service to individual performance. We believe that a rigorous application of the numerous managerial tools provided in the proposed legislation will result in a more efficient and productive Service.

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C.9. Question: How will the Department manage its Civil Service component once this legislation is enacted.

Answer: When this legislation is enacted, the Civil Service component within the Department will be enlarged by the addition of those individuals who are currently identified as Domestic Foreign Service. This will provide additional opportunities, since all domestic positions will be in the same system rather than split between FS and GS, enlarging the number of positions which can be competed for.

The laws, rules, and regulations which currently govern the Civil Service workforce will be applied (except as modified by the new legislation) to all Civil Service employees. Policies and procedures which now relate to the hiring, reassignment, training, and promotion of Civil Service employees will apply to the enlarged Civil Service workforce.

Provisions of the new Civil Service Reform Act (P.L. 95-454) will cover the enlarged group without differentiation.

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- C.10. Question: How many years do you anticipate it will take to formulate the regulations to accompany this bill if it becomes law? I note that you have not formulated regulations yet for two revisions we enacted last September. (R&R in U.S. rather than overseas; utilization of foreign rather than domestic carriers.)

Answer: The Department expects to have major revisions to our personnel regulations published within six months after passage of the legislation. When the legislative picture is clear as to probable passage, the Director General plans to designate in each program or operating office in the Bureau of Personnel an officer to be responsible for initial drafting of revised or new regulations under the direction of the Bureau's Regulations Coordinator.

Target dates will be set for completion of first drafts; completion of clearances within the Department; clearances with AID and USICA when regulations are to be uniform with those agencies; and for submitting approved drafts to the exclusive employee representatives for consultation/negotiation when required under proposed Title 10 in the legislation.

If necessary, officers will be detailed from regular assignments to augment the effort to meet deadlines.

We estimate that 200 pages of revised and new regulations will be required, plus 18 pages to be revised in 22 CFR.

NOTE: The provision for R&R travel to the U.S. rather than overseas has not been implemented due to lack of funds in the FT-79 budget for this purpose. The basic regulatory changes have been drafted and cleared within State/AID/USICA.

The regulations for utilization of foreign rather than domestic carriers were drafted in early October 1978. The draft was cabled to 28 embassies for Ambassadors' comments. After some further modification, the draft was cleared with AID and USICA. The cleared draft was then sent to the General Accounting Office (GAO) for review. GAO has not yet commented. The last step, following GAO response, will be consultation/negotiation with the exclusive employee representatives.

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C.11. Question: Are part time employment ceilings applicable at home as well as abroad?

Answer: Yes. The bureaus receive employment ceilings for both domestic and overseas positions.

C12: Question: How are post differentials determined and for what purposes are they used?

Answer:

Authority

Under 5 U.S.C. 5925 and Executive Order 10903, a United States citizen employee may be granted "a post differential... on the basis of conditions of environment which differ substantially from conditions of environment in the continental United States and warrant additional pay as a recruitment and retention incentive.... A post differential may not exceed 25 percent of the rate of basic pay." This authority is administered by the Secretary of State.

Principal Features

1. The post differential is additional compensation paid to all U.S. Government employees assigned to posts where extraordinarily difficult or notably unhealthful conditions, or excessive physical hardship exist. It is not limited to the Foreign Service in its application.
2. The post differential serves as an incentive in recruiting and retaining personnel for locations where unusual hardship conditions exist.
3. The post differential is authorized only at those posts where the degree of hardship is in excess of that which employees are expected to disregard as part of the self-sacrifice necessarily involved in overseas service.
4. More than half of the posts in foreign service areas have no post differential. A large number of posts having considerable hardship conditions do not receive post differential.
5. The post differential is subject to tax as part of gross income (other allowances are not taxable).
6. Owing to the 25 percent limitations, there is a wide range of hardship conditions existing at those posts where a 25 percent post differential is established.

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Determination of Rate

The Department of State continuously reviews a large body of facts relating to conditions prevailing at posts throughout the world. Each post must update its information biannually and complete a new differential questionnaire every four years. Each factor named in point number 1. above has been defined in specific terms. For example, the factor of "extraordinarily difficult living conditions" currently includes consideration of inadequate housing accommodations, lack of cultural and recreational facilities, geographic isolation and inadequate transportation facilities, and lack of food and consumer services.

The factor of "excessive physical hardship" involves consideration of the effects of climate and altitude and the presence of dangerous conditions affecting life, mental health, or physical well-being. The factor of "notably unhealthful conditions" involves consideration of the incidence of disease and epidemics, lack of public sanitation, and health-control measures and inadequacy of medical and hospital facilities.

In order to provide as objective a basis as possible for measuring the application of the above criteria to individual posts, a carefully developed point system is used, with each element contributing to difficult or adverse conditions given point values. The point system is then applied to the data collected on these conditions at the various posts in the service which are reported on Form OF-267 Post Differential Questionnaire.

The posts determined by this method to involve significant hardships are designated as differential posts. The posts having extremely adverse conditions carry a maximum 25 percent differential. Posts having lesser degrees of hardship have differentials of 20 percent, 15 percent and 10 percent. Adverse conditions must affect the majority of personnel at the post before the hardship is given consideration in contributing to a differential. No one factor, such as isolation, qualifies a post for differential. A substantial number of hardship conditions must be shown to exist even for a 10 percent differential.

The point score system referred to above provides a simple method of determining a close decision, for example, a 15 percent differential post as compared to a 20 percent post. A post must measure up to a specific point value to warrant the differential rating applied.

Each post is reviewed in the light of current conditions at least biennially. Differential rates are raised or lowered, if adjustment is necessary, depending upon the outcome of the review.

- C.13. Question: Have you reviewed the entrance requirements, including the substance of oral interviews, for Foreign Service applicants to determine whether changes are necessary? Who conducts oral interviews?

Answer: See responses to Questions A.4', A.4. and A.34.

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- C.14. Question: What kinds of questions are posed to Foreign Service applicants at oral interviews. Do you think the entrance process really draws the varied kinds of personnel that the Foreign Service needs? For example, it seems to me that the intellectual nature of the Foreign Service exam, with its many questions on virtually all areas of human endeavor, would draw individuals with an academic bent who would find administrative and consular work tedious and who would approach economic and political work from a less-than-practical standpoint. Would you care to comment?

Answer: See responses to Questions A.4. and A.26.

- C.15. Question: Will individuals in the Civil Service in the foreign affairs agencies be eligible for the Senior Executive Service? What are the requirements? Is there a transition problem?

Answer: Yes, individuals in the foreign affairs agencies are eligible for the Senior Executive Service. At the current time, and independently of the pending legislation, the State Department has offered membership in the SES to over 50 persons. Under Subchapter II, Title IV of the CSRA, a Presidential exclusion has been granted to reserve SES spaces for those individuals who are affected by the transition. For instance, a number of current domestic Foreign Service employees, who are covered by Foreign Service retirement, and whose positions are clearly appropriate for inclusion in the SES, would, if they were offered and accepted membership in the SES now, be deprived of Foreign Service retirement benefits. After passage of the legislation, and because we have reserved their SES option under the Presidential exclusion, such an offer and acceptance would allow individuals to both become a member of the SES and retain Foreign Service retirement.

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The requirements relating to the Senior Executive Service relate to both positions and people. A position must be at the proper level (i.e. above the GS-15 level) to warrant inclusion in the SES, the Department must have a space for the position as allocated by OPM, and the Department must formally designate the position as either Career-Reserved (to be filled only by career employees) or General (to be filled by either career or non-career employees). A person may be either offered SES membership (if they occupy such a position at the time it is designated during the conversion period) or they may be competitively considered as follows: Their subject-matter qualifications will be reviewed for approval by the Department, and their managerial skills and experience will be reviewed for approval by the Office of Personnel Management. After all such reviews have resulted in approval, the individual may be placed in the SES position and become a member of the SES.

D. 1. Question: Section 203 sets forth the authorities and responsibilities of the Chief of Mission. Do you view this language as adequate to protect the country-team concept?

Answer: Experience has not indicated any significant problem under current law, which is carried forward in section 203 of the bill.

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- D.2. Question: Under Section 205(b), can and should the Inspector General inspect the operations of a non-Foreign Service section in an overseas post?

Answer: The focus of the Office of the Inspector General is on evaluating how effectively the foreign policy of the United States is implemented. At most overseas posts this involves the management of more non-Foreign Service resources than Foreign Service resources. The Ambassador, as the representative of the President, is charged with overseeing and coordinating the application of all U.S. Government programs operating in a particular country. This is what inspectors evaluate -- how effectively and efficiently these resources, from whatever USG agency, are coordinated and used in the achievement of the Ambassador's goals and objectives.

Inspectors do not and should not evaluate the internal operations of non-Foreign Service Sections, as such, but will, in cooperation with the top management of the post and the heads of these sections, assess how their operations contribute to carrying out the Ambassador's goals and objectives.

One of the results of the inspection of an overseas post is an assessment of how well the Ambassador is managing and coordinating the operations of all sections of the post, both Foreign Service and non-Foreign Service, pursuant to 22 USC 2680 A.

- D.3. Question: Has the authority of section 205(c), regarding suspension of a member of the Service by a Foreign Service Inspector, ever been used?

Answer: This authority has been granted to inspectors since the Act of April 5, 1906, in which "Consuls General at large" were authorized to remove consular officers or clerks and replace them as necessary. This authority has not been used recently.

In case of irregularities the inspectors generally assemble all the facts regarding an alleged problem and report them to the Department. In most cases this has been adequate. Nonetheless, it is conceivable that an inspector could come upon a drastic case that would require immediate action to remove an officer engaging in wilful wrong-doing.

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- D.4. Question (a): Would you describe the operations of the Board of the Foreign Service? Will there be any changes in the legislation?

Answer: The Board of the Foreign Service currently functions under E.O. 11264. Its membership consists of representatives from State (4), USICA (2), Labor (1), Commerce (1), OPM (1), and OMB (observer). The Board is an advisory body to the Secretary with responsibility for making recommendations concerning personnel policies and procedures affecting the Service. Additionally, the Board exercises quasi-judicial functions with respect to the employee-management relations program and for separation for cause actions.

Under the legislation, the Board will be responsible for advising the Secretary on such matters as promoting compatibility among agencies using the Foreign Service personnel system, and on compatibility between the Foreign Service and Civil Service.

The quasi-judicial functions in labor-management relations and separation for cause will be vested in the Foreign Service Labor Relations Board and the Foreign Service Grievance Board, respectively.

- D.4. Question (b): Would you describe the operations of the Board of Examiners for the Foreign Service? Will there be any changes in the new legislation?

Answer: The Board of Examiners for the Foreign Service, chaired by the Director General of the Foreign Service and composed of representatives from the State Department and other agencies with foreign affairs interests, is charged with providing and supervising the conduct of such examinations as are administered to candidates for appointment as Foreign Service officers in the Department and the International Communication Agency. The Board is assisted in this task by the Secretariat, a part of the Department's Bureau of Personnel, which carried out the administrative and technical examining operations for the Board under the direction of the Executive Director of the Board. The Board meets periodically to review and render decisions on examinations conducted by the Secretariat.

Section 212 of the Foreign Service Act of 1946 had placed authority to prescribe examinations for the Foreign Service with the Board of Examiners for the Foreign Service, but these functions were transferred to the Secretary pursuant to Reorganization Plan No. 4 of 1965 and Executive Order 11263 31 F.R. 67. The Board now exercises these functions under a delegation of authority from the Secretary. Under the new legislation, Section 301(b) authorizes the Secretary to prescribe examinations for appointment to the Service and it is expected that under delegation the Board will continue to exercise the function of prescribing examinations as before. The nature of the examinations will depend on the type of appointment involved. In particular, Foreign Service officer candidates will continue to be subject to different examinations than candidates for other personnel categories.

- D.5. Question: Please describe the process of conversion into the Foreign Service, the Senior Foreign Service, and into the Senior Executive Service and the Civil Service.

Answer: Conversion from the current FSO category to the new FSO category, and from current FSRU/R/SS categories to the new FS category, with both new categories sharing the common single FS salary schedule, will be mandatory, on the effective date of the Act. Conversion tables will be developed to assign members of the Service to new salary grades and steps, once the new salary schedule is adopted. This will apply to all members of the Foreign Service who are or become worldwide available.

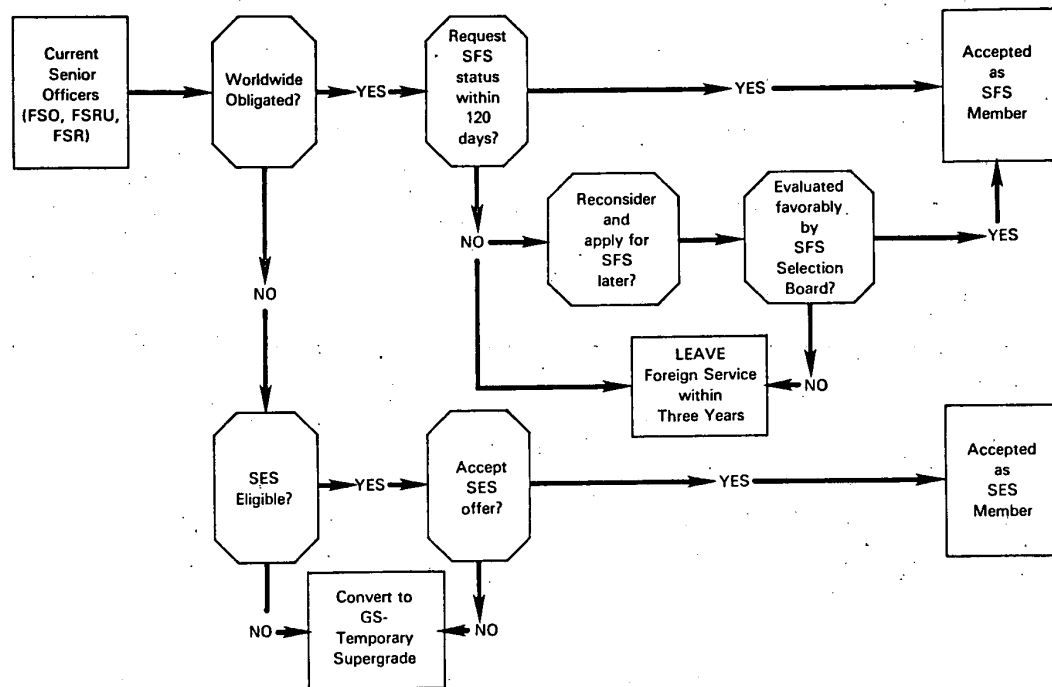
Conversion into the Senior Foreign Service will follow the provisions of Section 2102 of the proposed Act. This process is detailed in attachment 1, which has previously been supplied, as a part of the chart package. Once members have been accepted in the SFS, they will be assigned an initial SFS appointment, the length of which will vary according to how long individuals have been in their current senior class, but which will be between 1 and 5 years. Attachments 2 - 4 provide more detail on how the initial assignment period would be determined for each of the current senior classes.

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Conversion into the Senior Executive Service for current civil servants will proceed exactly as for the rest of government. Currently, acceptances or refusals of SES offers are being received by the Department's Bureau of Personnel, and our SES component will come into existence on July 13. About 48 Foreign Service positions, occupied by career-oriented Foreign Service personnel, have not as yet been designated for the SES. These jobs are covered by a Presidential exclusion, obtained so that the Department can delay SES designation until the proposed Foreign Service Act is dealt with by Congress. The Department sought this waiting period for two reasons. First, it is not now clear whether certain "domestic" FSRUs or FSR (FAS) candidates have a future in the Foreign Service personnel system by becoming worldwide available. It would be fairer to these people not to force an SES choice upon them until that future is clearer. Secondly, these same RUs now have Foreign Service retirement and benefits, which they must surrender to join SES, under existing law. The proposed Foreign Service act will permit these RUs to carry FS retirement and benefits after conversion to Civil Service (SES) status.

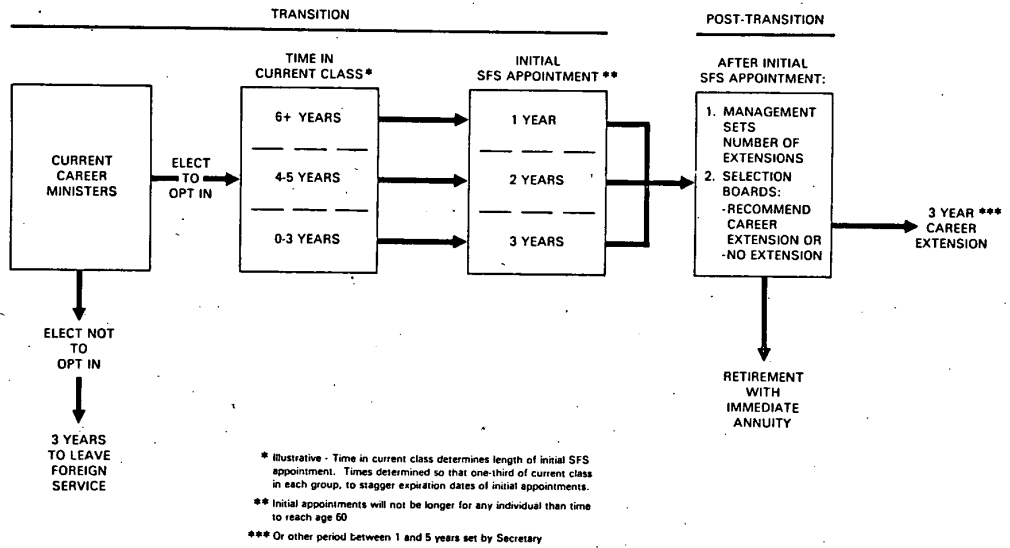
Conversion from Foreign Service domestic status to the Civil Service, below the SES level, will be mandatory, with a three-year period for choice, after which individuals in this category must either join the Civil Service, with pay, grade and benefits preserved, or otherwise leave the Foreign Service. Conversion will be to a comparable kind of appointment (e.g., career or non-career), and will be according to pay conversion tables established following the provisions of Section 2104 of the proposed Act.

SENIOR LEVEL TRANSITION



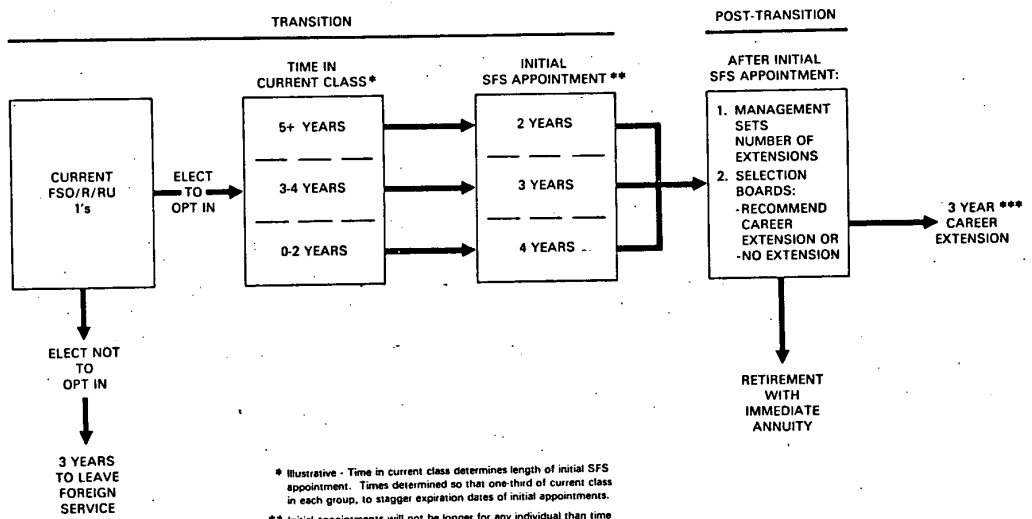
FOREIGN SERVICE - TRANSITION TO SFS/SUBSEQUENT CAREER PROGRESSION

I. Current Career Ministers



FOREIGN SERVICE - TRANSITION TO SFS/SUBSEQUENT CAREER PROGRESSION

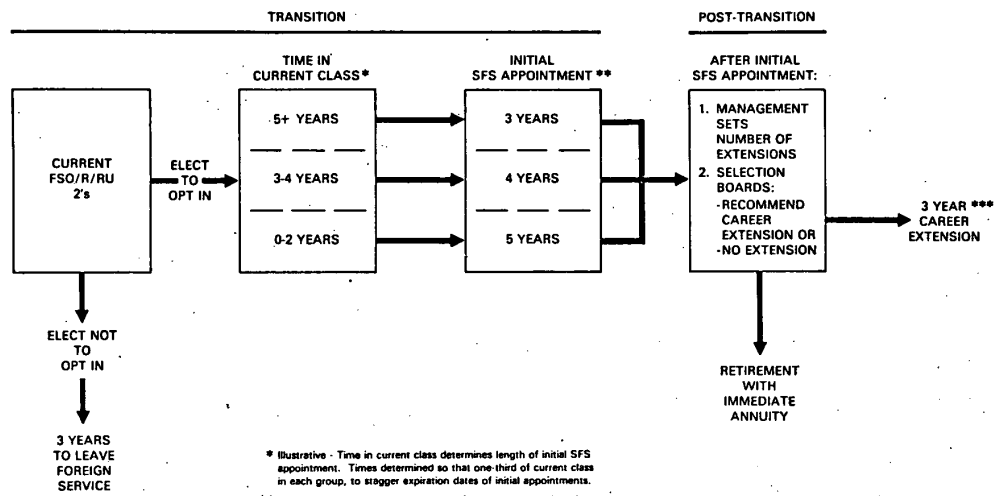
II. Current FSO/R/RU - 1's



* Illustrative - Time in current class determines length of initial SFS appointment. Times determined so that one-third of current class in each group, to stagger expiration dates of initial appointments.
** Initial appointments will not be longer for any individual than time to reach age 60/current remaining Time-in-Class/expiration of existing limited appointment
*** Or other period between 1 and 5 years set by Secretary

FOREIGN SERVICE - TRANSITION TO SFS/SUBSEQUENT CAREER PROGRESSION

III. Current FSO/R/RU - 2's



* Illustrative - Time in current class determines length of initial SFS appointment. Times determined so that one-third of current class in each group, to stagger expiration dates of initial appointments.
** Initial appointments will not be longer for any individual than time to reach age 60/current remaining Time-in-Class/expiration of existing limited appointment
*** Or other period between 1 and 5 years set by Secretary

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D.6. Question: Would you please explain section 2101(b), which seems to state that if a reserve or staff officer is willing to misrepresent the true state of his or her commitment to world-wide availability, he or she will be converted to the Foreign Service? Aren't you simply stating that if a reserve or staff officer changes his or her mind about world-wide availability, the Service will accept him or her? What time period is involved here? Why is this section necessary?

Answer: 2101(b) permits retention in the Foreign Service of those "domestic" personnel who accept world-wide availability for assignment as a required condition of employment, and for whom there is a certified need in the Foreign Service. This section is needed to sort those employees who presently have FSR, FSRU, and FSS appointments but who are not required to be world-wide available for assignment. Admittedly, there is always the possibility of misrepresentation. Those employees who are permitted to convert to the new Foreign Service under section 2101(b) will do so with the full knowledge that they are obligated to accept overseas assignments, and that there are overseas positions which they are qualified to fill. In these circumstances, the likelihood of early overseas assignment should prove a deterrent to misrepresentation.

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- D.7. Question: Please describe the problem of conversion of ICA employees who are covered by an existing union agreement (Section 2103(b)). How long will this conversion take?

Answer: The proposed legislation states that all Foreign Service domestic specialists in USICA shall be converted mandatorily to the Civil Service after July 1, 1981, with preservation of pay grade and benefits including retirement (Sections 2103(b), 2103(b)). If this provision becomes law, then the conversion process would be completed by June 30, 1984.

The problem seen by USICA and AFGE with this provision is that it would overtake an agreement negotiated between them in December 1977 which provided that all conversions from Foreign Service to Civil Service would be voluntary, by right until June 30, 1981, and under prevailing requirements and conditions established for conversion after that date. (Copy attached, see pages 3-5, paragraph 5.)

The Department believes that the proposed legislation honors the spirit of this agreement, in that existing pay, grade, and benefits would be preserved by law; this preservation of existing rights was not contemplated at the time the agreement was made, and provides totally new circumstances. It also believes that there are considerable advantages in moving to a coherent dual FS/GS system as rapidly as possible, after a transition period of three years, rather than relying only on voluntary movement which was estimated by Ambassador Reinhardt in his testimony on June 29 as requiring 15 to 25 years.

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Circular

487D N-486F

December 19, 1977

SUBJECT: Revised Personnel System

1. Purpose

The Agency has negotiated with AFGE, the exclusive bargaining representative for USIA's Foreign Service employees, a revised personnel system that will replace the Foreign Affairs Specialist (FAS) program. The purpose of this Circular is to announce the revised personnel system.

Agency Circular 460D and 459F, dated June 18, 1976, informed employees that the special Foreign Affairs Specialist conversion program would terminate on September 30, 1976. In the future the Agency will operate under two personnel systems; Civil Service rules and regulations for employees who are primarily United States based and Foreign Service rules and regulations for those who are primarily overseas based.

2. Categories of Employees

All employees in the United States and American employees abroad will be identified as being in one of the following personnel categories:

- a. Foreign Service Generalist (IO) -- Foreign Service Information Officers, Foreign Service Reserve Officer Unlimited (Generalist), Foreign Service Staff Officers (Generalist) and Foreign Service Limited Reserve Officers (FSIO Candidates) who are available for and expected to serve primarily abroad in such positions as Public Affairs Officers, Cultural Affairs Officers and Information Officers and on rotation in the United States.
- b. Foreign Service Overseas Specialist (OS) -- Foreign Service Reserve Officers -- Unlimited (Specialist), Foreign Service Staff Officers (Specialist) and Foreign Service Limited Reserve Officers (Specialist) who are available for and expected to serve both abroad and in the United States in a Specialist position which is part of an overseas -- U.S. rotational system. Positions in

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this system include Radio Engineers at VOA Radio Relay Stations, Printing Specialists at Regional Service Centers, VOA Correspondents, VOA Technical Monitors, Foreign Service Secretaries, Regional Librarians, Regional English Teaching Officers, BNC Directors of Courses, certain Publications Officers and certain Audio-Visual Officers.

- c. Domestic Specialists (DS) -- Civil Service Personnel (GS and Wage Board), Non-citizens, Foreign Service Reserve Officers -- Unlimited (Specialist), Foreign Service Staff Officers (Specialist) and Foreign Service Limited Reserve Officers (Specialist) who are assigned to a position in the United States and are expected to continue to serve in the United States. This category includes all employees who are not designated as Foreign Service Generalists or Foreign Service Overseas Specialists.

Employees will be notified of the category into which they have been placed. They may request the Office of Personnel Services, Domestic Personnel Division for U.S. based employees, and Foreign Service Personnel Division for overseas based employees, to review the identification if they believe they have been placed in the wrong category.

3. Designation of Positions

Subject to later review, all American positions abroad will retain their current designations as generalist or specialist positions. All positions in the United States will be designated as being in one of the following position categories:

- a. Generalist Positions (IO) -- Most USIS officer positions overseas which are staffed by Foreign Service Information Officers and other Foreign Service Generalist officers and positions in the United States where field experience in general program activities is more significant than continuity in the job or knowledge and skill in a specialized activity. (This would also include positions to which an FSIO could be assigned in order to diversify his/her experience and/or acquire skills that would be beneficial in future overseas assignments.)
- b. Overseas Specialist Positions (OS) -- Specialist positions at USIS posts and media extensions overseas staffed by Foreign Service specialist officers and positions in the United States which are part of an overseas -- U.S. rotational system where continuity in the job or knowledge and skill in a specialized

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activity are more important than field experience in general program activities.

- c. Domestic Specialist Positions (DS) -- All positions located in the United States other than those identified for staffing by Foreign Service Generalist or Foreign Service Overseas Specialists.

In order to expedite the filling of vacancies, position descriptions covering vacant positions will receive priority attention insofar as classification of the position is concerned. Managers who wish to propose a change in position designation should address their requests, including the rationale for the proposed change, through their Administrative Office to the Office of Personnel Services for review and decision.

4. New Hires

The appointment procedures and requirements and the personnel category of each new hire will be determined by the Agency's intent in employing the applicant. Applicants intended to fill Foreign Service generalist positions will be appointed under Foreign Service personnel authorities as Foreign Service Limited Reserve Officers (FSIO candidate) and those for Foreign Service overseas specialist positions as Foreign Service Limited Reserve Officer (OS Candidate) or Foreign Service Staff (FS Secretary). These appointment procedures and Foreign Service personnel authorities will be used regardless of whether the first assignment of the Foreign Service generalist or overseas specialist is in the United States or abroad. Domestic specialists will be appointed under Civil Service personnel authorities as General Schedule, Wage Board and non-citizen personnel will continue to be appointed under appropriate hiring authorities. It is the Agency's intent that candidates as domestic specialists whose papers are submitted to the Office of Security for processing on or after December 1, 1977, will be individuals selected for appointment through regular Civil Service procedures.

5. Conversion Rules -- FS to GS

Conversion from FS to GS will be entirely voluntary at the option of the employee. FSLR (Specialists) who choose to remain in the Foreign Service may apply for conversion to FSRU and, if eligible, that conversion will be approved and processed.

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Upon receipt of an application from FS employees for conversion to GS, in accordance with the procedures described in section 9 of this Circular, the following steps will be taken:

- a. Eligibility for Competitive Status -- A determination will be made as to whether the employee has eligibility for conversion to career or career-conditional status in the competitive service and the statutory or regulatory authority for that eligibility. (See note below.)
- b. Availability of Position -- The employee must encumber or be proposed for a domestic position which is within an element's authorized personnel ceiling.
- c. Position Classification -- The domestic position encumbered by the employee will be classified at the appropriate GS grade level in accordance with CSC classification standards.
- d. Qualification Standards -- A determination will be made as to whether the employee meets the CSC qualification standards for the position as published in X-118.
- e. All conversions of FS employees without career rights will be subject to a certification by the Head of the Office or Service that there is a continuing need for the employee in the position and the employee's services have been satisfactory.
- f. Salary Determination --
 - (1) When the employee is receiving a rate of pay equal to a rate in the grade in which the position is placed, the pay will be fixed at that rate.
 - (2) When the employee is receiving a rate of pay that falls between two rates of the grade in which the position is placed, the pay will be fixed at the higher of the two rates.
 - (3) When the employee is receiving a rate of pay below the minimum rate of the grade in which the position is placed, the pay will be increased to the minimum rate.
 - (4) When the employee is receiving a rate of pay above the maximum rate of the grade in which the position is placed, the pay will be decreased to the maximum rate or, as explained in the note below, if the Civil Service Commission approves our request to bring a group of excepted positions into the competitive service, the employee will be entitled

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to retain the former rate as long as he/she remains continuously in the same position or in a position of higher grade in the Agency.

These conversion rules will remain in effect until June 30, 1981. It is felt that this three and one half year period provides a reasonable time for present FS employees to decide whether they wish to convert to GS or to remain in the Foreign Service. Conversion to GS after June 30, 1981, will be subject to whatever requirements and conditions may be established at that time for conversion.

NOTE: The Agency has sent a letter to the Civil Service Commission proposing that all positions except those normally in Schedules A, B, or C occupied by FAS employees be brought as a group from the excepted service (Foreign Service) to the competitive service (Civil Service). If the Commission approves our request, we will have a way to accord competitive status to FAS employees who have no career rights who apply for conversion to GS and meet the Civil Service qualification standards for the position they occupy. It will also provide for salary retention if the employee is receiving a rate of pay above the maximum rate of the grade in which the position is placed.

Promotion

After conclusion of the 1977 Foreign Service Specialist Selection Boards, there will no longer be annual selection boards for Foreign Service personnel in the domestic specialist category. The Agency's Merit Promotion Plan, as it affects GS and FS employees, will be renegotiated with AFGE to provide similar treatment of General Schedule and Foreign Service personnel in the domestic specialist category as follows:

- a. Career Ladder Promotion -- Promotions to the full performance level (GS or FS) of the position will be by recommendation of the supervisor to the Office of Personnel Services.
- b. Merit Promotion -- Promotion above the full performance level and to supervisory levels will be by posting of vacancy announcements, application of interested employees (GS and FS), review by ad hoc promotion panels, and certification of the best qualified candidates. The candidate selected from the merit promotion certificate would be moved to the new position and promoted

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to the grade of that position. If the successful candidate is GS, he/she will be promoted to the posted GS grade. If the successful candidate is FS, he/she may choose to be converted to the posted GS grade or to remain in the FS and be promoted to the equivalent FS class.

The revised Merit Promotion plan will be published and become operative as soon as agreement is reached between the Agency and recognized employee unions.

Annual selection boards will continue to be convened for promotion consideration of officers in the Foreign Service generalist and the Foreign Service overseas specialist personnel categories.

7. Selection Out

Until changed, the current rules governing selection-out for performance or time-in-class will continue to apply to Foreign Service Information Officers and to Foreign Service Unlimited Reserve Officers in the generalist or the overseas specialist categories. With respect to Foreign Service Unlimited Reserve Officers in the domestic specialist category, the determination of failure to meet standards of performance and recommendation for selection-out would be made by the supervisor based upon position requirements described in the officer's evaluation report rather than by selection boards. The criteria for identifying Foreign Service Unlimited Reserve Officers (DS) for selection-out consideration and the procedures to be followed will be negotiated with AFGE. The ten-year waiver period established in MOA V-A/V-B-1000 would continue to apply to those domestic specialists who are serving under this exemption. Also for the domestic specialist category, the current time-in-class standards published in MOA V-A/V-B-1000 would continue.

8. Conversion of General Schedule to Foreign Service Generalist or Overseas Specialist

General Schedule employees who apply for and are selected to serve overseas in a Foreign Service generalist or Foreign Service overseas specialist position will be converted to the appropriate Foreign Service class and step level in accordance with the conversion table in Attachment A. The same table will be used for Wage Board employees after their hourly rates have been converted to an annual salary.

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9. Application for Conversion from FS to GS

FAS employees in the domestic specialist category who wish to apply for conversion to the competitive service as a General Schedule employee should complete the application form (IA-1087) provided as Attachment B.

Employees of the Voice of America should mail the form to:

Personnel Management and Counseling Branch/VOA
Room 3521, HEW-North

All other employees should mail the form to:

Personnel Management and Counseling Branch
Room 649 - 1776 Pennsylvania Avenue, N. W.

Additional copies of Form IA-1087 may be obtained from these personnel offices.

The time limit for submitting applications for conversion to General Schedule under the conditions described in this Circular is June 30, 1981.

DISTRIBUTION: X - All Employees in U.S.
O - All Americans Overseas

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D.8. Question: Please explain Section 2204 regarding attorneys' fees in back pay cases.

Answer: Section 2204 would afford authority for the award to Foreign Service personnel of attorneys' fees when successfully appealing from personnel actions as was recently afforded with respect to Civil Service personnel under Section 702 of the Civil Service Reform Act of 1978 (P.L. 95-454).

Foreign Service personnel entitled to claim attorneys fees in egregious cases would be those who successfully appeal their removals, suspensions without pay, withdrawal or reduction of pay, allowances, or differentials, or from an agency's omission or failure to take an action or confer a benefit.

E.1. Question: What happens if the Department wishes to keep someone who has reached the age of 60?

Answer: Under section 836(b) of the bill (as under section 631 of the 1946 Act), the Secretary may retain a career member of the Foreign Service beyond age 60 for up to five years if the Secretary determines this is in the public interest. In addition, Foreign Service personnel who reach age 60 while serving under Presidential appointments to positions are exempted from mandatory retirement until the expiration of such appointments.

E.2. Question: What is the difference between career and non-career members of the Senior Foreign Service?

Answer: Career members of the Senior Foreign Service will be those who have been granted tenure under the new rules and appointed by the President, by and with the advice and consent of the Senate. In short, they are those present FSO's and world-wide available FSRUs who would be converted to the SFS.

There will be two types of non-career members of the SFS. The first will be those who are specifically hired in expectation of eventually being tenured. The second type consists of other individuals whose services are required only for a limited tenure.

(See also answer to Question E.4.)

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E.3 Question: Please describe the composition and operations of the so-called "tenure boards".

Answer: Under existing law, the tenure board procedure has been in operation for junior level Foreign Service officers since mid-1978. Career candidates are initially accepted for a trial period subject to selection after demonstrated performance for a career appointment. The tenure board of this program recommends candidates for career tenure. It is made up of five career Foreign Service officers. There is a chairperson and a representative of each of the four mid-career functional cones, political, consular, economic/commercial and administrative. The sixth member of this board is designated by the Office of Personnel Management. This seat on the Commissioning and Tenure Board will rotate among the federal agencies concerned with the work of the Foreign Service.

The board members are all stationed in Washington and serve three-year terms. The board meets to consider candidates for tenure whenever there is a sufficient case load of people eligible for review.

The Commissioning and Tenure Board is charged with evaluating the personnel records of the candidates to determine if they have demonstrated the abilities to do successful work up through mid-career as a Foreign Service officer. The rules of procedure of the board require the affirmative vote of four of the six members to grant tenure; there is no quota of candidates that the board must accept or reject.

Each candidate for tenure is reviewed by the board once a year after having completed two years on the job. Candidates must achieve tenure before the expiration of the limited appointments of four years.

In the proposed legislation, section 322 authorizes continuing these same operations of the Commissioning and Tenure Board and expands this concept to cover all career appointments in the Foreign Service. Tenure boards, following the same principles and having similar rules of procedure as the Commissioning and Tenure Board, will be created to review and reject or accept candidates for career appointments as Foreign Service support or specialist personnel. These tenure boards are all required by section 322(d) to be composed entirely or primarily of career members of the Service.

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- E.4. Question: How will limited and temporary appointments operate and what kinds of jobs are contemplated?

Answer: The limited and temporary appointment authorities in Section 331 of the draft Bill parallel and carry forward existing authorities derived in part from Section 531 of the 1946 Act (for the staff corps) and Section 522 (for the Foreign Service Reserve). While Section 331 is more general than its predecessors, it continues to provide protection for the basic career structure of the Foreign Service, by limiting all such appointments to no more than five years.

Limited appointments will be used, as now, for two purposes: To provide the ability to hire non-career individuals for short periods to meet specific needs which cannot be met from within the Service; and to serve as a career candidate appointment, comparable to GS probationary and career conditional appointments, for individuals who will become career members of the Service, if their performance is acceptable.

Temporary appointments serve the first of these purposes, in cases where the need for the services of the employee in question is not expected to exceed one year.

While there is no limit on the occupational categories where limited or temporary appointments can be used, in practice they will be used for special functional fields (e.g., petroleum attache, commercial attache) and for appointments of a political nature (executive assistant or personal secretary to a non-career ambassador). Unlike current practice, they will not be used to meet short-term personnel needs in the United States.

- E.5. Question: What is the difference between the significance of diplomatic and consular commissions?

Answer: In current practice, career Foreign Service personnel who are expected to serve in both diplomatic and consular positions during their careers receive both types of commissions. All Foreign Service officers, irrespective of their cone (political, consular, economic or administrative), receive both diplomatic and consular commissions at the time they are appointed as Foreign Service officers. Other career Foreign Service personnel receive both commissions at the time of their initial assignment to serve abroad in a diplomatic or consular capacity. Accordingly, these commissions have no significance with respect to the personnel status, assignments or career development of the members of the Foreign Service.

Historically, diplomatic officers were primarily responsible for the conduct of relations between nations, while consuls were more concerned with the welfare of the appointing country's nationals and its commercial interests. In modern time, most countries have developed unified Foreign Service corps, whose members may be assigned either to diplomatic or consular posts. Considerable overlap has developed between diplomatic and consular functions. Nevertheless, international law continues to recognize the differences in the functions, rights, and status of diplomatic and consular personnel. A number of U.S. laws (both federal and state), some dating from the eighteenth and nineteenth centuries, similarly recognize distinctions between functions which may be performed by diplomats and those which may be performed by consuls. .

A diplomatic or consular commission is evidence of the authority of the appointee to perform diplomatic or consular functions as the case may be. Under the Constitution, the President commissions "Ambassadors and other public ministers and consuls", and the Congress may vest in the Secretary appointment authority for subordinate officers (i.e., vice consuls). This is the pattern of the 1946 Act, and is restated in section 341 of the Bill.

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E.6. Question: Has the provision authorizing the appointment of a staff officer or employee as vice consul been carried forward in this legislation?

Answer: The Bill contains an expanded version of this authority, which is in Section 533 of the 1946 Act. Section 341(a) of the Bill permits such commissions to be granted to any member of the Foreign Service who is a United States citizen. For example, this authority will be available to commission as a vice consul a Foreign Service officer candidate serving under a probationary appointment.

E.7(A) Question: In section 322, you provide for a trial period of service for incoming Foreign Service officers. How long is this trial period?

Answer: We contemplate a trial period for candidates for appointment as Foreign Service officers of four years with a possible extension in unusual cases of up to one additional year. The trial period for Foreign Service members will generally be shorter, depending upon occupational category.

E.7(B) Question: Have you considered authorizing representation allowances for consular agents where appropriate?

Answer: We have not considered granting representation allowances to consular agents as a general practice in the past since for one thing representation allowances are currently authorized only for U. S. citizens and not all consular agents are U. S. citizens. The bill does not limit eligibility for representation allowance to U. S. citizens, however. This will permit us to consider granting such allowances to consular agents in the future should they be required to perform significant representational responsibilities. (See also the answer to question K.7.)

E.8. Question: Section 333(b) provides that the Secretary shall prescribe regulations for the guidance of all agencies regarding the employment at posts abroad of family members of government personnel. Does this include the military as well?

Answer: This provision applies to all elements of Foreign Service posts, including military components, which operate under the direction of the chief of mission. The Secretary's guidance would not apply as a matter of law to military facilities under the command of a U.S. area military commander.

E.9. Question: (A) What benefits including salary, allowances and retirement do you contemplate providing family members employed under section section 333?

Answer: Section 333 of the bill authorizes either limited appointments under the Foreign Service Schedule or under a local compensation plan. The choice will depend primarily on how the position is normally staffed. Family members serving under the Foreign Service Schedule will participate in U.S. social security if appointed for less than a year and, otherwise, in the Civil Service Retirement and Disability System. Those serving under local compensation plans will contribute to U.S. social security. Section 444 of the 1946 Act (section 451 of the bill) was amended last year to authorize employment of family members under local compensation plans, theretofore utilized only to compensate foreign national employees. Local compensation plans provide for payment of salaries as benefits in accordance with local practices at rates fixed in local currency. Accordingly, family members employed under this provision are paid salary and benefits in local currency except, for retirement purposes, they are placed under the U. S. social security system.

The Department has established a pilot project at a limited number of posts to evaluate the effectiveness and efficiency of this approach to providing employment opportunities for family members. The results were so minimal (only two placements requested by early July) that the Department has made the program worldwide.

Family members are also employed in part-time, intermittent and temporary (PIT) positions to perform miscellaneous functions for which career personnel are not available. Salaries for all PIT positions are fixed in U. S. dollars at American rates. Overseas Allowances and Differentials are not authorized for personnel employed on a part-time, intermittent or temporary basis. Accordingly, family members so employed are not entitled to these allowances. Generally, they are entitled to retirement and other credit under the U. S. social security system.

At the present time, OPM regulations governing the acquisition of career status following appointment from a register make it difficult for family members accompanying career employees abroad to obtain status. The Department has requested discussions with OPM looking toward modification of these regulations to facilitate the acquisition of competitive status by family members employed with the Government in any capacity.

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E.9. Question: (B) What about retirement annuities for divorced spouses?

Answer: Retirement annuities would be authorized for divorced spouses by section 864(b) of this bill. The benefits authorized are identical to those authorized for divorced spouses of Civil Service employees under Public Law 95-366. (See the answer to Question A.24.)

E.10. Question: Medical Program - How often are Foreign Service personnel required to undergo physical examinations?

Answer: Physical examinations are required for Foreign Service members and their dependents prior to their employment. This examination is designed to ensure that the member will be available for worldwide assignment without undue jeopardy to the member's health and to ensure that the USG will be accepting a member who can perform the projected duties in an overseas environment.

After entry, physical examinations are required at two-year intervals or at the completion of a tour of duty, whichever is longer. This examination is designed to maintain the health of the Foreign Service community and to ensure that there are not medical conditions which would interfere with or interrupt the proposed assignments.

Physical examinations are also required upon separation in order to validate the health of the individual at time of departure from the Foreign Service, and to establish qualifications for any post-separation medical benefits, as provided by law.

Special examinations may be required to determine eligibility for medical disability retirement, continuation of assignment, fitness-for-duty, or such other examinations as may be medically indicated.

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F.1 Question: Describe the operation, step by step, of the Selection Board under the new legislation. How does this differ from present operations?

Answer: As described in the answer to question A.13 the current practice for selection boards is to establish criteria for the boards' rank-order decisions in a series of precepts. These precepts are developed in consultation with the employee representative. The boards' procedure for reviewing employees' performance folders and voting to determine rank order is controlled through rules of procedure which are also established in consultation with the employee representative. Copies of the precepts and the rules of procedure for the 1979 senior and intermediate selection boards are attached as examples of the step by step operations of typical boards.

The selection boards proposed under Section 603 of the new legislation would be essentially the same as the current boards. They would have the same major purposes and procedures, and they will continue to be governed by precepts and rules of procedure developed by the Department in consultation with the employee representative.

Under the new law, however, selection boards will take on several new tasks, and in the case of Senior Foreign Service members have an additional source of information of record to consider in evaluating performances. These boards may consider records of the senior officers' present and prospective assignment status. This information might typically be the record of the jobs that an officer had requested and of those jobs which had been offered the officer in the recent past. It is relevant information as it reflects the current and projected need for that officer at the senior levels.

The other proposed changes in selection board operations are the additional recommendations that boards may be required to make under the new legislation. Currently, a typical selection board rank-orders a competition group and decides which officers of the class have demonstrated the abilities

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and attitudes to merit promotion. In addition, the bottom ten percent of the rank-order list is forwarded to a separate review board to be considered for selection out for substandard performance. Boards also have the option to recommend that a periodic step increase in salary be withheld for unsatisfactory performance.

Under the proposed legislation, in addition to the above duties, those boards reviewing The Senior Foreign Service will be required to make recommendations for the award of performance pay within the limits established by Section 441. Selection boards will also have the responsibility of reviewing those members of The Senior Foreign Service who will be in their last year of the time allowed by the applicable time-in-class regulations, or who are in the last year of a limited career extension. This review is to determine which members of that group of officers to recommend to The Secretary for an offer or renewal of limited extension of career appointment as provided in Section 641(b) of the new act.

Outside the Senior Foreign Service, selection boards which review employees who have reached the highest levels of their pay category will also have the additional duty to review and recommend those members of these groups who should be given an initial or additional limited career extension.

Finally, selection boards may also be assigned additional functions such as recommending employees for more than one periodic step increase in recognition of especially meritorious service.

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June 18, 1979

Attachment to Question F1

**The Rules of Procedure Required of the 1979
Senior, Intermediate and Specialist Selection Boards**

Introductory Note

The Selection Boards will base their recommendations and findings solely on the materials which are provided by the Office of Performance Evaluation in accordance with Part H.2 of the General Directives of the 1979 Precepts.

Members of the Office of Performance Evaluation will guide the Boards in following the technical procedures described herein.

Training

Step 1: Board reviews, votes on and discusses a group of model cases to practice implementing the ten-point forced distribution voting procedure, including the procedure for breaking ties.

Initial Screening

Step 2: Board chair randomly selects and distributes files of 40 eligible employees.

Step 3: Board members review the files, varying the sequence of review from member to member, and each member nominates those people among the 40 that he or she would recommend for promotion according to the precepts, and those 6 people that he or she finds least competitive among the 40. The Boards are to use their own judgment to determine how many people to recommend for promotion. Those who are neither recommended for promotion nor found least competitive are all considered mid-ranked in their class, and will not be ranked relative to each other.

Step 4: Nominations are recorded and the files of those nominated for promotion or designated least competitive are separated for detailed review.

Step 5: Steps 2-4 are repeated until all the eligible employees have been screened.

Detailed Review and Rank-Ordering

Before beginning Step 6 the Boards are given an indication of the number of promotions Management can authorize for each competitive group in the current promotion cycle.

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Step 6: Board chair randomly selects and distributes 40 files of those people who have been nominated for promotion (Step 3).

Step 7: Board members carefully review the files, varying the sequence of review from member to member, and vote using the 10-point forced distribution voting procedure.

Step 8: Board members discuss and revote all cases where the range of votes is greater than 4.

Step 9: Steps 6-8 are repeated until all the files of people nominated for promotion have been exhausted.

Step 10: Individual Board members may at this point request authorization of the Board chair to change a previous vote. The chair has the discretion to authorize this change if the reason for the change is sanctioned by the precepts and if the member requesting the change adheres to the force-ranking system.

Step 11: When all the people have been given scores by the procedures in Steps 6-10, a single list is prepared, rank-ordered by score, with an indication of where the number of promotions available would reach on the list, i.e., the cut-off point. The Board then reviews again the group of cases at the margins of this cut-off point. This group will equal 10 percent of those recommended for promotion (or 10 cases, whichever is greater) which are divided equally on the rank-order list by the cut-off point. The Board re-rank-orders this group of cases around the cut-off point by using forced-distribution voting, including breaking ties.

Step 12: The Board then breaks any ties remaining in the rank-order list.

Step 13: Steps 6-10 are repeated for those people who were designated least competitive in the initial screening. The Board then rank-orders from the bottom up a number equal to 20 percent of the people eligible for consideration by that Board. When the bottom 20 percent have been rank ordered the point is established separating the bottom 10 percent from the top 10 percent. This is called the low-ranking point. The Board then reviews again the group of cases at the margins of this low-ranking point. This group will equal 10 percent of the low 20 percent (or 10 cases, whichever is greater) which are divided equally on the rank-order list by the low-ranking point. The Board re-rank-orders this group of cases around the low-ranking point by using

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forced-distribution voting, including breaking ties.

Step 14: The Board then breaks any ties remaining in the bottom 20 percent rank-order list.

Step 15: Authorized evaluative material which arrives after a Selection Board has begun the review of files and before the Board has established its rank-order lists will be read by all Board members before voting on the cases concerned. The Office of Performance Evaluation will pass such material directly to the Board Chairperson, who will be responsible for its correct handling. Control sheets will be established for each file to indicate which Board members have read a file and to ensure that the new material is read by all.

Evaluative material which becomes available after a Board has established its rank-order lists will not be submitted to or considered by that session of the Selection Boards.

PRECEPTS FOR THE 1979 FOREIGN SERVICE SELECTION BOARDS

This circular transmits the Precepts and Special Directives (Appendixes A, B, C, D, E and F) for the 1979 Foreign Service Senior, Intermediate and Specialist Selection Boards. Agreement on these Precepts and Special Directives was reached with the American Foreign Service Association on and approved by the Under Secretary for Management on

I. Major Changes in the Precepts

- A. Previously Boards were required to rank order employees and then indicate which officers should be promoted. Now Boards are instructed to first identify employees they deem qualified for promotion and then rank them based on relative merit.
- B. Boards will continue to receive an indication of the number of promotions Management can authorize, but the numbers will not be given to the Boards until they have identified those employees they deem qualified for promotion.
- C. Boards will not be required to rank entire classes, rather they will precisely rank order only employees qualified for promotion and those in the bottom 20 percent of the class. The remaining officers will not be ranked.
- D. Employees in classes FSR/RU-4 and FSR/RU-5 and FSS equivalent in the administrative subfunctions of personnel, general services and budget and fiscal

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will no longer compete jointly with FSOs. All other FSR/RUs (and FSSs equivalent) in these classes with generalist skill codes will continue to compete jointly with FSOs. Employees with generalist skill codes and program direction primary skill codes in classes FSO/R/RU-1, FSO/R/RU-2 and FSO/R/RU-3 will continue to compete jointly for promotion on Boards I, II and III respectively.

- E. Except for Boards IV and V, Boards are encouraged to prepare counseling statements for employees ranked in the bottom 20 percent of the class. As before, all Boards are required to prepare statements on those ranked in the low 10 percent or otherwise designated for selection-out review.
- F. Employees ranked in the bottom 20 percent of the class will be informed of their ranking.
- G. The Boards will no longer consider employees who are not identified in Part I, Section B of the Precepts.
- H. Employees in classes FSS-5 and 6 and FSR/RU-7 and 8 will no longer compete together by comparable class, i.e., FSS-5 with FSR/RU-7 and FSS-6 with FSR/RU-8, but will compete separately within their individual pay plan and function or specialty. Classes FSS-7 and 8 will continue to compete separately.
- I. Class 1, 2 and 3 employees with a Program Direction Primary Skill Code and a Specialist Secondary Skill Code will compete class-wide on Boards I, II and III. In addition, such officers in Class 3 will also compete in their specialist category on the appropriate specialist board.
- J. The Boards will take the specialized requirements of the Department and other agencies into account in determining employees qualified for promotion.

II. Cancellation

This circular supersedes FAMC No. 755 of June 13, 1978. This circular is automatically cancelled 6 months after the last Board has been dismissed.

Attachment: Precepts for the 1979 Foreign Service Selection Boards

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PRECEPTS FOR THE FOREIGN SERVICE SELECTION BOARDS

PART I - Purpose, Organization and Eligibility

A. Statement of Purpose

Precepts set forth the rules of conduct that Selection Boards must follow to identify employees qualified for promotion, to rank them by their relative merit and to identify those subject to separation proceedings for unsatisfactory or non-competitive performance.

Precepts are also policy statements of what constitutes positive and desirable performance by members of the Foreign Service, or, on the negative side, what is considered undesirable performance. All Foreign Service employees should, therefore, be familiar with these Precepts as guides for the performance of their duties and the development of their careers.

B. Coverage

The Boards will consider the following categories of employees in accordance with Sections C and D below:

1. Foreign Service Officers (FSOs)
2. Foreign Service Reserve/Foreign Affairs Specialist Candidates (FSR/FAS)
3. Foreign Service Reserve Employees pending FSO Conversion
4. Foreign Service Reserve Employees with reemployment rights with the Department
5. Foreign Service Reserve Employees under State/Commerce Exchange Program
6. Foreign Service Reserve Employees with Unlimited Tenure (FSRUs)
7. Foreign Service Staff career employees (FSS)

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The Boards will not consider any other FSR or FSS employee not listed above. This includes, but is not restricted to, Schedule C type, FSS Limited and Limited-Indefinite employees.

C. Scope and Organization

1. Senior Boards

- a. Board I will review all Class 1 officers (FSOs, FSRs, FSRUs) on a classwide basis. Officers with generalist and program direction primary skill codes will be reviewed together; officers with specialist primary skill codes will be reviewed separately.
- b. Board II will review all Class 2 officers (FSOs, FSRs, FSRUs) with generalist and program direction primary skill codes together on a classwide basis.
- c. Board III will review all Class 3 officers with generalist and program direction primary skill codes. Competition will be both on a functional and classwide basis. Officers who have a program direction primary skill code and a specialist secondary skill code will compete classwide on Board III and in their specialist category on Board B.

2. Intermediate Boards

Intermediate Selection Boards will consider officers in classes FSO/R/RU-4 through 8 and FSS--2 through 8. The Boards will be organized as follows:

- a. Boards IV and V will consider FSOs, FSR/RUs and FSSs equivalent with non-specialist skill codes in classes 4 and 5 (except those FSRs, FSRUs, and FSSs with non-specialist skill codes in the administrative subfunctions of personnel, general services, and budget and fiscal) by functional category in two groups, i.e., "Primary zone" and "Secondary Zone".
- b. Board VI will review tenured officers in classes FSO/R/RU-6 and FSS-4 on a classwide basis.

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- c. Board A will consider officers with non-specialist skill codes in classes FSR/RU-6 through 8 and FSS 4 through 8 (except those officers in the Junior Officer and Mustang programs) by functional category. The Board will also consider those FSR/RUs in classes 4 and 5 and FSSs in classes 2 and 3 with a non-specialist skill code in the administrative subfunctions cited in paragraph 2 a. above.

Officers in classes FSR/RU-4 through 6 and FSS-2 through 4 will be considered together by comparable class: FSR/RU-4 with FSS-2; FSR/RU-5 with FSS-3; and FSR/RU-6 with FSS-4. Officers in classes FSR/RU-7 and 8 and FSS-5 through 8 will be considered separately by individual pay plan. Review will be on a functional basis.

3. Specialist Boards

Specialist Boards will consider employees identified as Specialists in Appendix F of the Precepts in classes FSO/R/RU-2 through 8 and FSS-1 through 8. Officers in classes FSR/RU-4 through 6 and FSS-2 through 4 will be considered together by comparable class: FSR/RU-4 with FSS-2; FSR/RU-5 with FSS-3; and FSR/RU-6 with FSS-4. Officers in classes FSR/RU-7 and 8 and FSS-5 through 8 will be considered separately by individual pay plan. The Boards will be organized as follows:

<u>Board</u>	<u>Category</u>	<u>Classes</u>
B	Specialist	FSO/R/RU 2-4; FSS 1-2
C	Specialist	FSO/R/RU 5-8; FSS 3-8
D	Communications	FSR/RU 3-6; FSS 2-4
E	Communications	FSR/RU 7-8; FSS 5-8
F	Secretarial	FSS 3-6
G	Secretarial	FSS 7-8

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D. Selection Board Consideration

1. Class 1 Officers

FSOs, FSRs, and FSRUs (specialists and non-specialists) in Class 1 will be eligible for consideration if appointed or promoted to their present class on or before July 31, 1976.

2. Class 2 and 3 Officers

FSOs, FSRs, and FSRUs (specialists and non-specialists) in Classes 2 and 3 will be eligible for consideration if appointed or promoted to their present class on or before July 31, 1977.

3. Officers Below Class 3

a. FSOs (excluding specialists) in Classes 4 and 5 and those FSRs, FSRUs, and FSSs, who compete on Boards IV and V will be eligible for consideration if appointed or promoted to their present class prior to April 15, 1979.

b. Specialists in Classes FSO/R/RU-4 through 8, and FSS-2 through 8 will be eligible for consideration if appointed or promoted to their present class on or before August 31, 1978.

c. Non-Specialists in classes FSR/RU-4 through 8 and FSS-2 through 8 (except those FSRs, FSRUs, and FSSs identified in 2 a. above) will be eligible for consideration if appointed or promoted to their present class on or before August 31, 1978.

d. Officers in the Junior Officer program of Classes FSO/R/RU-6 and FSS-4 who have been recommended for tenure prior to the convening of the Board will be eligible for consideration.

4. In the case of those employees who converted laterally from one Foreign Service pay plan to another at a comparable grade level, time spent in the previous pay plan will be included in determining eligibility. Eligibility will be based on the date of last promotion in the previous pay plan.

In the case of those employees who converted to a different pay plan at a higher grade level, time spent in the previous pay plan will not be included in determining eligibility. Eligibility will be based on the date of conversion to the present pay plan.

5. All Boards will review separately the files of ineligible employees to determine if any employees have demonstrated such outstanding performance and potential that the time-in-class or time-in-service eligibility requirements should be waived as provided in 3 FAM 554.7. This review shall not include the file of any employee appointed to the Foreign Service after the closing of the official rating period for the year under consideration.

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PRECEPTS FOR THE FOREIGN SERVICE SELECTION BOARDS

PART II - GENERAL DIRECTIVES

Selection Boards will be governed by these General Directives and the appended Special Directives.

A. Major Responsibilities

1. Review the performance records of employees, identify those qualified for immediate advancement and rank them on the basis of relative merit.
2. Identify employees to be placed in selection-out zones and prepare statements giving the reasons therefor.

B. Basis for Promotion

Promotion is recognition that an employee is capable of performing the duties and responsibilities required at higher levels. It is not a reward for prior service, although the performance of present and past duties will usually indicate the degree to which an employee has developed or is developing the qualities needed for successful performance at higher levels.

Performance under unusually difficult and dangerous circumstances is particularly relevant, as is a willingness to risk disciplined and sensible dissent and the constructive advocacy of policy alternatives.

C. Basis for Selection Out

Selection out is prescribed when an officer, compared with others of the same class, fails to maintain the standard required of that class. All FSOs and some FSRUs are subject to selection out under Section 633 (a)(2) of the Foreign Service Act. A Performance Standards Board will make selection-out determinations after reviewing the files of those officers low ranked by the Selection Boards.

The lowest ten percent of those officers subject to selection out will be referred to such a Performance Standards Board. For specialists, this low ten percent will be derived on the basis of functional competition in all classes. Because of the rule that the lowest 10 percent of the FSRUs subject to selection out in any category must be referred to the Performance Standards Board, it is possible for an FSRU to

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be promoted and yet fall in the lowest 10 percent of the FSRUs in that category. In such a case, the officer would not, of course, be referred to the Performance Standards Board. For non-specialists in classes 1 and 2 the low ten percent will be compiled on the basis of a classwide comparison. In class 3 it will be compiled on the basis of functional competition.

In classes 4, 5 and 6 the Boards will identify specific officers for referral to a Performance Standards Board in accordance with their Special Directives.

In cases where it is impossible to derive a low ten percent (competitive groupings of nine or fewer employees subject to selection out), Boards will identify specific employees to be referred to a Performance Standards Board.

For each officer subject to selection out ranked in the low 10 percent or specifically identified for referral to a Performance Standards Board, the Selection Board will prepare a statement explaining the reasons for the low ranking or the specific designation. These statements will be made available to a Performance Standards Board.

D. Decision Criteria

1. Boards should identify those employees who in the Board's judgment are qualified for promotion at this time. Boards should consider for immediate advancement those employees whose records indicate an ability to perform at a higher level now and who have displayed superior long-range potential. This is one of the Selection Boards' most important functions; it should be exercised with care and discrimination.

Once Boards have identified those employees qualified for promotion they should rank these employees on the basis of relative merit.

In determining an employee's qualification for promotion, Boards should look for accomplishment or growth in the following areas:

- a. Substantive knowledge: The degree and level of sophistication of the employee's knowledge of the area or function of career concentration, including, where appropriate, mastery of technical career skills.

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b. Leadership:

- (1) Presence: The employee's self-presentation, determination, energy, and self-confidence.
- (2) Effective Oral Communication: The ability to speak clearly, sensibly and persuasively in groups and in direct conversation.
- (3) Positiveness: Confidence in oneself and one's goals despite setbacks and disappointments and the ability to instill or encourage by example similar qualities in others.
- (4) Negotiating Skill: The ability to present and defend a set of interests in developing an agreement or settling a dispute. This skill includes a capacity to perceive alternative courses that will satisfy one's own requirements, but will offer greater acceptability to others.
- (5) Foresight: The ability to anticipate problems and to plan or initiate actions accordingly.

c. Intellectual Skills:

- (1) Conceptual Ability: The ability to organize data sensibly and translate it into practical implications and to establish rational priorities.
- (2) Logical Thinking: The ability to reach sound conclusions from explicit assumptions and to communicate the reasons clearly and rationally.
- (3) Judgment: The ability to discern relationships of authority in varying contexts; understanding the effective range and use of one's own authority and position to further a desired goal, including the skill to challenge superiors effectively if necessary.
- (4) Skill in Written Communication: Ability to write clearly and usefully.
- (5) Language Skills: Ability and motivation to learn foreign languages as a tool for more effective performance of one's duties.

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- (6) Cultural Sensitivity: The ability to acquire, understand and interpret clearly the relevant information regarding another society, its values, and its institutional processes, and relate such information to American interests and objectives.

d. Managerial Skills:

- (1) Concern for Influence: Demonstrated aptitude for guiding others and skill in influencing events through the actions of others.
- (2) Objectivity of Purpose: The placement of job goals and responsibilities above personal interests or the desire to simply accommodate associates or subordinates.
- (3) Self-Control: The ability to contain impulsive emotional behavior.
- (4) Achievement Orientation: Interest in achievement, in fostering institutional improvements, in producing highest return at lowest cost.
- (5) Operational Effectiveness: Reliability in getting a job done, efficiently, on time and with mastery of all essential details.

e. Interpersonal Skills:

- (1) EEO Effectiveness: Commitment to the principles of fair treatment and equality of opportunity in dealings with all persons and awareness of equal employment opportunity as a fundamental aspect of good management and of the role of Affirmative Action in contributing to the Department's equal opportunity goals and objectives.
- (2) Social Sensitivity: The disposition and ability to solicit and understand the points of view of others and to respond in a manner that will gain their cooperation.
- (3) Teaching Skill: The ability to teach and guide others by allowing them initiative and responsi-

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bility without recourse to constant supervision; and sensitivity to the development needs of previously disadvantaged persons.

(4) Counseling Skill: The ability to win the confidence of others and to listen and make realistic and supportive recommendations.

2. As employees move beyond the starting levels of their careers, relative weakness in one or more of the areas listed above should adversely affect the Boards' determinations as to whether employees are qualified for immediate advancement.

In addition, any of the following factors should adversely affect the Boards' determinations as to whether or not employees are qualified for promotion and may, of themselves, be grounds for a low-ranking at any grade level:

- a. Reluctance to accept responsibility.
- b. Failure to carry out properly assigned tasks within a reasonable time.
- c. Low productivity or work poorly done.
- d. Lack of adaptability.
- e. Refusal to accept Service discipline.
- f. Inability to work fairly and cooperatively with supervisors, colleagues, or subordinates.
- g. Ineffectiveness in managing subordinates.
- h. Lack of honesty in assessing performance of subordinates.
- i. Lack of courage and reliability under conditions of hardship and danger.

E. Equality of Consideration

Boards will compare all employees solely on merit with absolute fairness and justice. In particular, Boards will not disadvantage any employee, directly or indirectly, for reasons of race,

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color, religion, sex, age, national origin, or means of entry into the Service.

This responsibility is not only that of an equitable weighing of performance data by the Board, but a positive discounting of any apparent bias or unfairness, either conscious or unconscious, in the material reviewed.

The performance rating process must be insulated from irrelevant or improper influences. Stereotypes, group assumptions, and sexist or ethnic comments must not affect evaluations.

If a Board discerns an indication of such unfairness in a performance file for any reason, it will discount the statement or implications and refer the matter to the Director, Office of Performance Evaluation for correction of the file as appropriate.

F. Other Factors

1. Personal Qualities

Medical problems, personal and physical characteristics should not be considered unless they affect performance or potential.

2. Assignments

Training assignments, assignments outside the Department of State, to the American Institute in Taiwan, and to international organizations, and "out-of-function" assignments are important to an employee's career development. An illustrative but not exhaustive list of such assignments would include fields such as science and technology, narcotics, political-military affairs, arms control, and public and congressional affairs. These assignments are essential if the Service is to develop the kinds of skilled personnel which are required to meet the demands of modern diplomacy. Many positions in the Service are multifaceted, and require an officer experienced in more than one of these skills. Boards should give credit to employees who have used such assignments to enhance their long-term potential. Boards should also know that all employees assigned to long-term training, particularly senior training, are selected

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on a competitive basis. Boards should also give due consideration to employees whose talents are needed primarily in the United States.

3. Other Agency Needs

There is a continuing need for highly qualified Foreign Service officers to support the international programs and activities of agencies other than State/AID/ICA. These include in particular those agencies which, like the Department of Commerce and Labor, do not have their own personnel overseas and are dependent upon the unified Foreign Service in this regard. The Foreign Service is charged with the responsibility to provide needed overseas support for the operations of these agencies. Accordingly, the Selection Boards shall give credit for service in these specialized areas and shall take the specialized requirements of these agencies into account in determining those employees qualified for promotion.

4. Absence

Boards should rate all employees--including those absent from their duties--on the basis of the evaluation material in their files. For employees on secondment or leave-without-pay, Boards should give appropriate consideration to evidence that such employees have used their leave to improve Foreign Service-related skills.

5. Non-Rates

Boards must rate an employee when all periods of an employee's service are covered by evaluation reports (including training reports or justification explaining the lack thereof). Only when the Board is advised by the Office of Performance Evaluation that a file is insufficiently documented may it not rate the employee. The Boards will prepare a written justification in each case.

6. Previous Board Findings

As specified in the Special Directives, a Board may be informed which of the employees it has found

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qualified for promotion were high ranked in recent years, but not reached for promotion. Boards may consider this information in their ranking of employees qualified for promotion.

G. Additional Authorities and Responsibilities

1. Low Ranking Statements

Boards will identify those employees ranked in the lowest 20 percent of their class. Such employees will be informed of their ranking.

Boards will prepare a statement on each employee subject to selection out who is ranked in the low ten percent of each class or who is otherwise designated for selection out consideration. The statement must justify the employee's low rating through a balanced presentation of his or her strengths and weaknesses. It should cite examples, and where appropriate, quote from evaluation documents. Such statements should draw on material from more than one rating year and where possible, on evaluation reports prepared by more than one rating officer.

Boards are encouraged to prepare counseling statements on the other employees ranked in the bottom 20 percent of the class. Such statements should address areas in which the employees should improve their performance. The statements will be given to the employees concerned and copies will also be given to the employees' Career Development Officers.

2. Denial of Within-Step Pay Increase

Boards will recommend the denial of the next within-step salary increase to employees whose performance during the most recent rating year did not, in the Board's view, meet the standard for efficient conduct of the work of the Service. The Boards will prepare a written justification in each case.

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3. Criticisms and Commendations

Boards will identify rating and reviewing officers and Inspectors, who merit commendation or criticism for the quality of the evaluation they prepared in the most recent rating period. In each case where an officer is criticized, the Board will prepare a written statement citing deficiencies. Such statements will be placed in the officer's personnel files.

4. Special Recommendations

Selection Boards may make any recommendations considered appropriate concerning the employees under consideration, the materials used in the evaluation process or improvements to the evaluation and selection process.

H. Briefings and Materials for the Boards

1. Members of the Office of Performance Evaluation will guide the Boards on the technical procedures to be followed. The Boards will address all queries regarding their work to the staff of that office.
2. Each Board member will be provided only the following:
 - a. A set of these precepts.
 - b. Each employee's performance file.
 - c. Instructions for the preparation of the Performance Evaluation Report form.
 - d. A list of all employees to be reviewed.
 - e. A Personnel Audit Report on each employee to be reviewed.
 - f. A copy of the Foreign Service Act and related regulations covering the performance evaluation and promotion system (3 FAM 500).

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- g. Reference material on Bureau activities.
 - h. An indication of the number of promotions Management can authorize for each competition group in the current promotion cycle.
3. Boards will base their decisions on material properly part of the employee's performance file. Boards will have available the employee's entire performance record including, in some cases, records from previous employment. Boards should place greatest emphasis on the most recent five years of service or period the employee has been in present class, whichever is longer. They should not give undue weight to any single evaluation report. They may seek additional insights by reviewing other reports prepared by rating officers.
 4. Board members should neither seek nor receive any information on employees other than that properly included in the performance file.
 5. A Board member may not bring to the Board's attention personal knowledge of an employee except for information relevant to the employee's performance or potential and then only by means of a signed memorandum. A copy of the memorandum shall be forwarded promptly, by cable if necessary, to permit the employee to comment on it before the Board completes its deliberations, but such completion will not be delayed pending the receipt of comment. A copy of the memorandum and the employee's comments, if any, will be placed in the performance file.

I. Findings

Each Board's findings will be forwarded to the Director General under cover of a transmittal letter signed by the Board members. The Director General may accept a Board's findings or return them for review if there are any questions regarding procedures or conformity with the precepts.

J. Oath of Office

Board members will heed the following oath of office and adhere to the precepts. Failure to observe these instructions may result in disciplinary action or penalties as prescribed by the Privacy Act. Board members should report to the Director, office of Performance Evaluation, any attempt to provide them information not authorized by these precepts.

"I, _____, do solemnly swear (or affirm) that I will, without prejudice or partiality, perform faithfully and to the best of my ability the duties of a member of a Selection Board; that I will preserve the confidential character of the personnel records used by the Board; that I will adhere to the precepts; that I will not reveal to any unauthorized person information concerning the deliberations, findings, and recommendations of the Board. So help me God."

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APPENDIX A

SPECIAL DIRECTIVES

BOARDS I AND II

A. General

Board I will review jointly the records of Class 1 officers (FSOs, FSRs and FSRUs) with generalist and program direction primary skill codes. Review will be on a classwide basis. It will review separately the files of officers with specialist primary skill codes.

Board II will review jointly the files of Class 2 officers (FSOs, FSRs and FSRUs) with generalist and program direction primary skill codes. Review will be on a classwide basis.

B. Special Instructions

The qualifications for senior responsibilities relate to the mission of the Foreign Service in formulating, implementing, directing, coordinating and supporting the foreign policy of the United States. The main task of Boards I and II is to identify those officers who can best lead the Service in this mission in the years ahead.

Substantive knowledge and leadership, intellectual, management, and interpersonal skills are particularly important at the senior levels. Senior responsibilities generally involve the marshaling of personnel, ideas, and resources toward the achievement of foreign policy objectives. This process involves a variety of activities. For example, while service in one of the senior positions on a policy planning or commercial policy staff might not ordinarily engage an officer in leadership and managerial skills, it would place great demands on the officer's intellectual skills. Conversely, service in senior administrative or consular positions might require much greater emphasis on leadership and managerial skills. Substantive knowledge and interpersonal skills are important to performance in all positions. Not all senior positions have easily defined requirements for policy direction and executive leadership. Yet they fit into the framework of senior responsibilities by virtue of the level of functional or area expertise required.

Foreign language skills are also vital to the conduct of foreign affairs, and it is the Department's goal that

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officers reaching the senior grades of the Service will have developed competency in two or more foreign languages. However, Boards should keep in mind that not all functions and career patterns provide the opportunity or the need for foreign language development.

C. Consideration of High Performance in Previous Years
(Board II Only)

Board II will inform the Director of the Office of Performance Evaluation of the names of those officers whom it has found qualified for promotion.

The Director of the Office of Performance Evaluation will inform the Board which of these officers had been ranked in the upper 20 percent by any two of the last three Selection Boards while in present class. The Board may consider this information in determining its ranking of officers qualified for promotion.

D. Promotion Numbers (Board II only)

The Board will inform the Director of the Office of Performance Evaluation when it has completed its task of identifying officers it deems qualified for promotion.

The Director of the Office of Performance Evaluation will then inform the Board of the number of promotions management can authorize for the competition group the Board has reviewed. Upon receiving this additional information, the Board will rank the officers it has found qualified for promotion on the basis of relative merit.

E. Submission of Findings

The Boards will prepare the following reports:

1. Board I

- a. A precise rank order list of the upper 20 percent of all officers reviewed with generalist and program direction primary skill codes.
- b. A precise rank order list of the upper 20 percent of officers reviewed with specialist primary skill codes.
- c. A precise rank order list of those officers with generalist and program direction primary skill codes in the bottom 20 percent of the class. All other officers need not be ranked.

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- d. The Board will identify the bottom ten percent of those officers with generalist and program direction primary skill codes subject to selection out and prepare statements explaining each low ranking.
- e. The Board is encouraged to prepare counseling statements on the other officers ranked in the bottom 20 percent of the class.
- f. A list of FSRU-1 specialists who are subject to selection out who should be referred to the Performance Standards Board in accordance with Section C. of the General Directives. A statement of reasons must be prepared to support each such recommendation.

2. Board II

- a. A precise rank order list of all officers reviewed whom the Board deems qualified for immediate advancement.
- b. A precise rank order list of those officers in the bottom 20 percent of the class. The remaining officers need not be ranked.
- c. The Board will identify the bottom ten percent of those officers subject to selection out and prepare statements explaining each low ranking.
- d. The Board is encouraged to prepare counseling statements on the other officers ranked in the bottom 20 percent of the class.

In addition to the above, both Boards may prepare the following reports and recommendations:

- (1) A list of officers who should be denied the next within-class salary increase (Section 625(a) of the Act). The Board will prepare a written justification in each case.
- (2) A list of officers who could not be rated, with a statement of reasons in each case.
- (3) A list of rating and reviewing officers, including Inspectors, who merit commendation or criticism for the quality of the evaluation reports they prepared in the most recent rating period. In each case where an officer is criticized, the Board should prepare a written statement citing deficiencies.
- (4) Recommendations on policies and procedures for subsequent Boards and improvements to the performance evaluation system.
- (5) Recommendations for the training, assignment, or counseling of any officer or group of officers.

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APPENDIX B

SPECIAL DIRECTIVES

BOARD III

A. General

Board III will consider jointly all Class 3 officers (FSOs and FSR/RUs) with generalist and program direction primary skill codes. The Board will also review FSSO-1 non-specialists. Consideration of FSOs and FSR/RUs will be made jointly both by function and classwide. Officers with a program direction primary skill code and a specialist secondary skill code will compete classwide on Board III and in their specialist category on Board B. FSSO-1s are at the top of their pay category and cannot be promoted to a higher rank. The Board will therefore review these files only to make recommendations on training, assignment, and counseling or to identify those whose performance merit consideration for action under paragraph G.2. of the General Directives.

The Board will first review and rank jointly the eligible FSOs and FSR/RUs within their appropriate primary functional category (i.e., administrative, consular, economic/commercial, and political). The Board will next review and rank jointly the eligible FSOs and FSR/RUs on a classwide basis.

B. Special Instructions

Promotion from Class 3 to Class 2 represents the crossing of an important threshold into the Service's executive ranks. It provides renewed tenure for extended further service, advancing the officer beyond the time-in-class limitations of mid career. Many officers can expect that they will not cross this threshold into the Service's senior ranks.

The skills and qualities which have brought an officer successfully to Class 3 are not necessarily sufficient to move that officer beyond Class 3. The competitive emphasis thus far in his or her career has usually been on functional and area expertise. There are a few jobs at the Class 2 level in which this emphasis is still appropriate. Therefore, when considering officers on a functional basis, the Board should consider for immediate advancement those officers who have demonstrated exceptional competence in their area of career concentration.

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The great majority of senior Foreign Service positions beyond Class 3, however, will place heavy demands on an officer's leadership and managerial skills. At the Service's executive levels, the ability to integrate various functional and area considerations in conceiving policies and in understanding their implications is more important than concentrated expertise in any one area or function. In considering officers on a classwide basis, the Board should consider for immediate advancement officers who have displayed unusual leadership and managerial ability.

Whether considering officers on a functional or a classwide basis, however, the Board should bear in mind that all senior positions in the Department, whether narrow or broad in scope, demand a high level of substantive knowledge, intellectual ability, and interpersonal skills. However, some officers may not have had an opportunity at mid-career to display all of these qualities and skills. When considering such officers, the Board should look for evidence of potential for such capacities.

Foreign language skills are also vital to the conduct of foreign affairs, and it is the Department's goal that officers reaching the senior grades of the Service will have developed competency in two or more foreign languages. However, the Board should keep in mind that not all functions and career patterns provide the opportunity or the need for foreign language development.

C. Consideration of High Performance in Previous Years

The Board will inform the Director of the Office of Performance Evaluation of the names of those officers whom it has identified as qualified for immediate advancement on the classwide list as well as the functional list. The Director of the Office of Performance Evaluation will inform the Board which of these officers had been ranked in the upper 20 percent by any two of the last three Selection Boards (either classwide or by function) while in present class.

The Board may consider this information in determining its ranking of officers qualified for promotion.

D. Promotion Numbers

The Board will inform the Director of the Office of Performance Evaluation when it has completed its task of

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identifying officers it deems qualified for promotion.

The Director of the Office of Performance Evaluation will then inform the Board of the number of promotions management can authorize for each competition group the Board has reviewed. Upon receiving this additional information, the Board will rank the officers it has found qualified for promotion on the basis of relative merit.

E. Submission of Findings and Recommendations

The Board will prepare the following report:

1. A single precise rank order list of FSOs and FSR/RUs qualified for immediate advancement on a classwide basis.
2. Precise single rank order lists of FSOs, FSRs and FSRUs qualified for promotion functionally.
3. Precise rank order lists of officers in the bottom 20 percent of the classwide list and the functional lists. The remaining officers need not be ranked.
4. The Board will identify the bottom ten percent of those officers subject to selection out on the functional lists and prepare statements explaining each low ranking.
5. The Board is encouraged to prepare counseling statements on the other officers ranked in the bottom 20 percent of the classwide list and the functional lists.

In addition to the above, the Board may prepare the following reports and recommendations:

- (1) A list of officers who should be denied the next within-class salary increase (Section 625(a) of the Act). The Board will prepare a written justification in each case.
- (2) A list of officers who could not be rated, with a statement of reasons in each case.
- (3) A list of rating and reviewing officers, including Inspectors, who merit commendation or criticism for the quality of the evaluation reports they prepared in the most recent rating period. In each case where an officer is criticized, the Board should prepare a written statement citing deficiencies.
- (4) Recommendations on policies and procedures for subsequent Boards, and improvements to the performance evaluation system.
- (5) Recommendations for the training, assignment or counseling of any officer or group of officers.

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APPENDIX C

SPECIAL DIRECTIVES

BOARDS IV AND V

A. General

Board IV will review the records of non-specialist FSOs, FSRs and FSRUs in class 4 and FSSOs in class 2, except those FSRs, FSRUs and FSSs in the administrative subfunctions of personnel, general services and budget and fiscal.

Board V will review the records of non-specialist FSOs, FSRs, and FSRUs in class 5 and FSSs in class 3, except those FSRs, FSRUs and FSSs in the administrative subfunctions of personnel, general services and budget and fiscal.

Officers will be referred to the Boards by functional category (political, economic/commercial, administrative and consular) in two groups, i.e., "Primary Zone" and "Secondary Zone".

For Board IV the Primary Zone will include officers with five or more years in present or equivalent Foreign Service class as of September 1 of the year the Board meets. For Board V the Primary Zone will consist of officers with three or more years in present or equivalent Foreign Service class as of September 1 of the year the Board meets.

The Secondary Zone for Boards IV and V will include all other officers as appropriate.

B. Special Instructions

Promotion is recognition that an employee is capable of performing the duties and responsibilities required at the next higher level in the employee's functional category.

Officers reviewed by Boards IV and V will compete under the "Zone-Merit" system which is designed to meet functional needs at the next higher level while providing: 1) a stable and predictable pattern of career advancement for good officers; and 2) rapid advancement of outstanding officers.

The Board may find that a number of promotable officers within a given function have substantially similar qualifications for advancement, making it difficult to rank them with confidence. In such cases the Board may favor those

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officers who have longer periods of sustained good performance overall while in present class. However, where a difference in merit as reflected in performance or potential is evident, time-in-class should be disregarded.

It is in the interest of the Foreign Service to retain particularly promising officers within its ranks. Therefore, Boards IV and V should make every effort to utilize the allocation of promotion opportunities in the Secondary Zone in the interest of advancing such officers more rapidly.

The Boards will receive a Memorandum of Certification from the Director General indicating the number of officers who may be promoted in each functional category in the primary and secondary zones.

C. Procedures

1. Primary Zone Consideration

The Board will rank the primary zone officers in each functional category in one of the following rank-groups:

a. Designated Promotees

This rank group will include those primary zone officers in each functional category deemed most deserving of promotion.

The Memorandum of Certification will establish an initial number of such designations in each functional category. The Board may not alter these quotas by shifting promotion opportunities from one functional category to another. However, the Board may, after completing its review of secondary zone officers, enlarge the primary zone opportunities for a functional category to whatever extent it elects not to utilize the secondary zone number for the same functional category (see paragraph 2 below). In such event the Board will elevate to the "Designated Promotee" rank group the officer or officers who would otherwise rank highest in the "qualified but not designated" rank-group described below.

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b. Qualified But Not Designated For Promotion

This rank-group will include all remaining primary zone officers who are judged qualified to serve at the next higher grade but who are not ranked high enough to be included in the "Designated Promotee" group. All officers except the top 15 should be ranked by score group, but ties in the scoring process need not be broken (see Section C.3).

c. Unqualified for Promotion

This rank group will include all officers judged not qualified for advancement. They need not be precisely ranked but a written statement of reasons supporting the Board's finding must be prepared for each case. Officers identified in this group will be referred to a Performance Standards Board for consideration for selection out.

2. Secondary Zone Consideration

The Board will review the files of secondary zone officers (by functional category) to identify those officers who: (a) have demonstrated such outstanding performance and potential as to merit immediate promotion or (b) are considered to be significantly inferior to their peers.

a. Outstanding Promotees

Officers so identified in each functional category may not exceed the number set for that category in the Memorandum of Certification. In determining whether to utilize all of the authorized secondary zone promotions in a particular cone, the Board should make a cross-zonal comparison between the secondary zone officers under consideration and the highest ranking officers in the "Qualified But Not Designated" group of the primary zone. To whatever extent the Board elects not to award the secondary zone promotion opportunities in a particular function it will correspondingly enlarge the "Designated Promotee" rank-group of the same functional category in the primary zone, by elevating officers from the top of the

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"Qualified But Not Designated" rank order list for that category.

b. Significantly Inferior

Secondary zone officers subject to selection out whose performance in their present class is significantly inferior to that of their peers in the same functional group will be considered for selection out. A precise rank-order of such officers is not required but a written statement of reasons supporting the Board's finding must be prepared for each case.

3. Additional Promotion Consideration

Circumstances may arise after the Boards have completed their work (deaths, resignations, approval of additional promotion opportunities) which may necessitate moving beyond the number of officers certified for promotion in the Memorandum of Certification. For this reason, the Board may identify for promotion up to three additional secondary zone officers in each functional category. If after cross zonal comparison between such officers and the top 15 primary zone officers "qualified but not designated" in each functional category the Board determines that any or all of the three secondary zone officers should be promoted, it should precisely rank both groups of officers jointly by function up to a total of 15 in each function. If it determines that none of the secondary zone officers merits promotion, it should precisely rank the top 15 primary zone officers "qualified but not designated" in each function.

D. Submission of Findings and Recommendations

Each Board will prepare the following reports:

1. Alphabetical lists by functional category of primary zone "Designated Promotees".
2. Rank-Order lists by functional category of primary zone officers judged "Qualified But Not Designated for Promotion".

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3. Precise rank order lists by functional category of additional officers considered for promotion as described in section C.3 above.
4. Alphabetical lists by functional category of primary zone officers deemed "Not Qualified for Promotion" with a separate statement of reasons to support each case. Officers identified in this group will be referred to a Performance Standards Board for further consideration for selection out.
5. Lists by functional category of officers in the secondary zone meriting immediate promotion.
6. Alphabetical Lists by functional category of officers in the secondary zone whose performance is judged significantly inferior to that of their peers with statements of reasons to support each case. Officers identified in this group will be referred to a Performance Standards Board for further consideration for selection out.

In addition to the above, each Board may prepare the following reports and recommendations:

1. A list of officers who should be denied the next within-class salary increase (Section 625(a) of the Act). A written statement of reasons should be prepared on each employee so identified; it will be sent to the employee.
2. A list of officers who could not be rated, with a statement of reasons in each case.
3. A list of rating and reviewing officers, including Inspectors, who merit commendation or criticism for the quality of the evaluation reports they prepared in the most recent rating period. In each case where an officer is criticized, a written statement citing deficiencies should be prepared.
4. Recommendations on policies and procedures for subsequent Boards and improvements to the performance evaluation system.
5. Recommendations on the training, assignment, or counseling of any officer or group of officers.

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APPENDIX D

SPECIAL DIRECTIVES

BOARD VI

A. General

The Board will review the records of Class 6 (FSO/FSR/RU) and FSS-4 officers who have been recommended for tenure and identify those whom it considers to be suitable for immediate advancement.

B. Special Instructions

All officers will be reviewed on a classwide basis in accordance with the General Directives. Officers should be judged on their overall potential as evidenced by their performance of assigned duties.

C. Promotion Numbers

The Board will inform the Director of the Office of Performance Evaluation when it has completed its task of identifying officers it deems qualified for promotion.

The Director of the Office of Performance Evaluation will then inform the Board of the number of promotions management can authorize for each competition group the Board has reviewed. Upon receiving this information, the Board will rank the officers it has found qualified for promotion on the basis of relative merit.

D. Submission of Findings and Recommendations

The Board will prepare the following report:

1. A precise rank order list of all officers who are qualified for immediate advancement.
2. A precise rank order list of those officers in the bottom 20 percent of the class. The remaining officers need not be ranked.
3. The Board is encouraged to prepare counseling statements on those officers ranked in the bottom 20 percent of the class.

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4. An alphabetical list of those officers whom the Board considers to be significantly inferior. The Board will prepare statements explaining the reasons for each case. Officers identified in this group will be referred to a Performance Standards Board for consideration for selection out

In addition to the above, the Board may prepare the following reports and recommendations:

1. A list of those officers who should be denied the next within-class salary increase (Section 625 of the Act). A written statement of reasons should be prepared on each officer so identified
2. A list of officers who could not be rated, with a statement of reasons in each case.
3. A list of rating and reviewing officers, including Inspectors, who merit commendation or criticism for the evaluation reports they prepared in the most recent rating period. In each case where an officer is criticized, the Board should prepare a written statement citing deficiencies.
4. Recommendations on policies and procedures for subsequent Boards or for improvement to the performance evaluation system.
5. Recommendations on the training, assignment, or counseling of any officer or group of officers.

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APPENDIX E

SPECIAL DIRECTIVES

BOARD A

A. General

The Board will review the records of non-specialist employees (except those in the Junior Officer and Mustang Programs) by comparable class in classes FSR/RU-6 through 8 and FSS-4 through 8. The Board will also review the records of those FSR/RUs in classes 4 and 5 and FSSs in classes 2 and 3 with a non-specialist skill code in the administrative subfunctions of personnel, general services and budget and fiscal.

B. Special Instructions

Employees will be referred to the Board by functional category (political, economic/commercial, administrative and consular) and subfunctional category (personnel, budget and fiscal and general services). The Board will evaluate such employees in accordance with the General Directives, with emphasis on each employee's demonstrated capacity to apply functional competence to the work of the Foreign Service and the potential to perform well in this function at higher levels of responsibility.

C. Consideration of High Performance in Previous Years

The Board will inform the Director of the Office of Performance Evaluation of the names of those employees in each functional and subfunctional group it has identified as qualified for immediate advancement in each competing group. The Director of the Office of Performance Evaluation will inform the Board which of these employees were ranked in the upper 20 percent of their competing group in any two of the previous three years while in present class and function. The Board may consider this information in determining the ranking of officers found qualified for immediate advancement.

D. Promotion Numbers

The Board will inform the Director of the Office of Performance Evaluation when it has completed its task of identifying officers it deems qualified for promotion.

The Director of the Office of Performance Evaluation will then inform the Board of the number of promotions management can

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authorize for each competition group the Board has reviewed. Upon receiving this additional information, the Board will rank the officers it has found qualified for promotion on the basis of relative merit.

E. Submission of Findings and Recommendations

The Board will prepare the following reports:

1. A precise rank order list of employees in each category by comparable class who are qualified for promotion.
2. A precise rank order list of employees in each category by comparable class who are in the bottom 20 percent. The remaining employees need not be ranked.
3. The Board is encouraged to prepare counseling statements on employees ranked in the bottom 20 percent.
4. A list of FSRUs subject to selection out who should be referred to the Performance Standards Board in accordance with Section III of the General Directives. In each case the Board will prepare statements explaining the reasons for each identification.

In addition to the above, each Board may prepare the following reports and recommendations:

1. A list of those employees who should be denied the next within-class salary increase (Section 625(a) of the Act). A statement of reasons should be prepared on each employee so identified.
2. A list of employees who could not be rated with a statement of reasons in each case.
3. A list of rating and reviewing officers, including Inspectors, who merit commendation or criticism for the quality of the evaluation reports they prepared during the most recent rating period. In each case where an officer is criticized, a written statement citing deficiencies should be prepared.
4. Recommendations on policies and procedures for subsequent Boards and improvements to the system.
5. Recommendations on the training, assignment, or counseling of any employee or group of employees.

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APPENDIX F

SPECIAL DIRECTIVES

SPECIALIST BOARDS

A. General

The Specialist Boards will consider the specialist employees by class and specialist category or categories as described in paragraph C of these Special Directives.

B. Special Instructions

1. Specialists are employees whose primary skills involve professional and technical qualifications of such a specialized nature that their performance is difficult to compare with employees of the same or equivalent class in the four major functional categories or in other specialties.
2. The Boards will evaluate such employees in accordance with the General Directives, with emphasis on demonstrated performance and potential in the employees' specialties.
3. Boards should be aware that some employees under their review have reached the top within their career field and cannot be promoted. Boards should give particular attention to recommendations they are authorized to make with regard to training and assignments, and an employee's potential to serve in other functions.

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C. Specialist Categories

Following is a list of the specialist categories in

which employees will compete:

<u>Specialist Categories</u>	<u>Skill Code Groupings</u>
1. Budget & Fiscal	2135-2186 & 9010
2. General Services	2315-2340
3. Printing & Publications	2350-2360
4. Communications Officers	2405, 2406, 2407, 2410-2426, 9050, 9120, 9160
5. Communications Technicians	2430-2434
6. Communications Engineers	2435
7. Diplomatic Couriers	2440, 2441
8. Mail, File & Records Officers	2450-2475, 9040, 9222-9224, 9340
9. Security Officers	2505, 2510-2515, 2530, 2525
10. Security Technicians	2520
11. Security Officers - Intelligence	2540
12. Organization & Management	2600-2669
13. Auditors	2670-2671
14. Computer	2703-2735
15. Foreign Buildings Officers	2820-2827 & 6063
16. Special Administrative Functions	2810-2811 & 2835-2870
17. Education & Cultural	4005-4100
18. Public Affairs	4510-4520 & 4540-4560
19. Writers & Editors	4530-4534
20. Research Analyst	5812-5819 & 5825-5830
21. Foreign Affairs Analyst	5820-5822
22. For. Aff. Pol/Mil Scien. Analyst	5824
23. Architects & Engineers	6010-6062 & 6064-6075
24. Medical Officers	6120-6121 & 6180
25. Medical Technicians	6130-6132 & 9230
26. Nurses	6140
27. Nurse Practitioners	6141
28. Science Officers	6150-6156
29. Mathematicians	6165-6170
30. Attorneys	6220-6231
31. Shorthand Reporters	6240
32. Education Officers	6250-6255
33. Foreign Assistance Inspector	6260
34. Geographers	6270-6272
35. Historians	6280
36. Treaty Specialists	6285
37. Librarian	6290 & 9215
38. Refugee & Migration Officers	6310
39. Visual Services	6330-6332
40. Interior Designer	6323
41. Protocol Specialists	6345
42. Congressional Relations Officers	6350
43. Language & Training Officers	6410-6692
44. Secretaries	9280-9282
45. Miscellaneous	6265-6267 & 6320-6322, 6340
46. Narcotics Officers	8556 & 6311
47. Clerk	9240 & 9450
48. Motor Transportation Operator	9912

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D. Consideration of High Performance in Previous Years

The Boards will give the Director of the Office of Performance Evaluation the names of all employees in each competing group they have identified as qualified for immediate advancement. The Director of the Office of Performance Evaluation will inform the Boards which of these employees were recommended for promotion or were ranked in the upper 20 percent while in present class and specialty by any two of the previous three Selection Boards. The Boards may consider this information in determining the ranking of employees found qualified for immediate advancement.

E. Promotion Numbers

The Board will inform the Director of the Office of Performance Evaluation when it has completed its task of identifying employees it deems qualified for promotion.

The Director of the Office of Performance Evaluation will then inform the Boards of the number of promotions management can authorize for each competition group the Boards have reviewed. Upon receiving this additional information, the Boards will rank the employees they have found qualified for promotion on the basis of relative merit.

F. Submission of Findings and Recommendations

Each Board will prepare the following reports:

1. A precise rank order list of employees in each category by comparable class who are qualified for immediate advancement.
2. A precise rank order list of employees in the bottom 20 percent of each category. All remaining officers need not be ranked.
3. The Boards are encouraged to prepare counseling statements on employees in the bottom 20 percent of each category.
4. A list of FSOs and FSRUs subject to selection out who should be referred to the Performance Standards Board, in accordance with Section III of the General Directives. In each case the Board will prepare

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statements explaining the reasons for each identification.

In addition to the above, each Board may prepare the following reports and recommendations:

1. A list of those employees who should be denied the next within-class salary increase (Section 625(a) of the Act). A statement of reasons should be prepared on each officer so identified.
2. A list of employees who could not be rated with a statement of reasons in each case.
3. A list of rating and reviewing officers, including Inspectors, who merit commendation or criticism for the quality of the evaluation reports they prepared during the most recent rating period. In each case where an officer is criticized, a written statement citing deficiencies should be prepared.
4. Recommendations on policies and procedures for subsequent Boards and improvements to the system.
5. Recommendations on the training, assignment, or counseling of any employee or group of employees.

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F.2. Question: What are the different kinds of compensation which are provided in this legislation? How will they be awarded?

Answer: The bill provides for the following types of payments to members as compensation for services rendered as distinguished from reimbursement for expenses incurred for representation, training, travel and similar activities:

(a) Basic pay for members of the Foreign Service. This includes salary increases granted as a result of both within class and class to class promotions. For American members of the Service, salary is based upon the member's personal rank or class, and for foreign nationals it is based on the position held.

(b) Performance pay (section 441) is authorized for career members of the Senior Foreign Service. Performance pay may not be given to more than 50% of the members of the Senior Foreign Service in any one year. Generally, performance pay may not exceed 20% of the member's annual rate of basic salary and is awarded by the Secretary on the basis of recommendations by a selection board. In addition, the President may award up to \$10,000 to up to 5% of the members of the Senior Foreign Service and up to \$20,000 to 1% of such members. The presidential awards are based upon recommendation by a special interagency selection board established by the Secretary for this purpose.

(c) Charge pay (section 461) is authorized for temporary service in charge of a Foreign Service post during the absence or incapacity of the principal officer. Charge pay may be an amount up to the full difference between the salaries provided for the principal officer and the officer acting in charge. It is awarded under regulations of the Secretary describing amounts to be paid and the minimum period of charge service required for eligibility for charge pay.

(d) Special allowances (section 462) are authorized for Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements. It is awarded pursuant to the Secretary's regulations on the basis of recommendations by a special committee and approval by the Director General.

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(e) Retirement (chapter 8) and severance (section 643) payments to those completing their careers in the Foreign Service and who met eligibility requirements specified in the Act.

(f) Special payments are authorized to foreign national employees to reimburse (1) those who are imprisoned because of their employment with the U.S. Government (section 453) and (2) those whose Civil Service annuities have fallen below prevailing local levels because of depreciation of the U.S. dollar (section 451(a)(2)).

Apart from performance pay described in paragraph (b) above, the kinds of compensation for the Foreign Service under this bill will be the same as under existing law. The new feature of performance pay parallels the provisions of the Civil Service Reform Act as applicable to the Senior Executive Service.

F.3. Question: What are the findings of the recent Comparability Pay Study (the "Hay Study") and how do they affect this legislation?

Answer: See response to Question A.2.

F.4. Question: How will the mandatory ceiling on salary levels affect the operation of performance pay?

Answer: The statutory ceiling on salary levels applies only to basic pay. As under the Civil Service Reform Act, performance is separate and apart from basic pay and is not subject to the ceiling.

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- F.5. Question: Please describe the difference between a "rank-in-person" system and a "rank-in-position" system and the advantages of the former over the latter.

Answer: The attached chart compares the two kinds of personnel systems with respect to basic personnel system functions such as recruitment, assignment, promotion, separation, and evaluation. Whether one is preferable to the other depends on the circumstances rather than any inherent advantage of one over the other. In particular, "rank-in-person" systems are advantageous in circumstances, like those in the Foreign Service, where members are required to move at frequent intervals from one position to another, since promotion is carried out separately from assignment, and thus, the central personnel system can assign individuals to specific positions according to the needs of the Service, rather than competition for each assignment being required as is usually true in a rank-in-position system. For a more static and more specialized workforce, as is usually the case for the Civil Service, a rank-in-position system has the advantages of competing individuals for promotion or assignment against the requirements of a specific position, which can provide a better match of skills against requirements.

More generally, there is no perfect personnel system. One of the reasons this Bill provides for "dual" FS/GS personnel systems for the foreign affairs agencies community is that a rank-in-person system is more advantageous for those who serve overseas as well as at home, and a rank-in-person system better suits those who serve only domestically.

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Alternative Personnel System Structures

<u>Personnel Function</u>	<u>Rank in Job (CS)</u>	<u>Rank in Person (FS)</u>
<u>Recruitment</u>	<p>Current job is key — Does recruit have qualifications or skills needed for this job? Can recruit do what is needed in this job better than other qualified applicants?</p> <p>Entrants come in at any level appropriate to job requirements.</p>	<p>Career orientation — Can recruit be expected to progress, in a controlled pattern, to the senior ranks of higher career speciality, and be more likely to do so well than competition? Does recruit have potential for long-term advancement in a variety of jobs?</p> <p>Most entrants come in at bottom, rather than mid-career or senior levels.</p>
<u>Placement/Assignment</u>	<p>Tied to specific standards of position in question. No requirement to move from current position. Competition for placement is key to modern merit promotion system. Individual must usually initiate and agree to changes in assignment. Job level and personal rank generally must be consistent. No option to assign above or below class.</p>	<p>Flexible assignments which periodically change. Individual subject to "Service discipline", i.e., to accept any geographic/functional/level assignment system requires. Individuals can be assigned above or below personal class/grade, if needs of Service warrant.</p>
<u>Promotion</u>	<p>Takes place in conjunction with assignments. If selected for a job at a higher level, the promotion comes automatically upon beginning duty in that job.</p>	<p>Separate process from assignment. Promotion occurs in competition with other members of class, with number promoted determined by "openings" at next level, in the aggregate, rather than "one-to-one" match of job seekers with positions.</p>
<u>Career "Breadth"</u>	<p>Normally, little concern with later career prospects; all is keyed to job in question. The primary concern is the immediate job in question rather than long-term career prospects.</p>	<p>Intention is to prepare for senior responsibilities, so next assignment viewed in longer term (developmental), as well as in terms of who is best equipped to perform this job now.</p>
<u>Separation</u>	<p>As long as individual is meeting basic standards of performance for job in question, can retain position (only mechanism is "separation for cause" if does not meet standards of position — standards of grade level, particularly critical elements under new Civil Service Reform Act standards).</p>	<p>In order to be retained, individual must a) meet minimum standards or else be separated for cause (like CS option); b) not exceed maximum periods of time in class without promotion ("time-in-class"); c) not be identified, on a relative basis of comparison of performance to all other members of his/her class, or being "low ranked" — this implies "up-or-out system" (either be promoted competitively, or leave system).</p>
<u>Evaluation</u>	<p>Employee performance evaluated only with respect to performance in current position. Only unsatisfactory rating likely to have immediate impact, if leads to separation action (rare); little impact on promotion, assignment, unless employee decides to compete for promotion/reassignment/transfer.</p>	<p>Employee evaluated not only with respect to current performance, but also regarding career potential. Ratings, even if not unsatisfactory, can have major impact on retention, promotions, assignment, since they are normally used to provide a relative ranking of all members of competition group (class level and/or occupational speciality).</p>

Labor-Management Relations and grievance regulations and procedures should provide equal due process, but likely to differ in form to meet specific circumstances of each system.

"Decoupling" of promotion and assignment in rank-in-person system needed in situations where frequent rotation of personnel (military, Foreign Service).

Most personnel systems tend to either rank-in-job or rank-in-person, but few if any "pure" systems exist in the public sector.

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F6. Question: One of the changes proposed in the pay system allows denial of within-grade step increases for those whose performance ranked at the bottom of a class and the granting of double-step increases to those ranked at the top. What is the purpose of this proposed change?

Answer: This change is intended to provide an additional incentive for outstanding performance and to make an impression on mediocre performers that greater effort is required of them. This will be accomplished without significant added costs, and will restore to the periodic step increase the quality of being a reward for satisfactory performance rather than an automatic benefit of seniority.

F.7. Question: What is your projected cost of the performance pay provision?

Answer: The Administration has not yet taken a final position on the sums to be sought for performance pay for SES members. The Department would, of course, plan to request a sum for SES performance pay which would be an identical percentage of basic annual salaries now provided for SES. In sum, we will be guided in this context by the objectives of pay comparability and compatibility between the Civil Service and the Foreign Service.

F.8. Question: Why do you authorize performance payments of up to \$20,000 in a year to a maximum of one percent of the members of the Senior Foreign Service and \$10,000 in any year to a maximum of six percent of the Senior Foreign Service members?

Answer: Section 441 of the bill provides that a total of six percent of the members of the SFS may be eligible for performance pay in addition to the otherwise applicable 20% of base pay limitation. Of this total, up to one percent of the SFS may receive awards of up to \$20,000 and up to five percent of the SFS may receive awards of up to \$10,000.

These limitations are the same as for the Senior Executive Service under the Civil Service Reform Act.

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F.9. Question: How does merit pay operate under the Civil Service regulations?

Answer: Under Title V of the Civil Service Reform Act, merit pay will apply to managers and supervisors at the GS-13, 14, and 15 levels. Merit pay is designed to recognize and reward quality performance. Individuals covered by merit pay do not receive regular step increases. Rather, on an annual basis, their performance is appraised, and a determination on the amount of merit pay to be awarded is made taking into account individual performance and organizational accomplishment. The determination may be based on factors such as improvements in efficiency, productivity and quality of work or service as well as timeliness of performance. The size of the merit pay award may be up to the maximum rate of basic pay payable for the particular grade.

See also Answer A.10.

F10. Question: Why were provisions for merit pay deleted from this legislation? Has it been replaced by within-class salary increases, which seem to be automatic unless substandard performance is found by a selection board?

Answer: See response to Question A19.

F.11. Question: Under the new performance pay system, isn't it theoretically possible that a Chief of Mission might be earning a lower salary than a subordinate who has accumulated a significant amount of performance pay? Is this a problem?

Answer: Under the new performance pay system (which is designed to parallel certain features of CSRA) it is possible for subordinates to earn more than superiors. This feature (which is found in the SES, Title IV of the CSRA) is an attempt to recognize individual performance over seniority or rank. It is particularly appropriate in a rank-in-person system which strives to recognize and reward significant individual performance. Performance pay is on an annual basis and is not guaranteed from year to year. This is not considered a problem, but rather a distinct plus.

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F.12. Question: Does the GAO report of January 8, 1979 recommending improved coordination and greater uniformity in foreign national pay plans suggest or require any changes?

Answer: The GAO report recommends closer coordination between State and Defense to more closely align, or make identical, embassy local compensation plans and those at nearby military bases, if any. The Department has taken several specific technical steps recommended by GAO to achieve this purpose. For example, we now include rates paid at nearby military bases in embassy wage surveys when a base uses an indirect hiring system with the base employees technically being employees of the host government and being paid wages negotiated with the host government. We have also emphasized to our contractors that conduct embassy wage surveys the importance of coordinating their activities and findings to the maximum extent possible with any nearby military base. Whenever possible, in countries where Defense uses the direct hire system, we attempt to schedule joint embassy-military wage surveys.

There are fundamental differences between the local wage programs of Defense and State and it will probably be impossible to eliminate all differences in these programs. The Defense system is designed to meet the needs of very large military complexes while the State system is designed to meet the needs of several hundred small posts. In addition, military bases are in competition with private industrial and quasi-industrial operations in the country which employ a predominantly blue-collar workforce. Just the opposite is true of diplomatic missions at which white-collar employment dominates. Differences in pay and benefits often exist for the same job between a plant operation (blue-collar) and its headquarters (white-collar) office. The Department's sampling of employers therefore is designed to ensure that embassies pay salaries comparable to their competitors. The Department of Defense sampling achieves the same result, but for a different type of employee.

The GAO report also recommended a greater effort to eliminate reliance on the U. S. civil service retirement system to provide retirement benefits for foreign national employees and to rely instead on local systems. The Department is increasing its efforts toward the achievement of this goal and it has been incorporated expressly into section 451 of the bill. Difficulties that must be overcome in this connection involve the negotiation of agreements or arrangements that permit embassies to retain

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adequate control over their hiring and firing policies and that will permit fair treatment of our long service employees. The latter type of problem involves the insistence by some countries that if any of an embassy's employees are to be enrolled in the local social insurance program, all must be enrolled and make contributions despite the fact that those who enroll late in life will get little or no return from their contributions.

Also, in countries with very poor local retirement systems and where a stigma attaches to those who work for the United States, we are reluctant to relinquish the incentive provided by the Civil Service retirement system to persons with superior qualifications to come to work for the United States.

F.13. Question: Besides the authority to pay special allowances (Section 462), are any overtime provisions included in this legislation?

Answer: Overtime and other forms of premium pay applicable to American personnel are authorized in Title 5 of the United States Code and are not provided for in the Foreign Service Act of 1946 or in this bill. Overtime to foreign national employees based upon prevailing local practices is authorized under section 451.

F.14. Question omitted by the Committee.

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F.15. Question: Earlier drafts of the Bill set salaries of all Chiefs of mission at Executive Level IV. The current section 401 provides a range from Executive Levels II through V. Why the change?

Answer: Earlier drafts of the Bill did indeed set the base pay of all Chiefs of Mission at Executive Level IV. Our preliminary view was that the continuation of different pay levels for Chiefs of Mission depending upon their post of assignment was inconsistent with the rank-in-person principle and with the idea of performance pay. At the same time and for the same reasons, we had planned to eliminate certain regulations which limit the pay and allowances of subordinate members of a Diplomatic Mission to \$100 less than the pay of the Chief of Mission and which also prevent the Chief of Mission from receiving hardship allowances for which other members of his or her staff are eligible.

We discovered that the cost of making changes in the allowance structure would be \$788,000 and that not making them but establishing a new, and in many cases, lower Chief of Mission base pay level, would have the effect of reducing the total amount of compensation of 150 persons by an average amount of \$1400. Since we do not have the resources to cover the additional costs, we decided that it would be unfair to set all Chief of Mission compensation at Executive Level IV at this time in view of widely differing responsibilities from post to post. Therefore, Section 401 was changed to reflect the existing system of paying Chiefs of Mission at Executive Levels II through V. However, the language of the section differs from existing law in that the four levels of salary for Chiefs of Mission will be a maximum number which may be reduced by the President. This provides the President with the ability to go to the single pay level at such time as the necessary resources are available and it is considered desirable to do so.

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F.16. Question (a): Medical Program - How large is the medical corps of the Department?

Answer: The Department has positions for 46 full-time Foreign Service physicians. Of these, 32 serve overseas, 12 support the program from the Washington base, and 2 are in specialized tropical medicine training. The overseas medical program supports over 250 posts and 29 Regional Medical Officers and 3 Regional Psychiatrists who provide direct physical and mental health care, local medical care evaluations, preventive medicine, and health care advice to over 50,000 persons covered under the State Department program.

In addition to the above, the Domestic Program which provided over 22,000 medical clearance actions per year and operates three domestic health rooms under the Randolph Health Act, has positions for two full-time Civil Service and positions for nine physicians who are employed part-time.

Question (b): Medical Program - How many vacancies does State have at the moment?

Answer: Currently, there are four Foreign Service medical officer vacancies and one part-time Civil Service vacancy.

Question (c): Medical Program - Do you anticipate having trouble recruiting personnel who meet State's requirements?

Answer: It is always difficult to recruit and retain very highly-qualified physicians into the Foreign Service. The exceptional responsibility of Regional Medical Officers requires professional medical background and experience that is in great demand. We cannot compete with the civilian sector financially and before passage of the Physicians Comparability Pay Allowance Act, could not compete with other elements of the Government. Implementation of the comparability allowance would assist State to compete more equitably and improve the possibility of filling the vacancies -- more importantly, it would assist to retain the well-qualified and experienced Foreign Service physicians. Retention is more cost-effective than recruiting.

Question (d): Medical Program - How will they classify -- Civil Service or Foreign Service?

Answer: Those physicians who are available for worldwide assignment are classified Foreign Service. Those who serve only in domestic service are classified as Civil Service.

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F.17. Question: Has consideration been given to providing variable incentive pay, similar to that provided by the Defense Department for the Foreign Service's medical personnel?

Answer: Consideration was given to including a variable incentive pay provision in the Foreign Service Act of 1979. In fact, an early draft of the bill contained a provision that would have authorized the Secretary of State to establish a pay plan for medical personnel of the Foreign Service with payments up to the amounts, under comparable conditions, specified in 37 U.S.C. 313 for variable incentive pay to medical officers of the Armed Forces. The provision was ultimately deleted because the Department concluded as a general matter that the essential personnel system reforms of the Act should not be encumbered or handicapped by additional proposals for new allowances or benefits, however meritorious such proposals might be in themselves. The Department does favor in principle variable incentive pay for our medical personnel, but continues to believe that the present Act is not the appropriate vehicle to authorize such pay.

F.18. Question: Would variable incentive pay alleviate State's difficulties in recruitment?

Answer: The Department believes that variable incentive pay for Department medical personnel would be a long-term solution to our recruitment problems. Our experience clearly demonstrates that a sufficient number of qualified medical personnel cannot be recruited or retained at the current rates of pay. It is hoped that the Physicians' Comparability Allowance authorized by P.L. 95-603 will ameliorate recruitment problems to some degree. However, P.L. 95-603 authorizes additional allowances only through 1981 and agreements for such allowances must be entered into by September 30, 1979. Consequently, even if implementing regulations are issued potential recruits can have no assurance that Department of State compensation will remain competitive with other job opportunities even over the middle-term. Moreover, the allowances permitted under P.L. 95-603 are still considerably less than those permitted under the variable incentive pay provisions available to the Department of Defense, the Veterans Administration, and the Public Health Service. The Department may remain at a disadvantage compared to these agencies unless it receives a similar authorization.

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- G.1. Question: In classifying positions under this new legislation, how do you plan to treat legal positions? If they are not classified as attorney positions, won't it be difficult to fill them with highly qualified attorneys, who generally expect to be treated as attorneys in name as well as position?

Answer: The Department has only a few attorney positions in the Foreign Service. These are normally filled by limited appointments of members of the Department's Office of the Legal adviser or AID's Office of General Counsel, who have reemployment rights in their former positions.

- G.2. Question: Currently what proportion of the salaries of Foreign Service personnel on loan to other agencies and organizations are reimbursed?

Foreign Service personnel on detail to other agencies and organizations as of July 1, 1979 are reimbursed as follows: fully reimbursed - 134; partially reimbursed (15 to 20 percent) - 11; and non-reimbursed - 22.

- G.3. Question: Is the Congress expected to pay travel and certain other expenses for personnel assigned to a Member or office of the Congress? (section 521(b)(2)) Why?

Answer: Currently, the Department pays the expenses to get the officer, his family and effects to and from the location of the assignment. All expenses associated with duties of that assignment, however, are undertaken by the host organization. The Department would not undertake to pay travel for attendance at meetings, or conducting other business on behalf of a state or local government, or other organizations qualified under the program. With respect to the Congress, there is a difference in the practice for the House as compared with the Senate. For officers assigned to the House of Representatives, travel and other expenses have been paid by the committee's or the Member's office to which an officer has been assigned. Senate regulations, however, prohibit payment of travel or expenses for any person other than a Senate employee. This bill will provide a uniform basis for all host organizations to fund the expenses connected with the actual work of the assignment. Since the Department cannot control this travel expense, it is believed that the employing office rather than the Department should budget and pay for this expense.

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G.4. Question: Section 521(c) establishes a limitation of four years on assignments to positions outside the Foreign Service, a limitation which is independent of the eight-year limitation on continuous assignments within the United States. Theoretically, this means that a member of the Service could serve in the U.S. for twelve years before going back overseas. Doesn't this threaten the concept of worldwide availability?

Answer: Section 521(c) and section 531(a) are separate provisions, but not cumulative. Any assignment, or series of assignments within the United States under section 521(c), would also have to be within the eight years provided by section 531(a). Section 521(c) assignments (for example, to OECD in Europe) may not involve domestic service at all; section 531(a) is specifically directed to limitation of domestic service, and controlling on that subject.

G.5. Question: Why are sabbaticals (Section 531 [e]) limited to a maximum of eleven months?

Answer: Sabbaticals are limited to 11 months in order to permit the individual to complete the work or study experience which is designed to contribute to his/her development and effectiveness. It parallels the provision in Title IV of the Civil Service Reform Act.

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- G.6. Question: You have made a number of changes in the so-called Pearson program. Among these are the elimination of the mandate for the Secretary to make appointments to this program and the elimination of the requirement that such appointments will occur after the seventh year of service. Would you explain these changes?

Answer: Changes in the Pearson program have been made to streamline and simplify its administration, similar to our efforts with a number of other provisions in the 1946 Foreign Service Act. The Department does not envision a change in the present practice of assigning Foreign Service officers to state and local governments, public educational institutions and private non-profit organizations. It regards these assignments as extremely valuable in broadening officers' experience and hopes to expand the program as resources permit. While the bill would not limit the program to officers who have completed seven years of service, the Department would continue to assign officers to this program who have completed initial tours in the Service.

Another change is the proposal to remove the current limitation on the number of assignments to the Congress under this program of 20 percent of the total number of assignments under the program. This rigid limitation could easily operate to bar an otherwise desirable assignment in this relatively small program. Accordingly, we substituted the proposed new requirement that assignments under this paragraph emphasize service outside Washington, D. C. We believe the latter is in keeping with the basic purpose and thrust of the program and we do not intend any significant shift in the proportion of officers assigned to the Congress under this program.

- G.7. Question: The legislation also says that assignment to a congressional office shall "emphasize service outside of Washington, D. C." What do you mean by "emphasize?"

Answer: See Answer to Question G.6.

- G.8. Question: Why does the legislation remove the minimum time limitation for Pearson program participants?

Answer: The present law states "to the extent practical, assignments shall be for at least 12 consecutive months . . ." By its wording, this is not a binding requirement and we thought it unnecessary to retain it in the revised statute. We agree that 12 months is about the minimum period that officers should be assigned under the Pearson program and we do not plan any change in this regard.

See Answer to Question G.6.

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H.1 Question: Regarding selection out for substandard performance, what provisions have you made to insure this kind of selection out will be fairly applied and will actually result in removal of personnel?

Answer: The proposed legislation would permit us to apply to all categories of Foreign Service personnel the system we now use for the selection out of Foreign Service Officers, or some close variant of it. In its essentials this system would involve an annual review of the cumulative performance of all employees by Selection Boards made up of their higher ranking peers. These boards would determine the relative standing of each employee compared to all others in his or her class and area of functional concentration on the basis of performance reports provided by supervisors, Foreign Service Inspectors, and other managers.

Those low-ranked (placed in the low 10 percent, for example)--and not excused because of mitigating circumstances, e.g., medical problems--would then be reviewed by a separate panel of Foreign Service peers, a Performance Standards Board. This panel would determine whether or not the employee's performance, viewed in a more absolute sense, fell significantly below the standard established by his or her class. This review would include the right of the employee identified for selection out to request and receive a due process hearing before the panel in which he or she could be represented by counsel, could call witnesses, and could introduce other material to refute the evidence of substandard performance.

We believe this approach to selection out provides ample guarantees of objectivity and fairness to our employees. Application of the principles described above, (i.e., relative ranking, multiple reviews, due process hearing) during the past two years has resulted in the separation of some 20 Foreign Service Officers. We believe, therefore, that this selection out process has proven its effectiveness in removing personnel whose performance is clearly substandard.

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H.2. Question: Under what "merit principles" will the system function?

Answer: The merit principles in this act are the principles enunciated in the Civil Service Reform Act of 1978. They include recruiting a work force from all segments of society and selecting and advancing that workforce on the basis of relative ability, knowledge and skill after fair and open competition which assures that all receive equal opportunity. It further assumes that all employees will be paid, trained and retained without regard to non-merit factors.

H.3 Question: How will selection out for substandard performance and time-in-class operate?

Answer: Selection out for substandard performance is to be operated as described in the answer to question H.1. Separation for excessive time-in-class is addressed in the answer to question H.7.

H.4. Question: The bill as written would appear in some instances to provide for a unified system for all foreign affairs agencies, but through the promulgation of regulations would appear to pave the way for some major differences. For example, it would appear that State could establish a three year "time-in-class" limit on an FSO-3, while ICA could establish a five year limit for an FSIO-3 and AID could establish an eight year limit for a comparable position. Doesn't this situation have the potential to create a bidding up process between the agencies on time-in-class requirements?

Answer: The bill does permit diversity among the foreign affairs agencies by regulation. There is also a strong statutory mandate for uniformity (sections 1204 and 1205) and compatibility (sections 202 and 1203). Significant differences between agencies would therefore have to be reasonably based upon different requirements. As indicated in the testimony of Director Reinhardt and Acting Administrator Nooter, the potential for "bidding up" time-in-class seems minimal.

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H.5. Question: With regard to selection board recommendations concerning promotions, the draft legislation gives the Secretary in "special circumstances" the authority to remove an individual's name from a promotion list submitted by the selection board. Can you give us an example of such "special circumstances?"

Answer: This provision, which is in current law for Foreign Service Officers (section 623(a) of the 1946 Act), is used, for example, for cases where a member of the Service is under investigation for, or the subject of, disciplinary proceedings. The selection board normally would not know of such investigation or proceedings.

H.6 Question: What types of individuals will constitute the selection boards which evaluate the Senior Foreign Service?

Answer: The composition of selection boards in general is addressed in the answer to question A.13. The membership of the boards which review The Senior Foreign Service will follow these same principles.

As was also pointed out in the answer to question A.21, the quality, representativeness, and experience of selection board members are key elements in the wisdom and reliability of their decisions and recommendations which are in turn, of vital importance to the future of the Foreign Service. Therefore, the Department will continue to place great emphasis on obtaining superior members of the Foreign Service and distinguished outside representatives to staff these selection boards.

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H.7 Question: How will retirement for excessive time-in-class operate?

Answer: Section 641(a) of the new legislation provides that the Secretary shall prescribe regulations specifying the maximum time in which members of the Senior Foreign Service and Foreign Service Officers may remain in a salary class or combination of classes without a promotion. The Secretary may change such time-in-class limitations as the needs of the Service may require. Other categories of career Foreign Service Officers may also be subject to time-in-class limitations when designated by the Secretary. Time-in-class regulations may distinguish among occupational categories.

Since 641(a) continues the authority for retirement based on excessive time-in-class for Foreign Service Officers provided in Section 633 of the 1946 Act. It expands this authority to cover career personnel of the most senior rank, who were not subject to time-in-class limitations under the 1946 Act. It also authorizes coverage of other relatively senior personnel to the extent the Secretary determines advisable.

Section 641(c) provides that anyone who does not receive a promotion or limited career extension provided by 641(b) within an applicable time-in-class limitation prescribed pursuant to Section 641(a) shall be retired from the Service and shall receive retirement benefits in accordance with Section 643.

The purpose of separating employees for excessive time-in-class lies at the heart of the up or out personnel system. It is the method by which both competition and attrition are maintained throughout the Service so that Foreign Service Officers may be moved at the optimum rate through a series of jobs and experiences which prepare them to fill the Department's most responsible and difficult positions.

Time-in-class separation also improves the overall excellence of the Service by removing those members whose performance has peaked. Admitting the utility of the above objectives, separation for excessive time-in-class should not be invoked mechanically and inflexibly, unless there is clear justification by the needs of the Service, when such a practice would produce unduly harsh consequences for

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the individuals who have invested their futures in the Foreign Service. The Department intends to follow its present practice of not immediately separating any tenured employee for excessive time-in-class who is approaching eligibility for a minimum immediate annuity under Section 643.

H.8 Question: Why do time-in-class regulations distinguish among occupation categories?

Answer: As is explained in the answers to questions A.33 and H.7, time-in-class regulations are needed to maintain the attrition and competition required in an up or out personnel system. This is an essential element in the effective management of the Foreign Service Officer Corps which must prepare officers for the most difficult and responsible positions in the Department of State and U.S. Missions abroad.

However, time-in-class limits must be set with regard to likelihood of promotion to the next class. Since such promotion opportunities differ, sometimes considerably, from occupation to occupation, TIC limits must also vary.

In addition, some career categories in the Foreign Service are not premised on this up or out model of preparing people for the top. Therefore, there is no requirement to separate these employees whose careers and skills are not directed towards advancement to the most senior and responsible positions in the Service, as long as they maintain the standard of performance appropriate for their job and their rank.

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H.9 Question: How will limited career extensions operate? Doesn't this create a potential loophole, if not administered closely, for individuals to be retained in the Service when in fact the needs of the Service and their performances do not justify it?

Answer: The limited career extension provisions of Section 641(b) of the new legislation are intended to provide maximum flexibility and efficiency in the utilization of Senior Foreign Service personnel. In keeping with this goal it is contemplated that time-in-class limitations for senior personnel will be shorter than present limits and would not exceed in the Senior Foreign Service the five year maximum period for limited career extensions.

Under Section 603 of the proposed legislation, selection boards will make the recommendations for the offer or renewal of limited career extensions. As is the case with all selection board recommendations, these, which will determine competitively to whom the limited career extensions are offered, must be based on criteria which are developed by the Department's management in consultation with the employee representative.

This process will make retention in the senior ranks dependent on performance and the needs of the Service. It is expected that the criteria, or precepts for the selection boards, for granting limited career extensions will establish the term of tenure at three years, rather than the maximum five years permitted in the Act, and will require that the selection boards recommend using them only for those employees who have demonstrated a strong ability and desire to perform and for whom onward assignments are available.

Furthermore, these precepts may also require the selection boards to weigh the performances of the candidates for limited career extensions against each other and against the performances of all the candidates for promotion to the highest rank of the Service. To qualify for a limited career extension would therefore require performance that stood out among peers and was also superior to that of the officers at the next lower level.

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Finally, the attrition needed in an up or out system must be generated by some officers leaving from the top. The Department's need for a particular officer's services through the limited career extension will be weighed against the system's need for top-level attrition.

For these reasons, the procedures for offering and granting the limited career extensions are heavily weighed against using the mechanism to retain officers, unless both their performance and the needs of the Service strongly justify it.

I.1. Question: I note that few changes have been made in the authorities relating to the Foreign Service Institute, career development, training and orientation. Do you view your current authorities as sufficient?

Answer: We believe our current authorities, as restated in the Bill, are sufficient. They have served the Department well for over three decades with the scope and flexibility of its legislative authority making for a viable training institution.

I.2. Question (a): Have these provisions been fully implemented?

Answer: These authorities have been implemented to carry out the mission of the FSI.

Question (b): What problems have you encountered?

Answer: None.

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J1. Question: What is an Unhealthful post and what is the effect of declaring a post "unhealthful"?

Answer:

Authority

Under section 853 of the 1946 Act, provision is made for the establishment of a list of posts to be classed as "unhealthful posts." Each year of duty at such post is counted as one year and one-half in establishing the length of service for the purpose of retirement of Foreign Service employees of State, AID, and ICA. No extra credit for service at an unhealthful post is credited to any participant who is paid a hardship post differential for service at that post.

Principal Features

1. Prior to 1955 all Foreign Service employees could receive extra credit for retirement for service at designated "unhealthful" posts, but some ("staff officers") could also elect the post differential in lieu thereof. Public Law 22 of 1955 placed all Department of State Foreign Service employees on an equal basis regarding selection of the two benefits. In 1968, ICA employees came under retirement provisions of the Foreign Service Act, as did AID employees in 1973. All eligible employees of these agencies may elect which benefit to receive; they may not receive both at the same post.

2. Practically all unhealthful posts are differential posts, but not all differential posts are unhealthful posts.

3. In general, credit toward retirement for service at the differential post is important only to the employee who entered the Service later than the average employee. Those employees entering when relatively young find that they will have served the required number of years without extra credit by the time they reach retirement age.

Determination of List

The determination of a post as unhealthful is based upon data received from the post and elsewhere, on sanitary conditions, types and frequency of diseases, health controls, medical facilities, etc.

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J2. Question: How often are posts added to or removed from the "unhealthful" classification?

Answer:

Review of unhealthful post status is made very two years in connection with review of post differential (hardship) status. As the conditions which comprise unhealthful consideration (climate, sanitation and disease conditions, and medical and hospital facilities) change slowly, there are very few additions or cancellations to the list each year of existing unhealthful posts. As AID or ICA (and occasionally State) opens new posts in the hinterlands of developing countries, several of these may be added to the unhealthful post list each year as soon as data is submitted and analyzed.

J.3. Question: What is the rationale behind section 837 regarding retirement of former Presidential appointees?

Answer: This provision is based on section 519 of the 1946 Act, which presently applies only to chiefs of mission. The bill extends to all similarly situated Presidential appointees the provision for retirement at the termination of their appointment. This feature recognizes the special difficulties that may be encountered in funding an appropriate assignment for a former Presidential appointee and the corresponding need for a dignified retirement mechanism for such officers.

J.4. Question: What is the rationale behind new section 851(h) regarding payments by employing offices of the Congress toward the retirement fund for Foreign Service employees?

Answer: Foreign Service personnel who are employed by the Congress while on leave without pay from the Service now get up to six months free retirement credit for each calendar year while they are on leave without pay. This amendment would eliminate this windfall and require Foreign Service employees and their employing offices in the Congress to make regular employee and employer contributions to the Foreign Service retirement fund during employment by a congressional office while in a leave without pay status from the Foreign Service.

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J.5. Question: Why have you provided a credit toward retirement rather than a post differential at unhealthful posts?

Answer: The unhealthful post credit has been a part of the Foreign Service Retirement System since it was established in 1924. A post differential (which is paid in cash as a percentage of the member's salary) was not made applicable to Foreign Service officers until 1955. The post differential covers a variety of hardship conditions in addition to unhealthfulness which exist at many Foreign Service posts. At posts designated both as unhealthful and as qualified for the post differential, members may choose to receive either the extra retirement credit or the cash differential, but not both.

Most members select to receive the cash differential rather than the extra retirement credit. However, the extra retirement credit is helpful for chiefs of mission who under the Department's regulations are not eligible for the post differential and senior officers who again under the Department's regulations are not permitted to receive post differential in an amount that would cause their total compensation to equal the salary of the chief of mission in their country of assignment.

Continuation of both benefits will enable members to continue to choose whichever one is most appropriate for their personal circumstances.

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J.6. Question: What changes have been made in the Retirement and Disability System over current law?

Answer: Chapter 8 is a restatement of the existing provisions of Title VIII of the 1946 Act concerning the Foreign Service Retirement and Disability System. Chapter 8 incorporates revisions in Title VIII made by Executive order to incorporate changes in the Civil Service Retirement System made by recent laws when this was necessary to maintain comparability between the Foreign Service and Civil Service Retirement Systems. Conforming changes previously made by Executive order include several matters involving survivor benefits, benefits for divorced spouses, and credit for persons of Japanese ancestry interned by the United States during World War II.

The only other substantive retirement changes introduced in the bill are:

(1) The requirement in section 821(b)(2) that a participant obtain the consent of his or her spouse before electing to provide less than the maximum survivor benefit in cases where the spouse has resided with the member on assignments in the Service including assignments abroad for an aggregate period of 10 years or more; and

(2) The requirement for participants on leave without pay from the Foreign Service employed in a congressional office to make regular retirement contributions to the Fund and for their employing offices to make matching contributions has been added to eliminate windfall benefits and is included in section 851(h).

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J.7. Question: Please explain the various administrative and judicial remedies contained in this legislation for various purposes -- e.g., separation for cause, grievance procedures, selection-out, etc. How do they compare with the Civil Service? Are the differences justified?

Answer: The Foreign Service Grievance Board has three types of jurisdiction:

(1) over individual grievances of members of the Foreign Service (Section 1101);

(2) over disputes between agency management and an organization which is the exclusive representative of that agency's Foreign Service employees concerning the effect, interpretation, or claim of breach of a collective bargaining agreement (Section 1024); and

(3) to hold hearings for members of the Service who are to be separated for cause (Section 651(a)).

There is no statutory counterpart to the first two for the Civil Service. Unions representing Civil Service employees can negotiate individual grievance systems through collective bargaining, and in the absence of such agreement the Office of Personnel Management provides a system by regulation.

The Merit Systems Protection Board is the statutory counterpart of the Foreign Service Grievance Board for separation for cause (adverse action). In addition, members of the Foreign Service in some cases may now go both to the Foreign Service Grievance Board and to the Merit Systems Protection Board on alleged prohibited personnel practices. Section 1131 of the bill would require an election of remedies in case of overlapping jurisdiction, to avoid duplication. Apart from this election, the Grievance Board, cannot take jurisdiction where other legislation requires resort to another body.

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The Foreign Service Grievance Board is independent of management, and over the years it has been in existence has developed unique expertise in the Foreign Service personnel system. Employees, management and employee representatives are satisfied with the way it operates. While the Board's role in collective bargaining disputes and separation for cause is new, the Board's expertise and experience are expected to produce equally satisfactory results.

The Merit Systems Protection Board is also independent of management, but it does not have expertise with such unique features of the Foreign Service as selection-out, selection boards, rank in person, and the character of overseas assignments.

There are three other administrative remedies provided by the bill:

- (1) administrative review of the cases of members of the Service identified for possible selection-out on the basis of relative performance (section 642);
- (2) the Foreign Service Labor Relations Board (sections 1011, 1012 and 1024(b)); and
- (3) the Foreign Service Impasse Disputes Panel (section 1014).

The first of these has no counterpart in the Civil Service because the Civil Service does not have selection-out. Under Federal District Court decision, this review must have a number of due process safeguards; section 642(a) in accordance with this decision requires that this review include an opportunity for the member to be heard.

The Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel do have counterparts under the Civil Service Reform Act (5 U.S.C. 7104 and 7105, 5 U.S.C. 7119). We believe a different system for the Foreign Service has proved its value since 1972 under Executive Order 11636. The proposed statutory basis provides the same independence from

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management as the Civil Service counterparts have, but as a continuation of separate bodies charged with responsibility for the Foreign Service only, these bodies will have more expertise and be able to move faster on urgent basis.

The bill also contains two special provisions on judicial review. Section 1013 provides for judicial review of orders of the Foreign Service Labor Relations Board; it is similar to 5 U.S.C. 7123. Section 1141 provides for judicial review of the decisions of the Foreign Service Grievance Board. This latter provision is in existing law and is broader than the provisions for Civil Service grievances. Under the Civil Service Reform Act judicial review is limited to matters under the jurisdiction of the Merit System Protection Board (5 U.S.C. 7703), and includes review of arbitrator's decisions under negotiated grievance procedures which could have been brought to the Merit Systems Protection Board (5 U.S.C. 7121(f)). As to the first, of course, final orders of the Foreign Service Labor Relations Board should be subject to the same judicial review as are final orders of the Federal Labor Relations Authority.

We believe that the different administrative and judicial remedies contained in this bill for the Foreign Service are justified by the differences between it and the Civil Service.

1063

K.1. Question: The bill before us authorizes representational allowances only for Foreign Service officers. Have you considered authorizing such allowances for consular agents where appropriate since at least some of these agents perform representational functions?

Answer: The bill does not restrict reimbursement of representational expenses to Foreign Service officers. Section 931 authorizes reimbursement, under regulations to be prescribed by the Secretary, to any member of the Service authorized to undertake representational responsibilities. To the extent that consular agents are authorized to undertake representational responsibilities, the Department will attempt to obtain funds under the authority of this bill to provide reimbursement. (See also response to Question E.7.(B).)

L1. Question: What are the differences between the right of employees to organize under the current Executive Order and the rights articulated in the legislation?

Answer: There are no differences between the Executive Order and the legislation with regard to employees' right to organize. Employees will continue to have the basic right to form, join or assist any labor organization as to refrain from any such activity.

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M.1. Question: What is the proposed composition of Foreign Service Grievance Boards? What are the components of the grievance and appeals procedures? How will the Merit Systems Protection Board operate?

Answer: Section 1111(a) provides that the Board shall consist of not fewer than five members who are not presently serving as officers, employees or consultants of the Department or as members of the Service. This is the same provision as appears in the existing legislation. At present, there are 15 members of the Board -- eight professional arbitrators and seven retired Foreign Service personnel. It is contemplated that the Board composition would continue to remain approximately the same. Under section 2104(d) of the Bill, present members of the Board may continue to serve without reappointment.

The grievance procedure, as presently constituted and as provided for in the proposed legislation, consists of an at least two-stage procedure. Certain types of complaints (e.g., about working conditions) are dealt with initially at the lowest levels of the post abroad or in the bureau in the Department. If they cannot be resolved at the post or bureau level, they are considered at the agency (State, AID, USICA) level. Certain other types of complaints (e.g., about evaluation reports in the employee's performance file) are not susceptible of resolution at lower levels and are dealt with initially at the agency level. In either case, an employee who is not satisfied with the agency level decision on his grievance, may take his or her grievance to the Foreign Service Grievance Board. Cases before the Board are considered by a panel of three members, with or without a hearing, with submissions being made by the grievant and the agency. If a hearing is held, witnesses are sworn, subject to examination and cross examination, and a verbatim transcript is made. The Board issues written decisions with any appropriate remedial orders or recommendations to the agency. Section 1141 provides for judicial review in the U.S. district court, at the instance of either the grievant or the agency, of decisions of the Grievance Board.

In large measure, employees of State, AID and USICA are subject to the provisions of the Civil Service Reform Act relating to the Merit Systems Protection Board. The bill permits an employee to elect between the Merit Systems Protection Board and the Foreign Service Grievance Board in cases of overlapping jurisdiction.

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N1. Questions: Will you maintain the designation of certain posts as hardship posts? For what purposes?

Answer: Yes, the Department will maintain the designation of certain posts as hardship posts.

The post differential is authorized under Title 5 U.S.C. 5925 and is not restricted to Department of State overseas posts. Overseas posts operated by the Air Force, Army, Navy, Agriculture, Commerce, Interior, NASA, and Peace Corps have been designated as hardship posts. The differential payment is made to all civilian government personnel at a post if eligible.

The purpose and principal features are as follows:

1. The post differential is additional compensation paid to employees assigned to posts where extraordinarily difficult or notably unhealthful conditions, or excessive physical hardship exist.
2. The post differential serves as an incentive in recruiting and retaining personnel for locations where unusual hardship conditions exist.
3. The post differential is authorized only at those posts where the degree of hardship is in excess of that which employees are expected to disregard as part of the self-sacrifice necessarily involved in overseas service.
4. More than half of the posts in foreign areas have no post differential. A large number of posts having considerable hardship conditions do not receive post differential.
5. The post differential is subject to tax as a part of gross income (allowances are not taxable).
6. Owing to the 25 percent limitations, there is a wide range of hardship conditions existing at those posts where a 25 percent post differential is established.

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