Appendix

Harvard Law Prof. Vern Countryman
Endorses Federal Garnishment Law as
Part of Consumer Credit Act

EXTENSION OF REMARKS

OF

HON. LEONOR K. SULLIVAN
OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 17, 1967

Mrs. SULLIVAN, Mr. Speaker, among
our witnesses in the Subcommittee on
Consumer Affairs of the Committee on
Banking and Currency this morning on
H.R. 11601, the Consumer Credit
Protection Act, which also includes truth-in-
lending provisions, was an outstanding
scholar in the field of bankruptcy law,
Prof. Vern Countryman, of the Harvard
University Law School.

Professor Countryman testified on only
one title of H.R. 11601, title II, which
would ban wage garnishment as a device
for enabling unscrupulous credit mer-
chants to overload low-income wage
earners with more credit than they can
possibly have while living on half of all
of their wages—and eventually their jobs—
because of employer annoyance and expense
in connection with the garnishment process.

Confiding his testimony to this one
title of the bill, Professor Countryman
provided us with valuable insight into the
relationship of harsh State garnish-
ment laws and the prevalence of per-
sonal bankruptcies in those States. He
called for severe limitations on the use
of this device to deprive a worker's family
of the money needed for day-to-day liv-
ing.

For those who wonder whether an
antigarnishment provision belongs in a
consumer credit bill dealing primarily
with disclosure of finance charges in con-
nection with extensions of credit—
truth in lending—I am taking this oppor-
tunity to call attention to the reasoned
and documented statement made to our
subcommittee by an outstanding mem-
er of the legal profession, as follows:

STATEMENT OF VERN COUNTRYMAN, PROFESSOR
OF LAW AT HARVARD LAW SCHOOL, BEFORE
THE SUBCOMMITTEE ON CONSUMER AFFAIRS,
OF THE HOUSE COMMITTEE ON BANKING
AND CURRENCY, ON H.R. 11601, THE CONSUMER
CREDIT PROTECTION ACT, AUGUST 16, 1967

My name is Vern Countryman. I am a
Professor of Law at Harvard Law School. I
have been teaching the law of creditors' rights and
bankruptcy since 1946, save for a four-year
period, 1955-1959, when I practiced law in
Washington, D.C.

I do not appear here to testify on all
aspects of H.R. 11601. I am not an expert on
consumer credit—a subject I have just begun
to study. I have gotten only far enough in
my efforts to know that reliable information
on the subject is scarce and that there is a
real need for the sort of investigation which
Title III of H.R. 11601 would authorize.

I appear to testify in general support of
Title II of H.R. 11601, which would prohibit
the garnishment of wages, although I have
several suggestions to make for changes in
the proposal.

The problem with which Title II would
deal is a nationwide one because nearly all
states permit wage garnishment. Some limit
the number of employers who can re-
duce claims to judgment, but most
permit the creditor to garnish the em-
ployee when suit is initiated. In some states
a single levy can be made every payday; in
others, the initial levy is a continuing one
until the creditor's judgment is paid.

All states exempt some portion of the
debtor's wages from garnishment, but the
exemptions vary drastically. In some states
they are expressed in dollar amounts and
they range from $250 for married debtors and
$200 for single debtors to $50 for all debtors in Rhode Island. In other states
they are expressed in percentages and range
from 50% in Arizona to 100% in Florida.
Pennsylvania allows the garnishing
creditor to garnish the many debtors whose employers can be
served with garnishment process outside
the state of the debtor's residence.

The best and most recent survey of this
bewildering pattern of state wage garnish-
ment laws is an article by Mr. George Brunn,
published in volume 33 of the California Law
Review in 1956. I have a copy of that article
with me which I would be happy to submit to
the Committee if you would care to have it.

The consequences of wage garnish-
ment are principally three:

(1) If garnishment of the employer is
affected outside the state of the debtor's
residence, he may find his wages shut off
entirely. If it is affected in the state of his
residence, he may find himself left to support
his family on $50 a month in Rhode Island,
$75 a month in Kentucky, $20 a week in
New Hampshire, half of his $75 a week
wage in Arizona, or 50% of his salary to $25,
whichever is less, in Vermont.

(2) Without regard to the amount of
the exemption, the debtor may find himself
forced repeatedly to deal with a new creditor
kindly to the extra bookkeeping required by
garnishment levies, particularly if they are
repeated. Labor unions have been largely
ineffectual in protecting Members against
such employer retaliation although
some collective bargaining contracts give the
employee one or two free garnishments before
discharge.

(3) To save his job and support his
family, the debtor may be driven to resort to
bankruptcy in many cases where he would
not otherwise do so in order to dissolve
the garnishment levy or prevent the licensed
levies. As the number of non-business bank-
ruptcies has increased more than twenty-
fold, from 8,500 to almost 176,000, between
1940 and 1966, this is a matter of some
consequence to the federal bankruptcy
courts.

Precise information on the relationship
of wage garnishment to bankruptcy is, of
course, not available. There is enough
evidence to support a recent statement of the
Bureau of Labor Standards that "There
seems to be a direct connection between the
number of garnishments and the number
of personal bankruptcies." Debt Pooling and
Garnishment in Relation to Consumer
Indebtedness, Fact Sheet No. 4-F (1966).

Mr. Brunn, in his California Law Review
article, made a study of the 10 states with
the highest and the 10 states with the lowest
per capita personal bankruptcy rates in 1962.
The results are so interesting that I repro-
duce them here.

Personal bankruptcies
[Per 100,000 population]

<table>
<thead>
<tr>
<th>State</th>
<th>Bankruptcies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>10</td>
</tr>
<tr>
<td>Arkansas</td>
<td>20</td>
</tr>
<tr>
<td>California</td>
<td>25</td>
</tr>
<tr>
<td>Colorado</td>
<td>30</td>
</tr>
<tr>
<td>Connecticut</td>
<td>35</td>
</tr>
<tr>
<td>Florida</td>
<td>40</td>
</tr>
<tr>
<td>Georgia</td>
<td>50</td>
</tr>
<tr>
<td>Illinois</td>
<td>60</td>
</tr>
<tr>
<td>Indiana</td>
<td>70</td>
</tr>
<tr>
<td>Kentucky</td>
<td>80</td>
</tr>
</tbody>
</table>

Of the states with the lowest personal
bankruptcy filings, Arizona, Nevada, and
Ohio had a 100% wage exemption, North
Carolina, South Carolina, and South Dakota
authorized exemptions up to 100% if needed
to support the debtor's family, New Jersey had
a 90% exemption, and Alaska exempted $350
for married and $200 for single debtors.

But in states where exemptions exceed $100
in some counties and $100 in others, wage
garnishments were little used because of the
necessity of a separate levy every payday.

Of the states with the highest personal
bankruptcy filings:

Alabama had a 75% exemption.
California had a 50% exemption.

States with the highest personal
bankruptcy filngs:

Alabama had a 75% exemption.
California had a 50% exemption.

Appendix
bankruptcies have multiplied 3.8 times in Iowa while multiplying 2.8 times nationally. It may be said that these figures alone do not prove this to be a case of the stultifying contributory cause of bankruptcy. It may merely be a series of remarkable coincidences. Or it may be that the evident cause which led to bankruptcy would have led to bankruptcy had there been no garnishment.

But we need not only rely on the figures alone. Last week you heard the testimony of three able and experienced Referees in Bankruptcy from states where wage garnishment is heavily practiced (Missouri, Georgia, California). They were unanimously of the view that wage garnishments caused bankruptcy filings by many debtors who would not otherwise have become bankrupt.

That view is supported also by studies of personal bankruptcies in which the bankrupts were interviewed. In one study, involving 64 bankrupts in Michigan, 75% indicated that garnishment or the threat of garnishment was the reason for their filing in bankruptcy. In another study, involving 73 bankrupts in Illinois, 56% indicated that garnishment or the threat of garnishment was what caused them to go into bankruptcy. This point is further illustrated in a study in Illinois in which 73 bankrupts were interviewed, 36% said garnishment was a reason or a threat, and 15% said in a very substantial number of the cases where bankruptcy petitions are filed only to avoid garnishment.

Second, I would suggest that the term "wages," as used in Section 201 is too restrictive and that the same is true of "wages or salary" in Section 202.(a). The Compensation of many of those who are threatened with garnishment is derived, wholly or in part, from commissions and bonuses. I would suggest, instead of the reference in the Title and in the Section to "employee" or "wages," the term "personal earnings" and that in Section 202(a), the operative Section "earnings in the form of wages, salary, commission or bonus, from whom earnings are derived regardless of the amount, from the exempted to avoid garnishment should be substituted for "wages or salary due an employee." I would delete the second reference to "employee" in Section 202(a) because of the different meaning of the term. Section 64(a)(2) of the Bankruptcy Act where it three times became necessary to amend the original language, "wages due to workmen, clerks, or servants," once by adding "traveling or city salesmen," again by adding "on a salary or a commission basis, whole or parttime," and finally by adding whether or not it can be paid with or without a drawing account." If this suggestion were followed in its entirety. Section 202(a) would read:

"No person may attach or garnish or by any similar legal or equitable process or order stop or divert the payment of earnings in the form of wages, salary, commission or bonus, or the like, which I have for personal service.

Third, I doubt the necessity of prohibiting garnishment of all earnings, regardless of size. I see no necessity for eliminating all the minor creditors, small vendors, etc., whose incomes approach or run into six figures.

I realize the difficulty of fixing a limit. One recent proposal suggests a poverty-level line. That line is much too low. Karlen, Exemptions from Execution, 22 Bus. Law. 1167, 1171 (1967). The present work is cooperating with the Consumer Credit Code, a project of the National Conference of Commissioners on Uniform State Laws which is not yet in final form, would provide that the exemption of the amount due to individuals, with dependents and $50 per week or for others [and would limit the protection to consumer credit claims]. This seems too low to me also, but I have only a copy of the pertinent sections of the present draft of the Code so that the Committee can examine them.

The studies of personal bankruptcies to which I have previously referred indicate that the typical bankruptcy has an income of about $5,000 per year. I would take that figure as an indication that the protection against garnishment should extend considerably higher.

Mr. Gorman's figures illustrate another problem. Even the traditional right of obsolescence, since laws like these tend not to get periodic revision—the Connecticut exemption law still saves to a debtor ten bucks out of his ten dollars account for the inadequacy of many of the state's wage exemption laws which employ dollar amounts. But the percentage exemption laws provide, in some cases, no protection for large income debtors and inadequate ones for small income debtors, regardless of the percentages used.

The present working draft of the Uniform Consumer Credit Code would solve this problem by using dollar amounts and authorizing, an administrator to change them whenever, there is a change of 10% or more in the U.S. Bureau of Labor Statistics Index for Urban Wage earners and Clerical Workers. Under H.R. 11601 the same's function might well be assigned to the Federal Reserve Board.

An alternative method of handling this problem would be to tie the exemption to a legislatively-fixed figure which does seem to have some correlation. Mr. Gorman, in his chart, shows the amount of earnings subject to tax under Section 209 of the Social Security Act. Currently, that figure is $6,000, although H.R. 5710, in response to a suggestion by the Senate Finance Committee, would raise the figure to $7,600. An exemption in H.R. 11601 for twice the amount of earnings taxed under the Social Security Act, in parenthesis, is very close to the $15,000 exemption I have suggested.

Fourth, and finally, if you go no further than to protect wages from garnishment, you may not accomplish much. In many states the creditor has the right to release the debtor's income by taking an advance assignment of future wages at the time of extending credit. And since employers do not have to pay garnishments, there will be the same jeopardy to the debtor's job. Again the debtor will be driven to seek the refuge of Chapter III and his debt discharged so as to free his post-bankruptcy earnings from the lien of the wage assignment. Mr. Justice Fortas, while still in a minority in 1961, voiced the use of the use of wage assignments in Chicago. Fortas, Wage Assignments in Chicago—State Street Furniture Co. v. Armour & Co. 42 Yale L.J. 83 (1933), in his report of 1965 by a statute limiting assignable wages to 25%, and limiting the effectiveness of the assignment to three years. Later reports indicated that the situation was not much improved (See Satter, Wage Assignments and Garnishments Cited as Major Cause of Bankruptcy in Illinois, 16 Per. Fin. L. Rep. 89 (1961), and in 1961, when Illinois
CONGRESSIONAL RECORD — APPENDIX

August 18, 1967

South Vietnam and Cambodia will soon join. For the essential aspect of a regional organization is that it be geographically comprehensive, not a club. It is perhaps worth noting that nothing in ASEAN's charter precludes eventual membership by a Communist country.

For the United States, the appeal of ASEAN and organizations like it is the prospect that eventually their members will be able to stand on their own. This country's role in Asia is not to blunt nor stay forever but to equip its friends to do without it, some day.

Honorary Degrees Awarded by Baylor University, Waco, Tex., to Tom Lea and Carl Hertzog, Outstanding Texas Men of Letters

EXTENSION OF REMARKS OF
Hon. RALPH YARBOROUGH
of Texas

IN THE SENATE OF THE UNITED STATES
Friday, August 18, 1967

Mr. YARBOROUGH. Mr. President, outstanding in the field of literature and of art in Texas are two men whose names are known throughout the United States: Tom Lea, author and artist, and Carl Hertzog, publisher and book designer. Recently these two men were recognized by Baylor University, in Waco, Tex., for their outstanding contributions to literature of the Southwest by the award of honorary doctorates. These two figures who have given such glory to their State and to their Nation are richly deserving of honor, and I commend Baylor University highly on its choice of these recipients of honorary degrees. The impressive record of their achievements was reproduced in the Baylor Line, the university's magazine, of May and June 1967, and inspired me with renewed admiration for these two great Americans and great Texans.

Mr. President, I ask unanimous consent that the biographical sketches of these two great men be printed in the Appendix of the Record.

There being no objection, the sketches were ordered to be printed in the Record, as follows:

Lea and Hertzog were awarded honorary Doctor of Literature degrees in recognition (in the words of President McCall) "of their major contributions to the culture of Texas and American letter." Lea, a versatile writer, painter, muralist, illustrator, and historian, is the author of several outstanding books on Southwestern subjects, including "The Brave Bulls," which has won two best-story awards and was also made into a successful motion picture, "The King Ranch," a two-volume work on the Hertzog's "Mexican Window," both with the author's illustrations; and "The Wonderful Country," and adventure story and prose poem which was also made into a movie. He was featured as the correspondent for Life Magazine and not only wrote notable war accounts but executed a number of wartime paintings which now hang in the Pentagon.

In 1946 Life commissioned him to illustrate the historical development of the cattle

Congress Is Forward-Looking — Congress Is Reactionary

EXTENSION OF REMARKS OF
Hon. HARRY F. BYRD, JR.
of Virginia

IN THE SENATE OF THE UNITED STATES
Friday, August 18, 1967

Mr. BYRD of Virginia, Mr. President, I ask unanimous consent to have printed in the Appendix of the Record an editorial entitled "Come Again?" published in the Richmond, Va., News Leader of recent date.

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

COME AGAIN?

"The Congress has done many positive and forward-looking things in recent years to meet the needs of our citizens. Congress has worked hard, and Congress has done some good things," Detroit Mayor Jerome Cavanagh, August 23, 1966.

"Congress is reactionary, not consistent, sometimes completely negative," Detroit Mayor Jerome Cavanagh, July 30, 1967.

AASEAN

EXTENSION OF REMARKS OF
HON. RICHARD T. HANNA
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES
Thursday, August 10, 1967

Mr. HANNA, Mr. Speaker, last week I commented on the significance of the new regional organization in Southeast Asia called the Southeast Asian Nation for Regional Cooperation. The official name taken by the member nations during the first meeting last week in Bangkok is the Association of Southeast Asian Nations, or ASEAN.

The formation of the ASEAN marks an important step in the growing trend toward mutual assistance in that area. The expansion of this spirit will lead to a time when the United States and all major powers will no longer be called upon for support and defense. Southeast Asia now possesses enough resources for a potential position of influence in world affairs. Through programs like ASEAN they can be developed to their fullest extent and still belong solely to the regional nations.

I would like to introduce to the Congressional Record an editorial from the Washington Post which further elaborates on the importance of the new association:

ASIAN REGIONAL EFFORT

The impulse toward seeing and solving problems in the regional terms is making itself felt in Indochina, as the pull of nationalism still overpowers the centripetal haul of regionalism; indeed, Asian nationalism's capacity to mobilize popular energy and emotion is striking in both Communist and non-Communist countries. And non-Communist Asia is far from creating regional institutions as strong as, for instance, the European Economic Community or the Alliance for Progress.

Yet there is discernible in Asia a developing feeling that traditional historical patterns must be either strengthened or supplanted, as the case may be, in order to forge regional ties of relevance today. The latest sign is in the formation of the Association of South East Asian Nations, composed of Thailand, the Philippines, Indonesia, Malaysia, and Singapore. "ASEAN" joins a company which already includes the geographically wider Asian and Pacific Council and the functional Asian Development Bank, among others. ASEAN's aims are clearly economic. Its first step, beyond its own birth, will be to study measures for cooperation in tourism, fisheries and trade.

It is gratifying to see Indonesia taking part; ASEA's committee will be located in Djakarta. Under Sukarno, Indonesia followed an adventurous foreign policy which brought it into collision with the neighbors, particularly Malaysia, which is not conciliating. Its present goals are more modest, realistic and practical. One hopes that...