



FEDERAL CONFLICT OF INTEREST LEGISLATION

HEARINGS

BEFORE THE

ANTITRUST SUBCOMMITTEE

(SUBCOMMITTEE NO. 5)

U.S. Congress, House, OF THE
" COMMITTEE ON THE JUDICIARY.

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 1900, H.R. 2156, H.R. 2157, H.R. 7556, and
H.R. 10575

BILLS DESIGNED TO STRENGTHEN AND IMPLEMENT THE
CRIMINAL LAWS RELATING TO CONFLICTS OF INTEREST,
AND TO PROMOTE ETHICS IN FEDERAL GOVERNMENT
EMPLOYMENT

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FEBRUARY 17, 18, 19, 24, 25, 26, MARCH 2 AND 3, 1960

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CONTENTS

Text of—	Page
H.R. 1900	2
H.R. 2156	6
H.R. 2157	9
H.R. 7556	11
H.R. 10575	366
Statement of—	
Abbott, George W., Solicitor, Department of the Interior	295
Beelar, Donald C., American Bar Association	313
Bennett, Hon. Charles E., a Representative in Congress from the State of Florida	15
Deale, Valentine B., American Bar Association	313
Derounian, Hon. Steven B., a Representative in Congress from the State of New York	23
Dodds, Robert J., Jr., General Counsel; accompanied by Griswold Forbes, Director of Agency Institution; and Ernest Nash of the General Counsel's Office, Department of Commerce	145
FitzGerald, John L., General Counsel, Federal Communications Commission	273
Forbes, Griswold, Director of Agency Institution, Department of Commerce	145
Goff, Hon. Abe McGregor, member, Interstate Commerce Commission	176
Jackson, Stephen S., Deputy Assistant Secretary of Defense for Manpower, Personnel, and Reserve; accompanied by Capt. John R. Mackroth, Office of Personnel Policy; John Kirby, Office of General Counsel; and Philip Kisek, Office of Procurement Policy, Department of Defense	111
Jones, Robert, Chairman, U.S. Civil Service Commission	96
Kastenmeier, Hon. Robert W., a Representative in Congress from the State of Wisconsin	81
Kendall, Charles H., General Counsel, Office of Civil and Defense Mobilization	133
Kuykendall, Jerome K., Chairman, Federal Power Commission; accompanied by Willard W. Gatchell, General Counsel	261
Lindsay, Hon. John V., a Representative in Congress from the State of New York	366
Macomber, J. H., Jr., General Counsel; accompanied by Herbert E. Angel, Director of Administration, General Services Administration	85
Mecker, Thomas G., General Counsel; accompanied by Irving M. Pollack, Assistant General Counsel, Securities and Exchange Commission	211
Newmann, Ross I., Associate General Counsel, Rules and Legislation, Civil Aeronautics Board	239
Perkins, Roswell B., chairman, special committee, Federal conflict of interest laws, the Association of the Bar of the City of New York; accompanied by Howard F. Burns, and Alexander C. Hoagland	383
Rea, Bryce, Jr., American Bar Association	313
Russell, Percy H., District of Columbia Bar Association	341
Vom Baur, Trowbridge, Federal Bar Association	343
Weitzel, Frank H., Assistant Comptroller General of the United States; accompanied by O. B. Carpenter, Office of General Counsel, General Accounting Office	57
Additional information—	
American Bar Association:	
Canons of Judicial Ethics	316
Resolution on presentation adopted by the house of delegates at its 1956 midyear meeting	326

Additional information—Continued

	Page
Antitrust Subcommittee:	
Business Advisory Counsel for the Department of Commerce, contributions for 1950-55, table.....	152
Document from Peyton Ford, Deputy Attorney General, Department of Justice, letter, June 14, 1951, to Hon. Burnet R. Maybank, chairman, Senate Banking and Currency Committee....	399
Summary of Provisions of Conflict-of-Interest Bills.....	12
Association of the Bar of the City of New York:	
Summary of proposed executive conflict of interest bill, H.R. 10575.....	466
Technical commentary on proposed executive conflict of interest bill, H.R. 10575.....	468
Campbell, Hon. Joseph, Comptroller General of the United States, letter, March 16, 1960, to Hon. Emanuel Celler, chairman, Committee on the Judiciary.....	69
Departmental reports:	
Atomic Energy Commission.....	51
Agriculture Department.....	79
Bureau of the Budget.....	52
Civil Service Commission.....	33
Comptroller General of the United States.....	27
Defense Department.....	53
Federal Power Commission.....	310
Federal Reserve Board.....	30
Federal Trade Commission.....	44
General Services Administration.....	34
Housing and Home Finance Agency.....	39
Interior Department.....	305
Interstate Commerce Commission.....	190
Labor Department.....	26
National Labor Relations Board.....	53
Office of the Postmaster General.....	35
Small Business Administration.....	50
State Department.....	36
Treasury Department.....	79
Veterans' Administration.....	37
Dodds, Robert J., Jr., General Counsel, Department of Commerce, letter, March 7, 1960, to Hon. Emanuel Celler, chairman, Committee on the Judiciary, with attachments.....	160
Federal Communications Commission, interoffice memorandum, re review of inspection program for employee conduct.....	292
Federal Power Commission, administrative order No. 66.....	269
Securities and Exchange Commission:	
Comparative table of provisions of H.R. 2156 and H.R. 2157 and Commission's conduct regulations and canons of ethics.....	234
Canons of ethics for members.....	212
Mecker, Thomas G., General Counsel, letter, March 18, 1960, to Hon. Emanuel Celler, chairman, Committee on the Judiciary.....	259
Statements submitted for the record:	
Association of Interstate Commerce Commission Practitioners....	486
Beclar, Donald C., American Bar Association.....	349
Deale, Valentine B., American Bar Association.....	353
Derounian, Hon. Steven B., a Representative in Congress from the State of New York.....	25
Dodds, Robert J., Jr., General Counsel, Department of Commerce.....	198
FitzGerald, John L., General Counsel, Federal Communications Commission.....	287
Forbes, Griswold, Director of Agency Institution, Department of Commerce.....	202
Goff, Abe McGregor, member, Interstate Commerce Commission.....	203
Jackson, Stephen S., Deputy Assistant Secretary of Defense for Manpower, Personnel and Reserve, Department of Defense....	142
Macomber, J. H., Jr., General Counsel, General Services Administration.....	109
Mecker, Thomas G., General Counsel, Securities and Exchange Commission.....	250

CONTENTS

Additional information—Continued

Statements submitted for the record—Continued

	Page
National Association of Manufacturers.....	483
Newmann, Ross I., Associate General Counsel, Rules and Legislation, Civil Aeronautics Board.....	254
Perkins, Roswell B., chairman, special committee, Federal conflict of interest laws, the Association of the Bar of the City of New York.....	459
Vom Baur, Trowbridge Federal Bar Association.....	358
Weitzel, Frank H., Assistant Comptroller General of the United States.....	72



FEDERAL CONFLICT OF INTEREST LEGISLATION

WEDNESDAY, FEBRUARY 17, 1960

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met pursuant to call at 10:05 a.m. in room 346, Old House Office Building, Hon. Emanuel Celler presiding.

Present: Representatives Celler, Rodino, Rogers, Holtzman, Toll, and Meader.

Also present: Herbert N. Maletz, chief counsel; Kenneth R. Harkins, cocounsel, and Richard C. Peet, associate counsel.

The CHAIRMAN. The committee will come to order.

Subcommittee No. 5 of the House Committee on the Judiciary begins public hearings this morning on a number of bills designed to strengthen and implement the criminal laws relating to conflicts of interest, and to promote ethics in Federal Government employment. These bills are H.R. 2156 and H.R. 2157, introduced by myself, and H.R. 1900 (identical with H.R. 2156), introduced by Representative Derounian of New York. We shall also consider H.R. 7556, introduced by Representative Bennett of Florida, which would prohibit, for 2 years, the employment of a former employee of the Federal Government by a concern with which certain transactions were handled. Copies of these bills will be placed in the record at the conclusion of this statement.

Recent years have recorded growing concern, both in and out of Congress, with the ever present and perplexing problems of how best to assure high ethical standards in the conduct of Federal Government. Several congressional committees, including our own, have conducted investigations into conflict-of-interest cases arising in executive agencies of the Government. The consensus of public expressions on the subject has criticized existing Federal laws in this area as inadequate, inconsistent, and confused.

In this context the staff of our subcommittee was instructed to make a detailed study and analysis of existing Federal conflict-of-interest laws to the end that they might be revised, simplified, and coordinated. The objective was more effectively to prevent unethical practices, while at the same time preserving the dignity of Government service and maintaining its attractiveness to competent men and women.

Parts I and II of the resulting study were issued in March 1958. They analyzed Federal statutes on conflict of interest and bribery and presented certain recommendations for amendment of these statutes. On May 19, 1958, I introduced in the House of Representatives

H.R. 12547 based upon these recommendations. In the 86th Congress Representative Derounian and I have reintroduced this bill as H.R. 1900 and H.R. 2156, respectively.

Also in 1958 the concluding sections of the staff study, comprising parts III, IV and V, were issued. These sections of the study contained recommendations for the enactment by Congress, in the form of an amendment to the Administrative Procedure Act, of a Code of Official Conduct for the Executive Branch of the Government. H.R. 2157, which is one of the measures before the subcommittee, is based on these recommendations of the staff's report.

In order that there may be a full and representative expression of views concerning these important measures, the subcommittee has invited to testify congressional sponsors of the bills, various interested agencies of the Government, and various bar associations.

There follows, as an appendix to my statement, a summary of the provisions of the bills and other considerations and data that will be placed in the record.

(H.R. 1900, H.R. 2156, H.R. 2157, H.R. 7556, and a summary of provisions of these conflict of interest bills are as follows:)

[H.R. 1900, 86th Cong., 2d sess.]

A BILL To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) so much of chapter 11 of title 18 of the United States Code as precedes section 214 is amended to read as follows:

"CHAPTER 11—BRIBERY, GRAFT AND CONFLICTS OF INTEREST

"Sec.

"201. Bribery of public officials.

"202. Bribery of witnesses.

"203. Compensation to Members of Congress, officers and others, in matters affecting the Government.

"204. Practice in Court of Claims by Members of Congress.

"205. Activities of officers and employees in claims against and other matters affecting the Government.

"206. Exemptions, retired officers of the armed forces.

"207. Disqualification of former officers and employees in matters connected with former duties or involving former agencies.

"208. Interested persons acting as Government agents.

"209. Salary of Members of Congress, Government officials and employees payable only by United States.

"210. Offer to procure appointive office.

"211. Acceptance or solicitation to obtain appointive public office.

"212. Offer of loan or gratuity to bank examiner.

"213. Acceptance of loan or gratuity by bank examiner.

"214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.

"215. Receipt of commissions or gifts for procuring loans.

"216. Receipt or charge of commissions or gift for farm loan or land bank transactions.

"217. Acceptance of consideration for adjustment of farm indebtedness.

"218. Voiding transactions in violation of chapter; recovery by the United States.

"§ 201. Bribery of public officials

"(a) For the purpose of this section: 'bribe' means money or other thing of value, or the promise thereof, and includes, without limiting the generality of the foregoing, an emolument, profit, commission, loan, honorarium, advantage, benefit, position, employment, or opportunity, and an agreement, check, note, order, contract, undertaking, obligation, gratuity, or security for the present or future delivery, conveyance, or procurement thereof.

" 'public official' means Member of, or Delegate to Congress, or Resident Commissioner, either before or after he has qualified, an officer, agent, or employee of the United States in the executive, legislative, or judicial branch of the Government, or of any agency, or juror, and

" 'official act' means any decision, judgment, verdict, recommendation, action, inaction, vote, abstention, attention, or neglect by a public official on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before such public official in his

official capacity, or in his place of trust or profit, or his commission, aid in committing, collusion in, or allowance or facilitation of any fraud on the United States, or commission or omission of any act in violation of his lawful duty.

"(b) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, gives, offers, or promises any bribe to, or at the direction or with the consent of

"(1) any public official or former public official for or because of an official act actually or purportedly performed by such public official or former public official, or

"(2) any person being about to become a public official, with intent to influence him in an official act, or

"(3) any public official for or because of any actual or purported official act or the actual or purported influence of such public official on any actual or purported official act or with intent to induce such public official to influence any official act; or

"(c) Whoever, otherwise than as provided by law for the proper discharge of official duty,

"(1) for or because of an official act actually or purportedly performed by him, or

"(2) with intent or agreement to be influenced in an official act, or

"(3) being a public official, for or because of any actual or purported official act or his actual or purported influence thereon or with intent or agreement that he will influence or attempt to influence any official act,

directly or indirectly asks, demands, exacts, solicits, seeks, accepts, or agrees to receive any bribe, for or to himself or to any person at his direction or with his consent—

"Shall be fined not more than \$20,000 and three times the amount or value of the bribe, or imprisoned for not more than fifteen years, or both, and shall forfeit and be disqualified from holding any office of honor, trust, or profit under the United States.

"The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in the other sections of this chapter and those prescribed in sections 1503 and 1504 of this title.

"§ 202. Bribery of witnesses

"Whoever, directly or indirectly, gives, offers, or promises a bribe, as that term is defined in section 201 of this title, to or at the direction or with the consent of any person for or because of, or with intent to influence the testimony of such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or his absence therefrom, or

"Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, or agrees to receive any such bribe for or to himself or to any person at his direction or with his consent, for or because of, or with intent or agreement to be influenced in testimony as a witness upon any such trial, hearing or other proceeding, or his absence therefrom,

"Shall be fined not more than \$20,000 and three times the amount or value of the bribe, or imprisoned for not more than fifteen years, and shall forfeit and be disqualified from holding any office of honor, trust, or profit under the United States.

"This section does not prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion.

"The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503 and 1505 of this title.

"§ 203. Compensation to Members of Congress, officers and others in matters affecting the Government

"Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services actually or pur-

portedly rendered or to be rendered at a time when he is or was a Member of or Delegate to Congress or a Resident Commissioner, either before or after he has qualified, or an officer, agent, or employee of the United States in the executive, legislative, or judicial branch of the Government, or of any agency, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested before any department, agency, court martial, officer, or any civil, military, or naval commission, or

"Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services, actually or purportedly rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Delegate, Commissioner, officer, agent, or employee—

"Shall be fined not more than \$10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

§ 204. Practice in Court of Claims by Members of Congress

"Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, practices in the Court of Claims, shall be fined not more than \$10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

§ 205. Activities of officers and employees in claims against and other matters affecting the Government

"Whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or aids or assists anyone before any department, agency, court martial, officer, or any civil, military or naval commission in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

"Nothing herein prevents an officer or employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary proceedings which may result in his removal or suspension from a position in the Government, or other penalty, or who has been removed or suspended from such a position, to present his defense or to be reinstated or restored to duty.

§ 206. Exemptions; retired officers of the Armed Forces

"(1) Sections 281 and 283 of this title shall not apply to any person because of his status as a retired officer of the armed forces of the United States, while not on active duty, or his membership in the National Guard of the District of Columbia, or to any person specially excepted by act of Congress.

"(2) Whoever, being a retired officer of the armed forces of the United States, while not on active duty.

"(A) at any time represents any person in the sale of anything to the Government through the department in whose service he holds a retired status or knowingly acts as agent or attorney for or aids or assists anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest or other matter in which the United States is a party or directly or indirectly interested, involving any subject matter concerning which he had any responsibility while in active-duty status, or

"(B) within two years after his retirement acts as agent or attorney for or aids or assists anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, and which involves the department in which he holds a retired status—

"Shall be fined not more than \$10,000, or imprisoned not more than one year, or both.

"§ 207. Disqualification of former officers and employees in matters connected with former duties or involving former agency

"Whoever, having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, after the time when such employment or service has ceased, knowingly acts as agent or attorney for, or aids or assists anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested involving any subject matter concerning which he had any responsibility while so employed or assigned to duty, or

"Whoever, having been so employed or assigned to duty, within two years after his last such employment or service has ceased, acts as agent or attorney for, or aids or assists anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, and which involves any agency in which he was so employed or assigned to duty,

"Shall be fined not more than \$10,000, or imprisoned not more than one year, or both.

"§ 208. Interested persons acting as Government agents

"Whoever, being an officer, agent, employee on leave of absence, or member of, or directly or indirectly interested in the pecuniary profits or contracts of any corporation, joint stock company, or association, or of any firm or partnership, or other business entity, is employed or acts as an officer or agent of the United States, or any agency for recommending or taking action with respect to any individual application to the Government for relief or assistance, on appeal or otherwise, made by such business entity, or for negotiating or executing any Government contract or in any other manner transacting business with such business entity shall be fined not more than \$2,000, or imprisoned not more than two years, or both.

"§ 209. Salary of Members of Congress, Government officials and employees payable only by United States

"Whoever receives any salary, or any contribution to or supplementation of salary, for or in connection with his services as a Member of or Delegate to Congress or a Resident Commissioner, or an officer, agent, or employee of the United States in the executive, legislative, or judicial branch of the Government, or of any agency from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

"Whoever, whether a person, association, or corporation, pays, or makes any contribution to, or in any way supplements the salary of, any such a Member, Delegate, Commissioner, officer, agent, or employee—

"Shall be fined not more than \$1,000 or imprisoned not more than six months, or both."

(b) Sections 214 and 215 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 210 and 211;

(c) Sections 216 and 223 of chapter 11 of title 18 of the United States Code are repealed;

(d) Sections 217, 218, 219, 220, 221, and 222 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 212, 213, 214, 215, 216, and 217;

(e) Chapter 11 of title 18 of the United States Code is further amended by adding at the end thereof the following new section:

"§ 218. Voiding transactions in violation of chapter; recovery by the United States

"The President or, under regulations prescribed by him, the head of the agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published or the performance of any service or transfer or delivery of any thing to, by, or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed in this title, the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof."

(f) Sections 281, 282, 283, and 284 of chapter 15 of title 18, section 434 of chapter 23 of title 18, and section 1914 of chapter 93 of title 18 of the United States Code are repealed:

(g) Section 113 of the Renegotiation Act of 1951 (50 U.S.C. App., sec. 1223 (Supp. 1952)) and section 190 of the Revised Statutes (5 U.S.C., sec. 99 (1952)) are repealed.

[H.R. 2156, 86th Cong., 1st sess.]

A BILL To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) so much of chapter 11 of title 18 of the United States Code as precedes section 214 is amended to read as follows:

"CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

- "Sec.
 "201. Bribery of public officials.
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 "207. Disqualification of former officers and employees in matters connected with former duties or involving former agencies.
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 "211. Acceptance or solicitation to obtain appointive public office.
 "212. Offer of loan or gratuity to bank examiner.
 "213. Acceptance of loan or gratuity by bank examiner.
 "214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.
 "215. Receipt of commissions or gifts for procuring loans.
 "216. Receipt or charge of commissions or gift for farm loan or land bank transactions.
 "217. Acceptance of consideration for adjustment of farm indebtedness.
 "218. Voiding transactions in violation of chapter; recovery by the United States.

"§ 201. Bribery of public officials

"(a) For the purpose of this section:

"'bribe' means money or other thing of value, or the promise thereof, and includes, without limiting the generality of the foregoing, an emolument, profit, commission, loan, honorarium, advantage, benefit, position, employment, or opportunity, and an agreement, check, note, order, contract, undertaking, obligation, gratuity, or security for the present or future delivery, conveyance, or procurement thereof;

"'public official' means Member of, or Delegate to Congress, or Resident Commissioner, either before or after he has qualified, an officer, agent, or employee of the United States in the executive, legislative, or judicial branch of the Government, or of any agency, or juror; and

"'official act' means any decision, judgment, verdict, recommendation, action, inaction, vote, abstention, attention, or neglect by a public official on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before such public official in his official capacity, or in his place of trust or profit, or his commission, aid in committing, collusion in, or allowance or facilitation of any fraud on the United States, or commission or omission of any act in violation of his lawful duty.

"(b) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, gives, offers, or promises any bribe to, or at the direction or with the consent of

"(1) any public official or former public official for or because of an official act actually or purportedly performed by such public official or former public official, or

"(2) any person being about to become a public official, with intent to influence him in an official act, or

"(3) any public official for or because of any actual or purported official act or the actual or purported influence of such public official on any actual or purported official act or with intent to induce such public official to influence any official act; or

"(c) Whoever, otherwise than as provided by law for the proper discharge of official duty,

"(1) for or because of an official act actually or purportedly performed by him, or

"(2) with intent or agreement to be influenced in an official act, or

"(3) being a public official, for or because of any actual or purported official act or his actual or purported influence thereon or with intent or agreement that he will influence or attempt to influence any official act, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, or agrees to receive any bribe, for or to himself or to any person at his direction or with his consent—

"Shall be fined not more than \$20,000 and three times the amount or value of the bribe, or imprisoned for not more than fifteen years, or both, and shall forfeit and be disqualified from holding any office of honor, trust, or profit under the United States.

"The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in the other sections of this chapter and those prescribed in sections 1503 and 1504 of this title.

"§ 202. Bribery of witnesses

"Whoever, directly or indirectly, gives, offers, or promises a bribe, as that term is defined in section 201 of this title, to or at the direction or with the consent of any person for or because of, or with intent to influence the testimony of such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or his absence therefrom, or

"Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, or agrees to receive any such bribe for or to himself or to any person at his direction or with his consent, for or because of, or with intent or agreement to be influenced in testimony as a witness upon any such trial, hearing or other proceeding, or his absence therefrom—

"Shall be fined not more than \$20,000 and three times the amount or value of the bribe, or imprisoned for not more than fifteen years, and shall forfeit and be disqualified from holding any office of honor, trust, or profit under the United States.

"This section does not prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion.

"The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503 and 1505 of this title.

"§ 203. Compensation to Members of Congress, officers and others in matters affecting the Government

"Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services actually or purportedly rendered or to be rendered at a time when he is or was a Member of or Delegate to Congress or a Resident Commissioner, either before or after he has qualified, or an officer, agent, or employee of the United States in the executive, legislative, or judicial branch of the Government, or of any agency, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, or

"Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services, actually or purportedly rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Delegate, Commissioner, officer, agent, or employee—

"Shall be fined not more than \$10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

“§ 204. Practice in Court of Claims by Members of Congress

“Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, practices in the Court of Claims, shall be fined not more than \$10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

“§ 205. Activities of officers and employees in claims against and other matters affecting the Government

“Whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or aids or assists anyone before any department, agency, court martial, officer, or any civil, military or naval commission in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

“Nothing herein prevents an officer or employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary proceedings which may result in his removal or suspension from a position in the Government, or other penalty, or who has been removed or suspended from such a position, to present his defense or to be reinstated or restored to duty.

“§ 206. Exemptions; retired officers of the Armed Forces

“(1) Sections 203 and 205 of this title shall not apply to any person because of his status as a retired officer of the Armed Forces of the United States, while not on active duty, or his membership in the National Guard of the District of Columbia, or to any person specially excepted by Act of Congress.

“(2) Whoever, being a retired officer of the Armed Forces of the United States, while not on active duty,

“(A) at any time represents any person in the sale of anything to the Government through the department in whose service he holds a retired status or knowingly acts as agent or attorney for or aids or assists anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest or other matter in which the United States is a party or directly or indirectly interested, involving any subject matter concerning which he had any responsibility while in active-duty status, or

“(B) within two years after his retirement acts as agent or attorney for or aids or assists anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest or other matter in which the United States is a party or directly or indirectly interested, and which involves the department in which he holds a retired status—

“Shall be fined not more than \$10,000, or imprisoned not more than one year, or both.

“§ 207. Disqualification of former officers and employees in matters connected with former duties or involving former agency

“Whoever, having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, after the time when such employment or service has ceased, knowingly acts as agent or attorney for, or aids or assists anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested involving any subject matter concerning which he had any responsibility while so employed or assigned to duty, or

“Whoever, having been so employed or assigned to duty, within two years after his last such employment or service has ceased, acts as agent or attorney for, or aids or assists anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, and which involves any agency in which he was so employed or assigned to duty,

“Shall be fined not more than \$10,000, or imprisoned not more than one year, or both.

"§ 208. Interested persons acting as Government agents

"Whoever, being an officer, agent, employee on leave of absence, or member of, or directly or indirectly interested in the pecuniary profits or contracts of any corporation, joint stock company, or association, or of any firm or partnership, or other business entity, is employed or acts as an officer or agent of the United States, or any agency for recommending or taking action with respect to any individual application to the Government for relief or assistance, on appeal or otherwise, made by such business entity, or for negotiating or executing any Government contract or in any other manner transacting business with such business entity shall be fined not more than \$2,000, or imprisoned not more than two years, or both.

"§ 209. Salary of Members of Congress, Government officials and employees payable only by United States

"Whoever receives any salary, or any contribution to or supplementation of salary, for or in connection with his services as a Member of or Delegate to Congress or a Resident Commissioner, or an officer, agent, or employee of the United States in the executive, legislative, or judicial branch of the Government, or of any agency from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

"Whoever, whether a person, association, or corporation, pays, or makes any contribution to, or in any way supplements the salary of, any such a Member, Delegate, Commissioner, officer, agent, or employee—

"Shall be fined not more than \$1,000 or imprisoned not more than six months, or both."

(b) Sections 214 and 215 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 210 and 211;

(c) Sections 216 and 223 of chapter 11 of title 18 of the United States Code are repealed;

(d) Sections 217, 218, 219, 220, 221, and 222 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 212, 213, 214, 215, 216, and 217;

(e) Chapter 11 of title 18 of the United States Code is further amended by adding at the end thereof the following new section:

"§ 218. Voiding transactions in violation of chapter; recovery by the United States

"The President or, under regulations prescribed by him, the head of the agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by, or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed in this title, the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof."

SEC. 2. Sections 281, 282, 283, and 284 of chapter 15 of title 18, section 434 of chapter 23 of title 18, and section 1914 of chapter 93 of title 18 of the United States Code are repealed.

SEC. 3. Section 113 of the Renegotiation Act of 1951 (50 U.S.C. App. 1223 (Supp. 1952)) and section 190 of the Revised Statutes (5 U.S.C. 90 (1952)) are repealed.

[H.R. 2157, 86th Cong., 1st sess.]

A BILL To implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government Ethics Act of 1959".

TITLE I—DECLARATION OF POLICY

SEC. 101. It is the purpose of this Act to implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to

strengthen the faith and confidence of the American people in their Government by promoting high moral standards in the conduct of that Government through the establishment of rules and requirements with respect to the conduct of Government officials and employees and other individuals dealing with the Government.

TITLE II—ESTABLISHMENT OF CODE OF OFFICIAL CONDUCT FOR THE EXECUTIVE BRANCH

SEC. 201. The Administrative Procedure Act is amended by inserting before section 1 thereof "TITLE I" and by adding at the end thereof a new title as follows:

"TITLE II

"SEC. 101. This title may be cited as the 'Code of Official Conduct for the Executive Branch.'

"SEC. 102. It shall be improper conduct for any officer or employee in the executive branch of the Government—

"(a) (1) to accept, directly or indirectly, any gift, favor, or service from, or (2) to discuss or consider his future employment with, or (3) to become unduly involved, through frequent or expensive social engagements with, any person outside the Government with whom he transacts business on behalf of the United States, or whose interests may be substantially affected by his performance of official duty;

"(b) to engage, directly or indirectly, in any personal business transaction or private arrangement for personal profit, including any investment, speculation, or employment, which accrues from or is based upon his official position or authority or upon confidential information which he gains by reason of such position or authority;

"(c) to divulge confidential commercial or economic information, or confidential information concerning the operations of any Government agency, to any unauthorized person, or to release any such information in advance of the time prescribed for its authorized release;

"(d) directly or indirectly to acquire or to retain financial interests, or to engage in private activities or employments, which conflict with the performance of his official duties;

"(e) to participate in any manner on behalf of the United States in the negotiation of contracts, the making of loans, the granting of subsidies, the fixing of rates or the issuance of permits or certificates, or in any investigation or prosecution, which affects chiefly a person (1) by whom he has been employed or with whom he has had any economic interest within the preceding two years, or (2) with whom he has any economic interest, or any pending negotiations concerning a prospective economic interest; or

"(f) to fail to conduct his personal and official affairs so that no reasonable suspicion or appearance of the violation of subsections (a) through (e) of this section can arise.

"SEC. 103. It shall be improper conduct for any former officer or employee in the executive branch of the Government, including any retired officer of the Armed Forces of the United States, at any time knowingly to represent any person in connection with, or to participate in the preparation of any proceeding, contract, claim, controversy or other matter, in which the United States is a party or directly or indirectly interested and which involves a subject matter concerning which he had any official responsibility or officially acquired confidential information during the period of his Government employment or his active duty.

"SEC. 104. It shall be improper conduct for any officer or employee in the executive branch of the Government, within two years after his Government employment has ceased, and for any retired officer of the Armed Forces of the United States within two years after his retirement, knowingly to represent any person in connection with, or to participate in the preparation of any proceeding, contract, claim, or controversy, or other matter in which the United States is a party or directly or indirectly interested, and which involves the agency in which he was employed or assigned to active duty.

"SEC. 105. It shall be improper conduct for any person—

"(a) (1) to give, directly or indirectly, any gift, favor or service to, or (2) to discuss or consider future employment of or (3) to become unduly

involved, through frequent or expensive social engagements, with any officer or employee of the executive branch of the Governments who transacts business with him on behalf of the United States, or whose performance of official duty may substantially affect his interests;

"(b) to persuade any officer or employee in the Executive branch of the Government to divulge confidential commercial or economic information, or confidential information concerning the operations of any Government agency to any unauthorized person, or to release any such information in advance of the time prescribed for its authorized release; or

"(c) knowingly to employ any former officer or employee of the executive branch of the Government, or any retired officer of the Armed Forces of the United States, under circumstances which would constitute improper conduct on the part of such former officer or employee or retired officer of the Armed Forces, within the meaning of section 103 or 104 of this title.

"SEC. 106. It shall be improper conduct for any party to a contested agency proceeding which has been designated for hearing, or his representative, or any person on his behalf, to consult with, advise, or make oral or written presentation to any agency member or employee concerning any question of law or fact involved in the proceeding, except upon notice and opportunity for all parties to participate.

"SEC. 107. (a) The head of any agency in the executive branch of the Government—

"(1) may, after notice and hearing, dismiss any officer or employee in his agency upon finding that such officer or employee has violated section 102 of this title;

"(2) may, after notice and hearing, bar the appearance before such agency, for such period of time as he deems proper, of any former officer or employee or any retired officer of the Armed Forces of the United States, upon finding that such former officer or employee or retired officer of the Armed Forces has violated section 103 or 104 of this title;

"(3) may require any person who is represented by another person in an appearance before such agency in connection with any proceeding or other matter to certify under penalty of perjury that such representative will not, by such appearance, violate section 103 or 104 of this title;

"(4) may, after notice and hearing, bar any person from negotiating or competing for any business with his agency, for such period of time as he deems proper, upon finding that such person has violated section 105 or 106 of this title; or

"(5) may, under regulations prescribed by the President of the United States, cancel any contract, loan, subsidy, rate, permit, or certificate which he finds, after notice and hearing, to have been procured as a result of improper conduct within the meaning of this title.

"(b) Whenever the head of any agency exercises the authority conferred by paragraphs (1), (2), (4), or (5) of subsection (a) he shall furnish a written statement of his findings to the person concerned and shall have such statement published in the Federal Register unless he determines that such publication would not be in the public interest."

SEC. 202. Reference in title I of the Administrative Procedure Act (other than in sections 1 and 2 thereof) to "this Act" shall be held to refer only to title I of such Act, as amended by this Act. References in any other law, or in any rule or regulation, in effect prior to the date of enactment of this Act, to the Administrative Procedure Act shall be held to refer only to title I of such Act, as amended by this Act.

[H.R. 7556, 86th Cong., 1st sess.]

A BILL To prohibit under certain conditions, for two years, the employment of a former employee of the Federal Government by any person, concern, or foreign government with which certain transactions were handled

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 284 of title 18, United States Code, is amended by inserting "(a)" immediately before "Whoever" and by adding at the end thereof the following:

"(b) It shall be unlawful for any person or concern knowingly, either directly or indirectly, to employ or to offer or promise to employ any person who as an employee of the Federal Government at any time in a two year period prior to

termination of his Federal employment has dealt with the claim against the Federal Government or business of such first-mentioned person or concern and who has terminated his Federal employment within two years previous to such employment or offer or promise of employment: *Provided, however*, That minor ministerial dealings shall not be included in this prohibition: *And provided further*, That the word "business" as used in this section relates only to business operations or transactions of the first-mentioned person or concern and excludes regulations or orders of general application and their effect on such business.

"(c) It shall be unlawful for any person who as an employee of the Federal Government at any time in a two year period prior to termination of his Federal employment has dealt with the claim against the Federal Government or business of a person, concern, or foreign government to accept or to promise to accept employment with such person, concern, or government within two years after such employee has terminated his Federal employment.

"(d) This section shall not apply to employment begun with any person, concern, or foreign government employer before the effective date of subsections (b) and (c) of this section nor to Federal employment by the Atomic Energy Commission or by the Securities and Exchange Commission.

"(e) Any person who violates subsections (b) and (c) of this section shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than one year, or both."

APPENDIX

SUMMARY OF PROVISIONS OF CONFLICT-OF-INTEREST BILLS

H.R. 2156 AND H.R. 1900

H.R. 2156 and H.R. 1900 propose the revision and reenactment of chapter 11 of title 18 of the United States Code, now captioned "Bribery and Graft," and now comprising sections 201 through 223. The revised chapter would include revisions of conflict-of-interest provisions presently contained in other chapters of title 18, and would bear the caption "Bribery, Graft, and Conflicts of Interest." As so revised, the new chapter would have 13 sections as follows:

Section 201. Bribery of public officials

Section 201 would combine 11 existing sections of title 18 (201-208, 211, 212, 213) which now deal in nonuniform fashion with the bribery of Government employees (201, 202), district attorneys and marshals (203), Members of Congress (204, 205), judges and judicial officers (206, 207, 208), and revenue and customs officers (211, 212, 213). The new section would for the first time define "bribery," "public official" and "official act" and would provide a uniform maximum penalty, striking equally at giving or receiving a bribe for any "official act" of a "public official."¹

Section 202. Bribery of witnesses

Proposed new section 202 would combine, broaden, and render uniform present section 209 and 210 dealing with the bribery of a witness. The new section would extend the statute to the bribery of witnesses before congressional committees and before Federal agencies; at present the statute applies only to bribery of witnesses before courts and officers authorized to take testimony.²

Section 203. Compensation to Members of Congress, officers and others, in matters affecting the Government

This section revises present section 281 of title 18 which prohibits Members of Congress and Federal employees from accepting compensation for services rendered before Federal agencies. The principal consequences of the revision are, first, to ban payment as well as receipt of the prohibited compensation; and second, to cover persons making agreements to receive such compensation before entry into public office or receiving such payment after leaving it.³

Section 204. Practice in Court of Claims by Members of Congress

This section would reenact without change present section 282 which prohibits Members of Congress from practicing in the Court of Claims.

¹ These provisions are discussed in pts. I and II of the staff report, pp. 65-75.

² Staff report, pts. I and II, pp. 75-76.

³ Staff report, pts. I and II, pp. 46-52, 53-54.

Section 205. Activities of officers and employees in claims against, and other matters, affecting the Government

Present section 283 prohibits Government employees from prosecuting claims against the United States. Proposed section 205 would extend this prohibition to include services in matters in which the United States is interested when performed before executive and independent agencies. A new paragraph exempts the uncompensated assistance to fellow employees who may be the subject of disciplinary proceedings.⁴

Section 206. Exemption; retired officers of the Armed Forces

This section combines the provisions of present sections 281 and 283 with respect to retired officers of the Armed Forces, members of the National Guard of the District of Columbia, and persons specially exempted by act of Congress. The section restates the three existing provisions of those sections by which retired officers remain subject to conflict-of-interest principles, i.e.:

(1) There is continued a lifetime prohibition against representing anyone in the sale of anything to the Government through the department in which he holds a retired status.

(2) There is continued a lifetime prohibition against the prosecution of claims against the United States involving subject matter with which the retired officer was directly connected during active duty. As in proposed section 205, the term "claim against the United States" is broadened to include "proceeding, contract, * * *" etc., "in which the United States is a party directly or indirectly interested."

(3) Present section 283 also requires retired officers, for a period of 2 years after their retirement, to refrain from prosecuting claims against the United States involving the department in whose service they hold a retired status. Proposed section 206 continues this requirement, but, as above, applies it to activity in connection with a broad range of Government-related matters and proceedings.

(4) The maximum penalty in the proposed section (\$10,000 and/or 1 year) is that of present section 283 which is less than that of section 281.⁵

In this connection the Chair notes that the Armed Services Committee of the House has commenced hearings on H.R. 9682, introduced by Representative Hébert, which deals primarily with conflict-of-interest problems involving retired commissioned officers. Our subcommittee is maintaining and will maintain close liaison with the Armed Services Committee in order to avoid the possibility of inconsistent action in this area.

Section 207. Disqualification of former officers and employees in matters connected with former duties or involving former agencies

This section broadens present section 284 which prohibits former Federal employees, within 2 years after termination, from prosecuting claims against the United States involving a subject matter directly connected with their employment or duties. It imposes (a) a lifetime disqualification with respect to all matters in which the United States is interested, and with respect to which the employee exercised responsibility, and (b) a 2-year disqualification with respect to other matters in which the United States is interested and which involved the employee's agency.⁶

Section 208. Interested persons acting as Government agents

This section amends and continues present section 434 of title 18 which prohibits a person with a pecuniary interest in a private business entity from representing the Government in a transaction of business with that entity. In addition to language broadening the concept of "transaction of business," the revised section expressly includes the right of reemployment in a private business as a right giving rise to a possible conflict of interest under the section, and also provides for the coverage of employees of Government-owned corporations.⁷

Section 209. Salaries of Members of Congress, Government officials, and employees payable only by the United States

This section would amend present section 1914 which prohibits private supplementation of Federal salaries by making clear that the section applies to

⁴ Staff report, pts. I and II, pp. 46-50, 52-53, 54-55.

⁵ Staff report, pts. I and II, pp. 55, 56.

⁶ Staff report, pts. I and II, pp. 58-59.

⁷ Staff report, pts. I and II, pp. 59-61.

legislative and judicial personnel coextensively with section 203. Provisions prohibiting receipt and payment respectively are rendered uniform.⁸

Sections 210-217

These sections would reenact without change sections 214-222 of chapter 11, title 18, of the United States Code.⁹

Section 218. Voiding transactions in violation of chapter; recovery by the United States

Present section 216 empowers the President of the United States to declare void any contract or agreement entered into in violation of its terms, which prohibit persons from giving, and Government personnel from receiving, any money or thing of value for procuring or aiding to procure a Government contract. Proposed section 218 expands the power of the President so that it will extend to Government licenses, grants, subsidies, and similar benefits consummated in violation of any of the provisions of chapter 11, including the conflict-of-interest laws whose inclusion in this chapter is proposed. The United States would be authorized in any such case to recover, in addition to prescribed penalties, whatever has been given or transferred in its behalf.¹⁰

In addition to the foregoing changes, H.R. 2156 would repeal a number of provisions of law rendered obsolete by its enactment.

H.R. 2157

H.R. 2157 would enact an overall code of ethical conduct to cover employees of all executive agencies as well as former employees and members of the public who deal with the agencies. The bill would provide administrative penalties, including (1) discharge, for employees who engage in unethical conduct; (2) suspension or disbarment of representatives who violate rules governing the activities of former Federal employees; and (3) disqualification for contracts and grants of private parties who engage in unethical practices in dealing with the Government.

In introducing this bill, I felt that although existing criminal laws, as revised by H.R. 2156, would adequately penalize more serious offenses, there remains a need for Congress to enact a code establishing clear and unambiguous minimum standards of honesty and fair dealing in the conduct of Government business, and authorizing decisive disciplinary action for violation, to be administered by agency heads.

Title I of H.R. 2157 contains a statement of legislative policy. Title II adds a new title II to the Administrative Procedure Act to be cited as the "Code of Official Conduct for the Executive Branch."

Section 102 of the new title establishes six categories of "improper conduct" for officers and employees in the executive branch of the Government, namely:

(a) To accept gifts from, discuss future employment with, or become unduly socially involved with persons outside the Government with whom they transact Government business or whose interests may be substantially affected by their performance of official duty;

(b) Use confidential Government information for personal gain;

(c) Divulge confidential information to unauthorized persons or release such information in advance of the time prescribed;

(d) Acquire or retain financial interests or engage in private activities or employments which conflict with proper performance of duty;

(e) Participate on behalf of the United States in any transaction which chiefly affects a person in whom they have an interest;

(f) Fail so to conduct their affairs as to avoid any reasonable suspicion or appearance of the violation of the foregoing principles.

Section 103 of the new title is aimed at former officers and employees of the Government, including retired officers of the Armed Forces of the United States. It makes it improper conduct for such a person ever to participate in a case or proceeding in which the United States is involved and which involves a subject matter concerning which such person had official responsibility, or officially acquired confidential information during his Government employment or active duty.

⁸ Staff report, pts. I and II, pp. 61, 62.

⁹ Staff report, pts. I and II, p. 77.

¹⁰ Staff report, pts. I and II, pp. 76-77.

Section 104 bars any such former officer, employee, or retired officer, within 2 years after termination of employment or retirement, from participating in cases involving the United States which also involve the agencies in which he was employed or assigned to active duty.

Section 105 is addressed to members of the public who deal with Government employees. It makes it improper conduct for such a person—

(a) to give gifts to, discuss future employment with, or become unduly socially involved with, a Government employee who transacts Government business with him or whose performance of duty may substantially affect his interests;

(b) persuade Government employees to divulge or prematurely to release confidential Government information; and

(c) knowingly to employ a former Government employee or retired officer of the Armed Forces under circumstances which would constitute improper conduct on their part within the meaning of section 103 or 104.

Section 106 makes it improper conduct for members of the public to make ex parte representations to agency members or employees regarding the issues in contested cases that have been assigned for hearing.

Section 107 empowers agency heads to impose administrative sanctions including the following:

1. Dismissal of any officer or employee upon a finding after notice and hearing that he has violated section 102;

2. Disqualification for appearance before the agency of any former officer or employee or retired officer of the Armed Forces upon a finding after notice of hearing that he has violated section 103 or 104;

3. Requirement that parties to agency proceedings who are represented by other persons certify that such representation will not violate section 103 or 104;

4. Disqualification for negotiating or competing for business with the agency of persons found after notice and hearing to have violated section 105 or 106; and

5. Cancellation, under regulations prescribed by the President, of any contract or other agency action found after notice and hearing would have been procured as the result of improper conduct within the meaning of the title.¹¹

H. R. 7566

H. R. 7556, introduced by Representative Bennett, of Florida, would prohibit, under certain conditions, for 2 years, the employment of a former employee of the Federal Government by any person, concern, or foreign government with which certain transactions were handled. Penalty for violation of the provisions of this bill would be a fine of not more than \$10,000 or imprisonment for not more than 1 year, or both.

The CHAIRMAN. Our first witness this morning is the distinguished Representative from Florida, our colleague, Representative Charles E. Bennett.

We are very glad to have you here.

STATEMENT OF HON. CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF THE STATE OF FLORIDA

Mr. BENNETT. Mr. Chairman and members of the committee, I deeply appreciate your kindness in allowing me to testify in behalf of H. R. 7556 and other legislative proposals which would improve the ethical conditions and procedures in the U. S. Government.

For a number of years I have been active in attempting to assist in the field of improving ethics in government and, as you know, Congress on July 11, 1958, passed a Code of Ethics for Government Service, which I and many other members of Congress had jointly worked

¹¹ The recommendations upon which H. R. 2157 is based appear in pts. III, IV, and V of staff report, pp. 65-70.

upon and introduced. In 1951 I introduced H.R. 4389 which was the original version of H.R. 7556, upon which I am primarily testifying today. In the intervening years since the 1951 introduction I have from time to time introduced similar bills making such refinements as seemed to be required or which were suggested to me by colleagues during these years.

The favorable report by the Comptroller General of the United States on H.R. 7556 includes the following language:

Our office heretofore has suggested the strengthening of the criminal laws on bribery of Government officers and employees to avoid loopholes now existing. Mainly, we have suggested a revision and broadening of 18 U.S.C. 284 and the enactment of adequate safeguards against connivance between Government employees and contractors for future employment. This measure, which would considerably broaden the scope of section 284 and make the employment prohibition applicable to both the employee and the employer, would tend largely to accomplish those objectives.

In commenting on certain other bills to revise 18 U.S.C. 284, we have cautioned against making the statute so restrictive that it might operate to deny to the Government the services of needed employees with special qualifications. This proposal, however, would impose only a 2-year employment prohibition and then only as to employers whose claims or business the employee had dealt with in the 2-year period prior to termination of his Government employment. Also, since the prohibition imposed by the bill, as we understand it, would apply only when the former Government employee "has terminated his employment," that is, to voluntary separations, it would not operate as an inequitable reemployment stumbling block in cases where Federal employees are involuntarily separated because of reductions-in-force, mandatory retirement, and the like.

We favor legislation which would accomplish the purposes of H.R. 7556. * * *

Now, one of the difficulties about enacting legislation in this field is that it is a field which goes further into personal behavior than the body of criminal and administrative law so far upon our statute books; hence, it is easy to desire to go a great distance to correct all conceivable abuses when cooler logic would tell us that it might be better and wiser to proceed firmly on sound ground for a short distance in a measure which can be passed and will be effective for the purposes designed. Still later, as popular acceptance may allow, and as the experience of a limited statute may encourage, it may be possible to enact further measures giving additional ethical strength to our Government. I maintain that H.R. 7556 is the limited type of statute which can be readily accepted, enacted, and utilized at this period in our history. I do not claim that it represents the best possible end result for some future day. It is a short statute, a relatively simple one, and one which has been the subject of quite a number of departmental reports in previous Congresses, at least in earlier versions of this measure. As this measure now stands before you, it is the result of trying to meet all previous objections to previous measures introduced in this field by myself and others when I had the opportunity to study the other reports. I sincerely hope that your committee may find it possible to approve this measure for enactment in this session of Congress.

Before I close my remarks I would like to compliment this committee and the chairman, members, and staff thereof, for their active work in this field, which I am sure will be a strengthening force in our Government. I understand that H.R. 2156 and H.R. 2157 are bills upon which I might properly comment and I take this opportunity to express the feeling that these bills contain many fine provisions for strengthening the ethical content of our Government. There

is one matter of terminology with regard to H.R. 2157 that I would like to mention and present my views upon: and this is that I believe that section 101 at line 12 on page 2 is not necessary to the act and may have the unnecessary and undesirable result of somewhat detracting from the Code of Ethics for Government Service passed in the 85th Congress. This same observation applies to so much of the title of this section as is contained in lines 5, 6, and 7 of page 2 as it is now drafted. I would suggest that perhaps the title could be reworded to read something like: "Prohibited Conduct in the Executive Branch." I suggest some change along this line because it does not appear to me that any great benefit is obtained by using the words "code of official conduct" while I can see some detriments to the Code of Ethics for Government Service if we now enact a provision which may throw some doubt as to whether the Code of Ethics for Government Service has been superseded or abandoned. Even though the Code of Ethics for Government Service has no penal provisions in it, it has been considered to have been helpful in the Government service, and there is no reason to suspect that its beneficial effects will be minimized in the future; in fact, they can be expected to increase. I believe there is no need for Congress to pass legislation conflicting with its earlier enactment and that desirable features of the currently discussed legislation can be passed without in any way detracting from or overriding the Code of Ethics for Government Service.

The CHAIRMAN. Mr. Bennett, may I say there was no intention on the author's part to supersede your general statute, upon which you are to be greatly complimented and which is called the Code of Ethics for Government Service.

We are not jealous of the language. We will certainly take into consideration your suggestion to entitle the proposed enactment "Prohibited Conduct in the Executive Branch."

Is that what it is?

Mr. BENNETT. I just suggest that it might be "Prohibited Conduct in the Executive Branch." That is just a possibility.

As I see it, there is a place for details, specific rules like those involved in the currently discussed legislation, and there is a place for the previously passed code of ethics. Those rules currently being considered are not suitable for framing or for being printed in wallet-card form, or for other distribution that would keep them in readily available form for Federal employees. On the other hand, rules of a more detailed nature than the code of ethics may well be needed and I can see the value of supplementing the code in this way. That the code of ethics passed by Congress last year has had a practical uplifting effect on ethics in Government is supported by the following statement in a letter recently sent to the House Post Office and Civil Service Committee from Civil Service Chairman Harris Ellsworth:

Passage by the Congress of House Concurrent Resolution 175, 85th Congress, establishing a uniform code of ethics in the Federal service, has been a major contribution in this field. It has done much to stimulate awareness of responsibility for employee conduct, and to emphasize the importance of their duties * * *.

In conclusion, I again express my gratitude to this committee for allowing me to present my views on legislation now pending in this session and I sincerely hope that the committee will find it possible

to report out H.R. 7556 or some similar measure or measures for strengthening ethical procedures in our Government.

The CHAIRMAN. As you know, Mr. Bennett, these bills are really a sort of first step, subsequent to the passage of your general code of ethics.

Mr. BENNETT. Thank you, sir. Thank you very much.

The CHAIRMAN. Any questions?

Mr. ROGERS. Suppose a man should be an employee of the Internal Revenue Service, connected with the Income Tax Division.

Now, upon his termination of employment, do you say that he shouldn't practice before the Internal Revenue Service for 2 years?

Mr. BENNETT. If he handled a particular case of a particular person, he could not then for 2 years be employed by that person.

Mr. ROGERS. Well, suppose he was supervisor of the division that handled, say, Florida cases, and while he wouldn't necessarily be passing on it, but he was a supervisor when one of these cases had been in the division. Would you prohibit him then from appearing before the department?

Mr. BENNETT. He would not be prohibited from appearing. If he had not himself made the policy or handled the case specifically, I wouldn't see that he should be prohibited from being employed by someone who once had business before the agency.

Mr. ROGERS. Although he would, during that period of time, have been a supervisor.

Mr. BENNETT. It seems to me general supervision not related specifically to the case would not prohibit him. The bill provides for exclusion of the prohibition in "regulations or orders of general application."

Mr. ROGERS. In other words, your legislation goes only to him who may have represented the Government as an employee and thereafter on resignation or termination of his service, you would say that for a period of 2 years that he could not be employed by a person with whom he had transacted business for the Government.

Mr. BENNETT. It only prohibits when the employee had something to do with a particular business matter in the preceding 2 years.

If there was something that he did 3 years before, it would not be a basis for prohibition.

Mr. ROGERS. All right, then, assuming that he did handle a tax case and the Government hasn't concluded it in 2 years, would he then be permitted to appear at the end of 2 years and be an applicant in the matter?

Mr. BENNETT. Yes; as far as this statute is concerned. This is a very limited statute.

But may I say it is better to pass some statute that is going to do some good than to talk in general about a tremendous field in which we never get around to enacting any legislation at all.

Mr. ROGERS. Thank you.

Mr. HOLTZMAN. Mr. Chairman, I want to say that I was one of the lucky recipients of the "ten commandments" or the credo of a public servant, and while many Members of Congress are deeply interested in this program, I know of no one who is more dedicated than the gentleman from Florida, who is a very dear friend of mine.

Mr. BENNETT. Thank you. The friendship is certainly reciprocated.

The CHAIRMAN. Any other questions?

Mr. MEADER. I would like to say that I think this raises a very important question. It is important that the Federal Government have access to qualified talent from private life.

Does the gentleman feel that this might prevent people accepting Government employment because it would somewhat limit their scope of activities after the Federal employment ceased?

Mr. BENNETT. Well, of course it would. The purpose of the law is to exclude some people from doing certain types of work with the Federal Government.

Obviously, it would have some effect in that field.

But may I call to your attention again that I think this is probably the narrowest bill in this field that has been introduced. It is a very narrow bill and it would be a little difficult to envision making a narrower bill which would affect fewer people and at the same time accomplishing any objective.

I think if you are going to do anything in this field and you feel that you can't go very far in it, this would be the bill that you would probably be interested in.

Mr. MEADER. I suppose one of the inducements for a person to accept public employment might be to become an expert in a particular field, and if he were to be denied the advantage of that experience and expertise that he developed in the Government for a period of at least 2 years after cessation of his employment, it might discourage him from accepting employment in the first place, thus depriving the Government of needed services.

Mr. BENNETT. I agree. That is the reason this law was drawn so narrowly, so a person could do what many lawyers appropriately do today.

I used to practice law in a firm that had a great deal of Internal Revenue business, and the company usually had several lawyers who had come with them from the Internal Revenue, and these people were not dissuaded from coming into the firm.

As a matter of fact, most ethical lawyers wouldn't have allowed, in our firm, the handling of a matter which had been handled by that man before he had come with us, just as a matter of ethical principles.

And I may say a 2-year thing would not have been the limit of their prohibition. They would have prohibited back to the time the man went into the Internal Revenue Service.

As I understand the ethical background of the firm with which I used to practice law, I don't think they would have allowed a man to handle any case that he had handled as a Federal employee. And this law doesn't go that far.

Mr. MEADER. Might I ask the gentleman what is the source of the phraseology in his bill H.R. 7556—was this originated with the gentleman himself or did he have some assistance, maybe from the General Accounting Office or some other agency, either of the executive branch or the Congress, in the preparation of the language of this bill?

Mr. BENNETT. I didn't bring all of my files with me I have rather extensive files on this subject. But my recollection is that the bill that I originally drafted in 1951 or thereabouts was a bill which did not go specifically to this section; didn't amend this particular section.

It set out a general policy, and then the departments, as they reported on this bill, suggested that they liked the idea of the legislation, but preferred having this amendment on this particular section of the statutes, and so then I took it up with the legislative counsel as to how to do this, accomplish the objectives of the bill which I originally introduced, but establish a new statute and apply that to the statute which they preferred to have amended.

The legislative counsel gave me that language. I may say two or three sessions ago in Congress someone who chairmanned the activity in this field referred this legislation to an infinite number of agencies. I think there must have been 20-some-odd reports from different agencies that came in.

So in the preparing of this particular bill, H.R. 7556, I read all the old reports and tried to meet every objection they had in those old reports in this legislation, and that is the way in which it got into this present form.

In other words, I studied the language that they said they didn't like and substituted this language that they thought might be better. This is sort of a result of the departmental reports which have been heretofore filed.

Mr. MEADER. You use the term "employment" in section (b). You say "shall be unlawful for any person or concern knowingly, either directly or indirectly, to employ or to offer or promise to employ any person."

Would "employment" be broad enough, as used in section (b), to cover the engaging of an attorney?

Mr. BENNETT. Yes, sir; in my opinion it should be. But, of course, it only relates to the things in which there has been some specific business transaction.

This is not a general prophylactic prohibition of anybody having been in the Federal Government not doing a similar work when they get out. It is only a prophylactic protection against somebody in a particular negotiation getting out and going to work for the person on the other side of this negotiation.

Mr. MEADER. I wasn't quite clear that it contemplated that the prohibited employment or offer of employment applied only during the period of 2 years following the cessation of his employment by the Federal Government.

Should it not also apply to a person who is currently employed by the Federal Government? Shouldn't the period also include employees who have not terminated their services with the Federal Government?

Mr. BENNETT. I think there are already on the statute books statutes which cover this.

In other words, a person used in a dual capacity, representing two people at the same time, would find penal sections right now which would get him.

I may be wrong about that, but I believe a person at the present time would run into trouble with existing statutes if he was representing some large corporation or some tax problem for an individual and also presenting the matter on the part of the Government.

Now, I feel that the statutes presently are sufficiently strong to cover this, although if they are not, I think that would be a thing to add to this statute.

Mr. MEADER. I am thinking of the situation where an employee of the Government in some agency isn't even thinking about leaving the Government service, but he is doing business with some business concern, and this business concern offers him a job, not to handle the thing that he is dealing in with this business concern, but something else.

Now, your bill wouldn't cover that situation, as I gather it.

Mr. BENNETT. It would not be criminal, providing that he did not handle, while a Federal employee, a substantial business matter between the employer and the Government. My bill says: "Minor ministerial dealings shall not be included in this prohibition."

The CHAIRMAN. Mr. Bennett, my bill, H.R. 2156, is different from yours in this regard. Section 207 of my bill broadens the present section 284, which prohibits former Federal employees within 2 years after termination from prosecuting claims against the United States involving a subject matter directly concerned with their employment or duties. It would impose, first, a lifetime disqualification with respect to all matters in which the United States is interested and with respect to which the employee exercised responsibility, and, second, a 2-year disqualification with respect to other matters in which the United States is interested and which involved the employee's agency.

The section follows the general principles enunciated in the Canons of Professional Ethics of the American Bar Association.

It might be well here now to quote canon 6, canon 36, and canon 37.

They read as follows:

Canon 6: The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

Canon 36: A lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity.

A lawyer, having once held public office, or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ.

Canon 37: It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment, and extends as well to his employees; and neither of them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information.

Do you care to comment on that?

Mr. BENNETT. Yes, I would.

I didn't remember the Canons of Ethics word for word, like you referred to, but even earlier in this conversation somebody raised the question of what ordinary legal procedures would be, and I in a very off-the-cuff manner tried to say something along the line that you have stated, and I think those principles are fine principles, and as far as I am concerned, I would prefer the ultimate enactment of the bill you have introduced because it is broader.

The only problem about it is that I doubt very seriously that Congress would enact such broad language.

As far as I, myself, am concerned, I think your bill states wonderful principles. I simply question whether or not Congress will ultimately be able to grind out such broad legislation. If it can, I certainly would expect to support it.

I don't think there is anything in there that I don't agree with. The only question is: Can such broad legislation be passed? I tried for many years to get this Code of Ethics passed. There was much soul searching and gnashing of teeth, even over this little Code of Ethics that had no penal provision in it at all. We had hearing after hearing in various sessions of Congress, and people wanted to quibble about periods here and commas there. But it probably made it better legislation in the long run. It would be difficult to pass a very broad piece of legislation in this short session of 1960.

Maybe it would be better to try something more limited and get it passed. Everybody loves to pass his own legislation. You are the man who ought to pass the legislation, as you are chairman of the committee, and you are holding the hearings and doing the bulk of the work.

I have no pride of authorship. We are all trying to do what is best for our country. I like the provisions of your bill. I just question whether or not the provisions of your bill could become law in 1960 or even in 1961.

The CHAIRMAN. You just want to be practical, as the saying goes. You want to be assured that the blanket is broad enough and long enough to cover this.

Mr. BENNETT. One thing that makes me feel this way is that I have read the reports of the various departments on legislation that you and I have introduced. Although it says repeatedly that they like the idea of the legislation, they have found a thousand ways to say they don't like the specifics, and yet, in many instances, they don't give you constructive suggestions as to what specifics they would like.

My feeling is if we can enact something in our day, like Mr. Webster said, "Let's do something in our day," and then wait for another session of Congress to broaden it or get closer to the more full attainment of what we would like to have in the end.

Mr. HOLTZMAN. Mr. Chairman, if I might.

Under your bill, Mr. Bennett, if there is a change in the status of an employee by reason of a reduction in force, or some involuntary separation, does the 2-year prohibition still remain?

Mr. BENNETT. Well, I must be very frank with you. When I drafted the legislation I didn't have in mind that I was making such a concession. When I drafted it I thought it applied to everybody. But the Comptroller General tells me that one of the reasons they like my bill is because it doesn't go as far as I thought it did.

I am willing to settle for that. In other words, if it doesn't go as far as I thought it did, and they are still willing to buy this bill, and they seem to be reluctant to approve one that is broader, as I say, I would rather take the smaller step.

If it should not apply to a reduction in force in this initial enactment, that suits me all right. But I think it ought eventually to cover reductions in force in a subsequent statute.

Mr. ROGERS. On your bill H.R. 7556, page 2, line 15, you say—

has dealt with the claim against the Federal Government or business of a person, concern, or foreign government, to accept or the promise to accept employment with such person, concern, or government, within 2 years after such employee has terminated his Federal employment.

Now, does that apply, say, to the business of a person?

What do you mean by that?

Mr. BENNETT. Well, originally when statutes were first passed in this field, about the only applicability this kind of statute had was the case where there was a claim against the Government.

Since that time we have had greatly expanded military and tax matters and the New Deal and the Fair Deal and the Eisenhower Deal, and there have been all kinds of innovations in Government. The Government is involved in lots of kinds of businesses, and, in fact, they overwhelm the picture. Claims are a small part of the activity of the Government at the present time, and so this new language brings this statute down to date.

Mr. ROGERS. In other words, if I were a procurement agent in the Department of Defense, buying airplanes, and I should sever my relations with the Government, then within a 2-year period, if within the 2-year period I had accepted employment from a company that is selling airplanes, where I was the agent, I would then be guilty.

Mr. BENNETT. Yes; you put your finger on a state of facts which is probably the most illustrative of the need for this legislation.

With an expenditure of \$40 billion a year by the Federal Government in defense alone, many billions of dollars in the field of procurement are handled, and this offers a tremendous opportunity for people to act as negotiators for the Federal Government in procuring things, and then turning around and becoming salesmen for the people that they used to procure from, and that is one of the greatest dangers that this bill will eliminate.

Mr. ROGERS. Then, directing your attention to line 13, at page 2, you say, "employee."

Well, now, is an admiral in the Navy an employee of the Federal Government, within that meaning?

Mr. BENNETT. That is the purpose of this legislation.

I have introduced a bill of a narrower scope which relates only to military personnel, and this has been referred to the House Armed Services Committee, of which I am a member.

However, my interpretation of H.R. 7556 is that it covers admirals and privates also.

Mr. ROGERS. And also generals?

Mr. BENNETT. Generals and everybody else.

The narrower bill, which is H.R. 7555, is before the committee, of which I am a member, the House Armed Services Committee, and that relates only to military personnel.

Mr. ROGERS. Thank you.

The CHAIRMAN. Thank you very much, Mr. Bennett.

We always welcome your presentations.

Mr. BENNETT. I appreciate your kindness to me, not only as the chairman of this committee, but also personally.

The CHAIRMAN. Our next witness is my neighbor from New York, the distinguished Representative from New York, Steven B. Derounian.

**STATEMENT OF HON. STEVEN B. DEROUNIAN, A REPRESENTATIVE
IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF
THE STATE OF NEW YORK**

Mr. DEROUNIAN. Mr. Chairman, I am very happy to be here to give you my views on H.R. 1900.

It is not absolutely necessary that my bill be passed, but any one like it which will do the job is satisfactory.

H.R. 1900 was introduced on January 9, 1959, as a result of the Goldfine hearings.

I think, to be absolutely fair, a bill of this sort should apply to Members of Congress. I believe in consistency. You can't have one rule for the executive and judicial branch, and one rule for the legislative branch.

Mine is an all-inclusive bill. The country should know what the "boundaries" are, and the individuals concerned, at their own peril, will be crossing these boundaries if they so choose to do.

The CHAIRMAN. You and I have the same bill.

Mr. DEROUNIAN. I am proud that I have the bill that the chairman has.

The CHAIRMAN. Pride is on my side.

Mr. ROGERS. Suppose I accepted an invitation to attend a banquet and had a free meal—would that be bribery?

Mr. DEROUNIAN. No; it would not.

Mr. ROGERS. Well, where is the line of demarcation passed?

Mr. HOLTZMAN. Would it be a gratuity?

Mr. ROGERS. Suppose I get a free meal. I am trying to find out if a fellow invites me in and wines and dines me, and then says, "Look, I've got a bill up there, and how about it"—is that a gratuity or is that a bribe?

Mr. DEROUNIAN. It is hospitality on a reasonable scale, which the courts have recognized as such, and it would not apply in this case.

My bill would not make that illegal.

Mr. ROGERS. Now, where does the hospitality end? How far can it go in value?

Mr. DEROUNIAN. Well, that is a matter of degree, and you cannot spell a matter of degree out in explicitness of a bill of this sort, unless you would say "anything of value," which would mean even a 1-cent stamp.

Mr. MEADER. Mr. Chairman, I would like to call Congressman Derounian's attention to page 3 of his bill, H.R. 1900, line 11. I had a little difficulty in checking what followed, and that is—

Commission, collusion in, or allowance or facilitation of any fraud on the United States, or commission or omission of any act in violation of his lawful duty.

Within the definition of that paragraph, which is a definition of an official act, which would seem to be a decision, inaction, and so on, this "aid in committing, collusion in," and so on, I look in section 201 of existing law, where the definition and the offense are all run together, and it appears to me, and I wish the gentleman would look at it and see whether I am correct or not, that whoever lifted the language out of the existing section 201 copied a little bit too far down and put in the offense itself, rather than just the definition of what is an official act.

Mr. DEROUNIAN. You would suggest striking out "aid in committing"?

Mr. MEADER. I think it confuses the meaning of a definition of an official act. It doesn't seem to me to be a part of it.

Mr. DEROUNIAN. Mr. Meader, I am amenable to any corrections that the committee may feel is necessary, but I must state that I want to keep this broad coverage in the bill.

Mr. MEADER. I see the value of defining these three elements—what is a bribe, what is a public official, and what is an official act. But I had difficulty in reading the definition of “official act” to bring those phrases in lines 11 through 14 on page 3 of H.R. 1900 within proper definition of an official act. It appeared to me maybe there was a slip in draftsmanship.

Mr. DEROUNIAN. Perhaps there was.

Mr. MEADER. Thank you.

The CHAIRMAN. Thank you very much.

(The full, prepared statement of Mr. Derounian is as follows:)

PREPARED STATEMENT OF HON. STEVEN B. DEROUNIAN, A MEMBER OF CONGRESS
FROM THE SECOND DISTRICT OF NEW YORK

Mr. Chairman, members of the committee, I appreciate this opportunity of appearing on behalf of my bill, H.R. 1900, which seeks to strengthen the criminal laws relating to bribery of public officials, graft, and conflicts of interest, by establishing appropriate clarification of these terms and setting forth commensurate penalties.

The American people expect the strictest conduct from persons in Government, whether they are elected, appointed, or career employees. It is also noteworthy that the great bulk of public servants are honest, conscientious, ethical.

It is, however, a matter of serious concern that from time to time we are faced with the shocking situation of a Government employee or an elected official who has violated the trust placed in him. Nevertheless, Congress, up to the present time, has done little to more clearly define the differences between inefficiency and corruption, faulty judgment and corruption, or to strengthen the laws where it is indicated that there is corruption.

There is much confusion and even more misunderstanding as to what constitutes “influence” and what is completely proper and appropriate intercession by an elected official in behalf of his constituent.

Not only do we need these determinations in order to properly judge the conduct of elected and appointed officials as well as employees in Government, but this clarification is due these same public servants so that they may determine their own conduct. They will offer protection not only to the American people, but to the Government official, as well.

Briefly, my bill defines bribery and attempted bribery of a public official and provides a fine or imprisonment for the guilty. It provides similar penalty for any Member of Congress, officer, agent, or employee of the Federal Government who accepts compensation in matters affecting the Government, or who practices in a court of claims, or who, for a period of 2 years after his last Government service knowingly acts as an agent in any matter in which the United States is a party. It provides fine and imprisonment also for any such Member of Congress, officer, agent, or employee of the Federal Government who accepts any supplementation of his salary.

I am very much encouraged by the interest of the committee in my bill and hope that this and other legislation strengthening the laws relating to bribery, graft, and conflicts of interests, will be reported on.

The CHAIRMAN. I wish to place into the record at this point reports of the following agencies concerning various bills before us:

Department of Labor, Comptroller General of the United States, Federal Reserve System, Civil Service Commission, General Services Administration, Office of the Postmaster General, Department of State, Veterans' Administration, Housing and Home Finance Agency, Federal Trade Commission, Small Business Administration, Atomic Energy Commission, Bureau of the Budget, National Labor Relations Board, and the Department of Defense.

(The reports of the various Government agencies are as follows:)

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, February 18, 1959.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary, U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: This is in further response to your request for a report on H.R. 2156, a bill "To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes."

The measure would rewrite substantial portions of the chapters of title 18, United States Code, which deal with bribery and conflicts of interest. It appears that, with two exceptions, the proposed changes in these criminal laws would not raise questions in areas of direct concern to this Department. Our observations respecting these two questions are set forth, for your consideration, in the attachment to this report.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

JAMES T. O'CONNELL,
Under Secretary of Labor.

ATTACHMENT TO DEPARTMENT OF LABOR REPORT ON H.R. 2156

I

Section 205 of the bill would prohibit Government officers and employees, among other things, from rendering uncompensated aid or assistance to anyone in connection with any matter of any nature before an agency of the Government. The provision of existing law which would be replaced (section 283 of title 18), so far as pertinent, merely prohibits these individuals from aiding or assisting in the prosecution or support of any claim against the United States otherwise than in the proper discharge of their official duties.

The proposal provides that section 205 would not apply to uncompensated action by an officer or employee to aid or assist a person who is the subject of disciplinary proceedings which may result in his removal or suspension from Federal employment. It is a common practice for representatives of Government employee unions and organizations to render assistance to their members in situations of this character, and the measure recognizes the propriety of these services. However, it is also a common practice for these representatives to counsel and aid their fellow workers in various other matters involving their employment, such as their rights to employee benefits conferred by the Federal Employees' Compensation Act and other provisions. Where this is done without compensation it is unobjectionable and can be conducive to better employee relationships.

In relation to the Federal Employees' Compensation Act, the practice has certain advantages which are a direct benefit to employees, particularly if officials of local unions and organizations are well informed concerning the law and regulations. In such circumstances, employees may secure needed advice and help without incurring the expense of attorney fees and gain a better understanding of their rights and obligations under the law which tends to facilitate the adjudication of their claims.

We believe that, if the proposed new section 205 is to recognize the propriety of tendering this kind of assistance in one area, that of disciplinary proceedings, consideration should be given to also permitting such help in the employee benefit area under proper safeguards.

II

Section 207 would broaden the present provisions of section 284 of title 18 in a number of respects. Among other things, the proposed amendment would make it a criminal offense for any person formerly employed in the Government, within 2 years after his last period of employment has ceased, to act as agent or attorney in, or to assist anyone in connection with, any governmental matter of any kind involving the agency in which he was employed.

With respect to ex-employees, the proposal would greatly broaden the scope of existing law, which only prohibits them, within 2 years after their Govern-

ment service has ceased, from prosecution, or acting as counsel, attorney, or agent in the prosecution of, claims against the United States involving a subject matter directly connected with their former employment or performance of duty.

It appears likely that the above provision of the bill would raise serious problems in connection with the obtaining of persons willing to perform certain types of temporary service. For example, the special industry committees for Puerto Rico, the Virgin Islands, and American Samoa appointed by the Secretary of Labor under the Fair Labor Standards Act are composed of disinterested persons representing the public, the employees in the particular industry, and the employers in that industry. While the service of these committee members constitutes only intermittent and casual employment of brief duration, their appointment would appear to induct them into Federal service as Government employees and hence bring them within the scope of section 207. To place the proposed prohibition upon individuals in this and corresponding categories, barring their participation in any matter involving the Department of Labor for a period of 2 years, would make it extremely difficult to obtain persons willing to perform services of this nature and seems wholly unwarranted in view of the type of the services which such people render.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, February 18, 1959.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: This is in further response to your request for this Department's views on H.R. 2157, a bill which would be cited as the "Government Ethics Act of 1959."

This measure would prescribe a "Code of Official Conduct for the Executive Branch," designed to cover various conflict of interest situations involving Federal personnel, former personnel, and other persons doing business with the Government, including official conduct as well as certain aspects of their personal affairs which may result in situations involving possible conflicts of interest. The agency head would be empowered, after notice of hearing, to dismiss any employee found to have violated the proposed code and to bar from doing business with the agency former employees and other persons similarly found to have violated the standards applicable to them.

We favor appropriate measures to deal with problems of conflict of interest involving Government employees and persons doing business with the Government. This Department has issued rules which provide standards and controls for the official conduct of its officers and employees, including areas where conflict of interest might arise. We believe these rules provide adequate safeguards on the subject insofar as this Department is concerned.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

JAMES T. O'CONNELL,
Under Secretary of Labor.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C. March 16, 1959.

HON. EMANUEL CELLER,
Committee on the Judiciary
House of Representatives

DEAR MR. CHAIRMAN: Your letters of February 4, 1959, acknowledged February 5, request our comments on (1) H.R. 2156, "To strengthen the criminal laws relating to bribery, graft, and conflicts of interests, and for other purposes," and (2) H.R. 2157, "To implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government."

The bill, H.R. 2156, would effect a general revision of certain of the provisions of title 18 of the United States Code relating to bribery, graft, and conflicts of interest in Government. The apparent purpose of the bill is to simplify and

strengthen the present provisions relating to such matters by making such provisions apply uniformly in the proscribed areas, by reducing unnecessary duplication, and by supplying needed omissions. Its provisions would apply to both direct and indirect corruption without distinction as to the corruptive means employed and would include the briber as well as the bribed official. Several present provisions granting exemption from the application of some of the present provisions in certain cases would be repealed.

Criminal statutes involve matters which come under the jurisdiction of the Department of Justice, not our office. Hence, on such of our comments as pertain to those matters we would defer to the views of the Attorney General.

Our office heretofore has suggested the strengthening of the criminal laws on bribery of Government officers and employees to avoid loopholes now existing. Mainly, we have suggested a revision and broadening of 18 U.S.C. 284 dealing with the prosecution of claims against the Government by its former officers and employees, and the enactment or adequate safeguards against connivance between Government employees and contractors for future employment. The definition of the term "bribe" contained in H.R. 2156 and the provisions which would replace 18 U.S.C. 284—new section 18 U.S.C. 207—would appear to accomplish those objectives.

In commenting on certain other bills to revise 18 U.S.C. 284, we have cautioned against making the statute so restrictive that it might operate to deny to the Government the services of needed employees with special qualifications. This proposed revision, however, would permanently prohibit former Government employees from representing anyone in any matter in which the United States is a party only when the matter involves any subject matter concerning which he had any responsibility while employed by the Government; and it would prohibit former Government employees for a period of 2 years after their last employment or service ceased, from representing anyone in any matter in which the United States is party only when the matter involves any agency in which he was employed or assigned to duty. Thus, the permanent prohibition is analogous to that contained in Canons 6, 36, and 37 of the Canons of Legal Ethics applicable to attorneys in the field covered by the section and we see no reason why other employees should not be subject to the same prohibition. Since the second prohibition applies only to agencies in which the former employees concerned were employed or assigned to duty, leaving them free to deal with all other agencies, we do not believe such prohibition will unduly hamper the Government in recruiting needed personnel.

The necessity for a revision of the present criminal provisions as they relate to congressional matters appears to be a matter especially for the consideration of the Congress and on this point we do not offer any opinion.

Certain actions of retired officers of the Armed Forces (Regular and Reserve) regarding negotiation of contracts and sales to the Government would be made a crime punishable by fine and imprisonment. No change, however, is proposed in the existing laws providing certain forfeitures of the retired pay of regular officers of those forces for such actions. See 5 U.S.C. 59c and 10 U.S.C. 6112b. If the provisions of H.R. 2156 are enacted we believe it would be appropriate for Congress to reconsider the retired pay forfeiture provisions to determine whether the provisions should apply to Retired Reserves as well as retired Regulars and to provide the same restrictions on retired pay for all the Armed Forces in the proscribed areas.

Those provisions of the bill relating to salaries of Members of Congress, Government officials, and employees apparently are not intended to modify or supersede the provisions of section 19 of the Government Employees Training Act, Public Law No. 85-507, approved July 7, 1958, permitting without regard to 18 U.S.C. 1914 the payment by certain private sources to employees in training of certain emoluments and expenses incident to the training authorized by the act. Hence, if this bill is to be enacted, section 19 of the training act should be amended to cite the correct criminal code section.

The bill would authorize, but would not require, the President, or his designee, to declare void, and to rescind transactions in violation of the bribery and conflict-of-interest statutes and would permit the recovery of the money or thing transferred or delivered on behalf of the United States incident to the voided transaction. It would appear that a final conviction under the criminal statutes would be a condition precedent to validly invoking such provisions. In that view and on the premise that the proscribed conduct in any degree is detrimental to the interest of the United States, we suggest that the transactions be declared void by the statute as is presently the case under 18 U.S.C. 431, relating to Government contracts entered into by Members of Congress.

Subject to the foregoing suggestions, we favor legislation along the lines of H.R. 2156.

The bill H.R. 2157 would amend the Administrative Procedure Act to declare that certain actions by executive-branch Government employees are improper conduct and to authorize the head of any agency in the executive branch to dismiss any employee upon a finding of improper conduct. The declarations of improper conduct contained in the bill cover generally the same ground as that covered by the criminal provisions contained in H.R. 2156.

The provisions of H.R. 2157 are so comprehensive that they might be applied as completely isolating officers and employees in the executive branch of the Government from that community of the Nation with which the Government does business and as requiring the dismissal of any employee for any association with any person in that community. Whether such a broad proscription is necessary is a matter of policy for Congress to determine. We note, however, that the heads of the executive departments and agencies now have power to make any disciplinary rules or regulations deemed necessary to prevent improper conduct by their employees and to enforce such rules or regulations. In our view one of the best means of protecting the public interest against questionable activities of Government officers and employees is the constant and unwavering vigilance on the part of those responsible for the administration of the respective departments and agencies. In such circumstances, and to provide some area of flexibility in the administration of H.R. 2157, we suggest that consideration be given to whether its provisions should not be relaxed at least to the extent of giving the head of the department or agency the authority to determine in the light of its own operations what extensions beyond the restrictions imposed by the criminal statutes may be appropriate for his department or agency.

If H.R. 2157 or a bill along its general lines is to be enacted we do not see any sound reason why such bill should not apply to employees in the legislative and judicial branches as well as to those in the executive branch of the Government.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, August 4, 1959.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: Your letter of July 22, 1959, acknowledged July 23, requests our comments on H.R. 7556.

Section 284 of title 18, United States Code, provides that former employees of the United States, including certain commissioned officers, who within 2 years after their employment or service has ceased, prosecute or act as counsel, attorney, or agent for prosecuting, any claim against the United States involving any subject matter directly connected with which such persons were so employed or performed duty, shall be fined not more than \$10,000 or imprisoned not more than 1 year, or both.

This bill would amend section 284 to subject to the same penal sanctions: (1) Any person or concern who, within 2 years after a Federal civilian employee has terminated his employment, knowingly, either directly or indirectly, employs or offers or promises to employ, any such employee who at any time in a 2-year period prior to termination of his Federal employment, has dealt with the claim or business of such person or concern, minor ministerial dealings and regulations or orders of general application to business excepted; and (2) any Federal civilian employee who, within 2 years after he has terminated his Federal employment, accepts or promises to accept employment with a person, concern, or foreign government whose claim or business he dealt with at any time during the 2-year period prior to termination of his employment. Also, the bill would exempt from the present prohibition of section 284 and the new prohibitions which would be added, employments begun with persons, concerns, or foreign governments prior to the effective date of the proposed amendments and would permanently exclude from all the prohibitions of that section Federal employment by the Atomic Energy Commission and the Securities and Exchange Commission.

Criminal statutes involve matters which come under the jurisdiction of the Department of Justice rather than our Office and our comments are made on that basis.

Our Office heretofore has suggested the strengthening of the criminal laws on bribery of Government officers and employees to avoid loopholes now existing. Mainly, we have suggested a revision and broadening of 18 U.S.C. 284 and the enactment of adequate safeguards against connivance between Government employees and contractors for future employment. This measure, which would considerably broaden the scope of section 284 and make the employment prohibition applicable to both the employee and his employer, would tend largely to accomplish those objectives.

In commenting on certain other bills to revise 18 U.S.C. 284, we have cautioned against making the statute so restrictive that it might operate to deny to the Government the services of needed employees with special qualifications. This proposal, however, would impose only a 2-year employment prohibition and then only as to employers whose claims or business, the employee had dealt with in the 2-year period to termination of his Government employment. Also, since the prohibition imposed by the bill, as we understand it, would apply only when the former Government employee "has terminated his employment," that is, to voluntary separations, it would not operate as an inequitable reemployment stumbling block in cases where Federal employees are involuntarily separated because of reductions in force, mandatory retirement, and the like.

The term "business" is very comprehensive and is subject to different interpretations depending upon the particular situation involved. See, generally, volume 5, Words and Phrases, Business. Hence, in order to insure compliance with the legislative intent in that respect, it may be advisable to include a provision in H.R. 7556 defining the term for purposes of the bill.

The need for exempting from the present provisions of section 284 violations of such provisions committed prior to the effective date of this bill and for permanently excluding from the prohibitions of the section, employees of the Atomic Energy Commission and the Securities and Exchange Commission, is not apparent. Unless such actions are clearly necessary from the standpoint of the Government's interest, we doubt their advisability.

If the provisions of this bill making it a crime for employers in the prescribed situation to employ former Government employees who have dealt with their claims or business and, also, making it a crime for those employees to accept such employment, became law, it is difficult to visualize a case where prosecutions under the present provisions of section 284 would any longer be necessary or attempted. Consequently, if this bill is to receive favorable consideration, your committee may wish to give consideration to repealing the present provisions except as to cases arising prior to such repeal.

We favor legislation which would accomplish the purposes of H.R. 7556. See in this regard, the comments in our letter of March 16, 1959, B-103987, to you about H.R. 2156, which, among other things, also proposes a revision of 18 U.S.C. 284. We note that a bill, H.R. 7555, which would impose employment prohibitions on former officers and enlisted men in the Armed Forces and former civilian employees of the Department of Defense, substantially identical with those which would be imposed on civilian employees by H.R. 7556, presently is pending before the Committee on Armed Services, House of Representatives.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, March 20, 1959.

HON. EMANUEL CEELE,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of February 4, 1959, requesting an expression of the Board's views on H.R. 2156 "To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes." The Board has followed with much interest the study which your committee has made of this general subject and is in full accord with the objectives of the bill.

The bill would rearrange provisions of existing law in a more orderly manner, make certain technical changes, and attempt to clarify and expand certain provisions of existing law which, in practice, have been difficult to interpret.

The Board considers that the provisions in section 1 of the bill relating to bribery, compensation to Government officials otherwise than as provided for by law, the prosecution by Government officials of claims against the United States, and interested persons acting as Government agents are desirable. No comments are offered with respect to the proposed new sections 204 and 206 of the Criminal Code since they in no way affect the Board of Governors.

The new section 207 embodies an amendment of the present section 284, relating to disqualification of former Government officers and employees in matters connected with their former duties. The first paragraph of the new section prohibits an ex-Government employee from ever representing a nongovernmental interest in matters concerning which he had some responsibility while employed by the Government. As applied to the Board of Governors, this provision, for example, apparently would forbid a former employee from acting on behalf of a member bank in connection with a request for approval of a branch application if, while employed by the Board, the individual had some responsibility with respect to that specific application. If this is the correct construction of the paragraph, the Board would have no objection to its favorable consideration. However, it is assumed that the paragraph would not be construed to forbid an employee of the Board who may have had some general responsibility in the processing of branch applications from later representing a bank in connection with such an application if while employed by the Board, the individual had no responsibility with respect to the specific branch application.

The second paragraph of section 207 would forbid an ex-Government employee, for a period of 2 years after termination of his Government employment, from assisting anyone in connection with any matter directly or indirectly involving the Government agency where he was formerly employed. This broad prohibition under the language of the paragraph would seem to apply whether his responsibility while employed by the Government involved the specific subject matter or not. The prohibition would apply to all Government employees regardless of the nature of their duties or the degree of their responsibility for actions taken by the Government agency. It is the view of the Board that, while some expansion of these criminal provisions along the lines indicated by the bill may be desirable, the language of the proposed provision would be unduly rigid and severe, would give rise to difficult problems of interpretation, and might seriously handicap the Board in recruiting qualified employees.

Finally, the Board wishes to comment on the proposed new section 218 under which the President or, under regulations prescribed by him, the head of a Government agency, might declare void and rescind any action taken by the agency if in connection with the action, there had been a violation of any of the conflict-of-interest provisions. In actual practice, it is believed that this provision could lead to most serious administrative difficulties. For example, if, under the Bank Holding Company Act, the Board takes some action involving a large number of corporate entities and years later it is found that there had been a violation of one of the conflict-of-interest provisions, then everything that had been done as a result of the Board's action might have to be undone. Conceivably and very probably, rights of innocent persons such as stockholders, borrowers, and depositors might be adversely affected, not to mention the difficulties which could be encountered in the process of "unscrambling" complicated corporate relationships. The Board, of course, would favor legislation designed to prevent anyone from profiting as a result of a criminal act. However, if the above interpretation of the proposed new section 218 is correct, then the Board believes that the provision in its present form should not be approved.

Sincerely yours,

C. CANBY BALDERSTON, *Vice Chairman.*

BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., March 20, 1959.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of February 4, 1959, requesting an expression of the Board's views on H.R. 2157 "to implement the

criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government."

The bill would amend the Administrative Procedure Act by setting out in a new title II those actions which would be considered as improper conduct on the part of Government employees, ex-Government employees, and private parties. Sanctions are provided for those who engage in such conduct.

The Board is in accord with the purposes of the bill and has no specific comments to make except with respect to certain provisions, including sections 103, 104, and 107(a) (5) of the proposed new title, which are in substance the same as certain provisions contained in H.R. 2156 with respect to which the Board has already reported to your committee.

Section 103 prohibits an ex-Government employee from ever representing a nongovernmental interest in matters concerning which he had some responsibility while employed by the Government. If applied to the Board of Governors, this provision, for example, apparently would forbid a former employee from acting on behalf of a member bank in connection with a request for approval of a branch bank application if, while employed by the Board, the individual had some responsibility with respect to that specific application. If this is the correct construction of the section, the Board would have no objection to its favorable consideration. However, it is assumed that the section would not be construed to forbid an employee of the Board who may have had some general responsibility in the processing of branch applications from later representing a bank in connection with such an application if, while employed by the Board, the individual had no responsibility with respect to the specific branch application.

Section 104 would forbid an ex-Government employee, for a period of 2 years after termination of his Government employment, from assisting anyone in connection with any matter directly or indirectly involving the Government agency where he was formerly employed. This broad prohibition under the language of the section would seem to apply whether his responsibility while employed by the Government involved the specific subject matter or not. The prohibition would apply to all Government employees regardless of the nature of their duties or the degree of their responsibility for actions taken by the Government agency. It is the view of the Board that, while some provision along the lines indicated by this section of the bill may be desirable, the language of the section in its present form would be unduly rigid and severe, would give rise to difficult problems of interpretation, and might prove to be a serious handicap in the recruitment of qualified employees.

The Board also questions the desirability of so sweeping a provision as that contained in section 102(a) which declares it to be improper conduct for an employee of the Government to discuss or consider his future employment with any person outside the Government with whom he transacts business on behalf of the United States, or whose interests may be substantially affected by his performance of official duty. A corollary provision is contained in section 105(a) and is directed at private persons who discuss or consider future employment of a Government employee who transacts business with him on behalf of the United States or whose performance of official duties may substantially affect his interests.

Section 107(a) (5) would authorize the head of an agency, under regulations prescribed by the President, to cancel any action taken by a Government agency involving improper conduct whether on the part of a Government employee, an ex-Government employee, or a private party. In actual practice it is believed that this provision could lead to most serious administrative difficulties. For example, if, under the Bank Holding Company Act, the Board takes some action involving a large number of corporate entities and later it is found that there had been improper conduct, then everything that had been done as a result of the Board's action might have to be undone. Conceivably, and very probably, the rights of innocent persons such as stockholders, borrowers, and depositors might be adversely affected not to mention the difficulties which could be encountered in the process of "unscrambling" complicated corporate relationships. The Board, of course, would favor legislation designed to prevent anyone from profiting as a result of improper conduct. However, if the above interpretation of the proposed section is correct, then the Board believes that the provision in its present form should not be approved.

The Board understands that Congressman Bennett has discussed with you the advisability of amending H.R. 2157 so as to indicate that the bill is to implement and supplement the code of ethics provided in H. Con. Res. 175, 85th Congress, and not to supplant or overrule it. The Board would have no objection to an amendment along these lines.

Sincerely yours,

C. CANBY BALDERSTON, *Vice Chairman.*

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., February 12, 1960.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: You have asked for our comments on H.R. 2156, H.R. 2157, and H.R. 7556, all relating to conduct and conflicts of interest of Federal employees. H.R. 2156 is a comprehensive revision of the criminal laws relating to bribery and conflict of interest. It would tighten present laws and close a number of loopholes. H.R. 2157 is a companion bill supplementing the criminal provisions of H.R. 2156 with civil penalties. H.R. 7556 adds several subsections to section 284 of title 18 of the United States Code.

We completely agree that major revisions are needed in the conflict-of-interest laws and that more emphasis needs to be placed on civil penalties in enforcement. The hearings held by Subcommittee No. 5, the staff reports made to the subcommittee during the 85th Congress, and the bills you are now considering are major steps forward in this area.

We recognize the difficulties inherent in drafting legislation in this area. Confidence of the public in the integrity of the Government is essential to self-government, and appearances as well as actual honesty are important. Equal claims must be treated equally. The use of public office for private gain must be prevented, and policymaking functions must be restricted to the established governmental channels.

At the same time our system of government requires recruitment of highly capable people from nonpublic employment for relatively short-term service. In addition, the traditional freedom of American citizens in choice of employment must not be lost sight of. The interests of the Government in recruiting and in justice to its employees requires that no more restrictions be placed on the activities of present and former Government employees than are necessary to protect the integrity of the Government.

There is added to these problems the very subjective nature of the whole subject of ethics and conduct. Proper conduct in any given situation is so dependent on a sensitivity to the factors in the situation as well as appearances, that dealing in this area is attempting, in effect, to legislate good judgment and high ethical standards. It is extremely difficult to work out language that will prohibit the reprehensible or undesirable conduct that we are aiming at without prohibiting other completely innocuous behavior.

We agree completely with the objectives and general approach of your bills but do feel that in certain sections the language needs to be refined to avoid unintended results. Members of our staff will be glad to cooperate with your staff on working out these problems.

As you know, the Committee of the Association of the Bar of the City of New York has been working on this subject. Although we have seen a preliminary draft of their study and the draft bill suggested in their report, we have not yet seen the report and the bill in its final form. We feel sure that you will want to have available that group's report and recommendations before final action is taken by the committee. Although there is a difference in approach between the bar group's draft bill and the bills under consideration, the end sought appears to be identical.

We are advised that the Bureau of the Budget has no objection to the submission of this report.

By direction of the Commission.

Sincerely yours,

ROGER W. JONES, *Chairman.*

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., February 12, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington D.C.

DEAR MR. CHAIRMAN: In response to your request of February 4, 1959, the General Services Administration submits herewith its comments on H.R. 2156, "To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes."

The subject bill revises and consolidates within chapter 11 of title 18 of the United States Code the related provisions of law now found in various chapters of title 18, as well as in title 5. In addition, the bill prescribes penalties in a number of instances which are considerably greater than under existing law.

GSA favors legislation to provide greater uniformity in the laws relating to bribery, graft, and conflict of interest. In this regard, we note that uniform definitions would be prescribed in section 201 of title 18 which clarify the meaning of the term "bribe," the classes of persons covered, and the official acts which are prohibited. We endorse, also, the second paragraph of proposed section 205 which exempts from prohibition the uncompensated assistance given to a fellow employee who may be subject to disciplinary proceedings.

In view of the many functions of GSA involving contracts with private firms for the procurement, transportation, and sale of property, we are particularly concerned with the need for maximum security against unethical practices. Accordingly, GSA favors enactment of H.R. 2156.

The general character of this legislation makes it impracticable to estimate the probable cost or savings to GSA which might accrue.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

FRANKLIN FLOETE, *Administrator*.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., February 12, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of February 4, 1959, requests the views of the General Services Administration on H.R. 2157, "To implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government."

The General Services Administration for many years has prescribed the GSA Standards of Conduct for its own employees. In addition, the Code of Ethics for Government Service (House Con. Res. 175, 85th Cong., 2d sess.) also has been applied to GSA employees by agency regulation.

H.R. 2157 sets forth in detail the specific acts which employees are prohibited from committing, and provides in section 107(a) (1) that the head of an agency may, after notice and hearing, dismiss any officer or employee of his agency for violations of these provisions. In the absence of any express language to the contrary, we assume that the provisions of the Veterans' Preference Act and the Lloyd-LaFollette Act, with respect to the removal of employees, will apply in any dismissals effected under section 107(a) (1) of the proposed act.

It is suggested that line 21 of page 6 of the bill be modified by inserting after the word "that" the phrase "to the best of his knowledge," so that an individual may not be required to certify to matters outside his knowledge or control.

While we believe the present GSA regulations serve the same objectives as the subject bill, we would interpose no objection to the proposed legislation, subject to both the assumption and the suggestion noted above.

The general character of this legislation makes it impracticable to estimate the probable cost or savings to GSA which might accrue.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

FRANKLIN FLOETE, *Administrator*.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., February 12, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of July 22, 1959, requested the views of the General Services Administration on H.R. 7556, "To prohibit, under certain conditions, for 2 years, the employment of a former employee of the Federal Government by any person, concern, or foreign government with which certain transactions were handled."

H.R. 7556 would amend section 284 of title 18, United States Code, relating to disqualifications of former officers and employees in matters connected with former duties, by adding four new subsections. Briefly, the bill would make it a crime for a person to accept, or to promise to accept, employment within 2 years after termination of his Federal employment if, within the 2 years prior to termination of such Federal employment, he dealt with a claim against the Federal Government by the one offering the employment. It also would provide criminal sanction on the part of the one employing, offering, or promising to employ such person. The bill would not have a retroactive effect and would not apply with respect to a person employed by the Atomic Energy Commission or by the Securities and Exchange Commission.

The subject bill would amend one of a number of statutes scattered throughout the United States Code dealing with past or present Government employees and commonly known as the conflict-of-interest statutes. While the general objective of H.R. 7556 is a commendable one, it unfortunately represents a piecemeal approach to the broad problem that underlies the conflict-of-interest statutes.

The bill is subject also to the objection that it would unduly penalize the Government employee. Thus, it would apply against a Government employee even though his connection with a claim had been that of resisting such claim strenuously. A Government employee who loses his position as a result of a reduction in force without any fault on his own part would be unjustly penalized by the provision of this bill. Finally, the fact that the bill contains exemptions for employees of such diverse activities as those of the Atomic Energy Commission and the Securities and Exchange Commission is an indication that the underlying principle enunciated by the bill is not one of general applicability.

General Services Administration is opposed to measures such as H.R. 7556 which are not based upon a comprehensive review and analysis of the interrelationships among the so-called conflict-of-interest statutes.

It is not anticipated that the subject bill would have any financial effect upon the General Services Administration.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

FRANKLIN FLOETE, *Administrator.*

OFFICE OF THE POSTMASTER GENERAL,
Washington, D.C., February 12, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for reports on H.R. 2156, a bill to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, and H.R. 2157, a bill to implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government.

This Department has no recommendations or suggestions to submit with respect to this legislation.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to the committee.

Sincerely yours,

J. M. MCKIMBIN, JR.,
Acting Postmaster General.

DEPARTMENT OF STATE,
Washington, February 12, 1960.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CELLER: Reference is made to your letter dated February 4, 1959, requesting an expression of the Department's views with respect to H.R. 2156, "To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes." Your letter was acknowledged by the Department on February 9, 1959.

From the standpoint of the foreign relations of the United States, the Department of State perceives no objections to the enactment of the proposed legislation. However, certain of the provisions of the bill are so broad and sweeping as to have a possible adverse effect upon officers and employees of the Department of State and other agencies of the Government. For example, the proposed section 207 would broaden the present section so as to include not only the prosecution of "claims against the United States involving any subject matter directly connected with which" one was employed by or performed duty with the Government but also "any proceeding, contract, * * * controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested involving any subject matter concerning which" an employee or officer "had any responsibility" while employed or assigned to duty. It would also remove the present 2-year limitation and extend to activities performed at any time following the cessation of the employment. The practical effect of such broad and sweeping provisions would be to prevent officials like the chief legal officer of a Government department or agency from resuming the practice of law at any time with any firm that might be engaged in advising concerning a private matter in which there was indirect Government interest, if the general subject matter was one for which he had some responsibility while in Government service. The language is also broad enough to apply to the heads of the executive departments with respect to any matter that was handled in their departments during their periods of service.

The Department believes such an extension of the present law unnecessary to adequately protect the interests of the Government and, moreover, is of the view that it would seriously impair the Government's opportunity to employ qualified individuals in positions of responsibility.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, JR.,
*Assistant Secretary
(For the Secretary of State).*

DEPARTMENT OF STATE,
Washington, February 12, 1960.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CELLER: Reference is made to your letter dated February 4, 1959, requesting an expression of the Department's views with respect to H.R. 2157, "To implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government."

From the standpoint of the foreign relations of the United States, the Department of State perceives no objections to the enactment of the proposed legislation. However, it is not clear from the language of the bill whether it is intended to replace or supplement the Code of Ethics for Government Service adopted by Congress in H. Con. Res. 175, 85th Congress. Since there appears to be no conflict between H. Con. Res. 175 and H.R. 2157, one would suppose that the latter is intended to supplement the former, but it is believed that the bill should make it clear that that is what is intended. Moreover, certain of the provisions of the bill are so broad and sweeping as to have a possible adverse effect upon officers and employees of the Department of State and other agencies of the Government. Although H.R. 2157, unlike H.R. 2156, would not change the present provisions of the criminal code but would rather implement such provisions, certain parts of the proposed code of ethics go far beyond anything that

is prohibited by the criminal code. For example, the proposed section 103 would make it improper conduct to represent persons in connection with or participate in the preparation of not only "claims against the United States involving any subject matter directly connected with which" one was employed by or performed duty with the Government, as prohibited by 18 U.S.C. § 284, but also "any proceeding, contract * * * controversy or other matter, in which the United States is a party or directly or indirectly interested and which involves a subject matter concerning which" an officer or employee "had any official responsibility or officially acquired confidential information" while an employee assigned to duty. The impropriety of the conduct would not be limited to the 2-year period prescribed in 18 U.S.C. § 284 but would extend to activities performed at any time following the cessation of the employment. The practical effect of such broad and sweeping provisions would be to discourage officials like the chief legal officer of a Government department or agency from resuming the practice of law at any time with any firm that might be engaged in advising concerning a private matter in which there was indirect Government interest, if the general subject matter was one for which he had some responsibility or concerning which he acquired some confidential information while in Government service. The language is also broad enough to apply to the heads of the executive departments with respect to any matter that was handled in their departments during their periods of office. While it is true that none of the acts in question would be made criminal offenses by the proposed legislation, a former officer or employee who engaged in them would not only run the risk of public and congressional criticism but also, under the provisions of the proposed section 107(a)(4), could be barred from forever doing business with the agency involved and, under the proposed section 107(a)(5), could have the fruits of his labors nullified by the Government.

The Department believes that the enactment of a code of ethics going so far beyond the provisions of the present criminal laws can hardly be considered an implementation of such laws and is not necessary to adequately protect the interests of the Government. Moreover, it is the Department's view that the enactment of such legislation would seriously impair the Government's opportunity to employ qualified individuals in positions of responsibility.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, JR.,
Assistant Secretary
(For the Secretary of State).

VETERANS' ADMINISTRATION,
Washington, D.C., February 15, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: The following report on H.R. 2156 and H.R. 2157, 86th Congress, is submitted as requested.

H.R. 2156 is designed "to strengthen the criminal laws relating to bribery, graft, and conflicts of interest." The principal provisions include (1) a prohibition of payments to, and receipt by, Government employees of compensation for services rendered before Government agencies; (2) a lifetime disqualification of former employees to act in any matter concerning which they had any responsibility while employed and a 2-year disqualification of such former employees to act in any matter involving any agency in which they were employed; and (3) uniform provisions prohibiting bribery of public officials and extending such provisions to witnesses before congressional committees and Government agencies. It would also make more nearly uniform the penalties applicable to various violations.

H.R. 2157 proposes an overall code of ethical conduct covering employees of all Government agencies, all former employees, and members of the public dealing with the agencies. It would authorize the agencies to take specific administrative disciplinary action upon a finding that such unethical conduct has taken place, including discharge of employees, disbarment of former employees to act as representatives before the agencies, and disqualification of members of the public to compete for any agency business.

The apparent intent of the proposals is to assure the Federal service of maximum security against unethical practices on the part of its employees, its former employees, and members of the public dealing with the Government, without at the same time undermining the dignity of the Federal service or making such service repugnant to able individuals. The Veterans' Administration is, of course, in accord with this basic objective. We have reservations, however, with respect to certain provisions of each bill which we feel are too broad and would create problems not intended.

H.R. 2156 proposes to revise 18 U.S.C. 205 to regulate activities of officers and employees in claims against and other matters affecting the Government. It contains a broad prohibition against Federal officers and employees aiding or assisting in the prosecution or support of any claim against the Government or any proceeding of the types enumerated in which the United States is a party or directly or indirectly interested. The only exceptions would permit such action, if uncompensated, in connection with disciplinary proceedings and in the proper discharge of official duties would permit participation in a claim against the Government. On the other hand employees would be barred from advising and assisting other employees in connection with their entitlement to file claims for retirement benefits, compensation for injuries, and so forth—unless it was their official duty to do so—and all employees would be precluded from advising and aiding others in matters not involving a claim, e.g., rights to appeal from various administrative actions and to have a hearing on a supposed grievance. It is our belief that employees should be permitted to aid other employees in achieving their rights as employees without risking the penalties of this section, and that the section accordingly should be modified to specifically except such actions.

The bill (in proposed section 207) would broaden the present 2-year prohibition against former officers and employees acting as agent or attorney in prosecuting any claim against the Government involving any subject matter with which such person was directly connected while an employee. The new section would impose a lifetime prohibition as to matters for which a person had any responsibility while employed and a 2-year prohibition as to any matters involving the agency that employed him.

While we are aware that this is intended as a safeguard and recognize the desirability of this basic objective, we think the provision is so sweeping in effect that it would result in undue hardship to former employees without corresponding benefit to the Government. The Veterans' Administration has many employees, such as contact representatives, field examiners, and so forth, who by virtue of the nature of their employment acquire a broad overall knowledge of our benefit programs. Because of their experience they voluntarily assist friends and neighbors in filing claims for benefits following their retirement or separation from the agency, with no thought of personal gain. Under the proposed section 207 they could not do this without subjecting themselves to penalty. Similarly, former Veterans' Administration employees now working for service organizations would be prohibited from employment in the prosecution of veterans' claims.

The Veterans' Administration program of guaranteeing and making loans on a nationwide basis has to some degree served as a training ground for many young employees in various aspects of mortgage lending and related fields. Former employees today serve builders, mortgage companies, insurance companies, and others in such areas as appraising, credit underwriting, architectural drawing, landscaping, engineering, and the like. We consider it in the interest of the Veterans' Administration to have them in private business, since they know our procedures and policies and facilitate our negotiations with private builders and lenders. Under section 207, many of these persons would be forever barred from helping their employers in their dealings with us.

Since employment in our loan guaranty program has been considered as an excellent training ground, we have been able in our employee recruitment activities to secure persons with considerable technical skill and ability. In the light of the proposed restrictions, persons of that caliber who contemplate future employment with private industry would certainly hesitate to accept employment in our loan guaranty program. Under the circumstances we feel that this section is unduly restrictive and should not be enacted in its present form.

The proposed revision of 18 U.S.C. 209 would prescribe a criminal penalty for any person who receives any salary, or any contribution to or supplementation of salary, for or in connection with his service as a Federal employee from any

source other than the United States, a State, or a municipal government. This is in conflict with section 19(a) of the Government Employees Training Act (Public Law 85-507) which, as implemented by section 2(g) of Executive Order 10800, promulgated January 15, 1959, authorizes the head of an agency to approve the acceptance of contributions, awards, and payments from certain organizations to employees when made incident to training in nongovernment facilities.

H.R. 2157 would add a code of official conduct for the executive branch to the Administrative Procedure Act. The bill's declaration of purpose states in part that it is designed to implement the criminal laws relating to bribery, graft, and conflict of interest. Sections 103 and 104 of the proposed code would implement the provisions of 18 U.S.C. 207 (as proposed by H.R. 2156 and discussed above).

Section 103 would declare it to be improper conduct for any former officer or employee of the Government at any time to represent any person or to participate in the preparation of any claim or other matter involving a subject concerning which he had any official responsibility during his Government employment. Section 104 would similarly consider it to be improper conduct for any former Government officer or employee, within 2 years following his employment, to engage in any such activities involving the agency that employed him. The comments with respect to 18 U.S.C. 207 (as proposed by H.R. 2156 above) are equally applicable to these provisions. While we realize that the provisions are intended as safeguards against wrongdoers, we feel that they are so broad as to constitute a hampering—undoubtedly not intended—of the legitimate pursuits of others.

The proposed code is consistent with the code of ethics for Government service adopted by the Congress on July 11, 1958 (H. Con. Res. 175, 85th Cong.), except that the proposed code would be limited to employees of the executive branch of the Government. The code of ethics contains general principles of ethical conduct, while the proposed code of official conduct lists specific acts which would be subject to penalty.

Subject to the foregoing comments, the Veterans' Administration would not object to the enactment of H.R. 2156 and H.R. 2157.

The Bureau of the Budget advises that there is no objection to the submission of this report to the committee.

Sincerely yours,

SUMNER G. WHITTIER,
Administrator.

HOUSING AND HOME FINANCE AGENCY,
Washington, D.C., February 15, 1960.

Re H.R. 2156 and H.R. 2157, 86th Congress.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Agency on the above two bills, relating to bribery, graft, conflicts of interest, and ethics in Government. Enclosed is a list of the specific programs of our Agency that would be affected by the legislation and an analysis stating our views concerning its provisions. The effect of the legislation would be generally the same in all our programs, with differences in degree noted in the analysis.

We have been informed by the Bureau of the Budget that this report is without objection insofar as the Bureau is concerned.

Sincerely yours,

NORMAN P. MASON, *Administrator.*

HOUSING AND HOME FINANCE AGENCY PROGRAMS AFFECTED BY H.R. 2156 AND
H.R. 2157, 86TH CONGRESS

A. FEDERAL HOUSING ADMINISTRATION

1. Property improvement loan insurance (title I, National Housing Act): Insurance of short-term loans requiring no mortgage security, for financing repairs and improvements to existing structures.

2. Insurance of mortgages (titles II and VII, National Housing Act) : Various housing programs, including 1- to 4-family sales housing and multifamily rental housing. Special programs for housing for the elderly, military housing, cooperative housing, housing in urban renewal areas, and housing for families displaced by urban renewal or other governmental action.

3. Yield insurance (title VII, National Housing Act) : Authority to insure investment returns on rental housing (program inactive).

B. FEDERAL NATIONAL MORTGAGE ASSOCIATION (TITLE III, NATIONAL HOUSING ACT)

1. Secondary-market operations : The purchase and sale of FHA and VA residential mortgages, primarily with money borrowed on the private market. Mixed ownership operation with users (as well as U.S. Treasury) owning stock in FNMA.

2. Special assistance functions : The purchase with Treasury-borrowed money of special types of Government-insured mortgages such as those on military housing, cooperative housing, urban renewal housing, and housing for the elderly.

3. Liquidation program : Mortgages bought under previous programs are also being managed and liquidated.

C. URBAN RENEWAL ADMINISTRATION

1. Urban renewal program (title I, Housing Act of 1949) : Federal financial assistance to local public agencies for the redevelopment, rehabilitation, and conservation of slum, blighted, or deteriorating areas, subject to certain limiting conditions such as conformance of an urban renewal project to a locally and federally approved urban renewal plan for the project area, and the provision of adequate relocation housing for those displaced from the urban renewal area. Available assistance includes loans for carrying out urban renewal activities and grants paying up to two-thirds of the cost of planning, acquiring, clearing, and preparing land, and providing necessary facilities, less the proceeds from disposition of land in the urban renewal project area.

2. Demonstration program (sec. 314, Housing Act of 1954) : Federal grants to public bodies to pay up to two-thirds of the cost of demonstrating improved methods and techniques for the prevention and elimination of slums and urban blight.

3. Urban planning assistance program (sec. 701, Housing Act of 1954) : Grants for up to 50 percent of the cost of planning assistance to State planning agencies for aid (a) to cities of under 25,000 population, (b) areas which have suffered from a major disaster, and (c) areas which are threatened with rapid urbanization through impact of Federal installations. Also, similar 50-percent grants (a) to official State, metropolitan, or regional planning agencies for planning work in metropolitan and regional areas, (b) to cities and counties of over 25,000 population for planning for areas which have suffered substantial damage from major disasters, and (c) to official governmental planning agencies for federally impacted areas, regardless of size.

D. PUBLIC HOUSING ADMINISTRATION

1. Low-rent public housing program (United States Housing Act of 1937) : Federal loans and annual contributions to locally owned and operated low-rent public housing. The PHA also provides technical assistance in the development and operation of the projects and determines whether the low-rent character of the projects is being maintained in compliance with statutory requirements.

2. Liquidation of the emergency housing program (under delegation of authority from the Housing and Home Finance Administrator) : This program is substantially completed, the principal remaining function being to service the purchase-money obligations received as proceeds from the sale of the property.

E. COMMUNITY FACILITIES ADMINISTRATION

1. College housing program (title IV, Housing Act of 1950) : Loans to colleges and universities to finance student and faculty housing and related services and facilities, and loans to hospitals to finance housing for student nurses or interns.

2. Advance planning of non-Federal public works (title II, Housing Amendments of 1955) : Advances to State and local governments for the advance planning of needed public works.

3. Public facility loan program (sec. 702, Housing Act of 1954): Loans to local governments, primarily smaller communities, to finance construction of needed public works, primarily water, sewer and gas-distribution systems.

4. Liquidation programs: Expired programs still subject to administrative action are the Alaska housing loan program (Public Law 52, 81st Cong.), prefabricated housing loan program (Housing Act of 1948, Public Law 849, 76th Cong.), RFC public agency loan program (Reorganization Plan No. 1 of 1957), Lanham Act war public works program (Public Law 849, 76th Cong.), and the defense community facilities program (Public Law 139, 82d Cong.).

HOUSING AND HOME FINANCE AGENCY VIEWS ON H.R. 2156, AND H.R. 2157, 86TH CONGRESS

H.R. 2156 is designed to strengthen the criminal laws regarding bribery, graft, and conflicts of interest, and to consolidate them into title 18, chapter 11, of the United States Code. A related bill, H.R. 2157, would establish a code of official conduct for the executive branch, to be administratively enforced.

A codification and strengthening of laws on these subjects may be appropriate, and it is certainly desirable for the Congress and the executive branch to review periodically all possible steps which would help assure integrity in all Government operations. The Department of Justice has, of course, had far more experience than this Agency in enforcing laws relating to this subject and can, therefore, better advise the Congress concerning the basic merits of the legislation. However, the Housing Agency does appreciate the opportunity to discuss the effect which some of the provisions of the bills would have on our operations.

This Agency believes that the new sections 205 and 207 in H.R. 2156 and sections 103 and 104 in H.R. 2157 are so restrictive and far reaching as to create substantial problems in its operations. Under section 205, a Federal employee who aids or assists anyone before any department, agency, officer, or commission in connection with any proceeding, contract, claim, or other matter in which the United States is a party or directly or indirectly interested would be guilty of a criminal offense. Literally construed, this provision would seem to make a criminal offense of many of the routine functions regularly performed by employees of this Agency, including its constituents. Apparently, employees would be prohibited under threat of criminal penalty from advising a small community on how to take advantage of Federal loans and grants designed to help achieve slum clearance or urban renewal, or from advising a nonprofit organization on special Federal Housing Administration mortgage insurance aids designed to provide relocation housing for persons displaced by urban renewal activities or to provide housing for the elderly. Similarly, employees would apparently be prohibited from assisting builders or lenders in taking advantage of especially favorable governmental terms designed to encourage investment in military housing of cooperative housing. In fact, employees answering routine letters of inquiry pertaining to program operations would frequently be covered by the sweeping language of this provision.

The provision contains an exception in favor of an employee "taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary proceedings * * * to present his defense or to be reinstated or restored to duty." It would seem that it also should be possible for Agency fiscal or personnel officials to take the initiative in informing employees or their heirs of certain legitimate claims against the Government. For example, a widow of an employee should be assisted in preparing forms relating to pension or death benefits, and employees should be informed of rights to accrued leave or retirement benefits.

The first paragraph of section 207 would make it a criminal offense for any former Federal employee to act as agent or attorney for or to assist anyone "in connection with any proceeding, contract, claim, controversy * * * or other matter in which the United States is a party or directly or indirectly interested involving any subject matter concerning which he had any responsibility while so employed or assigned to duty." In section 103 of H.R. 2157, a similar provision would make such action improper conduct. This would disqualify the former employee from appearances before the agency for an indefinite period and would subject any contract, loan, or other arrangement involved to cancellation.

These provisions would appear to prohibit any former employee from ever knowingly representing anyone in any matter in which the United States is in-

voiced and in which the former employee had even a remote responsibility. Such a result would be unfair to ex-Government employees, and would in many instances discourage persons from applying for Federal positions as well as from leaving the Federal service. Undoubtedly, the bill is correct in prohibiting a former Federal employee from using information obtained in the Federal service on behalf of persons whose interests are adverse to the Federal Government.

However, the language of the bill would also apply to an entirely different type of case in some of our programs. For example, technical personnel in our urban renewal program frequently assist State and local bodies in working with the Federal Government to achieve common objectives respecting the elimination of slums and blight through such means as clearance, rehabilitation, code enforcement, and planning to avoid future adverse land uses. A major benefit to the program results when technically trained personnel are free to gain experience in working for different Federal, State, and municipal agencies. There is generally much less danger of a conflict of interest arising when a Federal technical employee accepts employment with a municipal urban renewal agency than there is when, for example, a former Government purchasing agent accepts employment with a supplier to his former agency. There might be a substantial conflict of interest, even in the case of the planner who changes employment, if a controversy were pending or likely to arise between the Federal and municipal agencies. However, the prohibition in the statute relates to "any proceeding, contract, * * * or other matter," and not merely to controversies.

The second paragraph of section 207 would make it a criminal offense for a former Federal employee, within 2 years of such employment, to act as agent or attorney for or to assist anyone "in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, and which involves any agency in which he was so employed or assigned to duty." Parallel language is contained in section 104 of H.R. 2157. These provisions seem also to be too sweeping, since they would cover untold numbers of transactions with which the former employee could not possibly have been involved. To illustrate, an individual formerly employed in a minor capacity in the war housing liquidation program of the Public Housing Administration would be prohibited for a period of 2 years from aiding or assisting any public body or private person in connection with the PHA-aided low-rent housing program. Moreover, if the Housing Agency is regarded as one agency for this purpose, the former employee of the PHA would be prohibited from aiding anyone in connection with an application to the Federal Housing Administration for mortgage insurance or from aiding anyone in preparing an application to the Community Facilities Administration for a public facility loan or a college housing loan. Yet the former employee could have had no possible official contact with the work of the FHA or the CFA, and, indeed, his violation of the statute could be an unknowing one.

Similarly, section 207 would appear to preclude a former employee of the Urban Renewal Administration from accepting employment within a 2-year period with any local public agency, city or State, having a contract with the Housing Agency. In fact, it seems possible that under the first paragraph of section 207 such an employee would in some instances be permanently barred from such subsequent employment. It should be noted that the bill makes no provision for administrative discretion in such matters.

This agency is especially concerned about the application of these conflict-of-interest provisions to the employment of former employees of the URA and the PHA by State and local governments and their instrumentalities, since in both the urban renewal and public housing fields there are acute shortages of skilled professional people. The recruitment of qualified personnel is in any case a difficult task. Imposition of the restrictions on subsequent employment outside the Federal Government contemplated by H.R. 2156 and H.R. 2157 would impede our ability to attract professional staff in these fields. This would be particularly true in the case of professions such as planning, where the main employment opportunities are in the Federal, State, and local governmental units. In fact, the Housing Agency has seriously considered developing a program for the exchange of personnel with such units to aid in the training of technicians in fields of common interest.

In many of its relations with private industry, too, this agency is not dealing in adversary proceedings, but seeks the cooperation of private business for worthwhile social and economic ends. It has been the experience of the FHA,

for example, that former employees are often helpful in bringing about better understanding between Government and private industry. While it is important that such employees do not obtain special advantages, we feel that they should generally be permitted to represent private industry before this agency except on matters about which they acquired confidential information during their Government employment.

In addition, the penalty provided for violation of these provisions would present special difficulties for our mortgage insurance programs. Section 218 of H.R. 2156 allows transactions in violation of chapter 11 to be voided by the agency head. Section 107(a)(5) of H.R. 2157 similarly treats transactions "procured as a result of improper conduct within the meaning of this title." Participation in FHA programs is on a voluntary basis, and investors purchasing FHA-insured mortgages might be inclined to withdraw from participation if the possibility exists that insurance contracts may be voided by actions over which they have no control. Provisions are contained in the National Housing Act to assure against such a possibility, the insurance contracts being incontestable in the absence of the mortgagee's own fraud or misrepresentation. Even though the authority to void contracts in the event of a violation by an employee or former employee of the Government is discretionary, the possibility of its exercise where violations occur without the knowledge of mortgagees or purchasers of FHA-insured mortgages or other innocent third parties could have a seriously adverse effect on all FHA programs by discouraging investment in the mortgages. Similarly, in the case of such programs as urban renewal and special-purpose housing, the real impact of imposing a cancellation penalty would fall on innocent third parties, namely: the families whose housing conditions are intended to be bettered.

There are other sections in H.R. 2157 which appear to be unnecessarily broad. Section 102(a) and the corollary provisions of section 105(a) prohibit any officer or employee in the executive branch from discussing or considering future employment and from becoming "unduly involved, through frequent * * * social engagements with, any person outside the Government with whom he transacts business on behalf of the United States, or whose interests may be substantially affected by his performance of official duty." There is doubt as to the intended interpretation and the administrative feasibility of such broad provisions, particularly the reference to social engagements which need not involve the receipt by the employee of anything of material value.

Section 102(e), prohibiting an employee from many official dealings with a person by whom he has been employed or with whom he has had any economic interest in the last 2 years, again is so broadly worded as to give us concern. References have already been made to the desirability of close relations between Housing Agency programs and both local governmental units and private business. This Agency would prefer that a prohibition such as this be restricted in application to personnel with discretionary powers the exercise of which may substantially affect the interests of the outside party. It might also best be restricted to employees with substantial past or prospective economic interests with the outside party.

This statement has already called attention to the broad scope of many provisions of H.R. 2156 and H.R. 2157. Considering the varying purposes and organization of Federal agencies, it appears that such legislation, designed to prohibit in general terms all improper employee action, will for this and many other agencies also prohibit innocuous activities and impede our management and program functions. Even within the Housing Agency's administration of matters relating to employee conduct and conflict of interest, it has been found that situations and cases are extremely varied, depending, for example, on whether the dealings are with a public or nonprofit organization such as a university or a private business enterprise. The desired broadness of regulation on these matters might perhaps best be reached by giving the head of an agency authority to make such rules as he finds proper in keeping with the declaration of policy in section 101 of H.R. 2157 and not in conflict with specific provisions of revised legislation. The legislation would cover adversary proceedings, acceptance of bribes or gifts, disclosure of confidential information, and other special cases where general restrictions and criminal penalties may without objection be stated in statutes.

It would also seem desirable for agency heads to be expressly given more leeway in enforcing the regulations and statutes on his employees than the one

recourse stated under H.R. 2157, to dismiss the employee. In some cases an official reprimand or suspension might well be more appropriate.

In closing, it is noted that under existing law (12 U.S.C. 1701h) members of advisory committees established by the Housing Administrator or the head of any constituent agency of the Housing Agency are exempt from certain conflict-of-interest laws. This section provides that "service as a member of any such committee shall not constitute any form of service, employment, or action within the provisions of section 281, 283, 284, or 1914 of title 18, or within the provisions of section 99 of title 5." Since the bill would repeal all these sections of the United States Code, the exemptions would no longer be effective. If this legislation is to be enacted, it should continue these exemptions by changing the references in section 1701h to the new, similar provisions which the legislation would establish in title 18 of the United States Code.

FEDERAL TRADE COMMISSION,
Washington, D.C., February 15, 1960.

HON. EMANUEL CEELE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of February 4, 1959, for comment on H.R. 2156, 86th Congress, 1st session, a bill to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

This bill would amend chapter 11 of title 18, United States Code, and would incorporate into that chapter various other provisions relating to bribery, graft, and conflicts of interest now appearing in other sections of the Code of Crimes and Criminal Procedure.

Chapter 11 of title 18 presently consists of 23 sections which may be grouped as follows:

Thirteen sections which prohibit the bribery of Government employees (secs. 201 and 202), persons connected with the offices of the U.S. attorney or U.S. marshal (sec. 203), Members of Congress (secs. 204 and 205), judges, judicial officers, and jurors (secs. 206, 207, and 208), witnesses (secs. 209 and 210), revenue officers (sec. 211), and customs officers or employees (secs. 212 and 213).

Two sections which provide penalties for use, or offer of, influence to obtain Federal employment (secs. 214 and 215).

One section which prohibits payments for procuring or aiding to procure Government contracts and authorizes the President to declare such contracts void (sec. 216).

Seven remaining sections which primarily relate to banking officials and transactions. These are not changed by H.R. 2156 except that they are renumbered.

Section 201, as proposed, would replace sections 201-208 and 211-213 of chapter 11, title 18, United States Code, and combine and revise existing provisions relating to bribery of Federal employees, Members of Congress, judges, judicial officers, and jurors.

The term "bribe" is defined to include money or thing of value or promise thereof. A "promise" is presently included under the definition of bribe in sections 201, 202, 204, 205, and 207, but not under the other pertinent sections. The proposed section 201 clarifies the concept of a "thing of value" by specifically including such things as loans, honorariums, and present and future opportunities.

The term "public official" is broadly defined to include Members of Congress, jurors, and all officers, agents, and employees of the United States in the executive, legislative, and judicial departments of the Government.

The term "official act" is defined to include not only a public official's affirmative action, but also dereliction of official duty and inaction or neglect of matters within his official competence.

Section 201 not only retains the conventional concept of the intent to influence or to be influenced, but also prohibits, irrespective of intent, all payments and receipts for official action. In addition, payments to and receipts by public officials for official action by other public officials are prohibited. The section would also apply to former and prospective public officials.

" Violators are automatically disqualified from holding any Federal office. Penalties are provided up to \$20,000 in fines in addition to three times the amount or value of the bribe, and/or imprisonment up to 15 years.

As noted above, the new section 201 is a consolidation, clarification, and strengthening of various provisions in existing law relating to bribery of public officials. The Commission favors such an objective.

Proposed section 202 would replace and meet the objectives of existing sections 209 and 210 of chapter 11, title 18, United States Code, which prohibit payment to, or receipt of a bribe by witnesses or prospective witnesses before a court or before an officer authorized to take testimony. The proposed new section would be clearly applicable to witnesses before Federal agencies, which the Commission favors, as well as before congressional committees. The penalties for violation of this section would be the same as under the proposed section 201.

Proposed section 203 is an amended version of section 281 of chapter 15, title 18, United States Code, which prohibits the receipt of compensation by a Member of Congress or officer or employee of the United States for services rendered with respect to any matter in which the United States is a party or is interested. The scope of the violation has been broadened to include the payment as well as the receipt of prohibited compensation. Violation of the new section 203 is made to depend upon the status of the individual at the time of the actual or purported rendition of services rather than his status at the time of receipt or agreement to receive payment. Solicitation of payment is included as well as payments for services "purportedly" rendered. The section is broadly applicable to officers and employees of the executive, legislative, and judicial branches of the Government and "any agency."

To the extent that the proposed section 203 would affect the Federal Trade Commission and its officers and employees, the Commission favors its enactment, and otherwise offers no comment.

Proposed sections 204 and 206 pertain, respectively, to activities of Members of Congress and retired military officers. The Commission has no comment on these sections.

The Commission interposes no objection to proposed section 205, which is an amended version of section 283, title 15, United States Code. Under this provision, officers and employees continue to be prohibited from prosecuting another person's claim against the United States, and would now also be prohibited from assisting or providing any services in matters in which the United States is interested.

Proposed section 207 covers matters now included in section 284, chapter 15, title 18, and section 99 of title 5, United States Code. The first paragraph of section 207 would permanently disqualify former officers and employees from participating in any matters concerning which they had any responsibility during their Government tenure. The present section 284 prohibition is for 2 years. The Commission favors this proposed removal of the time limitations, as it would be inappropriate for a person who has participated in a matter representing the Government to participate in that same matter against the Government regardless of the length of time that had elapsed.

The proposal is also broader than section 284 in that (1) it covers "aid" and "assistance" as well as direct action; (2) the limited term "claims against the United States" is replaced by a broad coverage of proceedings, claims, contracts, controversies, arrests, etc.; and (3) it covers matters concerning which the former employee had "any responsibility," whereas section 284 presently applies only where the person's employment or duty was "directly connected" with the particular claim. Use of the words "any responsibility" would result in covering individuals where there is little or no danger of conflicts of interest and would be most unfair to the individuals concerned. For example, employees holding positions of authority in Government agencies are personally responsible for the decisions of subordinates, even though they have not actively participated in the matters and may never have seen or worked on the files. Also, employees who have had insignificant responsibilities with respect to matters would be covered by the prohibition.

The Commission, therefore, recommends against use of the words "any responsibility" and favors a more realistic basis for disqualifying former officers and employees. The present language of section 284, which is limited to matters "directly connected with" employment or duties, would be appropriate as would a restriction in the nature of section 3.29(b) of the Federal Trade Commission's rules of practice, which provides that:

“ * * * No former member or employee of this Commission shall appear as attorney or counsel in any adjudicative proceeding the files of which came to the personal attention of such former member or employee during his employment on or by the Commission and on which he performed any work of significant importance.”

Subject to the recommendation made above, the Commission has no objection to enactment of the proposed prohibitions as a portion of the Code of Crimes and Criminal Procedure.

Under the second paragraph of section 207, officers and employees of an agency who leave that agency are for 2 years prohibited from having anything to do with any matter in which that agency is involved. The Commission feels that this is much too severe a prohibition and does not favor its enactment. Such a prohibition would make it practically impossible for an agency to hire specialists for particular assignments and would also have an adverse effect upon the ability to hire capable employees.

It is a known fact that many persons secure employment with the Government to gain specialized experience which they hope can be used outside the Government at some later time at a substantially higher income level. Not only does the Government benefit from the services of such employees while they remain, but many do make Government service their permanent careers once they have been employed. Passage of this provision would not only deter such persons from accepting Government employment, but also persons who seek Government employment as a career but who would not want to be restricted as to possible future employment.

Lawyers and other professional personnel who work for the Government frequently are engaged in very specialized endeavors. To prohibit such persons, for any material period of time, from engaging in employment which involves agencies for which they previously worked would constitute an undue and unfair restriction upon their right to practice their profession.

Proposed section 208 is an amended version of section 434, title 18, United States Code. It would prohibit a person on leave of absence from, or with an interest in the pecuniary profits or contracts of, any business entity from representing the Government or taking action affecting said business entity while working for the Government. This section pertains to Government contracts or applications for Government relief or assistance and would have limited, if any, application to Commission matters.

While this provision would have no material effect upon the operations of the Commission, it is noted that, as drafted, the section would apply to a Government employee with insignificant stock holdings in a particular corporation. To allow for such a situation, the Commission's Personnel Bulletin 12 provides that in the event any Commission employee has a pecuniary interest in a company involved in a Commission proceeding, and that employee is assigned a responsibility in the matter, he shall notify his supervisor, who will determine whether or not the assignment should be changed.

Proposed section 209 is substantially the same as the present section 1914, title 18, United States Code. It prohibits payment and receipt of private salaries as compensation for services rendered to the Federal Government. The Commission, of course, favors the continuation of this provision.

Proposed section 218 is based partially on section 216, chapter 11, title 18, United States Code, which authorizes the President to declare void any contract or agreement with the United States where payment has been made to an officer, employee, or agent of the United States for procuring such contract or agreement. The proposed new section would authorize the President or, under regulations prescribed by him, the head of the agency involved, to declare void and rescind any “contract, loan, grant, subsidy, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished or published * * *” in violation of chapter 11.

The purpose of the section appears to be to authorize the cancellation by the President of things of value secured by acts or practices which violate chapter 11. However, by use of the words “ruling, decision, opinion,” the section would apply to orders and opinions of the Federal Trade Commission which can hardly be deemed things of value to respondents involved within the general intent of the proposal.

The authority to void or rescind is permissive, so that the Government may retain advantageous results regardless of the circumstances of their creation. Hence, the President would not only consider violations of chapter 11 alleged

to have occurred in the course of a Commission action, but he would be required to review the merits of the case in order to determine whether the decision should stand. This would be inconsistent with the principle that the Commission is an agency independent of the President.

Even if circumstances should ever arise that, through bribery or other violation of chapter 11, a Commission complaint might be dismissed or an order to cease and desist might not be as severe as the situation merited, this proposed authority in the President would serve no purpose. The President's rescission of an order to cease and desist would remove whatever obligations had been imposed upon an offending respondent, but it would still be up to the Commission to proceed anew in order to issue an appropriate order. Presidential action is not required as a condition precedent to such action as the Commission can now reopen and modify orders as appropriate.

It is noted that proposed section 218 is in terms of "any contract, loan, grant, subsidy * * *," etc., "in violation of this chapter." Chapter 11 would define certain acts or practices as violations, but the resultant contracts, loans, grants, or subsidies would not themselves be in violation of chapter 11.

By direction of the Commission.

EARL W. KINTNER, *Chairman*.

N.B.—Pursuant to regulations, this report was submitted to the Bureau of the Budget on April 14, 1959, and on February 11, 1960, the Commission was advised that there would be no objection to the submission of the report to the committee.

ROBERT M. PARRISH, *Secretary*.

FEDERAL TRADE COMMISSION,
Washington, February 15, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of February 4, 1959, for comments on H.R. 2157, 86th Congress, 1st session, a bill to implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government.

This bill would amend the Administrative Procedure Act by adding as title II a "code of official conduct for the executive branch."

Section 102 of the proposed new title proscribes particular acts and practices on the part of any officer or employee in the executive branch of the Government. The following comments pertain to certain of those proscriptions.

Proposed section 102(a) prohibits the acceptance of "any gift, favor, or service" from, discussion or consideration of future employment with, or becoming "unduly involved, through frequent or expensive social engagements with, any person outside the Government with whom he transacts business on behalf of the United States, or whose interests may be substantially affected by his performance of official duty."

The prohibition against receiving "any gift, favor, or service" and becoming "unduly involved" by participating in "frequent or expensive social engagements" is considered unnecessarily restrictive in that it precludes the ordinary exchange of courtesies and social amenities. While this is, of course, a problem area, it is most difficult to define the limits of propriety of behavior in exact statutory terms. The problem is exemplified by the indefinite phrases "unduly involved" and "frequent and expensive social engagements" which do not possess the preciseness required of statutory prohibitory language. The Commission, therefore, favors the exercise of administrative discretion in such matters. It is believed that the following provision in the Commission's Personnel Bulletin No. 12 appropriately covers the problems involved insofar as this agency is concerned:

"No employee of the Commission shall:

* * * * *

"B. Accept, directly or indirectly, any gift, gratuity, entertainment, or anything of value from anyone directly or indirectly connected with any Commission matter. (This does not preclude the reasonable and ordinary exchange of social amenities of inconsequential value.)"

Similar problems arise with respect to the proposed statutory restriction on employment negotiations. The word "discuss" is overly inclusive and to "consider" is not sufficiently objective. One may "consider" future employment

without any overt act and without any contact in that regard with the other party. The Commission prefers administrative regulation such as is provided for by section V of the Commission's Personnel Bulletin No. 12 which requires disclosure to superiors when an employee's "official duties affect or may affect any private person or organization * * * with whom he has arranged or is negotiating for subsequent employment or business relations." When such disclosure is received the superior decides whether or not the particular assignment is to be continued.

Proposed section 102(d) prohibits the acquisition or retention of "financial interests" or the engagement in private activities or employments which "conflict" with the performance of official duties. Proposed section 102(e) prohibits participation in an investigation or prosecution which affects a person with whom there is, is pending, or has been with 2 years "any economic interest" or by whom he has been employed within the past 2 years.

These sections are unduly restrictive in that the terms "financial interests" and "any economic interest" would require the application of title II to an instance of ownership of a single share of stock in a particular corporation. The word "conflict" is indefinite and may also be construed in an unduly restrictive manner.

The Commission is of the opinion that the particular problems involved are more properly the subject of administrative discretion such as is provided for by the Commission's Personnel Bulletin No. 12 which, in pertinent part, reads:

"III. OUTSIDE EMPLOYMENT

"Employees of the Commission shall refrain from engaging in any outside employment, for financial gain or otherwise, which may tend to impair their mental or physical capacity to render proper and efficient service at all times, or which is related to the work of the Commission in such manner that a reasonable question of propriety might be raised. Employees must obtain the written permission of the Executive Director before engaging in any employment outside the Commission. Requests for such permission shall be submitted in writing through normal supervisory channels.

"IV. SECURITIES TRANSACTIONS AND OWNERSHIP

"A. No employee shall purchase securities of, or make any other personal investments in, any corporation or other enterprise which he then has reason to believe will be involved in any decision to be made by him as an employee of the Commission.

* * * * *

"V. DISCLOSURE AND DISQUALIFICATION

"An employee shall notify his immediate supervisor in writing whenever the circumstances are such that his official duties affect or may affect any private person or organization (1) by whom he has been employed or in whom he has had any economic interest within the preceding 2 years, (2) in whom he currently has any economic interest, (3) with whom he has a close family relationship, or (4) with whom he has arranged or is negotiating for subsequent employment or business relations.

"When such report is received from an employee, his Bureau Director or branch office manager shall determine whether the employee should continue with the assignment in question. If the facts disclosed do not afford reasonable grounds for belief that a conflict of interest might exist, the Bureau Director or branch office manager is authorized to direct the employee to continue with the assignment. In any event, whether or not the employee is relieved of the assignment, the pertinent facts and the action taken shall be reported in writing to the Executive Director.

"Whenever any of the foregoing conditions exist with respect to the work of a Bureau Director or branch office manager, he is authorized to delegate his responsibility in the matter to a subordinate. He shall, in any event, submit to the Executive Director a memorandum outlining his interest and the action he has taken."

Proposed section 102(f) prohibits failure to conduct personal and official affairs so that no reasonable suspicion or appearance of the violation of the other provisions of section 102 can arise.

While employees may be admonished to conduct their affairs so as to be above suspicion, it is unreasonable to provide that an employee may be fired on the basis of suspicion of wrongdoing. Suspicion or appearance of wrongdoing may arise without the existence of any improper conduct and it is manifestly unfair to provide for the firing of an employee merely because such a suspicion arises.

Proposed section 103 prohibits any former officer or employee of the executive branch of the Government from ever participating in any matter in which the United States is a party or is interested "which involves a subject matter concerning which he had any official responsibility or officially acquired confidential information" during his Government employment.

This represents a change from the comparable criminal provision of section 284, title 18, United States Code, which applies only to "claims against the United States" and is limited to a 2-year period following employment. The Commission believes that it is improper for a person to participate in a particular matter against the Government where he has previously been actively engaged in that matter on behalf of the Government or has acquired confidential information by reason of his Government employment, regardless of the time that may have elapsed since that employment. However, to the extent that the prohibition goes beyond the particular matter in question and applies when that matter involves a subject matter with which the employee was concerned, the Commission believes that the section is unduly restrictive.

For example, a former employee of the Commission may have worked on trade practice conference rules or rules implementing the Wool Products or Fur Products Labeling Acts which involve the subject matter of unlawful conduct for members of particular industries. The fact that that person worked on that subject matter should not serve to disqualify him from representing a member of one of those industries in a subsequent proceeding leading to revision of any of those rules or in a matter involving a violation thereof.

Proposed section 103 is also broader than section 284 in that it covers matters concerning which the former employee had "any official responsibility," whereas section 284 applies only where the employment was "directly connected" with the particular claim. Use the words "any official responsibility" would result in covering individuals where there is little or no danger of conflicts of interest and would be most unfair to the individuals concerned. For example, employees holding positions of authority in Government agencies are officially responsible for the decisions of subordinates even though they have not actively participated in the matters and may never have seen or worked on the files. Also, employees who have had insignificant, though official, responsibilities with respect to matters would be covered by the prohibition.

The Commission believes that the following provision appearing in section 3.29(h) of its Rules of Practice constitutes a much more realistic basis for disqualifying former officers and employees than does proposed section 103:

"* * * No former member or employee of this Commission shall appear as attorney or counsel in any adjudicative proceeding, the files of which came to the personal attention of such former member or employee during his employment on or by the Commission, and on which he performed any work of significant importance."

Proposed section 104 prohibits a former Government officer or employee from having anything to do with any matter involving his former agency for 2 years after leaving that agency. The Commission feels that this is much too drastic a measure. Such a prohibition would make it practically impossible for an agency to hire specialists for particular assignments and would also have an adverse effect upon the ability to hire capable employees.

It is a known fact that many persons secure employment with the Government to gain specialized experience which they hope can be used outside the Government at some later time at a substantially higher income level. Not only does the Government benefit from the services of such employees while they remain, but many do make Government service their permanent careers once they have been employed. Passage of this provision would not only deter such persons from accepting Government employment, but also persons who seek Government employment as a career but who would not want to be restricted as to possible future employment.

Lawyers and other professional personnel who work for the Government frequently are engaged in very specialized endeavors. To prohibit such persons, for any material period of time, from engaging in employment which involves

agencies for which they previously worked would constitute an undue and unfair restriction upon their right to practice their profession.

Proposed section 105 generally prohibits acts and practices on the part of persons outside of Government which correspond to the prohibitions of sections 102, 103 and 104 against the activities of employees and former employees of the Government. Our previous comments on sections 102, 103 and 104 also apply to this section.

Proposed section 106 declares it to be improper conduct for any party to a contested agency proceeding which has been designated for hearing, to be in touch with any agency member or employee regarding any questions of law or fact involved in the proceeding, except upon notice and opportunity for all parties to participate.

This has not been a problem area at the Federal Trade Commission. Section 3.28 of the Commission's Rules of Practice for Adjudicative Proceedings provides that ". . . no party respondent or his agent or counsel in any adjudicative proceeding shall, in that or a factually related proceeding, participate or advise ex parte in any decision of the hearing examiner or of the Commission therein." Also rule 3.29(d) requires that "All counsel practicing before the Commission shall conform to the standards of ethical conduct required of practitioners in the courts of the United States and by the bars of which they are members." It is further provided by rule 3.29(e) that offenders may be reprimanded, suspended, or disbarred from practice before the Commission for good cause shown.

Proposed section 107 states the action which may be taken by agency heads when the preceding sections are violated. With respect to the prohibitions contained in section 102, section 107(a)(1) provides simply that the head of the agency "may, after notice and hearing, dismiss any officer or employee in his agency upon finding that such officer or employee has violated section 102 of this title." There is a further provision in section 107(b) to the effect that in such case the head of the agency shall furnish a written statement of his findings to the person concerned and will publish the statement in the Federal Register, unless such publication would not be in the public interest.

This provision for the dismissal of Government employees does not take into account section 6 of the Lloyd-LaFollette Act of 1912 (5 U.S.C. 652) and section 14 of the Veterans Preference Act of 1944 (5 U.S.C. 863), which, in general terms, cover the same grounds for dismissal of Government employees by the language "for such cause as will promote the efficiency of the service." The bill under consideration is inconsistent with the provisions of these sections of the Lloyd-LaFollette and Veterans Preference Acts which prescribe procedures, rights of appeal and appearances for the protection of veterans and other Government employees when action is taken to dismiss them.

While the Commission demands the very highest degree of ethical conduct on the part of its members, employees and those who practice before it, and would favor all reasonable proposals designed to insure such conduct, for all of the reasons stated above, the Commission is opposed to enactment of H.R. 2157.

By direction of the Commission.

EARL W. KINTNER, *Chairman*.

Pursuant to regulations, this report was submitted to the Bureau of the Budget on April 23, 1959, and on February 11, 1960, the Commission was advised that there would be no objection to the submission of the report to the committee.

ROBERT M. PARRISH, *Secretary*.

SMALL BUSINESS ADMINISTRATION,
Washington, D.C., February 16, 1960.

Re H.R. 2156; H.R. 2157

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CELLER: Further reference is made to your letters of February 4, 1959, and January 26, 1960, requesting my views on the captioned bills.

In effect, H.R. 2156 constitutes a restatement of the criminal laws relating to bribery, graft, and conflicts of interest involving employees of the Government. One of the evident purposes of the measure is to consolidate existing statutes

governing these crimes and to remove certain inconsistencies and duplications in the provisions of such statutes. In addition the bill effects a number of substantive changes. H.R. 2157 is designed to implement H.R. 2156 by establishing a code of ethics regulating the conduct of Government employees.

The Small Business Administration, like all other agencies of the Government, is aware that the success of its operations depends largely upon the integrity of its personnel. It is essential that any conflict between the personal interests of an employee and his duties to SBA be resolved in favor of the latter. The highest standards of conduct must be maintained if SBA and its officials are to enjoy the respect and confidence of the public. Needless to say, therefore, we are interested in the captioned bills and all other legislation whose purpose is to improve the laws governing bribery, graft, and conflicts of interest involving Government employees.

Nevertheless we possess no special competence in this field and I do not believe we can make a contribution which would be of assistance to the subcommittee. The Attorney General, whose duty it is to enforce all Federal criminal laws, including those governing bribery, graft, and conflict of interest, is better qualified than we to appraise the merits of the captioned bills. We would be guided by his views.

The Bureau of the Budget has no objection to the submission of this report.

Sincerely yours,

PHILIP MCCALLUM, *Administrator.*

U.S. ATOMIC ENERGY COMMISSION,
Washington, D.C., February 17, 1960.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CELLER: This is in response to your letter dated February 4, 1959, requesting the Atomic Energy Commission's comments on H.R. 2156 and H.R. 2157.

With respect to H.R. 2156, we favor a reexamination of existing criminal laws relating to bribery, graft, and conflicts of interest and collation of such statutes into a single chapter. We are also pleased to comment generally on some of the provisions.

Preliminarily, we would like to point out that sections 157(a) and 163 of the Atomic Energy Act of 1954, as amended, presently provide limited exemptions from sections 281, 283, and 284 of title 18. We note that H.R. 2156 proposes to repeal sections 281, 283, and 284 and substitute new sections therefor. Under the present exemptions the AEC has been able to secure qualified persons for service on advisory boards. We herewith request that any new codification of these laws not diminish the effect of the Atomic Energy Act exemptions.

Proposed section 205, activities of officers and employees in claims against and other matters affecting the Government, is a revised version of present 18 U.S.C. 283, and provides an exemption for officers or employees taking "uncompensated action" in assistance of "any person who is the subject of disciplinary proceedings * * *". We are in favor of the policy expressed by the addition of this portion of section 205. However, we would prefer that the term "uncompensated action" be clarified, so as to assure that the exemption includes Government employees receiving per diem or travel expenses as witnesses and who might thus be considered as compensated. We would also prefer that the adjective "disciplinary" be deleted, as some proceedings which might result in removal or suspension, such as security hearings, might not be considered to be "disciplinary."

Proposed section 207 reads as follows:

"§ 207. Disqualification of former officers and employees in matters connected with former duties or involving former agency

"Whoever, having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, after the time when such employment or service has ceased, knowingly acts as agent or attorney for, or aids or assists anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested involving any subject matter concerning which he had any responsibility while so employed or assigned to duty, or

"Whoever, having been so employed or assigned to duty, within two years after his last such employment or service has ceased, acts as agent or attorney for, or aids or assists anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, and which involves any agency in which he was so employed or assigned to duty,

"Shall be fined not more than \$10,000, or imprisoned not more than one year, or both."

We note that the first paragraph is a revised version of present 18 U.S.C. 284. We would prefer that the present language "involving any subject matter directly connected with which such person was so employed or performed duty," be retained. The language sought to be substituted, namely "involving any subject matter concerning which he had any responsibility", is too broad in our opinion. In addition, we would prefer that some time limitation, such as 2 years as in the present statute, be specified.

The second paragraph of section 207 would flatly prohibit former agency employees from participating in all proceedings which involve the agency in which they were formerly employed, for a 2-year period. Its prohibition would apply to the complete hierarchy of any agency, as well as to consultants and members of advisory boards, even though the particular employee had no governmental connection with the specific proceeding. Such a provision would seem to restrict the activities of former Government employees unnecessarily in situations where the interest of the Government may not be adversely affected. In our opinion, this prohibition would make it more difficult for agencies to secure the services of competent personnel.

With respect to section 209, we would suggest that the second paragraph be modified by the phrase "for or in connection with such services" as found in the first paragraph of this section and in previous 18 U.S.C. 1914. In addition, this section should recognize at least two existing statutory exemptions from 18 U.S.C. 1914 that we are aware of, namely, section 3(d) of Public Law 85-795, "Federal Employees International Organization Service Act," and section 19(a) of Public Law 85-507, "Government Employees Training Act."

With respect to H.R. 2157, our comments are addressed only to the question of whether such legislation would serve a useful purpose. H. Con. Res. 175 (85th Cong.) already contains a Code of Ethics for Government employees. Most agencies, including the Commission, have comprehensive internal regulations governing the conduct of their employees. It would seem that a more detailed statutory rule of conduct might simply invite dispute about the meaning of terms used.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely yours,

A. R. LUEDECKE, *General Manager.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., February 17, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: This will acknowledge your requests for reports on H.R. 2156, "To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes," and H.R. 2157, "To implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government."

The Bureau of the Budget would, of course, favor the enactment of legislation which would have the effect of improving Federal laws relating to conflicts of interest and related matters. There appears to be general agreement that improvement of existing laws would be desirable, and the activities of your committee in this regard have been of benefit. The activities of your committee, however, as well as the executive agencies' comments on H.R. 2156 and H.R. 2157 indicate the difficulty of drafting suitable legislation. While it is of the utmost importance that the conduct of Federal employees be above reproach and that deviations be dealt with promptly and effectively, any legislation developed must of course be based on the premise that employees are

generally honest and that, therefore, dishonesty, and corruption are the rare exception. Great care must be exercised to insure that in legislating to control exceptional cases, legitimate activities are not prohibited or the actions of present or former Government employees unnecessarily restricted.

Since the executive agencies have expressed the view in reports to your committee that H.R. 2156 and H.R. 2157 may in some respects have unintended and undesirable results, the substantial amendment of these measures would appear to be desirable. In this connection, the Bar Association of the City of New York has conducted an exhaustive study of this subject and has drafted a report and legislation which, in preliminary form, have received some consideration by the interested executive agencies. The proposal in its preliminary form represents a somewhat different approach to this type of legislation than H.R. 2156 and H.R. 2157. We believe that your committee will want to give it careful consideration before taking any final action on this legislation.

Sincerely yours,

PHILLIP S. HUOHES,
Assistant Director for Legislative Reference.

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., February 17, 1960.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN CELLER: In accordance with your letter of January 26, 1960, we have made a careful review of H.R. 2156 and H.R. 2157. There can be no disagreement with the objectives of both bills. In fact, insofar as the bills offer practical assistance in development of a moral climate within the Government that would set an example for the Nation, they are to be enthusiastically endorsed.

Our comments are limited to those sections which would particularly affect the National Labor Relations Board as a regulatory agency. We are particularly concerned with the impact of H.R. 2156, section 207, and H.R. 2157, title II, section 104, on agency operations. Whether attorneys are recruited directly from law schools or from private practice, the proposed 2-year restriction on employment after leaving Government service would place them in an unfavorable position. They would for all practical purposes be cut off from any private practice of their legal specialty during this period. Thus, these provisions would certainly impair agency-recruiting efforts and place the Government as a whole under a great handicap in its search for competent employees.

In this connection, your attention is directed to sections 102.119 and 102.120 of the Board's rules and regulations which prohibit former employees from practicing before the Board or its agents in connection with any case or proceeding which was pending before the agency during their employment.

Section 106 of H.R. 2157 proscribes consultation and certain other informal contacts between agency employees and parties to contested agency proceedings where such proceedings have been designated for hearings except upon notice to, and opportunity for participation by, all parties. This broad provision may in certain cases impede efforts of this agency to negotiate consent decrees, stipulated agreements, and informal settlements. Thus, the informal settlement of labor disputes may be held up and the work of the Board substantially increased.

The Bureau of the Budget has no objection to the submission of this letter to your committee.

Sincerely yours,

BOYD LEEDOM, *Chairman.*

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., February 17, 1960.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Department of Defense on H.R. 2156, a bill "To strengthen the criminal laws relating to bribery, graft, and conflicts of interest and for other purposes."

The Department of Defense is in general agreement with the purpose of the proposed bill. However, we are of the opinion that, as presently drafted, the bill is much too broad in its coverage.

Without attempting to comment on the bill section by section, we would like to offer certain general comments on those sections applicable to conflicts of interest for the consideration of your committee.

We have already taken a position with respect to H.R. 9682, a bill "Relating to the employment of retired commissioned officers by contractors of the Department of Defense and the Armed Forces and for other purposes" presently pending before the House Armed Services Committee which, in certain respects, is similar to this proposal.

Briefly, the Department position is:

1. With respect to those provisions of the bill which would broaden the coverage of existing laws to former military officers, we urge that consideration be given to limiting the coverage to former military officers who have served more than 10 consecutive years of commissioned service.

2. Insofar as the bill pertains to selling, the law should contain a precise definition of what selling activities are intended. The following definition is offered for the consideration of the committee:

"Sell (selling, sale) means (1) signing a bid, proposal, or contract; (2) negotiating a contract; or (3) contacting an officer or employee of the Department of Defense for the purpose of (i) obtaining or negotiating contracts; (ii) negotiating or discussing changes in specifications, price, cost allowances, or other terms of a contract; or (iii) settling disputes concerning performance of a contract."

3. The prohibition against selling, prosecution of claims, and aiding or assisting in matters concerning the United States should be effective for a 2-year "cooling off" period only.

4. We agree that any broader coverage of existing laws should apply, as proposed by this bill, to all civilian employees of the Federal Government. However, we urge that consideration be given to limiting the conflicts-of-interest coverage of civilians. For example, we urge consideration of the premise that not all former civilians should be subject to these laws in blanket terms. We believe that a GS-3 clerk with 1 year of Federal service who has been involuntarily separated should not be cast into the same position as a GS-18 executive who makes final and important decisions regarding Government affairs. In addition, we are concerned with applicability of these laws, as proposed and drafted, to Presidential appointees, and other high officials, who are prevailed upon to perform public service for relatively short periods of time at considerable personal sacrifice. We urge only that these special considerations be part of the deliberations of your committee and the Congress.

By definition in title 10, U.S.C., the term "department" means the Department of Defense which includes the Office of the Secretary of Defense and all three of the military departments. It should be clear that as applied to officers and employees of the military departments in the proposed bill, this usage of the term is the intent of the drafters.

With respect to technical defects in the language of the bill, we defer to the position of the Department of Justice, since that Department will be responsible for handling prosecutions under the proposed laws. However, we would like to offer the following general comments:

The bill, as written, is too broad and general in scope. It would make criminal every act, of the nature covered, which is not specifically authorized by law. For example, it would be unlawful, without specific authorization, for any person to present to an ex-President of the United States anything of value, be it a medal, loving cup, or scroll, or to offer him an honorary position or membership in any organization, in appreciation of the service performed by him while in office. In the absence of specific authorization, it would be criminal for any person on behalf of any university to bestow an honorary degree of doctor of laws upon the Secretary of State in recognition of service to the Nation.

The inclusion of the phrase "or at the direction or with the consent of" in section 201(b) of the bill is unclear. This phrase should be deleted or rewritten with greater clarity. Sections 201(b) (2) and (3) properly include the terms "intent to influence" and "intent to induce." It would appear that these same terms should be included in section 201(h) (1).

Sections 206 and 207 of the bill redefine the disqualifying relationship between a former Government official and a particular proceeding to include any

subject matter "concerning which he had any responsibility" while in Government status. The quoted change in language appears unduly broad, since it could be interpreted to apply to a former officer or employee who had no personal knowledge of the matter, but who was technically responsible because it concerned a department, agency, or office of which he was the head.

The proposed 2-year postemployment prohibitions in sections 206 and 207 on former Government officers and employees aiding in any matter involving their agency are apparently intended to prevent the exercise of personal influence. These prohibitions represent a distinct departure from present law, and no actual conflict of interest would be necessary for their imposition. If enacted, these prohibitions should be clarified to state that the postemployment period begins when the employee leaves the agency concerned, not when he leaves the Government service.

Section 218 should include in line 13, page 13, following the word "title" the words "or in a contract," since by contract provision there is frequently set forth a right in the United States to certain recoveries.

The Department of Defense concurs in the commendable objectives of this bill. However, it is apparent that the bill will require extensive study and considerable revision before its enactment would be desirable. In this regard, we are informed that a very exhaustive reexamination of the entire area of conflicts of interest has been recently accomplished by the Bar Association of the City of New York. Undoubtedly, a bill containing their findings will be introduced before the Congress.

On the basis of the foregoing, the Department of Defense is opposed to the enactment of H.R. 2156 in its present form.

The Bureau of the Budget has advised that there is no objection to the submission of this report on H.R. 2156 to the Congress.

Sincerely yours,

J. VINCENT BURKE, Jr.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., February 17, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H.R. 2157, a bill to implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government.

The purpose of H.R. 2157 is to establish a "Code of Official Conduct for the Executive Branch" as title II of the Administrative Procedure Act, and to implement the criminal laws relating to bribery, graft, and conflict of interest in any transactions between officers and employees in the executive branch of the Government and any other person who is not an officer or employee of the executive branch of the Government.

The Department of Defense favors the revision and clarification of existing statutes concerning conflicts of interest and related subjects. However, we are opposed to H.R. 2157 for the reasons stated below.

Sections 102 through 106 of the proposed title II prescribe in all encompassing detail what constitutes improper conduct in all Government transactions. In numerous instances the terms used are sweeping and ambiguous. Illustrative, though by no means all-inclusive, examples of these instances may be found in section 102(f) wherein an officer or employee could be dismissed if he failed to conduct his private affairs so that no reasonable suspicion or appearance of improper conduct arose. Further examples of such ambiguity are to be found in section 102(a)(3), where reference is made to "unduly involved, through frequent or expensive social engagements" and in section 106, using the term "a contested agency proceeding."

Section 107 of the proposed title II implements the criminal laws relating to bribery, graft, and conflict of interest by authorizing imposition of administrative sanctions against officers or employees whose conduct violates the prescribed ethical standards. These sanctions include dismissal, the barring of a former officer or employee from appearing in matters before an agency, and the cancellation of Government contracts procured as a result of improper con-

duct. Under existing law and regulations, the heads of Federal agencies have available most of the administrative sanctions authorized by section 107.

Administrative powers are already in existence within the executive branch which may compel personnel discipline and, when justified, personnel dismissal. Control can be had also of contractors in that those who violate conflict of interest legislation, as well as bribe, graft, and fraud laws may be debarred from doing business with the Government under existing regulations. Where Government transaction are found to have been the result of improper conduct amounting, in reality, to a fraud upon the United States, authority exists to effect cancellation.

To the extent that unethical practices may be said to exist, enactment of this bill would offer no assurance of curbing the evils with which it is concerned. Indeed, it might well add obstacles and uncertainties in the field of Government service.

Beyond the statutes now in the Criminal Code or those which congressional committees are studying for the purpose of amending and modernizing title 18, we believe that all that can be established effectively is an administrative delineation of what constitutes an imprudent area of behavior. Beyond necessary statutes, too much legislation might be worse than none at all. Accordingly, the Department of Defense is opposed to the enactment of H.R. 2157.

The Bureau of the Budget has advised that there is no objection to the submission of this report on H.R. 2157 to the Congress.

Sincerely yours,

J. VINCENT BURKE, JR.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., February 17, 1960.

HON. EMANUEL CELLER,
Chairman, House Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Department of Defense on H.R. 7556, a bill "To prohibit, under certain conditions, for 2 years, the employment of a former employee of the Federal Government by any person, concern, or foreign government with which certain transactions were handled.

The Department of Defense is opposed to H.R. 7556.

It is the Department of Defense position and, we believe the intent of the committee, that there should be no objection to a Government employee seeking a position with private industry while serving with the Government, providing his efforts do not involve actions which are collusive, fraudulent, or designed to favor a contractor to further his own interest. It is believed that present criminal statutes adequately cover these types of situations. The Department of Defense would have no objection to amending the criminal statutes to make it clear that the same standards should apply to a prospective employer.

As the committee knows, several proposed bills seek to amend this same section of the law. One of these bills, H.R. 2156, is pending before this committee, and another bill, H.R. 9682, is pending before the House Armed Services Committee. In this connection, we are informed that a very extensive reexamination of the entire area of conflicts of interest has recently been accomplished by the Bar Association of the City of New York. Undoubtedly, a bill containing their findings will also be introduced before the Congress. It is presumed that the committee will wish to review all of these proposals before reaching any conclusions. The testimony of the Department of Defense, which I am certain your committee is familiar with, before the Committee on Armed Services of the House of Representatives, gives our general policy with respect to the whole area of conflicts of interest. As our testimony indicates, we are in agreement with the objectives, as we understand them, of your committee and those of the House Armed Services Committee. I am sure you will agree that since we are dealing here with a criminal statute, and one aspect of the overall problem of conflicts of interest, it is necessary that the scope of the legislation be clearly defined.

Sincerely yours,

J. VINCENT BURKE, JR.

Our next witness is Mr. Frank H. Weitzel, Assistant Comptroller General of the United States.

You may proceed, Mr. Weitzel.

**STATEMENT OF FRANK H. WEITZEL, ASSISTANT COMPTROLLER
GENERAL OF THE UNITED STATES; ACCOMPANIED BY O. B.
CARPENTER, OFFICE OF GENERAL COUNSEL**

Mr WEITZEL. Thank you, sir.

Mr. Chairman and members of the subcommittee, we in the General Accounting Office appreciate the opportunity to appear before your subcommittee in connection with the proposals represented by H.R. 1900, H.R. 2156, H.R. 2157, and H.R. 7556 to simplify and strengthen the laws relating to bribery, graft, and conflicts of interest in Government.

The laws which would be affected by these bills are designed to insure honesty in Government and the conflict-of-interest statutes frequently have been referred to as ethical standards in Government service. Our people's religious tradition of personal integrity and our national principle that a public office is a public trust demand that our public officials and those who deal with them exercise a high standard of conduct in transactions involving relationships between the Government and the public. The concern of the Congress in this subject has been evidenced by hearings held and reports issued in both Houses and the adoption of House Concurrent Resolution 175, 85th Congress, which Representative Bennett referred to, promulgating a code of ethics for Government employees. The existing statutes and remedial proposals are excellently set forth in the staff report to this subcommittee dated March 1, 1958, which the chairman referred to, on Federal conflict-of-interest legislation.

The CHAIRMAN. When you speak of religious tradition, I think you speak of the admonition that a man cannot serve two masters.

Mr. WEITZEL. That is correct, and the principles of the Ten Commandments, and the religious convictions that have been handed down to our people through the ages.

This matter of ethics in Government has been and is one of much concern to our Office. It is a part of the job of the General Accounting Office to help enforce standards of honesty and integrity. We are a part of the system of checks and balances instituted in the Constitution and our part of the system has helped to prevent the taxpayers' money from being spent for purposes not authorized by the people through their representatives. We heartily concur in the statement of the Attorney General, in 33 Op. Atty. Gen. 273. that

No Government official or employee should serve two masters to the prejudice of his unbiased devotion to the interests of the United States.

As will be hereafter shown, our consideration of this problem has convinced us that a substantial strengthening, revision, and clarification of the laws relating to bribery, graft, and conflict of interest are needed if the mischief at which these laws are aimed is to be adequately prevented.

The CHAIRMAN. I want to say that as a result of disclosures in the so-called *Foote* case—disclosures that were made manifest by this subcommittee—the Attorney General announced his standards of conduct for his office, to which you have made reference.

Mr. WEITZEL. That is correct, Mr. Chairman, and we were very heartened by both of those steps. But the courts have not felt that

some of the existing statutes fully covered the situation that the statutes are aimed at preventing.

The CHAIRMAN. You forgive me for taking sort of a paternal pride in the work of this subcommittee.

Mr. WEITZEL. We welcome it, Mr. Chairman, and I have enjoyed working with the members of the subcommittee, not only on the House side but with Mr. Meader when he was chief counsel of the Senate National Defense Investigating Committee, I do feel that the disclosures and investigations of this committee have had a very healthy effect in this field of conflicts of interest, not only in publicizing the situations but in leading to executive action, as the chairman has stated, and also to amendments in the law.

The CHAIRMAN. It is refreshing to hear those encouraging views from you.

Mr. WEITZEL. Thank you, sir.

The various conflict-of-interest laws which these bills would repeal and supersede are 18 U.S.C. 281, 282, 283, 284, 434, and 1914, and 5 U.S.C. 99. These laws and their deficiencies are set out fully and completely in parts 1 and 2 of the report of your staff previously referred to. I would like, however, to comment briefly on those sections.

Mr. Chairman, I would follow your pleasure as to whether you would wish me to read the rest of the statement.

The CHAIRMAN. We would be very happy to have you read it.

Mr. WEITZEL. Thank you, sir.

Section 281 makes it a felony and provides for disqualification from holding Federal office for anyone who "being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court-martial, officer, or any civil, military, or naval commission," and they "shall be fined not more than \$10,000 or imprisoned not more than 2 years, or both."

In the case of *United States v. Quinn*, 111 F. Supp. 870, 116 F. Supp. 802, and 141 F. Supp. 622, the Court said that the "broad objective of this section making it illegal for Members of Congress to receive or agree to receive compensation for services in matters before Federal departments or bureaus is to secure the integrity of executive action against undue influence of 2 Members of Congress upon executive officers and to insure efficiency in conduct of public affairs." While the case finally was dismissed on the grounds of insufficient evidence, it was the first prosecution under this statute, and the court made some interesting observations. For instance, it expressed the opinion that section 281 does not prohibit a lawyer-Congressman from practicing in courts of law or appearing or acting as counsel or attorney in any case or proceeding, civil or criminal, but instead—referring to the legislative history—it proposes to "restrain Members of Congress * * * from receiving compensation for doing any busi-

ness before any department * * * or anywhere else except in the judicial tribunals of the country." And, finally, it was held that "mere inquiries by a Congressman concerning the status of matters pending before Federal bureaus, without discussion of the merits of the case, did not constitute rendition of 'services' within the contemplation of the statute."

The CHAIRMAN. I take it that decision in the *Quinn* case would be in conflict with the opinion that a Congressman could not appear in a Federal court to defend a defendant in a case in which the United States was a party, and which case involved a criminal action.

Mr. WEITZEL. Offhand, Mr. Chairman, I would say it would be in conflict. I don't have Attorney General McGranery's opinion before me, but the court in the *Quinn* case did carefully point out that this was limited to the executive departments.

The CHAIRMAN. In other words, section 281 does not apply to appearances in a court.

Mr. WEITZEL. That is correct, sir.

As you know, there is another section which specifically prohibits Congressmen from practicing in the Court of Claims.

The CHAIRMAN. That is right.

Mr. WEITZEL. Section 282 provides that.

Mr. ROGERS. Might I interrupt a moment?

Going back to this last statement on page 3—

And, finally, it was held that "mere inquiries by a Congressman concerning the status of matters pending before Federal bureaus, without discussion of the merits of the case, did not constitute rendition of 'services' within the contemplation of the statute."

Now, by that do you mean that if a Congressman had been retained before or after he was elected and called up the department and said, "When do you expect a decision," and that is all he said, he would not be in violation of the law—is that your interpretation?

Mr. WEITZEL. In answering your question, Mr. Rogers, I would make this general observation, that we in the General Accounting Office do not have the job of construing the criminal statutes, and so I am hopeful that anything I say here this morning will be taken in the light of that.

But the court did say that the mere inquiry about a case would not constitute a violation of the statute. And we have to remember, too, that the statute is aimed at receiving or agreeing to receive compensation for services rendered, or to be rendered in relation to a proceeding.

I might say that we, the General Accounting Office, get literally thousands of inquiries from Members of Congress on matters that are pending. We are proud of the close liaison we have with Congress and I have never known a single inquiry which I felt was improper from any Member of Congress regarding a case pending before the General Accounting Office.

Mr. ROGERS. Well, of course, that deals purely with the question whether there is an agreement for the payment of a fee.

Now how shall we apply it in the case of the Congressman who makes the inquiry and urges them to do something, and when it is all over, the gentleman says, "I am going to contribute a thousand dollars to your campaign."

Mr. WEITZEL. Mr. Rogers, I would like to beg off on that answer. I think that is something within the province of Congress.

Mr. ROGERS. Thank you.

The CHAIRMAN. I just want to make a statement here. We have to be on the floor at 12 o'clock. There is a bill for the appropriations of this committee and I hope that Mr. Weitzel can finish his statement within that time.

Mr. WEITZEL. Thank you, sir; I will proceed.

Section 283 provides that whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as an agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties or receives any gratuity, or any share of or interest in any claim, shall be fined not more than \$10,000 or imprisoned not more than 1 year, or both. This section excepts from its provisions—

retired officers of the Armed Forces of the United States, while not on active duty.

It is not to be construed, however, as allowing—

any such retired officer within 2 years next after his retirement to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving the department in whose service he holds a retired status—

or as allowing—

any such retired officer to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving any subject matter with which he was directly connected while he was in an active-duty status.

In connection with this section, there is an interesting case entitled *United States v. 679.19 Acres of Land, More or Less, in McLean County, North Dakota*, 113 F. Supp. 590, involving a condemnation case. An employee of the Soil Conservation Service, while on annual leave from his employment at the time of trial, testified on behalf of the landowners in answer to a subpoena in behalf of such owners. He had been employed by the landowners to examine their various tracts of land and testify mainly with reference to the different soils and their productivity. Government counsel directed attention to section 283, and objected to his testimony. The court overruled the objection and held: (1) The statute did not have in contemplation a situation such as that here involved. The statute was passed by the Congress for the purpose of preventing Government employees from making use of private Government information to assist persons who had claims against the United States; (2) it also was passed by the Congress for the purpose of prohibiting Government employees who had access to Government files from obtaining therefrom information regarding persons who might possibly have claims against the Government and then soliciting the representation of the owners of such claims or assisting them in some way, thereby earning fees. And, finally, the court concluded by saying that it did not believe—

that the rights of landowners in condemnation cases constitute "claims" against the Government within the purview of the statute. The landowners here are not the plaintiffs. They are not claimants. They are, in fact, the defendants.

Section 284 makes it a misdemeanor for anyone who—

having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, within 2 years after the time when such employment or service has ceased, prosecutes or acts as counsel, attorney, or agent for prosecuting, any claims against the United States involving any subject matter directly connected with which such person was so employed or performed duty.

In interpreting this section—284—the Attorney General in his Memorandum No. 40, dated August 27, 1953, stated that as of that date since this statute had never been judicially construed, it was thought that the Department should place a construction on it as a guide for U.S. attorneys. That is what the chairman referred to previously. And this he did. He stated that—

the Department believes that in order to effectuate the evident and obvious purpose of the statute, section 284 must be given as inclusive construction.

A reading of the statute, he pointed out, clearly indicated that it was designed to maintain and insure honesty and integrity on the part of officers and employees of the Government in the performance of their official duties to the end that they be removed from temptation by prohibiting them for a period of 2 years at least from representing the opposing party involving any subject matter directly connected with which such person was so employed or performed duty. He then went on to say that—

manifestly it is improper, and not in the interest of good government, for a public employee who has handled a matter for the Government to leave public service and subsequently represent the other side, just as it is improper for an attorney in private practice to accept employment in matters adversely affecting any interest of a former client with respect to which confidence has been reposed. This principle is self-evident as to all matters in which the Government has an interest, and about which the former employee acquired knowledge or took action in connection with his official duties.

The Attorney General stated:

There is no distinction in this respect between monetary claims and non-monetary claims, or between claims by moving parties and defensive ones. Such conduct should be considered illegal as well as unethical in all cases.

He then went on to say that:

The legislative history throws little light on the meaning of the statute, but the Department believes that it was the purpose and intentment of Congress in enacting section 284 to prohibit all such conflicts of interests. Thus, the Department rejects artificial distinctions based on a narrow reading of the clause, "prosecutes or acts as counsel, attorney, or agent for prosecuting, any claims against the United States." That language, in view of the purpose of the statute, is broad enough to encompass representation in any matter in which the United States has any interest whatsoever.

He concluded by saying:

Accordingly, it is the position of the Department that the statute prohibits any former employee of the Federal Government, for a period of 2 years after leaving Government service, from representing any nongovernmental interest in any matter whatsoever, "involving any subject matter directly connected with which such person was so employed or performed duty," in which the United States is interested, directly or indirectly, whether as a party, as an enforcement agent, or otherwise.

The courts, however, have not altogether accepted this broad view, and in the case of *United States v. Bergson*, 119 F. Supp. 459, in 1954, it was held that the term "claims" was limited to a demand for money

or property. Thus, under this latter interpretation, a former Government employee is little restricted in his activities. For example, no matter how intimately he may have been connected with a particular contract during governmental service, he may change sides and continue to negotiate the terms and conditions of the contract, or negotiate a price redetermination, or present a termination claim. Furthermore, what is meant by the term "subject matter"? It should first be noted that the statute does not bar the prosecution of all claims against the Government by former employees. It bars only those where the ex-employee was directly connected with the "subject matter." This term, of course, could refer to such broad fields as military procurement, renegotiation, foreign affairs, or taxes. However, it has been interpreted by the Ways and Means Committee of the House as referring to only those claims with which the former employee was specifically connected or personally considered during the course of his Government employment. See House of Representatives Report No. 725, 79th Congress, 1st session.

Title 5, United States Code, section 99, bars any employee of an executive department, for a period of 2 years after leaving such employment, from prosecuting any claim against the United States which was pending in either of said departments during his employment.

This statute is narrower in two respects than section 284. First it requires the claim be "pending" at the time the former employee served with the Government—which is not a prerequisite of the criminal statute. And, second, it applies only to persons employed by departments of the Government, and not to all Government employees. Both of these qualifications are strictly construed by the courts. For example, if the subject matter of a claim had only been investigated for the Government by a former employee, and no claim had actually been filed or presented, the court in *Day v. Cera Mills*, 231 New York Supplement 235, held that no violation of the civil statute would be possible—since no claim was "pending" during the former employee's Government service. Furthermore, if the former employee served with any branch of the Government, outside of the executive departments, such as with the Federal Trade Commission or the Securities Exchange Commission, or any other executive agency as distinguished from "Department," apparently he would be unaffected by the provisions of this statute.

Section 1914 of title 18 prohibits the receipt of salary from private concerns by a Government employee, or the payment of such salary by private concerns, for the performance of his Government services.

In addition to these general statutes there are several other statutes of a similar nature which are applicable in special situations. For example, 10 U.S.C. 6112 prohibits the payment of pay to an officer of the Regular Navy or Regular Marine Corps while he is employed by a contractor furnishing naval supplies or war materials to the United States and provides that a retired Regular officer of those services engaged for himself or others in selling, or contracting or negotiating to sell such supplies or materials to the Department of the Navy is not entitled to pay from the United States while he is so engaged. Section 1309 of the Supplemental Appropriation Act, 1952, 65 Stat. 757, 37 U.S.C. 323, imposed, for a period of 2 years

after retirement, the same restrictions on payment of pay to retired officers of all the Regular services engaged in like selling activities to any of such services. The appropriation act provision was subsequently enacted into permanent law and is codified as section 59c of title 5 of the United States Code.

This summary discloses a pressing need for revision and clarification of the conflict-of-interest laws. For example, a Federal employee who prosecutes a claim for money against the United States violates both sections 281 and 283. A Federal employee who defends a claim prosecuted by the United States violates neither. Section 434 literally disqualifies a Federal employee from transacting Government business with a corporation in which he directly or indirectly owns a single share of stock. Literally, section 281 is violated by a Federal employee who receives compensation for the mentioned services even where the services were completed prior to entry into Government service. On the other hand the section apparently does not prohibit the receipt of compensation after Government service had ended even though the services were performed while in Government service. That is, the prohibition is directed toward the receipt of compensation and not the performance of service. And, while punishing the bribed employee the section permits the briber to go scot free. The limitations of sections 284 and 5 U.S.C. 99 have already been sufficiently pointed out. The four bills before your subcommittee are aimed at remedying these deficiencies. We have furnished reports to the chairman of this committee on the proposed legislation.

Over the years cases involving the problems at which these bills are aimed have come to our attention. For example, we have noted instances where the Government's contracting officer appeared to be also in the employ of the contractor. Other instances have been noted where the contracting officer had resigned and, upon completion of the contract, accepted employment with the contractor at a substantial increase in salary. This type of situation always gives rise to some question as to which master the employee is serving.

We found that medical officers of the Naval Reserve on active duty as interns in private hospitals were receiving, in addition to their officer's pay and allowances, the intern's stipend paid by the hospital. In 30 Comp. Gen. 246, we suggested that unless the stipend was received for the benefit of the United States, 18 U.S.C. 1914 might be for application. These officers have been relieved of liability by Public Law 85-869, approved September 2, 1958, 72 Stat. 1620.

Shortly after resigning, a former employee sought to obtain, as administrator of an estate, the proceeds of certain checks due the estate. While the claim was disposed of on other grounds, we referred to the provisions of 5 U.S.C. 99, prohibiting Government employees from representing claimants within 2 years after the termination of the Government employment. This case is reported at 16 Comp. Gen. 365.

In 22 Comp. Gen. 943, we considered the propriety of awarding a post office contract to the wife of a letter carrier. While we concluded that there could be no objection to such award in that case because the letter carrier was in no manner responsible for letting the contract, we emphasized that payments to or contracts with wives of

Government employees are open to criticism for possible favoritism and preferential treatment and that it had been held that such payments or contracts should not be made except for the most cogent reasons, citing 7 Comp. Gen. 617.

In this same vein we recently expressed the opinion to the chairman of a congressional subcommittee that it would be repugnant to public policy for the wife of a Government official occupying a major administrative or policymaking position to receive a contract award regardless of the existence of any direct or immediate authority in him to approve the award or to make decisions respecting controversies which might develop between the Government and the contractor. His position would in itself tend to create a basis for favoritism in the making of the award or in the settlement of disputes or questions arising out of the contract.

In decision of November 9, 1959, B-140581, to the Secretary of the Navy we considered the application of the forfeiture-of-retired-pay provisions of 10 U.S.C. 6112b to sales activities of retired naval officers which involve public buildings and works.

Concerning the criminal aspect of the proposals here involved, the General Accounting Office has no jurisdiction to determine whether a Federal criminal statute has been violated or to prosecute criminal infractions. Such matters come under the Department of Justice and the courts, and our procedure in such cases is presently governed by Comptroller General's Order No. 1.13. That order points out that generally the Federal Bureau of Investigation is responsible for investigating violations of Federal criminal laws and instructs our personnel to follow a policy of referral to the Federal Bureau of Investigation of all information concerning possible criminal violations arising in our work. The order specifies that our personnel will be alert for possible Federal criminal law violations, but it is emphasized that this responsibility is limited to situations where facts or circumstances reasonably indicating that a Federal criminal law has been violated are disclosed as a result of normal audit and examination procedure. We are required nevertheless to pass upon the validity of payments under contracts, and where a substantial question of a conflict of interest has been raised we have taken the position that we should decline to authorize payment, leaving the matter to the courts to decide.

With reference to the legislative proposals before your subcommittee, H.R. 1900 and H.R. 2156, identical bills, would effect a general revision of the mentioned sections. The apparent purpose of the bills is to simplify and strengthen the present provisions relating to such matters by making such provisions apply uniformly in the prescribed areas, by reducing unnecessary duplication, and by supplying needed omissions. These provisions would apply to both direct and indirect corruption without distinction as to the corruptive means employed and would include the briber as well as the bribed official. Several present provisions granting exemption from the application of some of the present provisions in certain cases would be repealed.

Our Office heretofore has suggested the strengthening of the criminal laws on bribery of Government officers and employees to avoid loopholes now existing. Mainly, we have suggested a revision and broadening of 18 U.S.C. 284 dealing with the prosecution of claims

against the Government by its former officers and employees, and the enactment of adequate safeguards against connivance between Government employees and contractors for future employment. The definition of the term "bribe" contained in H.R. 2156 and the provisions which would replace 18 U.S.C. 284—new section 18 U.S.C. 207—would appear to accomplish those objectives.

In commenting on certain other bills to revise 18 U.S.C. 284, we have cautioned against making the statute so restrictive that it might operate to deny to the Government the services of needed employees with special qualifications. This proposed revision, however, would permanently prohibit former Government employees from representing anyone in any matter in which the United States is a party only when the matter involves any subject matter concerning which he had any responsibility while employed by the Government; and it would prohibit former Government employees for a period of 2 years after their last employment or service ceased from representing anyone in any matter in which the United States is a party only when the matter involves any agency in which he was employed or assigned to duty. Thus, the permanent prohibition is analogous to that contained in Canons 6, 36, and 37 of the Canons of Legal Ethics—which the chairman has placed in the record—applicable to attorneys in the field covered by the section and we see no reason why other employees should not be subject to the same prohibition. Since the second prohibition applies only to agencies in which the former employees concerned were employed or assigned to duty, leaving them free to deal with all other agencies, we do not believe such prohibition will unduly hamper the Government in recruiting needed personnel.

The necessity for a revision of the present criminal provisions as they relate to congressional matters appears to be a matter especially for the consideration of the Congress and on this point we do not offer any opinion.

The CHAIRMAN. Counsel wishes to ask a question.

Mr. MALETZ. Mr. Weitzel, is it the considered view of the Comptroller General's Office that section 207 of the pending bills, H.R. 2156 and H.R. 1900, would not hamper the agencies of Government from recruiting personnel, qualified personnel?

Mr. WEITZEL. Our report pointed out, I believe, Mr. Chairman and Mr. Counsel, that we did not think this would unduly hamper the Government in obtaining needed personnel.

Now, of course, we recognize it can be argued that any restriction of this sort will discourage good men from coming into the Government, and particularly in a time of great need by the Government, will discourage people with the most know-how in their particular field from coming in and assisting the Government in its activities in that area.

However, as our statement pointed out, we feel that this is a reasonable approach in that it only prohibits permanently in connection with matters for which the person had a responsibility while he was in the Government, and also that it only prohibits him for 2 years from engaging in matters before the agency by whom he was employed or to which he was assigned.

Now, in this respect this is narrower than some of the existing law which applies to any claim pending before any of the departments

while the person was in the Government service, although in some respects it also is broader because it applies to things other than claims.

All of this we think is good because we think that it provides some needed strengthening in the areas where the existing law has proved weak. But we also think that it considers the interests, not only of the Government, but balances those legitimate interests against the legitimate interests of the people who come into the Government for temporary periods to assist the Government.

The word "unduly" is important in this statement.

Mr. MALETZ. Thank you very much.

Mr. WEITZEL. Certain actions of retired officers of the Armed Forces, both Regular and Reserve, regarding negotiation of contracts and sales to the Government would be made a crime punishable by fine and imprisonment. No change, however, is proposed in the existing laws providing certain forfeitures of the retired pay of Regular officers of those forces for such actions. See 5 U.S.C. 59c and 10 U.S.C. 6112b. If the provisions of H.R. 2156, or H.R. 1900, are enacted we believe it would be appropriate for Congress to reconsider the retired pay forfeiture provisions to determine whether the provisions should apply to retired Reserves as well as retired Regulars and to provide the same restrictions on retired pay for all the Armed Forces in the proscribed areas.

Those provisions of the bills relating to salaries of Members of Congress, Government officials, and employees apparently are not intended to modify or supersede the provisions of section 19 of the Government Employees Training Act, Public Law No. 85-507, approved July 7, 1958, permitting without regard to 18 U.S.C. 1914 the payment by certain private sources to employees in training of certain emoluments and expenses incident to the training authorized by the act. Hence, if this bill is to be enacted, section 19 of the training act should be amended to cite the correct Criminal Code section.

The bills would authorize, but would not require, the President, or his designee, to declare void, and to rescind transactions in violation of the bribery and conflict-of-interest statutes and would permit the recovery of the money or thing transferred or delivered on behalf of the United States incident to the voided transaction. It would appear that a final conviction under the criminal statutes would be a condition precedent to validly invoking such provisions. In that view and on the premise that the proscribed conduct in any degree is detrimental to the interest of the United States, we suggest that the transactions be declared void by the statute as is presently the case under 18 U.S.C. 431, relating to Government contracts entered into by Members of Congress.

H.R. 2157 would amend the Administrative Procedure Act to declare that certain actions by executive-branch Government employees are improper conduct and to authorize the head of any agency in the executive branch to dismiss any employee upon a finding of improper conduct. The declarations of improper conduct contained in the bill cover generally the same ground as that covered by the criminal provisions contained in H.R. 2156. We note that the heads of the executive departments and agencies now have power to make any disciplinary rules or regulations deemed necessary to prevent improper conduct by their employees and to enforce such rules or regulations.

Many agencies have issued regulations on ethical standards of conduct for their employees' guidance. Our regulations are contained in Comptroller General's Order No. 1.21. The heart of that order is the principle that in all their dealings, officers and employees of the General Accounting Office shall so conduct themselves as to permit no possible basis for suspicion of unethical practices.

In our view one of the best means of protecting the public interest against questionable activities of Government officers and employees is the constant and unwavering vigilance on the part of those responsible for the administration of the respectation departments and agencies. In such circumstances, and to provide some area of flexibility on the administration of H.R. 2157, we suggest that consideration be given to whether its provisions should not be relaxed at least to the extent of giving the head of the department or agency the authority to determine in the light of its own operation what extensions beyond the restrictions imposed by the criminal statutes may be appropriate for his department or agency.

If H.R. 2157 or a bill along its general lines is to be enacted we do not see any sound reason why such bill should not apply to employees in the legislative and judicial branches as well as to those in the executive branch of the Government.

H.R. 7556 would amend 18 U.S.C. 284 to subject to criminal penalties (1) any person or concern who, within 2 years after a Federal civilian employee has terminated his employment, knowingly, either directly or indirectly, employs or offers or promises to employ, any such employee who at any time in a 2-year period prior to termination of his Federal employment, has dealt with the claim or business of such person or concern, minor ministerial dealings and regulations or orders of general application to business excepted; and (2) any Federal civilian employee who, within 2 years after he has terminated his Federal employment, accepts or promises to accept employment with a person, concern, or foreign government whose claim or business he dealt with at any time during the 2-year period prior to termination of his employment. Also, the bill would exempt from the present prohibition of section 284 and the new prohibitions which would be added, employments begun with persons, concerns, or foreign governments prior to the effective date of the proposed amendments and would permanently exclude from all the prohibitions of that section Federal employment by the Atomic Energy Commission and Securities and Exchange Commission.

The term "business" is very comprehensive and is subject to different interpretations depending upon the particular situation involved. See, generally, volume 5, Words and Phrases, Business. Hence, in order to insure compliance with the legislative intent in that respect, it may be advisable to include a provision in H.R. 7556 defining the term for purposes of the bill.

The need for exempting from the present provisions of section 284 violations of such provisions committed prior to the effective date of this bill and for permanently excluding from the prohibitions of the section, employees of the Atomic Energy Commission and the Securities and Exchange Commission, is not apparent. Unless such actions are clearly necessary from the standpoint of the Government's interest, we doubt their advisability.

If the provisions of this bill making it a crime for employers in the proscribed situation to employ former Government employees who have dealt with their claims or business and, also, making it a crime for those employees to accept such employment, become law, it is difficult to visualize a case where prosecutions under the present provisions of section 284 would any longer be necessary or attempted. Consequently, if this bill, H.R. 7556, is to receive favorable consideration, your committee may wish to give consideration to repealing the present provisions except as to cases arising prior to such repeal.

Going beyond the individual Government agencies and the prohibitions and penalties which may be found necessary to insure proper standards of ethical conduct, Comptroller General Campbell has a suggestion in the conflict-of-interest area which I think is excellent and commend to the serious consideration of this subcommittee. The suggestion is that a Government advisory board be set up, with which prospective Government officials could confer, before they assumed office, on possible conflict-of-interest questions, general or specific, arising out of their employment. Valuable service could be rendered by such a group in assisting new officials in recognizing and meeting various situations involving the work of their offices, contacts with public and private interests, and unofficial activities which might cast an adverse reflection on their official position. Thus, the new appointee might be enabled to escape some of the pitfalls and problems and avoid not only the evils but the appearance of evil.

Thank you, Mr. Chairman, and members of the subcommittee.

(Mr. Weitzel's statement appears at p. 72.)

The CHAIRMAN. Any other questions?

Mr. ROGERS. Has your attention been called to regulations issued by the Bureau of Reclamation, in the Department of Interior, as relates to engineers accepting employment? Has this matter been directed to the General Accounting Office?

Mr. WEITZEL. We have a large number of these individual orders. I will defer to our counsel, Mr. Carpenter, as to whether we have that particular one.

Mr. CARPENTER. We have not, as far as I know. Our attention has not been directed to this particular order.

We are aware that these orders vary in degrees as to their prohibition and application, but this particular one I am not familiar with, Mr. Rogers.

Mr. ROGERS. The report that we had last year was that employees of the Bureau of Reclamation appeared before the Federal Power Commission. I think one of the engineers testified for the city of Tacoma, Wash. They raised a question that he was pressing a claim against the Government. Of course, in that instance, the Federal Power Commission had the duty to determine whether or not a permit should be given to the city of Tacoma.

Now, as a result of that, certain rules and regulations have been promulgated by the Bureau of Reclamation concerning engineers and their employment, and if it hasn't been directed to your attention, why, naturally you wouldn't know their interpretation.

Mr. WEITZEL. We will be happy to obtain that, and we thank you for bringing that to our attention. We are interested in all such orders of the agencies.

Mr. ROGERS. There is the other matter, where you have engineers employed by the Bureau of Reclamation, for example, for 40 hours a week, and you also have private contractors who have contracts with the Government for foreign aid programs, building dams in other parts of the world.

Now, the question comes up as to whether a man who has a position as an engineer and employee of the Bureau of Reclamation can, in his spare time, accept employment from a contractor, sometimes from a foreign government, but to whom we supply the money.

Now, I don't know whether that matter has been directed to your attention or not, but upon looking at it, see if it has the same application.

Mr. WEITZEL. Yes. And thank you, Mr. Rogers.

There was a similar situation which a Senate committee has investigated, involving the part-time employment of Government employees outside of their official time, which Mr. Carpenter could probably comment on.

Mr. CARPENTER. Yes. This involved mapmaking activities of employees, principally in the Coast and Geodetic Survey, in the Army Map Service.

We were asked to investigate that, and we noticed that these employees, on their own time, were going into their own agencies and investigating bids or invitations for bids for private mapmaking concerns. Some of the employees even had their own mapmaking concerns. The employees were bidding or helping to prepare bids on Government contracts.

A bill designed to control this problem was introduced and referred to the Senate Government Operations Committee. Hearings were held on the bill, and at those hearings it developed that a number of agencies were proceeding actively to prevent the activities under their own administrative regulations. At that time, in line with your Bureau of Reclamation question, Mr. Rogers, the Interior Department was revising its so-called outside employment regulations. The regulations had not as yet been issued, but I gathered from the testimony of the witnesses at that hearing that they would be rather comprehensive.

In view of your question I think we will look into the Bureau of Reclamation regulations.

Mr. WEITZEL. I might say, Mr. Rogers, our regulations on the subject have a twofold approach; one, from the standpoint of avoiding any appearance of misconduct by the acceptance of any outside employment by an employee of the General Accounting Office; and secondly, from the standpoint of whether he is able to do this outside work and still give his full, regular, official duty to the Government.

Mr. ROGERS. Yes. Thank you.

(Subsequently, the following was received from the Comptroller General.)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 16, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: During the course of the testimony by our representatives at the hearing held February 17, 1960, by the Antitrust Subcommittee of your committee on H.R. 1900, H.R. 2156, H.R. 2157, and H.R. 7556, Representa-

tive Rogers raised a question about Bureau of Reclamation engineers, while on leave, working for International Cooperation Administration contractors on a part-time basis. He asked if this practice was sanctioned under the Bureau of Reclamation order that was issued after an incident came to light where a Bureau of Reclamation employee testified for the city of Tacoma, Wash., before the Federal Power Commission.

Representative Rogers' question concerns a personnel problem primarily of administrative concern. We have, however, looked into the matter.

During the hearings held in April 1959 before a subcommittee of the Committee on Appropriations, House of Representatives, on public works appropriations for 1960, it was developed (pp. 7 through 51) that a considerable number of Bureau of Reclamation engineers, with either express or tacit Bureau consent, had been engaging during off-duty periods in outside employment with private contractors for water-resource projects. When the Bureau became aware of the extent of this practice, it issued an order stopping all outside employment involving technical or professional skills utilized in Bureau employment. This order was issued on January 26, 1959. Subsequently, the entire matter was referred to the Attorney General for investigation by the Federal Bureau of Investigation for possible criminal law violation.

As a consequence of such order the outside employment of certain Bureau engineers by Tippetts-Abbott-McCarthy-Stratton (TAMMS), the engineering firm employed by ICA for the Government of China to design and supervise construction of the Shihmen Dam, Formosa, was stopped. On the basis that their work was of importance to a friendly nation and that the Shihmen project was being financed by the United States with ICA funds, permission was requested for these employees to resume such employment. We are advised that such permission was denied and that the Bureau offered to do the required work within the Bureau. The work was continued by the same employees within the Bureau in their capacity as Government employees. This case is discussed on page 45 of the appropriation hearings.

Our information is to the effect that, while the order of January 29, 1959, has been relaxed in a limited degree as to employees in grade GS-11 and below. Bureau of Reclamation instructions on this subject in effect as late as May 1959 directed that requests by Bureau employees for permission to engage in outside work be denied in all cases involving (1) Federal projects, (2) projects financed from foreign-aid funds, (3) projects requiring licenses or other forms of permission from the Federal Government, (4) projects for which Federal financing is being or is to be sought, or (5) any other projects in which there is or may be direct or indirect Federal interest.

The foregoing supports a conclusion that the practice mentioned by Representative Rogers was not sanctioned under the order to which he referred.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

Mr. MALETZ. Mr. Weitzel, is it fair to summarize your testimony in this respect: that you favor the enactment of H.R. 2156 or 1900, but have reservations about 2157, which would establish a code of ethics binding on the executive agencies?

Mr. WEITZEL. I would say, Mr. Counsel, that we have presented what I would call a favorable report on both of those bills.

We have made some comments about whether there should be a little more discretion in the heads of agencies as to the code of official conduct, as to which provisions they would adopt for their agencies.

I think it would be fair to say that we favor both bills generally.

Mr. MALETZ. A proposal now being discussed in various Government agencies recommends a deemphasis of criminal prohibition and greater emphasis on agency regulations with administrative sanctions to cope with problems of conflict of interest.

What is the opinion at your office with respect to such a proposal?

Mr. WEITZEL. I don't know whether we have specifically considered such a proposal, but just offhand, and speaking for myself, I feel that there are some areas that certainly would need treatment by a crim-

inal statute, and that the criminal statutes need clarification and need strengthening.

However, we have to recognize that there are some areas in the ethical field which probably never could be reached by a criminal statute that was broad enough to cover everything in the area without also doing some injustice or perhaps leading to some ridiculous results if literally interpreted.

So we certainly do feel that sound and good administration in the agencies is one of the best answers to this problem.

We have said that good administration, beginning at the top, is something for which there is no substitute in the area of ethical conduct of Government employees.

We favor the adoption of the Code of official conduct, with some amendments, but we do not feel that this should be to the exclusion of criminal statutes.

Mr. MALETZ. I notice in your report on H.R. 2156 you recommend that the provisions of proposed section 218, which authorizes but does not require the President to declare transactions void if consummated in violation of the chapter of the criminal code dealing with bribery, graft, and conflicts of interest, should be revised to render such transactions void.

I wonder, Mr. Weitzel, if you would enlarge on that recommendation.

Mr. WEITZEL. Well, we took the position in our report and in the statement that apparently it is intended that there has to be a final conviction under the criminal statutes as a prerequisite to the invocation of this power by the President or his delegate.

That being the case, we felt that perhaps it would be a stronger statute if it simply provided that transactions which are in violation of these criminal provisions are thereby declared void.

Of course, the transactions would have to be determined to be in violation by a proper judicial authority.

Mr. MALETZ. Might there not be situations in which, despite the wrongdoing, the interests of the United States would be better served by affirming rather than rescinding the transaction?

Mr. WEITZEL. I can conceive of cases where, as in a case of private collusion or fraud or improper conduct, a party might have a choice of either affirming or avoiding a contract or transaction.

Mr. MALETZ. In other words, I take it that the Comptroller General's Office doesn't feel too strongly about giving the President discretion with regard to rescinding the transaction in the event that the criminal statutes in this area have been violated.

Mr. WEITZEL. I think that is correct.

The CHAIRMAN. Thank you, Mr. Weitzel. We appreciate your testimony and the aid given by Mr. Carpenter.

We will now adjourn at this time until tomorrow morning at 10:30, when we shall hear from Mr. J. H. Macomber, Jr., General Counsel, and Herbert E. Angel, Director of Administration, General Services Administration; and Roger Jones, Chairman of the Civil Service Commission.

We stand adjourned until tomorrow morning.

(Whereupon, at 11:45 a.m., the subcommittee adjourned, to reconvene on Thursday, February 18, 1960, at 10:30 a.m.)

(The statement referred to at p. 68 follows:)

STATEMENT OF HON. FRANK H. WETZEL, ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES

Mr. Chairman and members of the subcommittee, we in the General Accounting Office appreciate the opportunity to appear before your subcommittee in connection with the proposals represented by H.R. 1900, H.R. 2156, H.R. 2157, and H.R. 7556 to simplify and strengthen the laws relating to bribery, graft, and conflicts of interest in Government.

The laws which would be affected by these bills are designed to insure honesty in Government and the conflict-of-interest statutes frequently have been referred to as ethical standards in Government service. Our people's religious tradition of personal integrity and our national principle that a public office is a public trust demand that our public officials and those who deal with them exercise a high standard of conduct in transactions involving relationships between the Government and the public. The concern of the Congress in this subject has been evidenced by hearings held and reports issued in both Houses and the adoption of House Concurrent Resolution 175, 85th Congress, promulgating a code of ethics for Government employees. The existing statutes and remedial proposals are excellently set forth in the staff report to this subcommittee dated March 1, 1958, on Federal conflict-of-interest legislation.

This matter of ethics in Government has been and is one of much concern to our Office. It is a part of the job of the General Accounting Office to help enforce standards of honesty and integrity. We are a part of the system of checks and balances instituted in the Constitution and our part of the system has helped to prevent the taxpayers' money from being spent for purposes not authorized by the people through their representatives. We heartily concur in the statement of the Attorney General (in 33 Op. Atty. Gen. 273) that "No Government official or employee should serve two masters to the prejudice of his unbiased devotion to the interests of the United States." As will be hereafter shown, our consideration of this problem has convinced us that a substantial strengthening, revision, and clarification of the laws relating to bribery, graft, and conflict of interest are needed if the mischief at which these laws are aimed is to be adequately prevented.

The various conflict-of-interest laws which these bills would repeal and supersede are 18 U.S.C. 281, 283, 284, 434, and 1914 and 5 U.S.C. 99. These laws and their deficiencies are set out fully and completely in parts 1 and 2 of the report of your staff previously referred to. I would like, however, to comment briefly on those sections.

Section 281 makes it a felony and provides for disqualification from holding Federal office for anyone who "being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court-martial, officer, or any civil, military, or naval commission," and they "shall be fined not more than \$10,000 or imprisoned not more than 2 years, or both."

In the case of *United States v. Quinn*, 111 F. Supp. 870, 116 F. Supp. 802, and 141 F. Supp. 622, the court said that the "broad objective of this section making it illegal for Members of Congress to receive or agree to receive compensation for services in matters before Federal departments or bureaus is to secure the integrity of executive action against undue influence of Member of Congress upon executive officers and to insure efficiency in conduct of public affairs." While the case finally was dismissed on the grounds of insufficient evidence, it was the first prosecution under this statute, and the court made some interesting observations. For instance, it expressed the opinion that section 281 does not prohibit a lawyer-Congressman from practicing in courts of law or appearing or acting as counsel or attorney in any case or proceeding, civil or criminal, but instead—referring to the legislative history—it proposes to "restrain Members of Congress * * * from receiving compensation for doing any business before any department * * * or anywhere else except in the judicial tribunals of the country." And, finally, it was held that "mere inquiries by a Congressman concerning the status of matters pending before Federal bureaus, without discussion of the merits of the case, did not constitute rendition of 'services' within the contemplation of the statute."

Section 283 provides that whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as an agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties or receives any gratuity, or any share of or interest in any claim, shall be fined not more than \$10,000 or imprisoned not more than 1 year, or both. This section excepts from its provisions "Retired officers of the Armed Forces of the United States, while not an active duty." It is not to be construed, however, as allowing "any such retired officer within 2 years next after his retirement to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving the department in whose service he holds a retired status," or as allowing "any such retired officer to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving any subject matter with which he was directly connected while he was in an active-duty status."

In connection with this section, there is an interesting case entitled *United States v. 679.19 Acres of Land, More or Less, in McLean County, North Dakota*, 113 F. Supp. 590, involving a condemnation case. An employee of the Soil Conservation Service, while on annual leave from his employment at the time of trial, testified on behalf of the landowners in answer to a subpoena in behalf of such owners. He had been employed by the landowners to examine their various tracts of land and testify mainly with reference to the different soils and their productivity. Government counsel directed attention to section 283, and objected to his testimony. The court overruled the objection and held: (1) The statute did not have in contemplation a situation such as that here involved. The statute was passed by the Congress for the purpose of preventing Government employees from making use of private Government information to assist persons who had claims against the United States. (2) It also was passed by the Congress for the purpose of prohibiting Government employees who had access to Government files from obtaining therefrom information regarding persons who might possibly have claims against the Government and then soliciting the representation of the owners of such claims or assisting them in some way, thereby earning fees. And, finally, the court concluded by saying that it did not believe "that the rights of landowners in condemnation cases constitute "claims" against the Government within the purview of the statute. The landowners here are not the plaintiffs. They are not claimants. They are, in fact, the defendants."

Section 284 makes it a misdemeanor for anyone who "having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, within 2 years after the time when such employment or service has ceased, prosecutes or acts as counsel, attorney, or agent for prosecuting, any claims against the United States involving any subject matter directly connected with which such person was so employed or performed duty."

In interpreting this section—284—the Attorney General in his Memorandum No. 40, dated August 27, 1953, stated that as of that date since this statute had never been judicially construed, it was thought that the Department should place a construction on it as a guide for the United States attorneys. And this he did. He stated that "the Department believes that in order to effectuate the evident and obvious purpose of the statute, section 284 must be given an inclusive construction." A reading of the statute, he pointed out, clearly indicated that it was designed to maintain and insure honesty and integrity on the part of officers and employees of the Government in the performance of their official duties to the end that they be removed from temptation by prohibiting them for a period of 2 years at least from representing the opposing party involving any subject matter directly connected with which such person was so employed or performed duty. He then went on to say that "manifestly it is improper, and not in the interest of good government, for a public employee who has handled a matter for the Government to leave public service and subsequently represent the other side, just as it is improper for an attorney in private practice to accept employment in matters adversely affecting any interest of a former client with respect to which confidence has been reposed. This principle is self-evident as to all matters in which the Government has an interest, and about which the former employee acquired knowledge or took action in connection with his official duties. The Attorney General stated that: "There is no distinction in this respect be-

tween monetary claims and nonmonetary claims, or between claims by moving parties and defensive ones. Such conduct shall be considered illegal as well as unethical in all cases." He then went on to say that: "The legislative history throws little light on the meaning of the statute, but the Department believes that it was the purpose and intent of Congress in enacting section 284 to prohibit all such conflicts of interest. Thus, the Department rejects artificial distinctions based on a narrow reading of the clause, 'prosecutes or acts as counsel, attorney, or agent for prosecuting, any claims against the United States.' That language, in view of the purpose of the statute, is broad enough to encompass representation in any matter in which the United States has any interest whatsoever." He concluded by saying: "Accordingly, it is the position of the Department that the statute prohibits any former employee of the Federal Government, for a period of 2 years after leaving Government service, from representing any nongovernmental interest in any matter whatsoever, 'involving any subject matter directly connected with which such person was so employed or performed duty,' in which the United States is interested, directly or indirectly, whether as a party, as an enforcement agent, or otherwise."

The courts, however, have not altogether accepted this broad view, and in the case of *United States v. Bergson*, 119 F. Supp. 459, in 1954, it was held that the term "claims" was limited to "a demand for money or property." Thus, under this latter interpretation, a former Government employee is little restricted in his activities. For example, no matter how intimately he may have been connected with a particular contract during governmental service, he may change sides and continue to negotiate the terms and conditions of the contract, or negotiate a price redetermination, or present a termination claim. Furthermore, what is meant by the term "subject matter"? It should first be noted that the statute does not bar the prosecution of all claims against the Government by former employees. It bars only those where the ex-employee was directly connected with the "subject matter." This term, of course, could refer to such broad fields as military procurement, renegotiation, foreign affairs, or taxes. However, it has been interpreted by the Ways and Means Committee of the House as referring to only those claims with which the former employee was specifically connected or personally considered during the course of his Government employment. See House of Representatives Report No. 725, 79th Congress, 1st session.

Title 5, United States Code, section 99, bars any employee of an executive department, for a period of 2 years after leaving such employment, from prosecuting "any claim against the United States which was pending in either of said departments" during his employment.

This statute is narrower in two respects than section 284. First, it requires that the claim be pending at the time the former employee served with the Government—which is not a prerequisite of the criminal statute. And, second, it applies only to persons employed by departments of the Government, and not to all Government employees. Both of these qualifications are strictly construed by the courts. For example, if the subject matter of a claim had only been investigated for the Government by a former employee, and no claim had actually been filed or presented, the court in *Day v. Cera Mills*, 231 New York Supplement 235, held that no violation of the civil statute would be possible—since no claim was pending during the former employee's Government service. Furthermore, if the former employee served with any branch of the Government, outside of the executive departments, such as with the Federal Trade Commission or the Securities Exchange Commission, or any other executive agency as distinguished from "Department," apparently he would be unaffected by the provisions of this statute.

Section 1914 of title prohibits the receipt of salary from private concerns by a Government employee, or the payment of such salary by private concerns, for the performance of his Government services.

In addition to these general statutes there are several other statutes of a similar nature which are applicable in special situations. For example, 10 U.S.C. 6112 prohibits the payment of pay to an officer of the Regular Navy or Regular Marine Corps while he is employed by a contractor furnishing naval supplies or war materials to the United States and provides that a retired Regular officer of those services engaged for himself or others in selling, or contracting or negotiating to sell such supplies or materials to the Department of the Navy is not entitled to pay from the United States while he is so engaged. Section 1309 of the Supplemental Appropriation Act, 1952, Stat. 757, 37 U.S.C. 323,

imposed, for a period of 2 years after retirement, the same restrictions on payment of pay to retired officers of all the Regular services engaged in like selling activities to any of such services.

This summary discloses a pressing need for revision and clarification of the conflict-of-interest laws. For example, a Federal employee who prosecutes a claim for money against the United States violates both sections 281 and 283. A Federal employee who defends a claim prosecuted by the United States violates neither. Section 434 literally disqualifies a Federal employee from transacting Government business with a corporation in which he directly or indirectly owns a single share of stock. Literally, section 281 is violated by a Federal employee who receives compensation for the mentioned services even where the services were completed prior to entry into Government service. On the other hand the section apparently does not prohibit the receipt of compensation after Government service had ended even though the services were performed while in Government service. And, while punishing the bribed employee the section permits the briber to go scot-free. The limitations of section 284 and 5 U.S.C. 99 have already been sufficiently pointed out. The four bills before your subcommittee are aimed at remedying these deficiencies. We have furnished reports to the chairman of this committee on the proposed legislation.

Over the years cases involving the problems at which these bills are aimed have come to our attention. For example, we have noted instances where the Government's contracting officer appeared to be also in the employ of the contractor. Other instances have been noted where the contracting officer had resigned and, upon completion of the contract, accepted employment with the contractor at a substantial increase in salary. This type of situation always gives rise to some question as to which master the employee is serving.

We found that medical officers of the Naval Reserve on active duty as interns in private hospitals were receiving, in addition to their officer's pay and allowances the intern's stipend paid by the hospital. In 30 Comp. Gen. 246, we suggested that unless the stipend was received for the benefit of the United States, 18 U.S.C. 1914 might be for application. These officers have been relieved of liability by Public Law 85-869, approved September 2, 1958, 72 Stat. 1620.

Shortly after resigning, a former employee sought to obtain, as administrator of an estate, the proceeds of certain checks due the estate. While the claim was disposed of on other grounds, we referred to the provisions of 5 U.S.C. 99, prohibiting Government employees from representing claimants within 2 years after the termination of the Government employment. This case is reported at 16 Comp. Gen. 365.

In 22 Comp. Gen. 943, we considered the propriety of awarding a post office contract to the wife of a letter carrier. While we concluded that there could be no objection to such award in that case because the letter carrier was in no manner responsible for letting the contract, we emphasized that payments to or contracts with wives of Government employees are open to criticism for possible favoritism and preferential treatment and that it had been held that such payments or contracts should not be made except for the most cogent reasons, citing 7 Comp. Gen. 617.

In this same vein we recently expressed the opinion to the chairman of a congressional subcommittee that it would be repugnant to public policy for the wife of a Government official occupying a major administrative or policymaking position to receive a contract award regardless of the existence of any direct or immediate authority in him to approve the award or to make decisions respecting controversies which might develop between the Government and the contractor. His position would in itself tend to create a basis for favoritism in the making of the award or in the settlement of disputes or questions arising out of the contract.

In decision of November 9, 1959, B-140581, to the Secretary of the Navy we considered the application of the forfeiture-of-retired-pay provisions of 10 U.S.C. 6112b to sales activities of retired Naval officers which involve public buildings and works.

Concerning the criminal aspect of the proposals here involved, the General Accounting Office has no jurisdiction to determine whether a Federal criminal statute has been violated or to prosecute criminal infractions. Such matters come under the Department of Justice and the courts, and our procedure in such cases is presently governed by Comptroller General's Order No. 1.13. That order points out that generally the Federal Bureau of Investigation is respon-

sible for investigating violations of Federal criminal laws and instructs our personnel to follow a policy of referral to the Federal Bureau of Investigation of all information concerning possible criminal violations arising in our work. The order specifies that our personnel will be alert for possible Federal criminal law violations, but it is emphasized that this responsibility is limited to situations where facts or circumstances reasonably indicating that a Federal criminal law has been violated are disclosed as a result of normal audit and examination procedure. We are required nevertheless to pass upon the validity of payments under contracts, and where a substantial question of a conflict of interest has been raised we have taken the position that we should decline to authorize payment, leaving the matter to the courts to decide.

With reference to the legislative proposals before your subcommittee, H.R. 1900 and H.R. 2156, identical bills, would effect a general revision of the mentioned sections. The apparent purpose of the bills is to simplify and strengthen the present provisions relating to such matters by making such provisions apply uniformly in the prescribed areas, by reducing unnecessary duplication, and by supplying needed omissions. These provisions would apply to both direct and indirect corruption without distinction as to the corruptive means employed and would include the briber as well as the bribed official. Several present provisions granting exemption from the application of some of the present provisions in certain cases would be repealed.

Our office heretofore has suggested the strengthening of the criminal laws on bribery of Government officers and employees to avoid loopholes now existing. Mainly, we have suggested a revision and broadening of 18 U.S.C. 284 dealing with the prosecution of claims against the Government by its former officers and employees, and the enactment of adequate safeguards against connivance between Government employees and contractors for future employment. The definition of the term "bribe" contained in H.R. 2156 and the provisions which would replace 18 U.S.C. 284—new section 18 U.S.C. 207—would appear to accomplish those objectives.

In commenting on certain other bills to revise 18 U.S.C. 284, we have cautioned against making the statute so restrictive that it might operate to deny to the Government the services of needed employees with special qualifications. This proposed revision, however, would permanently prohibit former Government employees from representing anyone in any matter in which the United States is a party only when the matter involves any subject matter concerning which he had any responsibility while employed by the Government; and it would prohibit former Government employees for a period of 2 years after their last employment or service ceased, from representing anyone in any matter in which the United States is party only when the matter involves any agency in which he was employed or assigned to duty. Thus, the permanent prohibition is analogous to that contained in Canons 6, 36, and 37 of the Canons of Legal Ethics applicable to attorneys in the field covered by the section and we see no reason why other employees should not be subject to the same prohibition. Since the second prohibition applies only to agencies in which the former employees concerned were employed or assigned to duty, leaving them free to deal with all other agencies, we do not believe such prohibition will unduly hamper the Government in recruiting needed personnel.

The necessity for a revision of the present criminal provisions as they relate to congressional matters appears to be a matter especially for the consideration of the Congress and on this point we do not offer any opinion.

Certain actions of retired officers of the Armed Forces (Regular and Reserve) regarding negotiation of contracts and sales to the Government would be made a crime punishable by fine and imprisonment. No change, however, is proposed in the existing laws providing certain forfeitures of the retired pay of regular officers of those forces for such actions. See 5 U.S.C. 59c and 10 U.S.C. 6112h. If the provisions of H.R. 2156 are enacted we believe it would be appropriate for Congress to reconsider the retired pay forfeiture provisions to determine whether the provisions should apply to retired Reserves as well as retired Regulars and to provide the same restrictions on retired pay for all the Armed Forces in the proscribed areas.

These provisions of the bill relating to salaries of Members of Congress, Government officials, and employees apparently are not intended to modify or supersede the provisions of section 19 of the Government Employees Training Act, Public Law No. 85-507, approved July 7, 1958, permitting without regard to 18 U.S.C. 1914 the payment by certain private sources to employees in training

of certain emoluments and expenses incident to the training authorized by the act. Hence, if this bill is to be enacted, section 19 of the training act should be amended to cite the correct criminal code section.

The bill would authorize, but would not require, the President, or his designee, to declare void, and to rescind transactions in violation of the bribery and conflict-of-interest statutes and would permit the recovery of the money or thing transferred or delivered on behalf of the United States incident to the voided transaction. It would appear that a final conviction under the criminal statutes would be a condition precedent to validly invoking such provisions. In that view and on the premise that the prescribed conduct in any degree is detrimental to the interest of the United States, we suggest that the transactions be declared void by the statute as is presently the case under 18 U.S.C. 431, relating to Government contracts entered into by Members of Congress.

H.R. 2157 would amend the Administrative Procedure Act to declare that certain actions by executive branch Government employees are improper conduct and to authorize the head of any agency in the executive branch to dismiss any employee upon a finding of improper conduct. The declarations of improper conduct contained in the bill cover generally the same ground as that covered by the criminal provisions contained in H.R. 2156. We note that the heads of the executive departments and agencies now have power to make any disciplinary rules or regulations deemed necessary to prevent improper conduct by their employees and to enforce such rules or regulations.

Many agencies have issued regulations on ethical standards of conduct for their employees' guidance. Our regulations are contained in Comptroller General's Order No. 1.21. The heart of that order is the principle that in all their dealings, officers and employees of the General Accounting Office shall so conduct themselves as to permit no possible basis for suspicion of unethical practices.

In our view one of the best means of protecting the public interest against questionable activities of Government officers and employees is the constant and unwavering vigilance on the part of those responsible for the administration of the respective departments and agencies. In such circumstances, and to provide some area of flexibility in the administration of H.R. 2157, we suggest that consideration be given to whether its provisions should not be relaxed at least to the extent of giving the head of the department or agency the authority to determine in the light of its own operations what extensions beyond the restrictions imposed by the criminal statutes may be appropriate for his department or agency.

If H.R. 2157 or a bill along its general lines is to be enacted we do not see any sound reason why such bill should not apply to employees in the legislative and judicial branches as well as to those in the executive branch of the Government.

H.R. 7556 would amend 18 U.S.C. 284 to subject to criminal penalties (1) any person or concern who, within 2 years after a Federal civilian employee has terminated his employment, knowingly, either directly or indirectly, employs or offers or promises to employ, any such employee who at any time in a 2-year period prior to termination of his Federal employment, has dealt with the claim or business of such person or concern, minor ministerial dealings and regulations or orders of general application to business excepted; and (2) any Federal civilian employee who, within 2 years after he has terminated his Federal employment, accepts or promises to accept employment with a person, concern, or foreign government whose claim or business he dealt with at any time during the 2-year period prior to termination of his employment. Also, the bill would exempt from the present prohibition of section 284 and the new prohibitions which would be added, employments begun with persons, concerns, or foreign governments prior to the effective date of the proposed amendments and would permanently exclude from all the prohibitions of that section Federal employment by the Atomic Energy Commission and the Securities and Exchange Commission.

The term "business" is very comprehensive and is subject to different interpretations depending upon the particular situation involved. See, generally, volume 5, Words and Phrases, "Business." Hence, in order to insure compliance with the legislative intent in that respect, it may be advisable to include a provision in H.R. 7556 defining the term for purposes of the bill.

The need for exempting from the present provisions of section 284 violations of such provisions committed prior to the effective date of this bill and for permanently excluding from the prohibitions of the section, employees of the Atomic Energy Commission and the Securities and Exchange Commission, is not ap-

parent. Unless such actions are clearly necessary from the standpoint of the Government's interest, we doubt their advisability.

If the provisions of this bill making it a crime for employers in the proscribed situation to employ former Government employees who have dealt with their claims or business and, also, making it a crime for those employees to accept such employment, become law, it is difficult to visualize a case where prosecutions under the present provisions of section 284 would any longer be necessary or attempted. Consequently, if this bill is to receive favorable consideration, your committee may wish to give consideration to repealing the present provisions except as to cases arising prior to such repeal.

Going beyond the individual Government agencies and the prohibitions and penalties which may be found necessary to insure proper standards of ethical conduct, Comptroller General Campbell has a suggestion in the conflict-of-interest area which I think is excellent and commend to the serious consideration of this subcommittee. The suggestion is that a Government advisory board be set up, with which prospective Government officials could confer, before they assumed office, on possible conflict-of-interest questions, general or specific, arising out of their employment. Valuable service could be rendered by such a group in assisting new officials in recognizing and meeting various situations involving the work of their offices, contacts with public and private interests, and unofficial activities which might cast an adverse reflection on their official position. Thus, the new appointee might be enabled to escape some of the pitfalls and problems and avoid not only the evils but the appearance of evil.

FEDERAL CONFLICT OF INTEREST LEGISLATION

THURSDAY, FEBRUARY 18, 1960

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler presiding.

Present: Representatives Celler, Rodino, Rogers, Holtzman, Toll, McCulloch and Meader.

Also present: Herbert N. Maletz, chief counsel; Kenneth, R. Harkins, cocounsel, and Richard C. Peet, associate counsel.

Mr. RODINO (presiding). The hearings of the subcommittee on the subject of Federal Conflict of Interest Legislation, considering bills H.R. 2156, H.R. 2157, H.R. 1900, H.R. 7556, and other related bills of this matter will now open.

I would like to place in the record reports received from the Department of Agriculture and the Office of the Secretary of the Treasury on H.R. 2156 and H.R. 2157.

(The reports referred to follow:)

DEPARTMENT OF AGRICULTURE,
Washington, D.C., February 18, 1960.

HON. EMANUEL CELLER,
House of Representatives.

DEAR CONGRESSMAN CELLER: This will acknowledge your letter of January 26, 1960 in regard to legislation proposed in H.R. 2156 and H.R. 2157.

In view of the fact that the proposed bills involve an issue for the entire Government not peculiarly related to the activities of the Department of Agriculture, this Department does not desire to take an independent position at this time.

The Bureau of the Budget advises that it has no objection to this report.

Sincerely yours,

TRUE D. MORSE,
Acting Secretary.

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, February 18, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your letters of February 4, 1959, requesting our views on H.R. 2156, a bill "to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes," and H.R. 2157, a bill "to implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government."

One of these bills, H.R. 2156, proposes a comprehensive revision of the provisions of the Criminal Code dealing with bribery, graft, and conflicts of interest

of Government employees and former employees. The other bill, H.R. 2157, proposes a code of ethics which would, in general, establish as improper conduct those activities which H.R. 2156 would make criminal.

Most of the provisions of H.R. 2156, and their counterparts in H.R. 2157, deal with matters which are investigated and prosecuted by the Department of Justice even though they may involve employees of the Treasury Department. Being only one of the many agencies thus affected in this limited way, we have not undertaken a detailed technical analysis of these provisions. It is assumed that the views of the executive branch in this regard will be presented by the Department of Justice.

Section 205 of H.R. 2156 is based on provisions presently in section 283 of title 18, United States Code, which prohibit Government employees from giving aid in the prosecution of claims against the United States. It would broaden this prohibition to cover giving aid in other agency proceedings, thus replacing a provision presently in section 281 of title 18, United States Code, which prohibits receiving compensation for giving aid in other agency proceedings. The proposed new provision would retain an exception from the prohibition against prosecuting claims for aid given in the discharge of official duties. It would not, however, provide the same exception with respect to aid given in other agency proceedings, although the exception becomes necessary when this provision is recast as a prohibition against the activity rather than as a prohibition against receiving compensation for the activity. This would appear to prohibit such desirable activities as the taxpayer assistance program of the Internal Revenue Service. This result should be avoided by expanding the exception to match the expanded prohibition.

Section 207 of H.R. 2156 is of special concern to the Treasury Department. This section is based upon section 284 of title 18 and section 99 of title 5 of the United States Code. It proposes to broaden existing provisions in several respects, two of which cause our concern. The first paragraph of section 207 would broaden the prohibition in the present law against a former employee prosecuting, within 2 years after leaving Government, claims against the United States involving any subject matter directly connected with which such person was so employed or performed duty. While it would broaden this provision in several respects, our concern is with the proposed change of the wording from "claims * * * involving any subject matter directly connected with which such person was so employed or performed duty" to the wording "any * * * matter * * * involving any subject matter concerning which he had any responsibility while so employed or assigned to duty." The change appears to propose a broadening of the prohibition which could preclude top officials of the Treasury from ever handling any matter before the Treasury, and could preclude supervisory officials from handling many matters with which they had no personal connection while in the Treasury. The second paragraph of the proposed section 207 would impose a flat 2-year prohibition against a former Government employee acting as attorney or agent in connection with any matter in which the United States is interested and which involves his former agency. No former employee of the Treasury, for example, could engage in Federal tax practice for 2 years after leaving the Treasury.

We believe that these provisions are unrealistic. They would go far beyond what is necessary to protect the Government from the evils of conflicts of interest. In going beyond what is necessary they would be inequitable to persons now in the Government and by imposing an unnecessary obstacle to recruiting they would be detrimental to the public interest. The evil which the Government must be protected against is the prospect of an employee who gains specific information about a particular matter later using that information against the public interest. It is proposed in the bill to protect against this evil by an absolute prohibition against all activity for 2 years, and a broadened prohibition based on former responsibility, rather than personal knowledge, thereafter. In short, the proposal seeks to make sure that one vice is prohibited by the expedient of prohibiting a vast range of activities which might include it, even though there could be no vice in the great bulk of the activities. Such an enactment would be manifestly unfair to present Government employees, who would have no way of protecting themselves against this form of discrimination. In the future, however, able people would protect themselves by avoiding Government service, and the public interest would thus suffer. It is not realistic to believe that able tax lawyers, for example, would be willing to fill posts in the Treasury on the policy level—the type of posts which are not

designed to be permanent under our form of Government—if they knew that they could not practice any Federal tax law for 2 years thereafter nor some tax law forever even though there were nothing ethically improper involved. And competent young law school graduates, even those who planned to make a career of Government, would hesitate to enter the Internal Revenue Service when they knew that if they decided to leave Government, 10, 20, or 30 years later, they would be unable for 2 years to engage in the only kind of practice they knew, and even thereafter could be limited in their practice.

Proposals such as these have been made before. At times the Congress has considered them extensively. No such proposal has, however, met with any degree of general approval. On the other hand, the Treasury Department has for many years effectively filled the gap in the statutes by its own rule, which reflects the recognized ethical principle—no more and no less—that a former Government employee is forever barred from representing a party before the Treasury in a matter to which he gave personal consideration or as to the facts of which he gained knowledge during and by reason of his Government service. We are opposed to restrictions which unnecessarily broaden this concept.

We also have your letter of January 22, 1960, inviting us to testify before Subcommittee No. 5 on these bills and on H.R. 7556. It appears to be the purpose of H.R. 7556 to make it a crime for a person or concern to hire a former Government employee, and for the former employee to be hired, within 2 years after termination of the Government employment if the former employee, within the 2 years preceding termination of his employment with the Government, handled any business of the person or concern. We believe that this proposal, like those above, would go too far and therefore would have results that would not be in the public interest. We do not believe, for example, that a lawyer in the Internal Revenue Service who handled one problem of a taxpayer should be barred, after leaving Government service, from handling for the taxpayer an entirely different problem.

We appreciate your invitation to appear and testify on February 19, 1960. However, since most of the provisions of the legislation affect other agencies of the Government and since we have nothing to add to this report which would be of help to the subcommittee, we will, subject to the wishes of your committee, not take advantage of your kind invitation to appear at the hearings. While other agencies may have specific problems under the bill, it is assumed that the views of the executive branch as a whole would be more appropriately presented by the Department of Justice.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

I call as the first witness our distinguished colleague from Wisconsin, the Honorable Robert W. Kastenmeier whom we are happy to welcome before this committee.

Mr. Kastenmeier is also a colleague of ours on the Judiciary Committee. You may proceed with your statement as you will.

STATEMENT OF HON. ROBERT W. KASTENMEIER, REPRESENTATIVE IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT, STATE OF WISCONSIN

Mr. KASTENMEIER. Thank you, Mr. Chairman, and Mr. Rogers. It is a pleasure for me to appear before you this morning in support of Mr. Celler's bills, H.R. 2156 and H.R. 2157. These bills, which will promote the confidence and trust of the American citizen in the integrity of the officials of his Government, set forward a strict but fair code of ethics for members of the executive branch of the Government while specifically amending the criminal laws to strengthen and make more reasonable the law as to bribery, graft and conflict of interest for all branches of Government.

I have long been interested in the problem of morality in Government and in the subtle, yet important problems involved in conflicts of interest. One of the first bills I introduced when I came to Congress last year was H.R. 5708.

Among other things this bill included:

Full disclosure of the financial interest of all Members of Congress, civil or military officers, and employees of the executive or legislative branches who earn in excess of \$12,500 a year. Annual reports would show all income received in the year, all assets held, all dealings in securities or commodities, and all purchases of real property;

A requirement that all communications in regard to a pending case, whether by letter or word of mouth, to a regulatory or semijudicial agency, be made part of the public record of the case;

Reporting and disclosure of expense accounts for all travel by members or staff of congressional committees, the accounts to be published in the Congressional Record;

The establishment of a Commission on Legislative Standards to study and make recommendations concerning problems of conflict of interest.

As can readily be seen this bill was aimed at making the laws already existing on this subject applicable in the same ways to the executive and the congressional branches of Government.

However, I am very happy that the Judiciary Committee, of which I am proud to be a member, has undertaken to reconsider the basic problems in this case, and thus to reform the Federal anticorruption laws.

From the kinds of things we have been discovering about ethical behavior in the society at large—such as the quiz show and payola revelations—no more better time than now exists for the Government to forge a strict but just pattern of ethical action for the members of the Government.

This will have, to no small extent, a multiplier effect in that non-governmental segments of our society that involve the public interest will begin to reevaluate their behavior in line with the Government's unequivocal pronouncement vis-a-vis ethical and moral behavior.

One should always remember that the "governors" of a society are, as a result of their position, emulated by others in the society. In this sense, the officers and employees of the various branches of Government are either a force for morality or amorality.

This is especially true in a democratic society where the Government is allowed to operate only so long as it has the trust of the people. Where that trust exists, the punitive aspects of the law will be necessary—but only in an exceptional or abnormal situation, rather than in the daily operation of the society.

On the other hand, if the "abnormal" situation were to become the daily occurrence, trust and good faith would no longer be present. Chaos and revolution would result. We must therefore act now to prevent the spread of the payola atmosphere as normal in American society.

Men have had enough experience with Government to know that the classic advice that Lord Bacon gave just does not work out:

While never missing a chance to take a bribe, one should never let the taking of the bribe influence his conduct in the slightest.

Unfortunately, it happens to be the case that favor taking and giving is an effective way to get things done, and to destroy the independence of the Government official.

And yet even if such favor taking and giving did not, in fact, affect the outcome of an individual's decision, it is paramount that an individual in Government "shall avoid the appearance of evil as well as evil itself." This itself would be the reason to enact the legislation you are reviewing.

For the most part, the way the Government has handled the problem of conflict of interest has been in an ad hoc and ex post facto manner. Legislation in this area has been as a result of excesses. It has never tried to deal with the problem in a general and comprehensive manner.

Because of this, much of the legislation on the books regarding conflict of interest is overlapping and sometimes contradictory.

Leonard Wheeler has pointed out in the *Federal Bar Journal* in 1945 that these statutes represent a—

multiplication of complexities and uncertainties which in themselves not only discourage prospective Government employees from offering their services where needed, but also prevent employees from rendering fearlessly and efficiently the best performance of which they are capable.

Dembling and Forrest have pointed out in an article in 20 *George Washington Law Review* that serious contradictions exist in present law. Besides such difficulties, certain gaps exist which must be corrected.

For example, under sections 281 and 283—the code applies only to those who take bribes and does not apply to those who give them, except possibly as aiders and abettors.

This, I am happy to see, would be changed under the Celler bill. I am also happy to see that the Celler bill not only applies to the executive branch of the Government but applies as well to the courts and Congress.

As long as certain standards are made applicable to the executive arm of the Government, such standards should apply to the Congress as well. The old question of who will "police the policemen" can only be answered when various of the policemen are more committed to certain basic views of morality and action than they are to the protection of the group as a selfish-interest group.

Thus, Congressmen must be willing to stand the same test that they impose on others. This is what the people expect and deserve. In this sense, I am glad to see that the bill specifically calls for penalties where payment is made to Members of Congress, judges, and judicial officers.

For these reasons, I agree with the premises under which the staff report, namely, that "the essential objective of the bribery laws is to preserve the integrity of official action from direct and indirect corruption; second, that the briber and the bribed official stand in *pari delictu*; and third, that all bribes of public officials have potentially equivalent corruptive impact on the public service." At this point, I would add—"and the public as well."

I would also like to voice my strong support of the proposed Government ethics code which promulgates a code of ethical practices to be followed by all employees and those individuals and groups that

deal with the agencies. It is my feeling that this code will set a new tone of operation for individuals in Government and those who deal with the Government.

Presently it is difficult to know what an individual may or may not do under the law. A gray area develops in which an individual either refuses to act, "passes the buck," or acts in most blatant self-interest. The code makes perfectly clear what is expected of each person who may be involved with the Government.

I am very much in favor of the sanctions that exist in this code of ethics: That is, discharge for those employees who engage in violation of this code, disqualification of those contracts with individuals and groups outside of Government that come about as a result of unethical practices, and suspension or disbarment of Representatives who violate rules governing the actions or activities of former Federal employees.

I am hopeful that the committee will report out favorably these series of bills on Federal conflict of interest. The time for them is long overdue. The time for a comprehensive reformulation of the laws in this area is now. I commend the chairman for introducing these bills and for undertaking to correct those present laws on conflict of interest which are confused and inadequate.

Through such legislation as this, we are strengthening the democratic proposition, that the people may trust and have faith in their elected representatives, those who are delegated power by their elected representatives, and those who serve in the judicial branch of the Federal Government.

Mr. RODINO. I would just like to put one question to you.

Chairman Celler, yesterday, in a discussion of this matter with the witnesses who had appeared here referred to the Canons of Professional Ethics that apply to lawyers and he particularly alluded to canon 6, canon 36, and canon 37. The question naturally arises whether or not such canons should apply to other people in Government service, as well as lawyers.

I ask you, Congressman, do you think that canons 6, 36, and 37 which reflect a code of ethics such as the chairman seeks to pattern in his bill, should not also apply to all people in Government service?

Mr. KASTENMEIER. Mr. Chairman, I am sorry I missed the discussion on that yesterday.

I am not sufficiently familiar with the direct application of those canons to the problem that we are considering here.

I can only say that if they are applicable, I would tend to favor them because I would personally favor the highest possible standards for the group of people we are discussing in this type of legislation.

Mr. RODINO. Do any of the other members have any questions?

Mr. HARKINS. If I may, Mr. Chairman. Mr. Kastenmeier, I have one question. There have been some objections to the bills on the ground that enactment may tend to make recruiting for Federal employment more difficult. The question is: Would it be your view that present standards that we have against conflict-of-interest situations should be relaxed in an effort to make recruiting for Federal employment more easy?

Mr. KASTENMEIER. No; that would not be my position.

My position would be that the standards should be stricter but more clearly spelled out, more codified so that the prospective employee would know exactly what would be expected of him.

I think there is now some confusion among employees in that regard.

Mr. RODINO. Mr. McCulloch has just come in. Do you have any questions?

Mr. McCULLOCH. No questions.

Mr. HOLTZMAN. Mr. Kastenmeier, actually it would be to the best benefit of the public officials and Government employees to know exactly what they have a right to do and what they don't have a right to do so far as we are able to define in the law. Isn't that so?

Mr. KASTENMEIER. That is correct.

Mr. HOLTZMAN. So that a man wouldn't have to wonder if he was doing the right thing or not.

Mr. KASTENMEIER. I would certainly agree.

Thank you very much, Mr. Chairman.

Mr. RODINO. Thank you very much, Mr. Kastenmeier, for your very excellent presentation.

Mr. Macomber, of the General Services Administration, and Mr. Angel, Director of Administration for the General Services Administration, will be our next witnesses.

STATEMENT OF J. H. MACOMBER, JR., GENERAL COUNSEL, GENERAL SERVICES ADMINISTRATION; ACCOMPANIED BY HERBERT E. ANGEL, DIRECTOR OF ADMINISTRATION, GENERAL SERVICES ADMINISTRATION

Mr. MACOMBER. Mr. Chairman and members of the subcommittee, I am here today at your request to express the views of the General Services Administration on H.R. 2156 and 1900 bills to strengthen the criminal laws relating to bribery, graft, and conflict of interest; H.R. 2157, a bill to implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government; and H.R. 7556, a bill to prohibit, under certain conditions, for 2 years, the employment of a former employee of the Federal Government by any person, concern, or foreign government with which certain transactions were handled.

The principal programs administered by the General Services Administration which will be affected by these bills are as follows:

FEDERAL SUPPLY SERVICE PROGRAMS

Procurement of stores and nonstores items, Federal Supply Schedule contracts, consolidated purchase programs; stores management programs, including stores depot operations, standardization, specification, and Federal cataloging programs; and the surplus disposal programs.

Public buildings service programs: Contracting for construction and repair of buildings, custodial services, concessions, site acquisitions, rental of buildings and space, disposal of surplus real property, architect-engineer services, appraisals of real property, and space utilization surveys.

Transportation and public utilities service programs: Procurement of transportation and public utilities services, and protection of the Government's interest as a user of such services through appearances before State and Federal regulatory bodies.

Defense materials service programs: Stockpiling of strategic and critical materials; programs to encourage the expansion of productive capacity of metals, minerals, and other raw materials; the abaca production program; the National Industrial Equipment Reserve of machine tools and industrial manufacturing equipment; the machine tool expansion programs; and the program for the custody and management of the supplemental stockpile.

Effect of H.R. 2156 on GSA programs: H.R. 2156 would revise and consolidate within chapter 11 of title 18 of the United States Code certain related provisions of law now found in various chapters of title 18 and in title 5. We believe this consolidation generally will clarify the obligations of Government employees, and thus assist in achieving maximum security against improper practices in the Federal service.

As the second largest procurement agency in the Government, the General Services Administration benefits directly from legislation of this kind. Primarily concerned are our programs for procurement of supplies and services, construction and repair of buildings, acquisition of real property, and the sale of surplus property.

We are pleased to report that there have been gratifying few instances where misconduct has occurred among employees of the General Services Administration. This fine record stems in part from such operating factors as the emphasis placed by this agency upon the use of competitive bidding in both its procurement and disposal operations and, in the instance of procurement of transportation and public utilities services, the fact that charges for such services are based largely upon published tariffs or other agreements subject to public inspection. The contracting methods utilized by the General Services Administration tend to minimize opportunities for misconduct.

The General Services Administration recognizes the need for constant vigilance against improper practices both by Government employees and the public with whom they deal. Accordingly, we favor enactment of legislation such as H.R. 2156, but would defer to the views of the Department of Justice—and I should add the General Accounting Office—insofar as the details of the bill are concerned.

H.R. 2157 would amend the Administrative Procedure Act by establishment of a Code of Official Conduct for the Executive Branch. Specific acts are set forth which Government employees are prohibited from committing and, in addition, the head of an agency is authorized, after notice and hearing, to dismiss any officer or employee for violation of the code.

The General Services Administration, because of its many relationships with the public as a procuring and disposal agency, for many years has prescribed its own GSA standards of conduct.

In addition, the Code of Ethics for Government Service—incorporated in House Concurrent Resolution 175, 85th Congress, 2d session—also has been adopted by agency regulation and is currently applicable to General Services Administration employees.

While we believe the present agency rules have operated very satisfactorily, we recognize that H.R. 2157 goes beyond administrative action by establishing a code of conduct as a matter of law.

In the absence of any express language to the contrary, it is assumed that the provisions of the Veterans' Preference Act and the Lloyd-LaFollette Act with respect to the removal of employees would apply in any dismissals effected under section 107(a) (1) of H.R. 2157. These acts furnish employees with certain rights of appeal to the Civil Service Commission in removal actions.

Section 107(a) (3) would enable the head of any agency to require a person to certify that his representative will not, by his appearance before such agency, violate the code with respect to former employment in the Government. In order that such person may not be required to certify to matters outside his knowledge or control, it is suggested that the certification required by that section be modified by adding the phrase "to the best of his knowledge" or similar wording.

The General Services Administration is in accord with the objectives of H.R. 2157, as evidenced by its own internal regulations establishing a code of conduct for its employees. Should the Congress determine that it is desirable to establish such a code in law, we would interpose no objection to this legislation. Clarification of section 107(a) (1) and (3), however, would serve to improve the workability of the present bill.

H.R. 7556 would amend section 284 of title 18 of the United States Code to make it a crime for a person to accept, or to promise to accept, employment within 2 years after termination of his Federal employment if, within the 2 years prior to such termination, he dealt with a claim against the Federal Government by the one offering the employment. The bill also would provide criminal sanctions on the part of the one employing, offering, or promising to employ such person.

The general objective of H.R. 7556 is a commendable one and is regarded favorably by the General Services Administration. Unfortunately, the bill in a way amounts to a piecemeal approach to the broad problem that underlies the conflict of interest statutes.

As drawn, we believe the bill would unduly penalize the Government employee. For example, it would apply against such employee even though his connection with a claim had been that of resisting such claim strenuously. A Government employee who loses his position as a result of a reduction in force without any fault on his part also would be penalized—we believe—unjustly by the provision of this bill.

The General Services Administration is opposed to measures such as H.R. 7556 that do not reflect a comprehensive evaluation of the interrelationships among the so-called conflict-of-interest statutes.

That completes my formal statement, Mr. Chairman.

(Mr. Macomber's statement appears at p. 109.)

Mr. Maletz had requested that I endeavor to amplify the statement in some respects, and if the committee desires, I will proceed to offer a few personal comments on certain provisions.

Mr. RODINO. Yes; we would like to hear them.

Mr. MACOMBER. In H.R. 2156, section 201, on bribery of public officials, I have two very minor suggestions, perhaps hardly worth mentioning.

On page 3 in the definition of official act, it seems to me that there is a little incongruity in that definition in the sense that it says, skipping over certain portions of it to make my point, "official act means commission or omission of any act in violation of this lawful duty."

I think the term "official act" applied to that is, as I say, a little incongruous; perhaps some better term could be substituted for "official act."

Mr. RODINO. Do you have any suggestions?

Mr. MACOMBER. I have not been able to think of any suggestions, Mr. Rodino.

On that same page in paragraph (1), I would suggest that consideration be given to inserting in line 20, after "performed" the words "or to be performed"—I am not sure that literally as it is written the statute would apply to the giving or offer of a bribe for a prospective action by the official. It is a very minor point and it may be adequately covered in paragraph (3).

In section 205—

Mr. RODINO. What section is that?

Mr. MACOMBER. 205, Mr. Chairman, on page 8. I have no comments except to say that we think that is a substantial strengthening of the present language and would favor it.

And passing on to page 10, section 207, the matter of disqualification of former officers and employees, I would only suggest that consideration be given to the possibly very broad import of the word "responsibility" in line 19.

It seems to me that to disqualify a former employee from having anything to do with any matter with which he had any "responsibility" in the broadest sense might be unduly restrictive. I am thinking of an individual who was head of a large procurement unit in the Government, so that in a sense he had responsibility for all procurements performed by his unit, and after he leaves the Government service and goes into private employment it seems to me that a case might arise where he could represent his private employer without any wrongdoing or appearance of wrongdoing in a matter which was handled in his unit but in which he had no personal participation whatsoever.

Mr. RODINO. Mr. Macomber, at that point I can understand and appreciate why it raises such a question.

Let us assume that after line 18 we had the words instead of "with which he was directly connected," would that change your way of thinking?

Mr. MACOMBER. Yes, sir; something referring to direct connection or direct participation or something like that would certainly meet the point that I am raising for your consideration.

Mr. RODINO. Yes; and you are in favor of the lifetime ban in this instance where he was directly connected?

Mr. MACOMBER. I would see no objection to a lifetime ban in this instance, Mr. Chairman.

In other words, it seems to me that what is being aimed at is an individual taking advantage, not of his general know-how that he has acquired in the Government service, but of his particular acquaintance with a transaction, and I think it is entirely proper that he should not be permitted to go out and take advantage of his connection with a particular transaction.

I merely raise the question as to whether he should be prohibited from making use of his general know-how.

Mr. RODINO. Well, Mr. Macomber, I would like to point out that that reflects the intent of Canon 37 of the Canons of Professional Ethics of the American Bar Association that a lawyer should not accept employment as an advocate in any manner on the merits upon which he has previously acted in a professional capacity.

That is the code of ethics that applies to lawyers.

Mr. MACOMBER. And in the second paragraph, Mr. Chairman, relating to the 2-year disqualification it seems to me that the improper practice that is aimed at in the 2-year disqualification is not only to prohibit the use of special knowledge of a transaction but also the possible influence on former associates or subordinates, particularly subordinates, and in that text I wonder whether it is necessary to accomplish that purpose, to prohibit completely—let me call it office participation. I mean here where there is no direct contact with the agency, but merely advice to one's associates with his new employer. I am not so sure that that is a legitimate point, but I did wish to raise it for consideration of the subcommittee.

Mr. HARKINS. Mr. Macomber, is your objection here to the idea that he is barred from any agency in which he was employed or assigned to duty for 2 years after he leaves rather than only to the last agency in which he was employed at the time he leaves?

Mr. MACOMBER. No.

Mr. HARKINS. It is not. Your objection, then, is to all contacts in the agency?

Mr. MACOMBER. The question I am attempting to raise is whether it is necessary to prohibit a former employee from assisting in connection with a matter with which his new employer is concerned so long as he refrains from any contacts or any open participation where his influence might be brought to bear on his former associates.

Mr. HOLTZMAN. Mr. Chairman, on that point, wouldn't that be a self-defeating situation in essence?

Wouldn't that be a real vehicle for evading the law that we are trying to strengthen?

Mr. MACOMBER. I recognize the possibility of that, Mr. Holtzman, and I am just raising the question that perhaps this language goes a little further than is necessary to accomplish the purpose which we are all interested in accomplishing.

Mr. ROGERS. May I inquire, Mr. Macomber, I understand it is the department's position that it isn't favorable to H.R. 7556 which prohibits the employee from doing business within the department within a 2-year period.

Has there been any instances that you know of where the employees in the General Services Administration after they have left that employment and became associated with those who may be selling to the General Services Administration in any manner whatsoever?

Mr. MACOMBER. I don't recall any instance, Mr. Rogers, where a question has been raised about that type of conduct.

Mr. ROGERS. So far as you know, your attention has not been directed to former employees who became associated with those selling to the General Services Administration or submitting bids to them.

You don't know of any instances?

Mr. MACOMBER. I don't recall any instances where there have been any allegations of improper influence arising out of that type of situation and I don't recall any instance, without a question being raised, where there has been that sort of participation. I won't say that there have not been instances, but I don't know of any.

Mr. ROGERS. Could you give me the percentages of the contracts let by the General Services Administration that are negotiated and those that are on bids?

Mr. MACOMBER. I would be glad to furnish that for the record, Mr. Rogers. I don't recall the percentage of advertised, publicly opened contracts, but it is very high in relation to the percentage of negotiated contracts.

I am sorry I can't give you this information now.

Mr. ROGERS. Where the purchases are made on bids, advertised bids, and so forth, can you envision any conflict of interest of a former employee who may be representing a company which submitted bids and obtained any advantage by virtue of the fact that he was a former employee of GSA?

Mr. MACOMBER. I would certainly say that normally there would be very little opportunity for it.

I can think of possibilities where it might occur. I think particularly it could occur in a matter of evaluation of bids. Sometimes the evaluation of bids, determining which is the lowest bid, the one in the best interest of the Government, involves the exercise of judgment, something more than a mere mathematical computation.

Mr. ROGERS. What do you mean by evaluation of the bid? If you ask for so many trucks with that designation of—with no designation of what type and so forth, then it becomes a question of evaluating whether they would take a Ford or Dodge or something of that nature.

Is that what you mean by evaluating?

Mr. MACOMBER. Yes; in awarding contracts under advertised bidding procedures under our statute, the award is made to the bidder whose bid will be most advantageous to the Government, price and other factors considered.

Ordinarily in simple procurements the award is made upon the basis of price alone, but there are occasions where other factors come into play in the evaluation of the most advantageous bid.

Mr. ROGERS. The other factors in evaluation would not be, should I say, influenced one way or the other by virtue of the fact that the man may have been a former employee who submitted the bid. Does the General Services Administration, for example, when they get ready to evaluate, do they call these people in and say, "Look, we believe that we should have a machine of this type to do this work. Now you have submitted the bid. Will it do that work?" Do you conduct your bids in that manner?

Mr. MACOMBER. That wouldn't ordinarily happen, Mr. Rogers.

Mr. HOLTZMAN. Mr. Macomber, the problem would arise in appraising the contracts. Isn't that where the problem would arise?

Mr. MACOMBER. That is certainly one place.

Mr. HOLTZMAN. Because I can't envision any problem if you are ordering 100 Fords or Chevrolets and that is the area where you have difficulty, is it not?

Mr. MACOMBER. That is certainly one place, Mr. Holtzman.

Mr. HOLTZMAN. That would be a big area, would it not?

Mr. MACOMBER. I would think so.

Mr. HOLTZMAN. In determining whether this would be advantageous to the Government.

Mr. MACOMBER. That would come up on the question of determining the responsibility of the bidder, the ability of the low bidder to perform the contract.

Mr. ROGERS. If an amendment was offered to this law and said it did not apply to those instances where bids were received and the highest or lowest bidder awarded the contract, would that affect or hurt your Department one way or the other if there was that amendment in this bill?

Mr. MACOMBER. Offhand, Mr. Rogers, I think from our point of view that that would be undesirable.

We feel that there are such occasions although comparatively rare, where there might be an opportunity for improper influence so that we think the statute should apply even to advertised procurement.

Mr. ROGERS. Could you illustrate instances of where that might occur? When we pass this legislation we want to try to do it for the interest of the Government and the people dealing with it. We don't want it unnecessarily burdened, but at the same time we want to cover all contingencies.

I was trying to find out to what extent a problem exists of bids being accepted because a fellow may have been employed by GSA within the past 2 years, enabling him to express influence or exert influence, so that there would be a conflict between what he was doing while he was working for the Government and what he is now doing working for the private employer.

Now I am trying to envision whether there could be such a conflict and whether it could arise when you are bound to accept what we call the low bid.

Mr. MACOMBER. We are bound to accept the lowest, responsible bid, and determining the responsibility of the bidder is primarily a matter of judgment.

Might I suggest a hypothetical case?

Mr. ROGERS. Surely.

Mr. MACOMBER. Let's assume that our lower bidder, "A," is a possible credit risk or possibly not fully equipped to perform the contract.

The next low bidder, "B," is clearly a responsible bidder. A former employee of GSA is presently a representative of the "B" company. After the bids are opened he sees that his company is not the low bidder and he attempts to influence his former associate, the contracting officer in the case, who has to determine whether the "A" company is a responsible bidder or not.

Mr. HOLTZMAN. To convince GSA that "A" is not a responsible bidder and so that it would not be in the best interest of the Government and this is still the greatest area where you have a problem, is it not, just as we discussed before?

Mr. MACOMBER. Yes.

Mr. ROGERS. Thank you, sir.

Mr. HOLTZMAN. Mr. Macomber, we would like to have your comments with respect to increasing the competitive bidding as against negotiated bidding.

When you find the ratio, will you furnish this committee with it, of competitive bidding vis-a-vis negotiated bidding?

Mr. MACOMBER. Yes, sir.

Mr. HOLTZMAN. Would you do that for us?

Mr. MACOMBER. It is my recollection, which I will put on the record now, subject to verification, that about 60 percent of all our contracting is on a competitive bid basis. This includes several types, such as architect and engineer contracts and some of our supply schedule contracts which do not lend themselves to the competitive bidding procedure.

Mr. HOLTZMAN. Do you have any thoughts on this discretionary area in determining the "responsibility" of the contractor?

Do you have any suggestions as to how any possible conflict might be eliminated in those areas?

Mr. MACOMBER. I am not sure that I follow you, Mr. Holtzman.

Mr. HOLTZMAN. Well, we have established, I think, that the most fertile area for a possible conflict would be in the discretionary area where the GSA determines the responsibility of the contractor, all other things being equal.

I would like to have your thinking if you have any on it at the moment, as to what we can do to minimize the discretionary part and put it into some other avenue where there would be the least opening of the door to a conflict.

Mr. MACOMBER. I don't have any suggestions as to how that discretionary area could be minimized, Mr. Holtzman.

Mr. HOLTZMAN. Will you think about that and if you come up with some thoughts, give us the benefit of it?

Mr. MACOMBER. I will be glad to.

I do think that, rather than attempt to minimize the discretionary area, our efforts should be directed toward improving the conflict-of-interest statutes to the point that they can be applied more effectively. Certainly, I agree that H.R. 2156 does that and I am merely questioning whether at the moment that second paragraph of section 207 may not go a little too far and unduly penalize the former Federal employee, with a possible impact on the ability to recruit able people.

I mean we have here a delicate balancing of opposing factors as I see it.

Mr. HOLTZMAN. Yes; I thought of that. But I am sure that you agree that strengthening the conflict-of-interest law does not necessarily exclude minimizing the potential danger in the discretionary approach.

Mr. MACOMBER. Oh, certainly not.

Mr. HARKINS. Mr. Macomber, to summarize the position of GSA, you are in favor of H.R. 2156 and have no objection to H.R. 2157 providing the clarifying amendments in section 101 are made as suggested.

Mr. MACOMBER. Yes; although I would also echo that portion of the very fine statement of the Assistant Comptroller General of yesterday regarding possible desirability of incorporating a little more flexibility into H.R. 2157.

Mr. HARKINS. Has the General Services Administration met with any difficulty in recruiting personnel because of the conflict-of-interest standards that are incorporated in the GSA regulations?

Mr. MACOMBER. Not that I am aware of, sir.

Mr. HARKINS. There have been some objections to the bills under discussion on the grounds that these bills could tend to make recruiting for Federal employment more difficult.

What is your view on that?

Mr. MACOMBER. I don't believe that the bill would make it unduly difficult. I think it would be less difficult if some change were made in this disqualification section along the lines I have been discussing.

Mr. HARKINS. Well, it would be your position, or the position of your agency I am sure, that there should be no relaxation of any of the present conflict-of-interest standards that have been enacted either into law or regulation in order to make recruiting for Federal employment easier. Is that a correct assumption?

Mr. MACOMBER. I believe it would be a correct assumption in the light of our statement.

Mr. HARKINS. Would it be your view that there is any necessity at all to permit conflict-of-interest situations to continue, or the dangers of some conflict-of-interest situations to continue, in order to secure a greater number of personnel for Federal employment?

Mr. MACOMBER. Generally speaking, I would think not. I could envisage the possibility of it being desirable to have some relaxation in certain emergency situations.

Mr. HARKINS. But when there is not an emergency situation, where they are required to bring in large numbers of people into Federal employment at one time you would not be in favor of such relaxation, is that right?

Mr. MACOMBER. Yes.

Mr. HARKINS. Now, would you say that whatever recruiting difficulties Federal agencies are having, more likely is due to the comparison of the Federal pay scale to what is available in private industry for comparable work rather than to any hardships that might flow from conflict-of-interest standards.

Mr. MACOMBER. I would think so. Mr. Angel, do you have any statement on that?

Mr. ANGEL. I think that would be true.

Mr. HARKINS. That is: The difficulty in Federal employment is due to the low pay scale in comparison to the pay scale in private industry?

Mr. ANGEL. I do not believe the conflict-of-interest would be as significant as the low pay scale.

Mr. RODINO. The proposal being discussed in various Government agencies recommends a deemphasis of criminal prohibition and greater emphasis on agency regulation with administrative sanctions to cope with problems of conflicts-of-interest. What is the position of GSA with respect to such a proposal?

Mr. MACOMBER. Mr. Chairman, I don't know that I can express the position of the agency.

I would like to offer a personal view, if I may.

Mr. RODINO. We will appreciate it.

Mr. MACOMBER. I would not, I believe, be in favor of a general deemphasis. I do think, though, that we have to recognize that tightening of the criminal statutes, which is desirable, is a difficult proposition because it is so hard to get a broad statute that will catch the improper practices without including within its literal terms a lot of

practices that most people would consider entirely unobjectionable, and I think that perhaps from that point of view there should be without perhaps any deemphasis on the criminal statutes, in fact a tightening up of them, that there should be greater emphasis upon the administrative side.

Mr. RODINO. Should be greater emphasis on the administrative side?

Mr. MACOMBER. Yes.

Mr. RODINO. Along the lines of H.R. 2157?

Mr. MACOMBER. Yes, I think so.

Mr. RODINO. H.R. 2156 and H.R. 2157 Mr. Macomber, taken together, seem to have the effect of codifying the criminal laws and at the same time provide administrative sanctions in the conflict-of-interest area.

Do you look upon this as a feasible technique for dealing with the problem or would you, GSA, favor greater emphasis on the administrative approach, putting it in that manner, both together?

Mr. MACOMBER. Well, I think I would be in favor of both approaches simultaneously, both bills subject to the reservations I have expressed with respect to particular provisions.

Mr. RODINO. Do you think that that would deal with the problem?

Mr. MACOMBER. Well, if you mean by that do I think it will solve the problem, I don't think anything will ever completely solve the conflict-of-interest problem, but I think it would be very helpful.

Mr. RODINO. We are not going to completely solve it, but we must trend toward that direction.

Mr. MACOMBER. Yes; I certainly think so.

Mr. RODINO. You believe, then, that what we are attempting to do is in that direction?

Mr. MACOMBER. Yes; it is.

Mr. RODINO. Any other questions?

Mr. TOLL. I was just wondering whether the view presented on page 2 showing, at the bottom of page 2, a very satisfactory record in your Department, and on page 3 you show that you have already your own standards and subscribe to the code of ethics which was established in the 85th Congress, 2d session.

What possibly would be the advantage of further restrictions as contained in the bills with regard to the advancement of Government services?

Mr. MACOMBER. Well, I think I would answer that, Mr. Toll, that while we feel that we have been extremely fortunate in the past, we don't consider that the present conflict-of-interest statutes are entirely adequate.

There are, as we see it, very considerable gaps, and we are not sure that we will always be as fortunate as we have been in the past, and we think further legislation is desirable.

Mr. HOLTZMAN. As a matter of fact, you will be more fortunate than you have been in the past.

Mr. TOLL. Your past record is good, and you are questioning the future products of Government service.

Mr. MACOMBER. We recognize the possibility that we may not, in the future, be as fortunate as we have been.

Mr. HOLTZMAN. Mr. Macomber, hasn't the real problem here not been the emphasis or deemphasis on the criminal or administrative? Rather, isn't the real problem trying to define as much as is reasonably possible what employees can or cannot do, should or should not do? Isn't that the heart of the problem?

Mr. MACOMBER. That is very definitely the case, and that is what troubles me, Mr. Holtzman, about the criminal part of it, that we are getting awfully close to morals here, and while I certainly believe that there is room for improvement in the criminal law, I think there is also much that must be left to the administrative sanction.

Mr. RODINO. Any other questions?

Mr. HARKINS. Mr. Macomber, is there any reason in principle why the canons of ethics against breaching confidences should not be applied to other employees of Government other than lawyers?

Mr. MACOMBER. Against breaching of confidence?

Mr. HARKINS. Yes. I am referring to the canons of the bar association, canons 6, 36, and 37, that prohibit an attorney from breaching confidences of his former clients.

Mr. MACOMBER. Well, certainly, I don't think that any Government employee should breach confidences in the sense of disclosing confidential information.

I am not sure whether professional ethics are applicable in a complete sense to nonprofessional Government employees.

Mr. HOLTZMAN. Would your feeling be the same if the employee of the Government happened to be a lawyer?

Mr. MACOMBER. I think that both as a lawyer and Government employee, he should be subject to the ethics of the profession.

Mr. HARKINS. Mr. Macomber, section 284 of title 18, United States Code, operates only when the matter haudled is a claim against the United States, and then it operates only for 2 years. Is that not so?

Mr. MACOMBER. Yes.

Mr. HARKINS. Now this means, does it not, that even with respect to a claim against the United States, a former employee who had worked on the defense of the claim for the Government could, after the lapse of 2 years following cessation of his Government employment, lawfully join the prosecution of that identical claim, could he not, under the present law? The courts have construed the present law, have they not, to mean a claim for money or profit in which the United States is the resistant as distinguished from the moving party?

Mr. MACOMBER. I understand so.

Mr. HARKINS. The claim against the Government is not the same as the Government's claim against a private party, and a suit by the Government to recover taxes or condemnation proceedings would not be a claim against the United States under section 284.

Now proceedings before regulatory agencies, irrespective of the value or amount involved, are not covered except when the subject of the litigation is recovery of money or property from the Government. Isn't that true?

Mr. MACOMBER. Yes.

Mr. HARKINS. In other words, licenses and certificates of convenience and necessity and other privileges and rights that come from the administrative agencies are not covered by section 284 unless it is a claim for money or property.

Now Mr. Celler's bill, H.R. 2156, in section 207 broadens the concept of claims against the United States, to include any proceeding in which the United States is interested.

Do you see any reason why such a change is not feasible?

Mr. MACOMBER. Speaking personally, Mr. Harkins, I believe such a change is desirable, because it seems to me that involves the use of specialized knowledge in behalf of one's new employer rather than general know-how.

Mr. HARKINS. And you have already testified that you are in favor of the imposition of a lifetime ban with respect to all matters where the former employee was directly connected during his Government service.

Mr. MACOMBER. I see no objection to that; no.

Mr. ROGERS. Thank you very much, Mr. Macomber.

The committee will now take a very brief recess.

(A brief recess was taken.)

STATEMENT OF ROGER JONES, CHAIRMAN, CIVIL SERVICE COMMISSION

The CHAIRMAN (Mr. Celler presiding). Mr. Jones, you sent a letter to me under date of February 12, 1959, and among other things, said:

As you know, the committee of the Association of the Bar and the City of New York has been working on this subject. Although we have seen a preliminary draft of their study and the draft bill suggested in their report, we have not yet seen the report and the bill in its final form.

We feel sure that you will want to have available that group's report and recommendations before final action is taken by the committee.

Although there is a difference in approach between the bar group's draft bill and the bills under consideration, the end sought appears to be identical. We are advised that the Bureau of the Budget has no objection to the submission of this report.

Now, have you a draft of your views on the bills pending before this committee?

Mr. JONES. I have a general statement which has not been put down in formal text, Mr. Chairman, and I also have some observations with respect to certain of the provisions in the bills which are before the committee.

The CHAIRMAN. Are you willing to give those observations to us now?

Mr. JONES. I am, sir.

The CHAIRMAN. What is the relevance of the Association of the Bar's report on this subject, with respect to the views of your agency on the pending bills?

Mr. JONES. I cannot give you a categorical reply to that, Mr. Chairman, until I see what the final form of the bar report and bill is.

I made this observation by virtue of the fact that the executive agencies had cooperated rather fully with the New York bar group, had appeared before them and had given testimony, and have been assured, in part at least, that some of the views expressed will probably appear in both the report and the bill which the Bar group presents.

The CHAIRMAN. Since when is the Association of the Bar to be considered on a level with a designated standing committee of the Congress?

Mr. JONES. It is not, sir, and I do not so consider it.

The CHAIRMAN. Are these executive agencies that you mention arranging to work with the bar association and not with this Judiciary Committee?

Mr. JONES. I did not know they were not working with the committee, sir.

The CHAIRMAN. I understand we asked the Attorney General to testify before this committee, and he expressed reluctance to do so.

Now what is this, is it a conspiracy of silence as far as this Judiciary Committee is concerned? I do not like it. I think that is a reflection on this Judiciary Committee.

I am willing to receive—and I am sure the members of the committee are willing to receive—recommendations from the Association of the Bar of the City of New York. But this bar group has no right to seek to arrogate unto itself authority that might transcend congressional authority and say to the executive agencies of the Government, "Don't testify fully before the Judiciary Committee until you have conferred with us."

I never heard of such a thing, and I think you ought to know that. Furthermore, the members of the executive agencies who have agreed to do this very thing must be told in no uncertain terms that this is a most reprehensible procedure.

Mr. JONES. I have no evidence that that has taken place, Mr. Chairman.

The CHAIRMAN. You know the practice, sir, of the committee.

When you are invited before a congressional committee on legislative proposals—and I say this to you with all due deference, as there is nothing personal in this matter—you know that it is customary to present a written statement to the committee.

Now you have had plenty of time to prepare a statement. If you had felt that more time was required, we would have set another date. But you haven't presented a statement, and this letter indicates that before you do, you want an opportunity to confer with the committee of the Association of the Bar of the City of New York.

Mr. JONES. No, sir; I must argue that it does not say that, Mr. Chairman.

The CHAIRMAN. Will you tell me why you haven't got a prepared statement this morning?

Mr. JONES. I do not have a prepared statement to present to this committee with respect to the bills before you beyond the formal indication of support for the committee's approach for three reasons:

The first reason, sir, is that I do not believe that most of the matters with which the committee concerns itself are matters of proper concern for the Civil Service Commission of which I have the honor to be the chairman.

We can advise; we can give you our views with respect to reasonably final statements of other agencies in two respects:

First, as to their effect on personnel policy, and, second, as to their effect on personnel management.

I do not think that we are an agency which would have any prime responsibility for decisions as to what does go into or is not included in a revision of the conflict-of-interest laws.

Mr. MEADER. Mr. Chairman, on this matter of the prepared statement, could I make reference to the rules of the House?

The CHAIRMAN. Yes.

Mr. MEADER. Rule 1126(f) reads as follows:

Each committee shall, so far as practicable, require all witnesses appearing before it to file in advance written statements of their proposed testimony and limit their oral presentation to brief summaries of their argument.

The staff of the committee shall prepare digests of the statements for use of the committee members.

That has been the provision of the Legislative Reorganization Act of 1946, but it hasn't been observed very well, and I think it would expedite the work of the committee if it were observed more frequently, and I would assume that some officials of the executive branch of the Government and the executive agencies know the rules of the House when they are requested to appear as witnesses before the committees of Congress.

The CHAIRMAN. When we send notices to witnesses to testify, we always embody the contents of that rule. Furthermore, our notice requires witnesses to provide the committee 48 hours in advance with a prepared statement.

I will say, Commissioner, one of the bills, H.R. 2157, provides a code of ethics for a good many Federal employees who come under your jurisdiction.

I should think that this would be of vital concern to the Civil Service Commission.

Mr. JONES. Insofar as the bill pertains to problems of personnel policy or personnel management, they are of definite concern to us, sir.

But may I indicate that there are no responsibilities in this legislation, or in existing law, vested in the Civil Service Commission with respect to the administration of conflict-of-interest statutes or codes of ethics based thereon.

The CHAIRMAN. Is that the gist of your testimony?

Mr. JONES. The gist of my testimony, sir, was to indicate that that is our general position, but that we do stand ready to advise with the committee on these matters. I wanted to give some examples of the kind of problem about which we are concerned.

The CHAIRMAN. All right, you might do that. Do I take it, though, that this will preclude your submission of a formal written statement to the committee?

Mr. JONES. Again, Mr. Chairman, I don't believe it would be quite fair to say to the committee that I know. I do not know. I am very sure from the length of time that the committee and the executive agencies have given to their studies of this matter that the bills presently before you will, in all probability, be amended before they are reported.

The CHAIRMAN. What did you say? The bill before us will be amended?

Mr. JONES. Before it is reported, yes. There have been a number of objections expressed to specific provisions and I suspect that, as the committee moves on in its deliberations, there will be amendments to the legislation before you.

The CHAIRMAN. That is why we have witnesses appear before us, to make suggestions as to whether there should or should not be amendments; whether there should be changes in the proposed bills. That is the very objective of a hearing.

Mr. JONES. That is why I am not prepared to tell you, sir, that this is the final statement that the Civil Service Commission may wish to make.

The CHAIRMAN. You may proceed, sir.

Mr. JONES. If I may revert very briefly, Mr. Chairman, to our letter of February 12 to you, I would like to ask the chairman's permission to have that included in the record at the point at which the chairman referred to it earlier.

The CHAIRMAN. That is already in the record, sir.

Mr. JONES. It is already in the record. Thank you. Moving on from this report, which I will not repeat, may I say that the Civil Service Commission does have responsibilities for advising the executive agencies and also advising the Congress on problems that affect personnel policy and personnel management.

It is our judgment that any legislation to amend the existing conflict-of-interest statutes, regardless of whether those statutes include criminal sanctions, or any proposal to establish a statutory code of ethics for official conduct of Federal officers and employees, carries with it direct implications for both of the subjects that I have mentioned.

Over the years I believe that the obvious and growing anachronisms of the present conflict-of-interest laws have, from the point of view of personnel policy, focused attention on four problems, as follows:

First, how can the Government employ in the public interest, either as policy officers or in career positions, persons who have acquired extensive background, knowledge and interest in specific fields, without requiring such persons to suffer extensive economic loss or major impairments to their careers if they choose later to return to careers from which they came to Government?

Second, how can the individual who is offered Government employment know precisely to what extent he must divest himself of economic holdings or other interests in order to avoid either the appearance of conflict of interest or actual conflict of interest in the discharge of his governmental duties?

Third, to what extent is it appropriate and permissible when judged in the light of good ethical standards to permit Federal officers and employees to engage in activities outside of their Government employment which can be construed to relate either directly or indirectly to such employment?

Fourth, what safeguards should be established to protect the Government against subsequent employment of Federal officers or employees by business or industry in a capacity which affects or is related to matters for which such individuals have some degree of official responsibility while serving in the Federal Government?

Now, it is these four questions, I believe, Mr. Chairman, which run to questions of personnel policy and personnel management, and if I misunderstood the desire of the committee, I am sorry.

It was my belief that the committee did not desire me to speak to the detailed merit or lack of merit of any provisions of the bills in front of them, but rather they wished me to appear here as the Chairman of the Civil Service Commission to give your our impression as to why these questions are pertinent, and how the bills relate to these questions.

The CHAIRMAN. I think that is what we want.

Mr. JONES. I did not understand it was expected that I would do this against the backdrop of a formally prepared statement at this time.

I stand ready and willing to supply a formal statement at any time the committee wishes it, but I did not understand that you wanted formal testimony of that kind at the moment. My understanding was based on two other factors that I referred to but did not make specific a few moments ago when answering your question, Mr. Chairman.

First, I felt a formal statement at this time would have to be released. There would be a request for it, and the committee might not wish to have it released prior to the time that you were further along in your consideration of the testimony of other people in these measures.

Second—

The CHAIRMAN. We indicated our desire for a statement from you, and you can submit it at your convenience. We value very highly your views on this matter.

Mr. JONES. Mr. Chairman, perhaps it would be of most use to the committee, then, if what I have said up to this point in developing the four questions might be considered as being the first part of our formal statement.

Thereafter, I will supplement it with an additional statement which can be included in the record at the appropriate time.

The CHAIRMAN. That is agreeable. Counsel wishes to ask you a question.

Mr. MALETZ. Mr. Jones, has the Commission formulated a position with respect to the four bills pending before this committee?

Mr. JONES. That is a difficult question to answer, Mr. Maletz, because it deserves a yes or no answer, and I can't give it a yes or no answer.

Mr. MALETZ. More specifically, has the Commission formulated a position with respect to H.R. 2156?

Mr. JONES. With respect to H.R. 2156, we believe that the end sought is desirable. We do think it needs some amendments.

Mr. MALETZ. In other words, the Commission would recommend favorable consideration of H.R. 2156 provided that it is amended in certain respects, is that correct?

Mr. JONES. That is correct, yes.

Mr. MALETZ. Has the Commission formulated a position with respect to H.R. 2157?

Mr. JONES. We have not formulated a position with respect to H.R. 2157, because we think that any code of ethics which is enacted by statute must, in turn, depend very largely on whatever criminal statute there is in front of it.

Therefore, believing as I do implicitly that there will be changes in H.R. 2156, it is quite difficult to take a position on H.R. 2157 at this time.

I would like to say two things about H.R. 2157. I have, myself, considerable doubt as to whether any code of ethics which does not permit very broad administrative discretion in how it is to be handled will be successful.

I think that one which is as tight as this appears to be is going to end up by creating fear and apprehension rather than creating a full-fledged desire to cooperate and to accept it in its own terms.

Mr. MALETZ. Do you recall that the Commission was invited last year to present its views on H.R. 2156, and that about a week before the hearings were scheduled the Commission was advised that those hearings were scheduled the Commission was advised that those hearings would be postponed because of the pendency of other legislation before the committee?

Mr. JONES. I do not, sir, no.

I think I must admit that this situation was recalled to my mind at the time you and I discussed it over the telephone.

Mr. MALETZ. Yes.

Mr. JONES. But up to that point, I was not aware of what the last session had done because very frankly, I have had a degree of compression of memory here. My responsibility in the Bureau of the Budget and my move to the Civil Service Commission are hard for me to separate in time and issues.

Mr. MALETZ. Has the Commission's position in favor of H.R. 2156 been cleared with the Bureau of the Budget?

Mr. JONES. Only insofar as we have stated in our letter of February 12 that the Bureau of the Budget has no objection to our indication that legislation is needed in this field.

Mr. MALETZ. Has the Commission made a study sufficient to indicate at this time what amendments of H.R. 2156 would be desirable.

Mr. JONES. We have, sir, and that is the second of the factors to which I referred a few minutes ago and wanted to discuss with you this morning.

As I indicated to counsel over the telephone, I did not believe it was the wish of the committee to have a detailed discussion of the technical provisions of the bill contained in the formal report.

Mr. MALETZ. That is correct.

Mr. JONES. And that is the second reason why such amendments are not contained in our report.

Mr. MALETZ. Mr. Chairman, counsel did have that discussion with Mr. Jones the other day, and indicated that it would be preferable for the subcommittee staff to work with the staff of the Commission as to certain technical amendments.

Mr. JONES. Now I did think that it might be of some use to the committee to indicate by very brief example the kind of things which again bother us from the point of view of personnel policy and personnel management.

If I may use a blunt word, I thought that it would be improper for me to discuss detailed amendments before the chairman and members of the committee. I did not think that would be within the committee's desires.

From the point of view of personnel policy, the chief problem is one of decision as to where standards of acceptable conduct break off and spill over into the field of conduct which should be prohibited under penalty for violation.

The committee has heard extensive testimony and some of this is reflected in the staff report which the committee has before it. I think there is agreement that in the complex situation in which we

must conduct the Government today we should not tie the strings so tightly that we deny ourselves the right to seek, from American business and industry, people who will come to Government for short periods of time and serve it ably and well.

The difficulty, if there be one, comes from the fact that there is probably some need for a slightly different standard at three different levels; the standard which is applied to members of the cabinet and other presidential appointees serving under Senate confirmation can perhaps be somewhat less rigid by the fact that every nominee who must be confirmed can, at that time, have his affairs, his attitudes, his responsibilities examined to whatever extent the Congress believes is desirable.

Immediately below that level is a level of Federal officers, many of whom do not hold presidential appointments. Most of them are appointed directly by the department heads. They are officers who have major policy or program responsibilities, but who are not career people.

The third category is the career service itself, the civil service, the foreign service, the service of agencies outside of the civil service like the Atomic Energy Commission, the Central Intelligence Agency, the FBI, and the Tennessee Valley Authority and so on.

But together they make up what we in the Civil Service Commission consider the career service of the United States.

Generally, these are people who are employed in jobs with a top ceiling of the top of the classification act, \$17,500 in grade GS-18. Engineers and scientists are under another law which carries a \$19,000 top salary limitation.

In the lower levels there are probably very few opportunities for conflict of interest of the kind that the committee is concerned with.

Once the career service, however, reaches the upper stages of its classification levels, beginning roughly in grade GS-13 at about \$10,000 a year—from there on up the career services are just as deeply concerned with policy matters of the sort that get into conflict-of-interest situations as the two levels above them, the bureau level and the cabinet and subcabinet level.

Although we hope when we recruit people at a relatively early age that they will come into the Federal Government to stay, we know that we lose some 300,000 to 400,000 people; that we are not going to be able to hold all of them for full careers.

By and large when a man leaves the Federal Government he goes to American business or industry in some capacity which is related to the kind of work that he has been doing in the Government.

When he leaves, in a few years there are, of course, opportunities for the development of the conflict-of-interest situation of one sort. If he serves through until retirement, there is an opportunity for still another kind of conflict-of-interest situation to grow up.

It is to avoid such situations that we need to get a clear, consistent, easily applicable set of statutes which carry with them criminal sanctions or criminal penalties.

The bills before the committee move very incisively in that direction. I do not believe that a great deal needs to be done to the legislation insofar as protection against improper activity by former employees is concerned.

There are some very minor things that I would like to refer to very briefly in just a moment.

Now, coming back to the situation of what happens to the new people who come in, it is impossible to expect a man to lose his interest—whether that be intellectual or whatnot is of no matter—in his chosen line of work if it be manufacturing of a specific product or the conduct of some specific kind of business, say the insurance business.

The Civil Service Commission runs the largest insurance business in the world. We have two very major programs, the Federal employees life insurance program and the Federal employees health benefits program, which comes into force next July in response to legislation enacted in the last session of Congress.

In both of these situations if we are to do the job that the Congress expects us to do, it is going to be necessary for us to have continuing advice, continuing assistance, and, at times, continuing direct participation in the establishment of the policies that underlie these two programs from the people best equipped to give us that advice, namely officers of the insurance industry of America.

We would certainly hope that the Congress would not, in enacting a rational conflict-of-interest statute, draw the strings so tight that we would find it impossible for us to get the participation of the insurance companies in this work. This could be the result if any one of them feared prosecution for conflict of interest.

I will not discuss the kind of question that underlies the issue of confirmation of a very substantial American businessman to a Cabinet post, the issue of the extent to which he must divest himself of his holdings.

I think it is unnecessary to go back over that ground. The committee is well aware of the problems there.

I would simply say to the committee that to a lesser extent this same kind of problem holds whenever you want a man to come into the Government to do a specific job or whatever you need a man to come in to give you advice, or whatever, on a specialized program which some agency must administer in the public interest.

We cannot deny ourselves the opportunity to use, and to use to the interest of the Government and for the benefit of the people, that kind of knowledge and experience and expertise.

At the lower levels, the question with which I am most deeply concerned as chairman of the Civil Service Commission is our career executives. There are perhaps 10,000 to 20,000, depending on what grades you count, who can be assumed to fall into this category.

Certainly, I doubt that you would go much below the GS-14 level, but you extend from there on up. You will pick up some GS-13's, particularly in the field.

In this group, we know that in the course of the next 10 years the Government will lose, by retirement, approximately two-thirds.

In addition, there will be the normal loss from death, resignation, things of that sort. We believe very deeply that a prime responsibility of the executive branch is to create a kind of training program which will enable it to prepare people to fill the jobs of this large number of career executives who are going to retire over the course of the next decade.

Better than a third of them will go before the end of the next President's administration. To this end, there is no substitute for the knowledge and expertise which the Government has acquired in the form of long service on the part of its career people.

As these proposed statutes are now drawn, we are very much afraid that a literal interpretation of them could deny the Government the right to use its people to do such things as to give courses on the outside in colleges and universities; to permit its people to work with the universities on the development of outside training courses, and things of that sort.

I believe these difficulties, Mr. Chairman, are merely questions of words and are not the matters which we need to take the time of the committee this morning, but I would like the chairman's permission to explore them further with counsel in order to see what the intent of some of the language is.

The CHAIRMAN. You may certainly have that opportunity, sir.

Mr. JONES. If I may, I will illustrate by a direct personal example. When I was in the Bureau of the Budget first as a career man and later as a presidential appointee, one of the things that I was expected to do was to maintain a certain degree of contact with some of the eastern university people about the course content of their work that was designed to train people to come into the Federal Government to do budget jobs.

The situation was one in which it was felt that what I was doing was of equal benefit to the university and the Government, and that there should be no prohibition against my accepting travel and their costs paid by the universities rather than to have the Government pick up that check.

This attitude prevailed, not only in the present administration but in the predecessor administration. By the same token, there is great advantage to the Government, and equal advantage to private business and industry, to have responsible Federal officials go to meetings of such organizations as the Detroit Economic Club, the United States Chamber of Commerce, various associations of manufacturers to explain Government policies and programs and to consult about problems that affect these groups.

Over the years, and bearing propriety in mind, it has been quite customary, again because of tightness of appropriated funds for travel, to permit Government officers to do this with the organization which sponsored the meeting carrying the cost of travel.

We think that there is a question whether these bills as they are now drawn might deny continuation of that practice.

I think this is not in any way supplementation of income or agency appropriations and involves only a question of morals and ethics and appropriate conduct. There is not a question of anything which is criminal in its implications.

It is not bribery; it is not graft; it is not selling of Government information for the private gain of anyone else. That too is a subject that we would like to explore with the staff, if we may.

The CHAIRMAN. Like the type of club where if you wanted to pay, you couldn't pay.

Mr. JONES. Yes, there are some occasions of that sort.

If, for example, a convention gives banquet favors or entertainment the Federal man should not be denied the right to accept, or required

to return it on the grounds that it is a gift given to get him to take some action in behalf of the organization.

I don't think there is anything immoral, or unethical, or criminal about that kind of situation.

The CHAIRMAN. You are not on a plane with the disc jockey.

Mr. JONES. No, and I am not talking about expensive gifts at Christmas time and things of that sort. I am talking about the normal hospitality in participation in outside activities.

Another kind of question which is involved there would be this sort of thing, sir, if I may refer to the work of the Civil Service Commission—should the Federal Government on the other hand permit its officers and employees to accept pay for teaching courses in personnel administration or in any other subject that comes within the sphere of their responsibilities, and on the other hand deny to its officers and employees, on their own time, the opportunity to serve as a consultant on matters which they have come to be recognized as being outstanding.

There are many of our scientists, many of our administrative officers whose services are sought from time to time in a consulting role on something which is of indirect benefit to the Government, and not in conflict with assigned duties.

I do not believe that the committee would wish to deny a continuation of that opportunity for interchange of ideas and cross-fertilization of views.

In summary, Mr. Chairman, I think if I may I would say this. As a personnel problem, the Civil Service Commission is not concerned with criminal acts.

The discovery and punishment of criminal acts is a matter for the agency itself and for the law enforcement agencies. However, in the development of any code of ethics, the standards of the criminal statutes must at least be looked at and carefully considered. Therefore, we would urge that as the committee moves along, if there are changes in the part of the law, part of the proposed statute which pertains to criminal activities, that the effect upon the code of ethics be very carefully considered and that the two things be kept in direct parallel insofar as you can.

We would also urge that administrative discretion be given with effect to the kinds of activities that I have illustrated to the committee here this morning.

There are many other detailed sorts of situations which perhaps the staff can discuss with counsel just on the basis of what do you think of this—do you think the law applies or not apply?

Mr. MEADER. Mr. Chairman, may I suggest to the Commissioner that in the statement he intends to prepare and submit to the committee that he cover the effect of the Veterans' Preference Act, provisions of the Lloyd-LaFollette Act and other security protections for civil servants as inhibiting disciplinary action administratively by their superiors in the Federal service.

Mr. JONES. Would it be your thought, sir, that this could appear as an insert in the record at this point or do you want a separate document on it?

Mr. MEADER. I understood you were going to prepare a statement, and add it to your testimony.

Mr. JONES. I call. It is a question of whether you want it in the record at this point or in the supplemental statement that I will prepare.

Mr. MEADER. I don't think it is important where it goes into the record, but I thought that possibly your experience with the right of appeal in civil service and veterans' cases in the past would enable you to tell us whether these laws have limited the authority of superiors, particularly with respect to disciplinary action, over subordinates with respect to misconduct of the kind sought to be reached by the legislation pending before this committee now.

I think the Civil Service Commission would be the one agency where that information would be most readily available.

Mr. JONES. It would have to be an expression of opinion and judgment.

We have no statistical study which would give us anything of the kind you want, Congressman.

I can tell you what I think and I am sure that my colleagues join in that thinking, but I can't give you any statistics which will say that the Veterans' Preference Act has inhibited administrative action in any number of cases because we don't have that kind of information, and I doubt we would get it if we asked for it.

Mr. MEADER. Can you give a brief statement right now?

Mr. JONES. Yes. I do not believe that the Veterans' Preference Act or the Lloyd-La Follette Act or any of the provisions with respect to security investigations that appear in Executive Order 10450 have anything directly to do with discharges of a kind that would be brought about under this code of ethics if it were enacted.

There is, however, the question for consideration as to whether a discharge for one of the reasons given in H.R. 2157 can be effected without taking into account the coexisting parallel provisions that pertain to procedures that are laid down, for example by the Veterans' Preference Act.

Under the Veterans' Preference Act, an agency is required to give an employee the charges against him "specifically and in detail." This requirement affects both form and substance.

Now it is this requirement of specificity and detail which has led to so much of the difficulty in the effective use of normal, administrative disciplinary actions where veterans are concerned. Courts require that the language specifically and in detail be carried out precisely on an A, B, C, D, E basis not only in the Veterans' Preference Act, but also in Lloyd-La Follette cases and security cases. In other words, procedural error as the courts have construed it is very often cited as an impediment to an effective disciplinary action which involves discharges.

I think that the fault is not so much in the administrative requirement as it is in the fact that the agencies have gone too far in protecting employee rights and have become overly afraid of what will happen if they are taken into court.

The court precedents have not been all exactly in the same direction, but generally what they say is that if you establish procedures, agency "A" you must follow them exactly. Stated another way, if you seek to discharge someone, we will not uphold you unless you have followed your own procedures.

This is the nub of the attitude of the courts, including the Supreme Court. By extension, the agencies now are reluctant at times to take disciplinary action by virtue of the fact that there are statutory rights of appeal.

Employees do go into court and the agency naturally doesn't like to subject itself to a long, drawn out proceeding of this kind if some other means can be found of bringing about the same result.

I think that our appeals system needs overhauling. There is no consensus on it in the executive branch. It is probably my duty and responsibility to say so. I have said so and I am trying my best to get a consensus on it.

I think we could overhaul it and enact a new appeals statute that would greatly minimize the present procedural impediments to disciplinary actions.

Aside from the matter I just discussed, there is nothing in the Lloyd-La Follette Act which would present any very substantial impediment to disciplinary action under a code of ethics such as envisioned in H.R. 2157.

Similarly, there is nothing in the executive order which has to do with security jobs, jobs in which there is a threat to the security of the United States if a person unsuitable to discharge security responsibilities is put in them.

I do not think it need be serious at all, but I am very sure that the agencies would think it would be serious.

Does that answer your question?

Mr. MEADER. I believe it does.

Mr. TOLL. Mr. Jones, I am sorry the chairman had to leave. He wanted to compliment you on the excellent nature of your testimony and I join with him.

Mr. JONES. Thank you, Mr. Toll.

Mr. TOLL. I was very much impressed by it.

Is there anything further?

Mr. JONES. Now, may I say sir that I do not think that perhaps it is necessary to take up these individual provisions here. I have some 12 pages of discussion of individual provisions that we will take up with the staff.

Mr. TOLL. Yes, I suggest that they be introduced as part of the record, if you have no objection to that.

Mr. JONES. I would suggest, sir, that they not be introduced in the record at this time because some of them may be unnecessary verbiage. I would like to go over them with Mr. Maletz and see if they are things that are necessary.

Mr. TOLL. Suppose you handle it in that manner then.

Mr. JONES. What I have tried to do is to avoid dragging the committee and staff through every technical objection to changes in these laws.

Mr. TOLL. You are right, Mr. Jones.

Mr. JONES. I am sorry there was some misunderstanding between the chairman and myself in that respect.

Mr. TOLL. Suppose you review those features with the chief of the staff and then the results of your conferences can be included in the record.

Mr. JONES. Now, I would like to speak to two other issues if I may.

The witness who preceded me this morning, the General Counsel of the General Services Administration, was asked a question as to whether the enactment of the bills in their present form would, in his judgment, have any inhibiting effect in recruiting for the General Services Administration.

His answer, in general, was in the negative, subject to certain amendments of the language.

So far as I can determine from talking about this issue with many people over more years than I sometimes would like to remember, I do believe that there will definitely be an inhibiting effect to any tightening of the conflict of interest statute.

May I say for myself, and this is entirely a personal view, that I am perfectly willing to run the risk of that inhibiting effect if we can get statutes so clear in their terms so there is little doubt as to how they would be applied. Then, and only then, would it be possible to come to the Congress and do anything except guess as to where the trouble lies.

Any judgment I would give the committee today as to the inhibiting effect of these statutes at best would have to be a guess.

If the statutes are revised along the lines the committee is interested in, I believe in a very short time that we could get specific cases in which the standard was too tight. We could then come to you on a factual basis.

We can't do that today. That has been one of the difficulties in trying to deal with this problem, as the committee is aware.

It is a problem that plagued the staff very much when they attempted to draft their excellent report because no one could give them the ABC's of the situations.

The final matter to which I would like to refer without criticism of individual pieces of legislation would be to urge upon the committee that it not attempt to do this job piecemeal, a little bit at a time.

The third of the bills before the committee deals with one very narrow part of this whole problem. I would hope if we are going to legislate on that, that we could do it on a much broader basis.

I say that not in derogation of the third bill but simply because I am convinced from many years of experience that piecemeal tinkering with these statutes is going to result in things that none of us intended and that we probably don't want.

If the job is done it should be as comprehensive as we can make it.

Mr. TOLL. A comprehensive code referring to conflict-of-interest situations.

Mr. JONES. Yes, and the moral and ethical problems that relate thereto.

I say, as many of the witnesses have said before you, that you can't legislate morality, but you can legislate a backdrop against which morality can be gaged.

Mr. TOLL. Thank you very much, Mr. Jones. Your testimony has been very fine, and once again I state that the chairman felt it was very productive.

Mr. JONES. Thank you very much, sir.

Mr. TOLL. There are no further witnesses for today.

The meeting will now be continued until tomorrow morning at 10 o'clock when our witnesses will be Stephen S. Jackson, Deputy Assistant Secretary of Defense, Manpower, Personnel and Reserve; Charles H. Kendall, General Counsel, Office of Civil and Defense Mobilization, and a representative of the Office of the Secretary of the Treasury.

The meeting is now adjourned.

(Whereupon, at 12:45 p.m., the subcommittee recessed, to reconvene at 10 a.m., Friday, February 19, 1960.)

(The statement referred to at p. 87 follows:)

STATEMENT OF J. H. MACOMBER, JR., GENERAL COUNSEL, GENERAL SERVICES ADMINISTRATION

Mr. Chairman and members of the subcommittee, I am here today at your request to express the views of the General Services Administration on H.R. 2156, a bill to strengthen the criminal laws relating to bribery, graft, and conflict of interest, H.R. 2157, a bill to implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government, and H.R. 7556, a bill to prohibit, under certain conditions, for 2 years, the employment of a former employee of the Federal Government by any person, concern, or foreign government with which certain transactions were handled.

PROGRAMS AFFECTED

The principal programs administered by the General Services Administration which will be affected by these bills are as follows:

1. *Federal Supply Service programs.*—Procurement of stores and nonstores items, Federal supply schedule contracts, and consolidated purchase programs; stores management programs, including stores depot operations, standardization, specification, and Federal cataloging programs, and the surplus disposal programs.

2. *Public Buildings Service programs.*—Contracting for construction and repair of buildings, custodial services, concessions, site acquisitions, rental of buildings and space, disposal of surplus real property, architect-engineer services, appraisals of real property, and space utilization surveys.

3. *Transportation and Public Utilities Service programs.*—Procurement of transportation and public utilities services, and protection of the Government's interest as a user of such services through appearances before State and Federal regulatory bodies.

4. *Defense Materials Service programs.*—Stockpiling of strategic and critical materials; programs to encourage the expansion of productive capacity of metals, minerals, and other raw materials; the abaca production program; the national industrial equipment reserve of machine tools and industrial manufacturing equipment; the machine tool expansion programs; and the program for the custody and management of the supplemental stockpile.

EFFECT OF H.R. 2156 ON GSA PROGRAMS

H.R. 2156 would revise and consolidate within chapter 11 of title 18 of the United States Code certain related provisions of law now found in various chapters of title 18 and in title 5. We believe this consolidation generally will clarify the obligations of Government employees, and thus assist in achieving maximum security against improper practices in the Federal service. As the second largest procurement agency in the Government, the General Services Administration benefits directly from legislation of this kind. Primarily concerned are our programs for procurement of supplies and services, construction and repair of buildings, acquisition of real property, and the sale of surplus property.

We are pleased to report that there have been gratifyingly few instances where misconduct has occurred among employees of the General Services Administration. This fine record stems in part from such operating factors as the emphasis placed by this agency upon use of competitive bidding in both its procurement and disposal operations and, in the instance of procurement of trans-

portation and public utilities services, the fact that charges for such services are based largely upon published tariffs or other agreements subject to public inspection. The contracting methods utilized by the General Services Administration tend to minimize opportunities for misconduct.

The General Services Administration recognizes the need for constant vigilance against improper practices both by Government employees and the public with whom they deal. Accordingly, we favor enactment of legislation such as H.R. 2156 but would defer to the views of the Department of Justice insofar as the details of the bill are concerned.

EFFECT OF H.R. 2157 ON GSA PROGRAMS

H.R. 2157 would amend the Administrative Procedure Act by establishment of a code of official conduct for the executive branch. Specific acts are set forth which Government employees are prohibited from committing and, in addition, the head of an agency is authorized, after notice and hearing, to dismiss any officer or employee for violation of the code.

The General Services Administration, because of its many relationships with the public as a procuring and disposal agency, for many years has prescribed its own GSA standards of conduct. In addition, the code of ethics for Government service (H. Con. Res. 175, 85th Cong., 2d sess.) also has been adopted by agency regulation and is currently applicable to General Services Administration employees.

While we believe the present agency rules have operated very satisfactorily, we recognize that H.R. 2157 goes beyond administrative action by establishing a code of conduct as a matter of law.

In the absence of any express language to the contrary, it is assumed that the provisions of the Veterans' Preference Act and the Lloyd-La Follette Act with respect to the removal of employees would apply in any dismissals effected under section 107(a) (1) of H.R. 2157. These acts furnish employees with certain rights of appeal to the Civil Service Commission in removal actions.

Section 107(a) (3) would enable the head of any agency to require a person to certify that his representative will not, by his appearance before such agency, violate the code with respect to former employment in the Government. In order that such person may not be required to certify to matters outside his knowledge or control, it is suggested that the certification required by that section be modified by adding the phrase "to the best of his knowledge."

The General Services Administration is in accord with the objectives of H.R. 2157, as evidenced by its own Internal regulations establishing a code of conduct for its employees. Should the Congress determine that it is desirable to establish such a code in law, we would interpose no objection to this legislation. Clarification of section 107(a) (1) and (3), however, would serve to improve the workability of the present bill.

EFFECT OF H.R. 7556 ON GSA PROGRAMS

H.R. 7556 would amend section 284 of title 18 of the United States Code to make it a crime for a person to accept, or to promise to accept, employment within 2 years after termination of his Federal employment if, within the 2 years prior to such termination, he dealt with a claim against the Federal Government by the one offering the employment. The bill also would provide criminal sanctions on the part of the one employing, offering, or promising to employ such person.

The general objective of H.R. 7556 is a commendable one and is regarded favorably by the General Services Administration. Unfortunately, the bill amounts to a piecemeal approach to the broad problem that underlies the conflict of interest statutes.

As drawn, we believe the bill would unduly penalize the Government employee. For example, it would apply against such employee even though his connection with a claim had been that of resisting such claim strenuously. A Government employee who loses his position as a result of a reduction in force without any fault on his part also would be penalized unjustly by the provision of this bill.

The General Services Administration is opposed to measures such as H.R. 7556 that do not reflect a comprehensive evaluation of the interrelationships among the so-called conflict-of-interest statutes.

FEDERAL CONFLICT OF INTEREST LEGISLATION

FRIDAY, FEBRUARY 19, 1960

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 346, Old House Office Building, Hon. Byron G. Rogers presiding. Present: Representatives Rogers and Meader.

Also present: Herbert N. Maletz, chief counsel; Kenneth R. Harkins, cocounsel, and Richard C. Peet, associate counsel.

Mr. ROGERS. The committee will come to order. The first witness this morning is Mr. Stephen S. Jackson, Deputy Assistant Secretary of Defense for Manpower, Personnel, and Reserve.

Come forward, Mr. Jackson.

Mr. JACKSON. Thank you. I have some of my staff people here if they might join me.

Mr. ROGERS. Will you identify them for the record?

Mr. JACKSON. This is Capt. John Mackroth from our Division of Personnel Policy of my office. This is Mr. Kirby from the Office of the General Counsel of the Secretary of Defense. This is Mr. Risek from Mr. McGuire's office who has policy determination of procurement problems.

Mr. ROGERS. Now you have a prepared statement, Mr. Jackson.

Mr. JACKSON. Yes, sir.

Mr. ROGERS. All right, you may proceed.

STATEMENT OF STEPHEN S. JACKSON, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER, PERSONNEL, AND RESERVE; ACCOMPANIED BY CAPT. JOHN R. MACKROTH, OFFICE OF PERSONNEL POLICY, OASD; JOHN KIRBY, OFFICE OF GENERAL COUNSEL, OSD; AND PHILIP RISEK, OFFICE OF PROCUREMENT POLICY, OASD

Mr. JACKSON. Mr. Chairman and members of the committee, we, in the Department of Defense, appreciate the opportunity you have afforded us to express our views on the very important subject of conflicts of interest which is before your committee at this time.

While we do not propose to speak for the entire executive branch of the Government, we do have a very great interest in this subject, since more than half of the civilian employees of the executive branch are employees of the Defense Department, and, of course, all of the military personnel of the Armed Forces are in the Department of Defense.

We realize that members of the Armed Forces and civilian employees who serve the Department of Defense, or any other Department of the Government, should be held to proper standards of conduct with respect to their duties.

While it is true that employees and former employees in private enterprise certainly have an obligation of fair dealings toward their employers while employed and after leaving their employment, we think it is fair to say, however, that those who serve their country in uniform or as civilians, are charged with an even greater responsibility of loyalty and integrity in relation to their employer; namely, the U.S. Government.

As you know, there has been concern that retired officers of the Armed Forces, who have obtained great prestige and high rank might use these characteristics in the interest of an employer who had dealings with the Defense Department.

With the tremendous amount of money which is being spent by the Defense Department on contracts with private defense contractors, it is certainly a prudent and warranted position to take all reasonable steps to preclude the probability of any such influence.

This subject has been explored during the past several months by another committee, which has made certain recommendations for legislative changes. The Department of Defense has given its views on these.

It is significant perhaps to note that in some 1,300 pages of testimony and exhibits given by over 70 witnesses, there has been no reported instance of actual dishonest dealings on the part of those retired officers employed by defense contractors or by any active or former civilian or military personnel.

However, the Defense Department is fully in accord with the establishment of clear, uniform intelligent norms which will guide both our employees and officers in the choice of their employment and in the performance of duties in such employment after they have been retired or separated from the Department of Defense.

We believe that there is nothing about military officers or civilian employees which would give rise to the conclusion that they are more likely to engage in improper dealings than any other individuals, either before or after retirement.

For instance, with respect to the commissioned officer who has been retired after long years of service and attained a high rank, he has time and again been scrutinized for his character as well as his abilities under keen competition with his fellow officers.

Retirement for him is a certification that he has given all that is required to the service of his country unless he should be needed in case of war or emergency. We have every reason to believe that these officers who have stood the rigid tests involved in a military career and have acquitted themselves with honor frequently during the hazards of combat will undoubtedly carry these characteristics with them into retirement.

Retirement in the military service is somewhat different from the ordinary concept of retirement. Age alone is generally not the determining factor. Retirement is an integral part of the overall program of keeping the forces vigorous and competent with a constant opening up of the higher ranks for opportunity of younger officers to develop their career.

Many officers are retired at a time when they have several years of active life before them. They also have acquired valuable, and in some instances, rare skills. It is also fact that retirement frequently comes at a time when financial burdens are the greatest, with children pursuing higher education and their personal expenses generally higher. It is imperative, therefore, that no undue restrictions be placed on their seeking proper employment after retirement.

We feel that the principal problem is not that large numbers of these officers will become involved in dishonest dealings. What our retired military people and, indeed, retired civilians need are clear, understandable guidelines as to what they may and may not do. The laws at present do not provide such clarity.

The penal statute involving selling to the military departments as applied to retired officers has given rise to different interpretations among the services and certainly needs clarification. The Department of Defense recommends a change in this statute which would make it uniform in that retired officers should be prohibited from selling to any service of the Department of Defense (rather than only to their own military department) for a period of 2 years. We further believe that a definition of selling should be enacted into the statute, and we have proposed the following:

Sell (selling, sale) means (1) signing a bid, proposal, or contract, (2) negotiating a contract, or (3) contracting an officer or employee of the Department of Defense for the purpose of (i) obtaining or negotiating contracts, (ii) negotiating or discussing changes in specifications, price, cost allowances or other terms of a contract, or (iii) settling disputes concerning performance of a contract.

The Department of Defense is further of the opinion that this prohibition against selling to the Department of Defense should not apply to officers who have less than 10 years of continuous active service because such officers would probably not have ranks higher than lieutenant, senior grade, in the Navy or captain in the other services.

It would seem apparent that officers of such rank would be unlikely to have a capability of any influence on their former associates in the Department of Defense. There are other cogent reasons why such a provision would be desirable.

I would be happy to expand on this later if you are interested.

With respect to H.R. 2156, the Department of Defense defers to the Department of Justice with regard to section 201 "Bribery of Public Officers" and section 202, "Bribery of Witnesses." It interposes no objection to section 205 having to do with claims and other matters affecting the Government.

We suggest that section 206(2)(A) be modified in accordance with the remarks we have made previously in regard to selling to the Department of Defense.

We are fully in accord with the concept that a retired officer or any other employee of the Government should not successively act on two sides of a claim or transaction involving the Government and some non-Government interest.

We feel, however, that the disqualifying relationship between an individual and a particular proceeding which in the proposed statute includes any such matter "concerning which he had any responsibility" is unduly broad. It might very well be construed to include matters of which he had no personal knowledge or dealings, but it could be

said he had an overall responsibility since he was the head of the particular branch or bureau concerned.

With respect to proposed section 206(2) (B), we feel that it would be unnecessary if section 206(2) (A) were appropriately amended.

We also feel that a matter in which the United States is a party directly or indirectly which involves a particular military department would be an extremely difficult judgment to make in all cases.

There is a tremendous turnover in civilian employment in the Government as a result of employees from private enterprise coming into Government service on a temporary basis.

This is especially true, for instance, with regard to stenographers and secretaries, for whom there is a considerable demand outside of government.

With the very extensive dealings that the Defense Department and other agencies have with private industry, it would seem that the prohibitions under section 207 of the bill would greatly narrow the opportunity for such persons to seek employment outside the Government if they were precluded thereafter from rendering any assistance to anyone in connection with any subject matter concerning which they had any responsibility.

We have had considerable difficulty in recruiting engineers and scientists which I might add has been recognized by Congress, and alleviated to some degree by helpful legislation.

When such persons decide to leave government employ, that is scientists and engineers, almost invariably their likelihood of employment would be with a company having a contract with the U.S. Government.

Another group which the Defense Department as well as other agencies of government must recruit are statutory appointees.

Frequently these are men holding high positions in successful and large business operations which frequently deal with the Government. These appointees hold positions of great importance in the Government and at times it is difficult to recruit them. They are appointed with full knowledge that their tenure will be a comparatively temporary one, after which, as a rule, they will return to private enterprise.

We suggest that careful consideration be given to exclude such appointees or such employees as we have indicated from any restrictions that would preclude their serving the Government in these important posts.

We also feel that there is no need for any such restrictions to those workers in the lower grades.

The Department of Defense is opposed to H.R. 2157. This is not to say that we are opposed to the very desirable objectives that this bill is as we feel designed to attain.

We feel, however, that these objectives as far as legislation is concerned should be restricted to a revision and clarification of existing penal statutes.

The area of conduct embraced in this bill, in our own opinion, should be restricted to appropriate administrative action. The Defense Department is presently completing a directive which deals with many of the areas which are dealt with in this bill. Furthermore, administrative powers are already in existence within the executive branch which may compel discipline and, when justified, dismissal.

Control can be had also of contractors in that those who violate conflict-of-interest legislation as well as bribe, graft, and fraud laws may be debarred from doing business with the Government under existing regulations.

Where Government transactions are found to have been the result of improper conduct amounting in reality to fraud upon the United States, authority exists for cancellation.

We feel that additional legislative enactments which extend to the area of imprudent behavior might be deleterious to effective administration of laws which we believe are proper for punishment of crimes in this field.

Finally, a word about H.R. 7556. It is the position of the Department of Defense that there should be no objection to a Government employee seeking a position with private industry while serving with the Government, providing his efforts too do not involve actions which are collusive, fraudulent, or designed to favor a contractor to further his own interests.

It is believed that present criminal statutes adequately cover these types of situations. The Defense Department would have no objection to amending the criminal statutes to make it clear that the same standards should apply to a prospective employer.

However, we believe that enactment of H.R. 7556 could possibly result in many employers refusing to engage former Federal employees during the 2 years following their Federal employment for fear of becoming subject to criminal prosecution in spite of any safeguards which they might establish.

As this committee is undoubtedly aware, several other proposed bills seek to amend the same section of the law. One of these, H.R. 2156, is before this committee; another, H.R. 9682 is pending before the House Armed Services Committee.

In this connection, we are informed that a very extensive reexamination of the entire area of conflicts of interests has recently been accomplished by the Association of the Bar of the City of New York.

Undoubtedly a bill containing their findings will also be introduced in the Congress for its consideration.

In closing, Mr. Chairman, and members of the committee, I wish to emphasize the fact that the Defense Department is not taking a negative position in the matter of legislation in this area.

We are anxious that clarifying legislation of a uniform nature be enacted.

We believe the general objectives of your committee are the same as those of the Defense Department and that is that clear, understandable, reasonable laws be enacted which will guide the actions of our retired officers and former civilian employees of the Federal Government.

This concludes my formal statement.

(Mr. Jackson's prepared statement appears at p. 142.)

Mr. MALETZ. Mr. Jackson, have the present conflict of interest statutes, and I refer specifically to title 18, United States Code, sections 281, 283, 284, and 434, 1914 and title 5, United States Code, section 99, hampered the Defense Department in recruiting civilian personnel?

Mr. JACKSON. I do not believe that there is any general answer to that, sir. I think there have been instances in which the possibility

of running afoul of one or another of those statutes has been a factor in the consideration of whether or not a person would come aboard.

Mr. MALETZ. Do you know of any such case?

Mr. JACKSON. I have not been directly involved so that I can't speak from my own knowledge, but I know there have been some instances. The only one in which I have been personally involved is when I was assistant general counsel in the Office of the Secretary of Defense. A former member of my staff resigned. We had to prepare for some congressional hearings, and he was a very competent and very brilliant attorney who had worked on the original bill, and I wanted him to come back on a temporary basis and give me his assistance because he was familiar with it. He said that he didn't want to start the statute running again that would preclude him or limit him for a certain period of time as an attorney and a former employe. That is the only instance I know of personally, sir.

Mr. MALETZ. Is it the position of the Department that the conflict of interest statutes which I have specified need to be revised and amended and strengthened?

Mr. JACKSON. I wouldn't presume offhand to cover all of those that you mentioned, but it is definitely the position of the Defense Department that there should be clarification of 281 and 283. As to their being strengthened, I think a clarification would strengthen them.

Mr. MALETZ. Is it the position of the Department that more effective enforcement would be assured by emphasizing administrative rather than the criminal sanctions in present law?

Mr. JACKSON. This is really a question which I presume those who are officially in the legal field could answer. I would say that it has been pointed out that under the present laws there is what has been regarded as a paucity of prosecutions under the penal laws, and a leaning rather toward the administrative. The reason for that I wouldn't presume to say. I do know that there is in the statutes I have mentioned even in the Defense Department a difference of opinion of interpretation between the services as to its applicability from the penal standpoint.

Mr. MALETZ. That would indicate the necessity, would it not, of clarifying existing law?

Mr. JACKSON. Yes, sir; and we so recommend.

Mr. MALETZ. Would you recommend relaxing present criminal sanctions?

Mr. JACKSON. I am not sure that I would want to answer what would constitute relaxing.

Mr. MALETZ. Making the penalties less severe.

Mr. JACKSON. No, sir. We are not suggesting that the penalties be made less severe.

Mr. MALETZ. Do I understand that in essence the Department of Defense takes the position that it favors H.R. 2156 with amendments, but opposes H.R. 2157? Is that the gist of your testimony?

Mr. JACKSON. I think that is a fair statement, yes. We emphasize with amendments, and I think otherwise that is a good—

Mr. MALETZ. Do you think it would be desirable for the Congress to enact a code of ethics which would be binding on all the executive agencies?

Mr. JACKSON. Well, as I have indicated in my statement, whereas the objectives of the code of ethics are thoroughly consonant in most instances with the Defense Department, we feel that it is contraindicated to enact them into statutory—

Mr. MALETZ. It is what, sir?

Mr. JACKSON. It is not indicated to put them into statutory provisions as the bill proposes, and I have indicated that we are doing in the Defense Department by administrative action what is tantamount to a requirement of proper conduct in many of these areas.

Mr. MALETZ. On page 2 of its report on H.R. 2156, and the report is dated February 17, 1960, the Department of Defense has stated, and I quote:

“In the absence of any specific authorization, it would be criminal for any person on behalf of any university to bestow an honorary degree of doctor of laws upon the Secretary of State in recognition of service to the Nation.”

Would you tell the committee what provision or provisions of H.R. 2156 your department is referring to?

Mr. JACKSON. Will you bear with me a moment, please?

Mr. MALETZ. Yes, indeed.

Mr. JACKSON. Would you want to pass that question? This letter is from the general counsel.

Mr. MALETZ. Yes; the report was signed by the general counsel.

Mr. JACKSON. His representative will find the language that was referred to. I will appreciate it if you would afford him some time, sir. Are there further questions that you want to ask?

Mr. MALETZ. Is he going to answer the question?

Mr. JACKSON. I was requesting that you afford him time to look up the language that would apply there.

Mr. MALETZ. We have a series of questions based on the answer to this particular question.

Mr. ROGERS. May I ask Commissioner Jackson, in your analysis of H.R. 7556 the question arises as to whether it says on the first page at line 8:

Offer or promise to employ any person who as an employee of the Federal Government at any time in a 2-year period prior to termination of his Federal employment * * *.

Would you consider that retired officers were employees of the Federal Government under that section, or if they were, what effect it would have?

Mr. JACKSON. We had frankly, in view of the express use of retired officers vis-a-vis employees in other parts of the bill considered that this was directed toward civilian employees rather than retired officers.

Mr. ROGERS. But if there was any doubt and the doubt might arise as to whether they were actually employees, what would be your position?

Mr. JACKSON. I think it would be the same, sir, as our position with respect to civilians, as I have indicated it.

Mr. ROGERS. Would it necessarily follow? For example, if an officer had been on duty in the procurement division as it relates to airplanes, upon retirement would he be prohibited then from being

employed by an airplane company which may be doing business with the Federal Government?

Mr. JACKSON. We hadn't in our thinking on this bill differentiated between even the civilian who was in procurement rather than non-procurement, so my answer would be that this in itself would not in my opinion necessarily preclude his taking employment even though he did have discussion with the representative of his company prior to his leaving.

We think the gravamen of the thing is that, if there is any indication that such a discussion of a promised job was designed either by the employer in suggesting it, or by the employee (or the officer if it includes him) to give a favorable consideration to the procurement procedure, we think there it should be dealt with as a penal offense. But it is really almost—

Mr. ROGERS. That would be in the nature of a bribe on the face of it.

Mr. JACKSON. Yes, sir.

Mr. ROGERS. And the objective of H.R. 7556 is to get at those instances where an individual employed in the department subsequently leaves and goes over and becomes employed by the A corporation and 3 days later the A corporation turns up with a \$50 million contract right out of the department where he was employed.

Now there are instances in the Defense Department that we know of that that has been done.

Mr. JACKSON. I would say obviously this might give rise to some considerations as to whether there is a relation between the employment and the issuing of the contract and it might bear investigation.

All I am saying, sir, is that in the absence of any malfeasance or any collusiveness on the part of an officer or civilian on active duty, the mere fact that subsequently he works with a company or a contractor who is doing business with the Defense Department in and of itself, we feel, should not constitute a crime.

Mr. ROGERS. Hence the inhibition that is set forth here in H.R. 7556 which makes it a crime you think would be wrong?

Mr. JACKSON. Yes, sir. We think it would be wrong as prescribed, and as I have indicated—

Mr. ROGERS. How are you going to control the situation when we know and at least the reports are that any number of people employed in the Defense Department, particularly officers who retire, which associate themselves with companies which either have contracts or get them from the Defense Department.

How do you propose to control this type of situation to see that influence isn't used?

Mr. JACKSON. Oh, yes; we agree that steps should be taken to preclude any such influence. Our opposition to this bill isn't a recommendation that there will be no prohibitions against influence of sales, and that is why we have recommended a 2-year period in which any retired officer will be precluded from any actions which are directed toward affecting a contract or selling as we have defined it, and we think rather restrictively here as I have indicated.

Mr. ROGERS. That has reference to H.R. 9682, better known as the Hébert bill.

Mr. JACKSON. If I may say, sir, this is not what the Hébert committee recommended. This is our position as given to the Hébert

committee and which we think is sound, and we are proposing it here, sir.

Mr. MALETZ. Now, Mr. Chairman, so that the record may be clear, I will repeat the question, Mr. Kirby was preparing to answer.

On page 2 of its report on H.R. 2156 dated February 17, 1960, the Department of Defense has stated:

In the absence of any specific authorization it would be criminal for any person on behalf of any university to bestow an honorary degree of doctor of laws upon the Secretary of State in recognition of service to the Nation.

The question was whether Mr. Jackson or his associates would tell the committee what provision or provisions of H.R. 2156 the Department is referring to.

Mr. KIRBY. On that, sir, we believe that the very broad language of section 201 in the definition of what constitutes a bribe, where it refers to an honorarium could possibly cover such a situation.

Mr. MALETZ. Could you tell the committee whether the same result could not be inferred under present section 201 of existing law?

Mr. KIRBY. As to whether it could be inferred under the present section I could not definitely say. We believe that the language here though—

Mr. MALETZ. Are you objecting to the use of the word "honorarium"?

Is that the objection?

Mr. KIRBY. Not specifically, no, sir.

Mr. MALETZ. Well, what specifically?

Mr. KIRBY. We are objecting to what we consider broad general language in the bill in certain points. Now as to that, in our letter we have said we would defer to the Department of Justice, because we felt that the Department would be responsible for handling any prosecutions under—

Mr. MALETZ. Would the term "money or other thing of value" be too broad in the view of the Department?

Mr. KIRBY. Well, sir, this being a criminal statute, I believe it should in all instances be as specific as possible in its language.

Mr. MALETZ. In other words, the term "or other thing of value" would be too broad, would it not, in your view?

Mr. KIRBY. Yes.

Mr. MALETZ. Are you familiar with the fact that section 201 for a great number of years has had the clause incorporated therein "whoever promises, offers, or gives any money or thing of value"?

Mr. KIRBY. Yes, sir, I am, but again—

Mr. MALETZ. Have you ever made objection to that provision of 201 on the basis that it is too broad?

Mr. KIRBY. We have never had occasion to, sir, to my knowledge.

Mr. MALETZ. Have you ever recommended relaxation of section 201 on the basis that the term "other thing of value" is too broad?

Mr. KIRBY. As far as the Department of Defense is concerned, sir, not to my knowledge, but I would say again on that we would wish to defer to the Department of Justice.

Mr. MALETZ. Have you ever informed any committee of Congress that under present section 201 it would be criminal for any person or university to bestow an honorary degree on the Secretary of State?

Mr. KIRBY. Not to my knowledge.

Mr. MALETZ. You haven't?

Mr. KIRBY. No, sir.

Mr. MALETZ. And that result would follow, would it not, if you are correct under present section 201?

Mr. KIRBY. That is correct.

Mr. MALETZ. Do you know of any prosecution by the Department of Justice in a situation such as that you have mentioned?

Mr. MALETZ. What was the purpose then of indicating that this codification of section 201 might have this dire result?

Mr. KIRBY. Well, in our general considerations, sir, we were looking on the proposed codification on an overall basis and to certain language that we did consider to be very broad and general in its scope, and in this instance we were citing what we considered to be some possible interpretations of language because of its broad general nature.

Again to go back and repeat though, we did not attempt nor did we feel it proper for our Department to go into this at great length, because we thought that this responsibility would be that of the Department of Justice, so we deferred to them.

Mr. MALETZ. When you made your analysis of section 201, of H.R. 2156, did you make that analysis in light of existing law?

Mr. KIRBY. We considered existing law, yes, sir.

Mr. MALETZ. And did you consider that existing law would bring about the rather horrendous result you foresee for H.R. 2156?

Mr. KIRBY. Yes, but we of course were called upon now to comment. We have not commented before, to my knowledge. We were just pointing this out as a possible instance of what we considered in certain portions of this proposed bill to be broad general language.

Mr. MALETZ. Then you feel that section 201 of existing law is too sweeping, do you not, by virtue of the fact that it applies to money or other thing of value?

Mr. KIRBY. It could possibly be; yes.

Mr. MALETZ. In other words, you would favor revision of present section 201 to relax its severity?

Mr. KIRBY. Well, as Mr. Jackson has said, we wouldn't suggest or recommend to this committee the relaxation of any of the criminal laws. We feel that they are all very pertinent, but we do feel and have recommended a clarification of any words that we feel would cause us trouble.

Mr. MALETZ. You object to the broadness of the term "thing of value," is that correct?

Mr. KIRBY. I believe that that term "thing of value" could in a situation where that thing of value was very incidental, be subject to some question.

Mr. MALETZ. And I think you have indicated—

Mr. KIRBY. If I might go one step further in the language, carrying on beyond the word "honorarium" that we spoke of, we find "advantage and benefit." Such words as these would also be what we would consider to be unclear and possibly words that could subject the Department of Justice to some difficulty in handling a criminal prosecution under it.

But again as we have said, for that we would prefer to defer to that department that is responsible.

Mr. MALETZ. If you did want to defer to the Department of Justice on this point, what was the occasion then for presenting this specific example, especially since it would be equally applicable under present law?

Mr. KIRBY. Well, only as I have said, to point out what we thought would be a possible construction of the language as it is there.

Mr. MALETZ. Now, let's talk about possible construction for a moment.

You are familiar I take it with section 434 of title 18, United States Code?

Mr. KIRBY. Yes, I am.

Mr. MALETZ. Is it not correct that under present section 434, which has been on the statute books for a number of years, a person with a pecuniary interest in a private business entity would be prohibited from representing the Government in transacting business with that entity?

Mr. KIRBY. Yes, sir; that is correct.

Mr. MALETZ. Up to this point has the Department of Defense ever advocated changing that criminal provision?

Mr. KIRBY. Not to my knowledge.

Mr. MALETZ. Yet is it not a fact that, under present section 434, a Government employee who owns but one share of stock in a mammoth corporation would be in violation of this criminal sanction, should he transact any business with that corporation on behalf of the Government?

Mr. KIRBY. Technically that is correct; yes, sir.

Mr. MALETZ. Now do you know of any instance since section 434 has been in the code where there has been any prosecution in a case such as that which I have mentioned?

Mr. KIRBY. I do not.

Mr. MEADER. Mr. Chairman, I would like to ask a few questions of counsel on phraseology as soon as you are finished with this point.

Mr. MALETZ. Yes. In other words, isn't it correct that with respect to many criminal statutes, it is possible to state hypothetical situations which could conceivably lead to absurd results?

Mr. KIRBY. No, sir; I wouldn't want to go all out with you on that to agree.

Mr. MALETZ. Not all out, but aren't there a number of criminal statutes where you can develop hypothetical situations which might lead to absurd results?

Mr. KIRBY. That is quite possible, yes.

Mr. MALETZ. We have mentioned two this morning, have we not?

Mr. KIRBY. That is correct.

Mr. MALETZ. One under present section 201, the bribery statute, and one under section 434, isn't that correct?

Mr. KIRBY. That is correct. Of course now that—

Mr. MALETZ. Now was it your purpose in mentioning this example to seek to cast some cloud on present H.R. 2156?

Mr. KIRBY. Our purpose certainly was not an effort to cast a cloud on H.R. 2156. Our purpose, as we have said, I believe, was that we recommend and recognize that this section of the criminal code does need clarification. It needs it, we recognize in our own department, because of differences of interpretation that have been put on it by our own legal officers.

We believe that the maximum of clarity in any revision of this section is essential to avoid such situations in our own department.

Mr. MALETZ. And for how long—

Mr. KIRBY. That is, anything that we said or do say is merely to attempt to be helpful and constructive and to make any general recommendations that we feel in order, to make specific recommendations insofar as they would fit our Department, the personnel of our Department, but again, as we have said, for technical language we defer to the Department of Justice.

Mr. MALETZ. This has been a thorny problem with the Department of Defense for a number of years has it not, this conflict-of-interest problem and particularly the conflict-of-interest statutes?

Mr. KIRBY. I don't know as to your description, sir, of a thorny problem. We have had problems in connection with it.

Mr. MALETZ. The problem of interpretation of the conflict-of-interest statutes has been a matter of some concern to the Department of Defense for some years, has it not?

Mr. KIRBY. That is correct; yes, sir.

Mr. MALETZ. As a matter of fact, if I recall correctly, several years ago a Mr. Brown of the Department of Defense prepared an extensive memorandum pointing out some of the confusions in the present conflict-of-interest statutes, is that right?

Mr. KIRBY. Yes, I am aware of that memorandum.

Mr. MALETZ. There have been other memorandums in the Department of Defense concerning problems presented by present conflict-of-interest statutes, is that correct?

Mr. KIRBY. Yes, sir.

Mr. MALETZ. Now in all this time has the Department of Defense ever suggested to Congress a comprehensive revision of the conflict-of-interest statutes so that there could be clarification of some of the problems suggested in the various intradepartmental memorandums?

Mr. KIRBY. To my knowledge the Department of Defense has not.

Mr. MALETZ. Can you explain why not?

Mr. KIRBY. Well, I would say—and again I hate to repeat myself as I have time and time again—I believe that we do feel that the criminal code and the criminal statutes are within the province of the Attorney General, and while many of our discussions on controversial points and problems we have trouble with may at times be discussed with that office, I am not in a position to say what was the thinking of the Department of Defense as a whole, but my own thinking would be that we would look to the Department of Justice to come forward with these recommendations.

Mr. MALETZ. Have you ever taken this matter up with the Department of Justice and suggested that it recommend a comprehensive revision of the conflict-of-interest statutes?

Mr. KIRBY. Personally I have not.

Mr. MALETZ. Do you know of anybody in the Department of Defense who has taken that matter up with the Attorney General?

Mr. KIRBY. I wouldn't be in a position to answer your question specifically, to name a person or an instance, so I am unable to answer.

Mr. MALETZ. Let me put it this way. Has the Department of Defense officially—these conflict-of-interest statutes have been on the books for a long time—has the Department of Defense officially rec-

ommended to the Attorney General that he submit to Congress a proposed revision of the conflict-of-interest statutory structure?

Mr. KIRBY. I do not know.

Mr. MALETZ. Do you know, Mr. Jackson?

Mr. JACKSON. Not to my knowledge. I would like to say if I may that the procedure in the executive departments which would be followed would be the Department of Justice proposing these statutes, they would be given to the Department of Defense and other agencies to elicit their comment.

But Mr. Kirby is quite right. The initiative of a revision of these particular statutes would fall within the purview of the Attorney General's office.

I am certain that there have been discussions between legal officials in the Department of Defense and the Attorney General's office concerning specific instances that may arise. Personally I don't know the individuals involved, but I am sure it has occurred.

Mr. MALETZ. But the Department of Defense has never taken, I gather, an official position vis-a-vis the Department of Justice with respect to a comprehensive revision of the conflict-of-interest statutes?

Mr. JACKSON. I wouldn't go on record to say it has never happened because I don't have sufficient knowledge to say that. All I can say is that there have been I am certain in specific instances. I think that undoubtedly when Mr. Brown wrote his analysis of the statutes—

Mr. MALETZ. When was that, do you recall?

Mr. JACKSON. It must be 5 years ago I would say approximately. I recall at the time that he or his superior may have had discussions, but the initiation of action would necessary come from the Department of Justice.

Mr. MALETZ. And have you been with the Department of Defense for those past 5 years?

Mr. JACKSON. Yes, sir.

Mr. MALETZ. How long have you been with the Department of Defense?

Mr. JACKSON. Nearly 10 years.

Mr. MALETZ. During the past 10 years do you recall the Department of Defense having at any time taken an official position with the Department of Justice that the Attorney General should recommend to the Congress a revision of the conflict-of-interest statutes?

Mr. JACKSON. I know of no official position that was taken, and again I would say that I don't know that an official position should be initiated from the Department of Defense to revise these conflict-of-interest statutes.

Mr. MALETZ. You pointed out, I believe, that the Department of Defense employs more than half of the civilian employees in the executive branch of the Government, and I think you have also pointed out that the conflict-of-interest problem is a matter of concern to your Department.

Mr. JACKSON. That is correct.

Mr. MALETZ. Now, that being the case, wouldn't it be logical to assume that the Department might, during the past 10 years, have made

recommendations to the Attorney General with respect to revision of the conflict-of-interest statutes?

Mr. JACKSON. I think that is altogether possible; yes, sir.

Mr. MALETZ. But that did not happen?

Mr. JACKSON. I didn't say it didn't. I have no knowledge of it.

Mr. ROGERS. Mr. Meader?

Mr. MEADER. Is it Mr. Kirby?

Mr. KIRBY. Yes, sir.

Mr. MEADER. I would like to ask just a little bit about your background in the Defense Department and your legal background. How long have you been there? You are now in the counsel's office?

Mr. KIRBY. I am in the General Counsel's office of the Department of Defense.

Mr. MEADER. And how long have you been there?

Mr. KIRBY. I have been in that Office for about a year and a half.

Mr. MEADER. Where were you before that?

Mr. KIRBY. I was with the Army Judge Advocate General for about 2 years.

Mr. MEADER. I am concerned about the phraseology, whether some of the phraseology is good, and I would like to direct your attention to a definition of bribe in section 201.

I didn't see any comment in Mr. Jackson's statement, and I would like to start out by quoting from Black's Law Dictionary defining bribery:

Bribe: Anything of value; any gift, advantage, or emolument, any price, reward, or favor. *State v. Douglas*, 70 S.D. 203, 16 N.W. 2d 489, 496. Any money, goods right in action, property, thing of value, or any preferment, advantage, privilege, or emolument, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to induce or influence action, vote, or opinion of person in any public or official capacity. *People v. Van de Carr*, 87 App. Div. 386, 84 N.Y.S. 461; *People v. Ward*, 110 Col. 309, 42 p. 894; *Williams v. State*, 188 Ind. 283, 123 N.E. 209, 213. It is a gift not necessarily of pecuniary value, bestowed to influence the conduct of the receiver, and must be of substantial value to him. *People v. Hyde*, 156 App. Div. 618, 141 N.Y.S. 1089, 1093.

Payment of corporation funds by director and executive officer of the corporation to officials of labor union to prevent ruinous strikes which union officials were under no legal duty to call as "bribe." *Hornstein v. Paramount Pictures*, Sup. 37 N.Y.S. 2d 404, 412.

But I notice that the definition of bribe in section 201 just describes a lot of things, and I think probably all of them could come under the heading of a thing of value. But it doesn't have any element of purpose of influencing official action. Do you have any comment about whether or not a definition of the term "bribe" should include the element of influencing official action?

Mr. KIRBY. I feel that your question, sir, as to the definition of what constitutes bribe or those items that might represent a bribe are subject to description as has been done in 201.

Mr. MEADER. But isn't a necessary element of the term "bribe" the influencing of official action?

Mr. KIRBY. Yes, sir.

Mr. MEADER. Wouldn't you think the definition was somewhat deficient in just listing a lot of items that might all of them come under the heading of a thing of value without any reference to the element of influencing official action? I am speaking now simply as a matter of legal draftmanship and asking for your comment as a lawyer.

Mr. KIRBY. Yes, I believe that it could be linked together into one definition, yes.

Mr. MEADER. Do you think a definition of bribe which omitted the element of influencing official action would be a good definition of the term "bribe"?

Mr. KIRBY. No, sir, I do not.

Mr. MEADER. Now you seem to complain that the phrase "anything of value" was too broad when it was related to bribery, and yet that seems to be the established common law word of art. Do you have any comment on that?

Mr. KIRBY. My comment would only go, sir, to say that when the common law "anything of value" was broadened out to make the many specific suggestions contained here in the proposed definition, it does raise question as to something mentioned or not mentioned or how far the something mentioned could be construed as going.

Mr. MEADER. Of course, the phrase in the definition in section 201 of H.R. 2156 says "without limiting the generality of the foregoing" and then mentions a lot of specific items, emoluments, profits, commissions, loans, honorariums, and so on, which would seem to indicate that those things specifically named did not broaden the generality of the phrase "other thing of value," "money or other thing of value."

Mr. KIRBY. Yes; I would agree with that.

Mr. MEADER. In the light of not just Federal law, which section 201 as it now exists of title 18, United States Code, says, "Whoever promises, offers or gives any money or thing of value"—in other words, existing law uses the term "thing of value." The Federal law does and apparently the common law regards anything of value as being an appropriate description of the subject matter of a bribe.

Mr. KIRBY. Yes, sir.

Mr. MEADER. I don't see why you should complain about that. That isn't anything new.

Mr. KIRBY. We were only offering as a suggestion that when you do point out specific items in a proposed definition, they may sometimes be subject to the raising of a question as to whether or not an unnamed item would be included within a definition.

Mr. MEADER. In other words, your suggestion is that those specific items be stricken, and we just rely upon money or other thing of value and leave it there the way the law is now.

Mr. KIRBY. We believe that that would be adequate; yes, sir.

Mr. MEADER. Now I would like to direct your attention to page 3 of H.R. 2156 and ask you whether you have given any attention to the definition of "official act," and particularly to the phrases following the word "trust or profit" on page 9; I mean line 9, page 3.

Mr. KIRBY. I'm sorry, sir. Would you repeat that?

I was using a copy of the companion bill 1900, but the lines are numbered differently on it.

Mr. MEADER. I can find it for you in H.R. 1900. It is identical legislation, I believe. There it is, page 3, line 11, commencing at the beginning of line 11.

Perhaps the thing to do is to read this because it strikes me that the matter commencing on line 11, page 3 and on the remaining lines in that paragraph is out of place and does not contribute anything but confusion to the definition of "official act."

The whole phrase reads as follows, commencing on line 5, page 3 of H.R. 1900:

"Official act" means any decision, judgment, verdict, recommendation, action, inaction, vote, abstention, attention, or neglect by a public official on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before such public official in his official capacity, or in his piece of trust or profit.

It seems to me the definition ought to end right there but it goes on to say—

or his commission, aid in committing, collusion in, or allowance or facilitation of any fraud on the United States, or commission or omission of any act in violation of his lawful duty.

What is being defined is "official act." Why do we go on to say "of any fraud on the United States"? That doesn't seem to me to be an official act. I would appreciate your comment on those phrases commencing on line 11, page 3 and following.

Don't you agree with me that they do not properly add anything to the definition of an "official act," but they tend to confuse it because it brings in some idea of wrongdoing in connection with an official act?

Mr. KIRBY. Yes, sir, I agree with you. I think that the particular reference you have made does that, and of course, as we have said, in Mr. Jackson's statement and in our report, that we believe certain language of the proposed bill is broad and general, and does need further study and clarification.

Mr. MEADER. Have you pointed out specifically what phraseology is objectionable and why?

Mr. KIRBY. No, sir. We haven't done that because we said that as to that we would defer to the position of the Department of Justice.

We went into those sections of the proposed bill that would particularly affect the personnel, retired officers or civilians of our department, and we were maintaining the same position which we had taken on the companion legislation before the Armed Services Committee that in certain respects was the same.

We did not go into a technical analysis of this particular chapter of the criminal code because we thought we should and preferred to leave that to the Department of Justice and the Attorney General.

Mr. MEADER. Let me say that I regard this committee's, and each member of the committee's, obligation in consideration of legislation of this kind to make the language, particularly with respect to criminal laws, as clear and unambiguous as possible.

I think we have, particularly on the Judiciary Committee, as lawyers an obligation to do our best to state the law as clearly and unambiguously as we can, and I think as an attorney of the Defense Department who will have some responsibility with respect to the reference perhaps to the Attorney General of violations of criminal statutes that come to your attention, you should also be concerned with the proper phraseology of a criminal statute concerning which you, or your successors, will have some responsibility in the future. I am a little bit surprised to have you say that you don't take an interest in the phraseology, that you are going to leave that all to the Justice Department.

I am not sure whether we are going to have the benefit of the legal skill of the Justice Department in considering this legislation. They apparently haven't displayed any interest in coming before this committee up to the present time, so I am trying to ask you as a lawyer to comment upon the proper phraseology of this legislation, because, if we do something, I would like to see it well done.

Mr. KIRBY. Mr. Meader, I certainly agree with your statement as to the need for the law to be clear and unambiguous, particularly the criminal law. I don't want to be misunderstood to say that we were not concerned with this. But if, as you say, there is question as to whether the Department of Justice will or will not appear before your committee, then certainly our suggestion that we propose to defer to them was in error, and I believe if we could have additional time, we would go into the bill as you suggest from this angle.

Mr. MEADER. Mr. Chairman, I would like to suggest that the committee request the counsel's office of the Defense Department to go through this legislation with a fine tooth comb and cull out any unfortunate phraseology or where the phraseology can be made more definite and certain to make specific suggestions on how the language can be tightened up.

Mr. ROGERS. That is a good suggestion. Have you any idea how long it would take your department, Mr. Kirby, to submit an analysis, sir?

Mr. KIRBY. If the committee—I would like to ask for at least a week.

Mr. ROGERS. That would be perfectly all right. If it takes a little more time, say 2 weeks, just so we get it and get it in this record.

Mr. KIRBY. Very good, sir. In other words, you would like a proposed redraft of the bill, taking out or making any corrections of language that we would deem to be necessary or appropriate or clarifying.

Mr. ROGERS. That's right. It may from our standpoint as well as your standpoint be effective in your being able to determine what is in the best interests of your department—both employees and the Department itself, if you try to define what this word "bribery" should constitute.

Mr. MEADER. I think if they went through the bill, section by section, referred to page, line, the objectionable phraseology and the suggested alternate phraseology that you think would improve the bill and make it more specific and understandable.

Mr. KIRBY. Yes, we will be glad to do that.

Mr. MEADER. With the reasons, with an explanation as to the reasons for the objection and the reasons for your belief that the suggested substitute phraseology is preferable.

Mr. KIRBY. Very good.

Mr. ROGERS. Mr. Peet?

Mr. PEET. Mr. Jackson, I would like to ask one or two questions involving section 207 of the bill 2156. Beginning on line 11 that provision reads, and I am going to quote a breakdown of that provision:

Whoever having been employed in any agency of the United States * * * after the time when such employment or service has ceased * * * aids or assists anyone in connection with any * * * contract * * * in which the United States is * * * directly or indirectly interested involving any subject matter concerning which he had any responsibility while so employed * * *

would be subject to prosecution.

I would like to pose a question to you of a general nature. Dr. T. Keith Glennan is head of the National Aeronautics and Space Administration. He came to the Government from Case Institute. Case Institute undertakes studies for the Government in exotic fields of science and technology. As head of NASA, Dr. Glennan would have "responsibility" in this field of science and technology as it applies to civilian missions in the space field.

Do you believe, under the wording of this proposal, that an individual such as Dr. Glennan could return to Case Institute after the termination of his Government employment and not be subject to prosecution under its provisions if enacted into law?

Mr. JACKSON. I would think it highly unlikely that he would under the verbiage as set forth in this proposal.

Mr. PEET. Do you believe if Dr. Glennan were confronted with such a provision before he came to Government, that he would be likely to accept a Government position as long as such an inhibition were on the books? We are speaking purely hypothetically. I don't mean to have you speaking for Dr. Glennan.

Mr. JACKSON. I appreciate that because I would be quite hesitant to try to interpret what his views or motives might be. But I would say generally if this language were on the books in a situation like that the individual concerned might well be inhibited from coming into Government service, if this were law.

Mr. PEET. Now proceeding down to line 21 on page 10, it reads:

Whoever, having been so employed—
in the Government—

within 2 years after his last employment * * * aids or assists anyone in connection with any * * * contract * * * in which the United States is * * * directly or indirectly interested—

and—

which involves any agency in which he was so employed—

shall be subject to prosecution.

In such a situation, do you believe it is conceivable that a scientist or technician working on a rocket project, with a skill in an exotic field, might be subject to prosecution if he returned to civilian life and went to work for one of the rocket companies, rocket or missile companies, who were working in the particular fields that his Government work was concerned with?

Mr. JACKSON. If the rocket company were involved in the agency in which he was engaged I would say yes.

Mr. PEET. Since we have only two agencies involved in rocketry, it is likely one or the other might be involved in such a contract.

Mr. JACKSON. That is true.

Mr. PEET. Now may I address one question to Mr. Kirby?

Mr. Kirby, as a lawyer, if a client came to you and asked for advice as to whether or not he should come into Government in the first place, because of fears of possible violations of conflict-of-interest statutes upon leaving Government and returning to his former civilian employment, would you be content to advise him that he should have no worries over prosecution even though a clear violation of statutes would exist, if the Attorney General, as a matter of policy, was not prosecuting in such cases?

Mr. KIRBY. No, sir; I would not.

Mr. PEET. I have no further questions.

Mr. MALETZ. On that last point, Mr. Chairman, I think we discussed previously the situation under present section 434 where a Government employee who owns one share of stock say in General Motors would, on pain of criminal prosecution, be precluded from acting in any capacity with respect to transacting business with General Motors. Do you recall that discussion?

Mr. KIRBY. Yes; I do.

Mr. MALETZ. You have not as I understand it recommended any change at least in the past 10 years, in the severity of that section, have you?

Mr. KIRBY. I have not; no, sir.

Mr. MALETZ. Nor has the Defense Department?

Mr. KIRBY. I would not have knowledge of that.

Mr. MALETZ. In view of your answer to Mr. Peet's question, why haven't you recommended a change?

Mr. KIRBY. You asked for the Defense Department, sir, and my answer to that is I don't know. I personally have not been in a position to recommend to the Department of Justice.

Mr. MALETZ. Have your superiors recommended a change?

Mr. KIRBY. Did you say have they?

Mr. MALETZ. Yes.

Mr. KIRBY. I don't know.

Mr. MALETZ. Mr. Jackson, do you know?

Mr. JACKSON. I am a little confused as to what we are discussing. Was the question directed to the current law?

Mr. MALETZ. We are talking about section 434 specifically.

Mr. PEET. If I may interject here I was addressing the questions to the enactment of 2156.

Mr. JACKSON. That is what I thought.

Mr. PEET. I think Mr. Maletz has reference to the laws presently on the books.

Mr. MALETZ. Exactly.

Mr. JACKSON. There is where I am a little confused as to whether Mr. Kirby's answer was in the framework of the question referable to the proposed amendment or the present law and I thought it was the former.

Mr. MALETZ. I think the record is probably clear as it is and I will not press these questions any further.

Mr. HARKINS. Mr. Jackson, I would like to clarify your testimony on page 5 of your statement with reference to section 207 of bill H.R. 2156. Am I correct in assuming that your objection to section 207 is the fact that the test there disqualifies former officers or employees for life on matters concerning which he had any responsibility? I take from your statement that your objection goes to the use of the term "responsibility," is that right?

Mr. JACKSON. Yes, any responsibility.

Mr. HARKINS. Now if the section 207 were amended on line 19 of page 10 of H.R. 2156 so that it would read "involving any subject matter with which he was directly connected while so employed"—in other words things that he had worked on directly—would you still have objection? That is to eliminate the word "responsibility,"

and make it apply only to subject matters with which he was directly connected when he was in the Government employ?

Mr. JACKSON. I think I indicated that in my statement that we would be opposed to a situation where a former employee acted in one side of a situation and subsequently acted on the other to the disinterest of the service. Now if the term "directly connected" and I want to caveat what I say here that I would want to study it a little more carefully, but if it had that connotation I would say that we would go along or would not be opposed.

There is a question of time factor here it seems to me which has been accepted in the statutes, and I would say that perhaps it should be circumscribed by a time factor. That isn't to say that at any time we would approve or recommend that a man who had dealings while he was on active duty, civilian or otherwise, which would put, because of those dealings, him in a favorable position while subsequently employed with an outside interest should be condoned.

No, we agree that that is improper.

Mr. HARKINS. Disqualification on things of which he had personal knowledge or personal dealings when he was in the Government should extend for an extended period of time if not for life, is that your position?

Mr. JACKSON. If the subsequent employment involved the specific matter in which he had gained knowledge of such a nature as would put him in an advantage now dealing with the Government, we would certainly agree that that could not be countenanced no matter how long it was after his employment.

Mr. HARKINS. The lifetime ban would be appropriate in that circumstance?

Mr. JACKSON. I would think so, yes.

Mr. HARKINS. Now in your statement page 5, you objected to the present language because it could very well be construed to include matters of which he had no personal knowledge or dealings, but it could be said he had an overall responsibility since he was the head of the particular branch or bureau concerned.

The alternative language that I have suggested, I intended by the words I used—"directly connected"—to make it apply to a subject matter in which he had personal knowledge, with which he had dealt personally.

Now my question is: If this section 207 is so restricted, with the word "responsibility" eliminated and the test of "directly connected" substituted, would the Department of Defense be in favor of a lifetime ban or a lifetime disqualification in such a situation?

Mr. JACKSON. I think that is in terms of, as I have stated it, where the personal knowledge would be of such that subsequently it would put him in a preferred position in representing an outside interest adversely to the Government.

Mr. HARKINS. That is what I attempted to include in my definition.

Mr. JACKSON. I have indicated I think in terms of what our reaction would be.

Mr. HARKINS. In fact there are many employees of the Department of Defense at the present time who are subject to the canons of ethics of the American Bar Association. All your lawyers therefore are presently operating under such a lifetime disqualification; is that not true?

Mr. JACKSON. In view of their professional requirements as an attorney, yes, sir.

Mr. HARKINS. That would be canon 36. Mr. Chairman, at this point I would like to read canon 36 into the record:

CANON 36 OF THE PROFESSIONAL ETHICS OF THE AMERICAN BAR ASSOCIATION

A lawyer should not accept employment as an advocate in any manner upon the merits of which he has previously acted in a judicial capacity. A lawyer, once having held public office or having been in the public employ should not, after his retirement, accept employment in connection with any matter which he has investigated or passed upon while in such office or employ.

Now has this canon created any difficulty in the Department of Defense obtaining lawyers to work in the Department?

Mr. JACKSON. As I have stated, I have one personal instance when I was the Assistant General Counsel.

I know that particular one of my own knowledge. There are times where outstanding people who have been in the Government might be requested to come back for just a short time on a particular ad hoc situation, and they don't want to start, to use the expression, the statute running again, for fear that it might preclude activity which would otherwise be proper and lawful and consonant with the canons to do. I only know of the one instance from personal knowledge.

Mr. HARKINS. Do you know of any reason why groups other than lawyers working in the Department of Defense should not be held to this same standard of accountability?

Mr. JACKSON. Well, I think in principle they should.

I think the attorney who has a peculiar and rather unique relationship with his client, whether it be a government or an individual, is certainly perhaps held to an even more meticulous observation of not violating the relationship. But in general, I would say yes, sir.

Mr. HARKINS. One final question. Would you also say that the problems that are posed to the Department of Defense with respect to recruiting that flow from possible application of the conflict-of-interest statutes are nearly as important as the fact that the standard pay scale for the Government employment is generally lower than the pay scale for comparable civilian employment?

In other words, which is the more important in creating recruiting problems, conflict-of-interest standards or this other problem?

Mr. JACKSON. I wouldn't be able to evaluate that, but I would say up and down the scale broadly speaking perhaps the monetary disparity would be the more predominant.

Mr. MEADER. Mr. Chairman, I have been stimulated to ask a question. I would like to ask Mr. Kirby a question with reference to this same section that we have been talking about, 207, and I want to give a hypothetical case because I think it always helps us to understand the meaning and effect of language if we think in terms of persons and events. Under that section, either with the broad phrase "concerning which he had any responsibility" or the more limited phrase which Mr. Harkins has suggested "involving direct connection or personal dealing," in your opinion would it be possible for Wernher von Braun to leave whichever department he is in now, I guess he is in the Space Agency, and accept employment with one of the firms that are now performing work for either the Defense Department or the Space Agency. I suggest that since Von Braun has

been in both agencies there would be nowhere for him to go without being subject to this section.

Could he assist a contractor doing business with the Government in connection with that contract?

In other words, would he be forever barred from accepting civilian employment in his own field simply because he had been at one time employed by the Government in that field?

Mr. KIRBY. Under the proposed language of 207, I believe he would be forever precluded because of the broad nature of it, "any subject matter concerning which he had any responsibility" would preclude him forever, because he is in the missile—

Mr. MEADER. Now I am asking the question also with respect to the more limited phraseology that Mr. Harkins has suggested, "with which he was directly connected." He was directly connected with the rocket program.

Mr. KIRBY. I believe that the language proposed would be construed as his connection with a particular type of rocket, and not go so broadly as to say because he was involved in the field of rockets it would cover the entire field. I would limit it to that field in which he had been particularly engaged and did have direct and intimate knowledge.

Mr. MEADER. But in effect section 207 without any time limitation would prohibit any person from leaving Government employment and using the knowledge and skill that he acquired either while with the Government or before that in behalf of a contractor contributing to the defense effort?

Mr. KIRBY. It is for that reason we are concerned with the language; yes.

Mr. JACKSON. May I ask your indulgence for one observation before the record is closed, please? It appears on the record that the request to the General Counsel's office to give an analysis and critique if you will of these statutes with the reasons. I would like to state I am no longer with the General Counsel's office but I am speaking now for the Office of the Secretary of Defense.

We will do this for the committee as a service, a drafting service or other service. But I am constrained to add that the last word with respect to these statutes perforce is within the cognizance of the Department of Justice and the Attorney General's office. This is a matter which we have no authority over, and we do not submit it except subject of course to the fact that they are the final authority in these matters.

Mr. ROGERS. We recognize that you might perhaps have to clear prosecutions and things of that nature. Our objective, as I understand what Mr. Meader has in mind, is to find out ourselves, because we, Congress, are the ones who finally enact the legislation. We want to enact it so that it will work for the Defense Department and the Justice Department and all the rest of them.

That is why we want to get their various ideas. We understand that what you will submit is only the views of your Department and not those of Justice.

And so, with that comment, we thank you for coming.

Mr. JACKSON. Thank you, sir.

Mr. MEADER. Mr. Jackson, might I suggest since we have spent so much time on this section 207 that you come up with what you think

might be workable phraseology that would prevent what we are all seeking to prevent but not, at the same time, be so sweeping that it does perhaps a lot of harm that we don't want to do?

Mr. KIRBY. Yes, sir.

Mr. ROGERS. Thank you, Mr. Jackson.

Our next witness is Mr. Charles H. Kendall, General Counsel of the Office of Civil and Defense Mobilization.

STATEMENT OF CHARLES H. KENDALL, GENERAL COUNSEL, OFFICE OF CIVIL AND DEFENSE MOBILIZATION

Mr. KENDALL. Mr. Chairman, Mr. Meader, and gentlemen, I am Charles H. Kendall, General Counsel, Office of Civil and Defense Mobilization.

I am a career civil servant with about 19 years' service. I am here at the request of Governor Hoegh, the Director of OCDM, in response to the chairman's letter asking the views of our agency on these bills.

First let me say that it is inconceivable that consolidation, clarification, and improvement of the conflict-of-interest statutes would in any way impair any program of ours. This is all to the good. We are for it and we agree, as I guess every witness has, that the conflict-of-interest statutes can stand improvement.

I suppose that an ideal criminal statute would prohibit the evil, all of the evil, nothing but the evil, and be readily enforceable.

It would have no loopholes, yet it wouldn't prohibit things that were not wrongdoing, and it would be something that you could take into court and enforce readily. In point of fact and practicality, criminal statutes are not drawn that way because they are too hard to enforce. There is too much motivation, intent, and circumstance to be considered in determining whether a thing is really wrong—so the statute tends to be drawn in broad, sweeping terms.

Just as a homely example, we know that under certain weather conditions and traffic conditions 70 miles an hour is not excessive out Shirley Highway. We know that under other traffic conditions and weather conditions 50 miles an hour would be murderous.

But the statute makes I think 60 the limit. It is easy to apply. This I think has been true of the conflict of interest statutes. They have covered not only the evil but in many cases the opportunity for evil and the appearance of evil. This has made it very important, very important to programs of the OCDM and other departments that there be in existence exemptions from the statutes—not to avoid the evil, but to avoid those portions of the statute that make the appearance of or the opportunity for evil a criminal offense.

You are aware, I know, of a half dozen provisions for exemptions. The reasons for these exemptions are usually quite clear.

Consider, for a moment, a wartime government in the United States. In order to accomplish the war aims in the economic field, the Government of the United States has to take over the distribution of materials.

It has to control prices and wages and rents. It has to do all kinds of things that are not normally done by a government in a private enterprise economy. This means that regular Government employees are not skilled in this type of thing. They don't know enough

about steel plants and distribution wholesalers and the operation of a transportation system to control them in time of war.

This specialized knowledge and experience is available only in the business world. So we have to bring people in in time of war to help the Government do its extraordinary job.

Typically these people who are brought in are paid much more than the Government can afford. Typically they also have interests, sometimes wide interests, financially, in various companies.

Typically also, if I may say so, they come here with the best of intentions, and are perfectly capable of divorcing their private interests from the emergency job that they are brought down here to do.

But without some exemption from the conflict of interest statutes, they simply couldn't come. And so it is our suggestion that the committee consider whether in consolidating and rewriting the conflict-of-interest statutes it would not be wise to include, right in this statute, an authorization to the President of the United States, when he finds it necessary, to provide by regulation for the exemption of temporary employees of outstanding experience and ability for the single purpose of doing the extraordinary jobs presented by a national emergency.

Mr. MEADER. Mr. Chairman, might I ask a question at that point?

Mr. Kendall, were you in a legal position in Government during World War II?

Mr. KENDALL. Yes, sir, I was at the Office of Production Management in the days of the Truman committee, Mr. Meader.

Mr. MEADER. I take it there was an exemption from these conflict of interest statutes for the dollar a year men and the w.o.c.'s that came down here during World War II, wasn't there?

Mr. KENDALL. The dollar a year man exemption consisted actually of an opinion of the Attorney General which was to the effect that these persons were here on leave with pay unconnected with their services for their company either before or after their Government service.

This, I trust you will forgive me, was a legal fiction but it served in World War II in most cases.

Some of the leaders in World War II in Washington actually gave up all their connections with their own businesses, men like Mr. Knudsen and Mr. Nelson. But those that couldn't had the shelter of the Attorney General's opinion on the subject.

Mr. MEADER. There was no legislation at all during World War II?

Mr. KENDALL. I know of no legislation exempting from the conflict of interest statutes in World War II, sir.

Mr. MEADER. I may say, Mr. Chairman, that in setting up commissions like the Hoover Commission and the Inter-Governmental Relations Commission, by bills which were reported by the Government Operations Committee on which I have served since coming to Congress, we have uniformly inserted a provision exempting the members of that Commission and their staffs from the conflict of interest statutes, and I really am greatly surprised that the dollar a year men in World War II relied only upon the Attorney General's opinion rather than a statutory exemption.

Mr. KENDALL. It caused enough difficulty so that the statutes enacted in the early 1950's with the Korean affair uniformly carried

an exemption, the Civil Defense Act, the Defense Production Act and the others. They carried exemptions from these statutes. And they are of great help, of course, in getting people to come to Washington temporarily.

Mr. MEADER. And what you are suggesting now is that in any conflict of interest legislation that this committee might report, that we delegate to the President the power to grant exemptions from the operation of these conflict of interest statutes in his discretion.

Mr. KENDALL. In his discretion, sir, limited by standards such as that he do it by regulation, that he do it when he deems it necessary, that it be for temporary employment, and that it be for persons of outstanding experience and ability. We have the specific case of the Defense Production Act.

Mr. MEADER. Would you limit that to time of war or national emergency?

Mr. KENDALL. National emergency I think, sir, yes. I should have said that too. It should be so limited I think.

Mr. MEADER. Have you drafted any language to accomplish that result?

Mr. KENDALL. There is language in existing statute that comes pretty close to it. Let me give you just a little history of what happened in the Defense Production Act.

There such an exemption was authorized and President Truman issued regulations, the purpose of which was to exempt from the statutes generally but not exempt from the crux of the wrongdoing, the evil. It did not exempt you from direct dealings with your own company on behalf of the Government. These men are not inclined to do these things anyway, but the regulation did not exempt from that for example.

Subsequently the Congress adopted almost word for word that entire Executive order or regulation, and the Defense Production Act today includes all these limitations upon the exemption that Mr. Truman established when he issued the regulation. I think this would be helpful to a President in wartime. I think it will be necessary if we are to get the people that we need.

Now there are giants of industry who can afford to sell out all their interests and disconnect themselves with any future employment and come down here. The trouble is that the large number of branch chiefs and assistant branch chiefs who must know industry are not in a position to do that. They are in their forties perhaps, or their early fifties. They still have children in school. They can't afford to give up the salary or the retirement rights, or to undertake not to go back to their company.

So this exemption is a matter of dire necessity.

I do not propose to make any specific comments on the bill unless you insist. I won't mention the Justice Department or the bar association of the city of New York because I think the committee has heard that before. Let me just disqualify myself. In 26 years of practice I have never had to try an important criminal case, so I am not an expert on criminal law.

Mr. ROGERS. Mr. Harkins?

Mr. HARKINS. With respect to the exemptions from the conflict-of-interest statutes that were authorized in the Defense Production Act

and the various appropriation acts, it is true, is it not, that the President has issued Executive orders establishing regulations to control the activities of the people who come in under those exemptions?

Mr. KENDALL. That's right.

Mr. HARKINS. Now would you say that the effect of the Executive order is such that the person who comes in under an exemption ends up with only an exemption from section 1914 of the United States Code? That is 18 U.S.C. 1914, prohibiting dual compensation.

Mr. KENDALL. Let me say primarily that he isn't entirely exempt from 1914. If you may remember the order provided he could not receive pay salary or emolument from anyone other than from the company by which he was employed. He couldn't change jobs.

But there are other exemptions. This 2-year limitation on being able to go back to work on something you did for the Government is an important exemption.

Mr. HARKINS. Does not the executive order prohibit for 2 years, working on—in fact it is very broad—on any matter in which you were associated?

Mr. KENDALL. Where he was directly associated, yes, that is true; but only where he made the decision or advised on the decision as I remember the language.

Mr. HARKINS. Are you familiar with the report of this subcommittee in the w.o.c. investigation?

Mr. KENDALL. The w.o.c.? When was it made?

Mr. HARKINS. In the 84th Congress.

Mr. KENDALL. I read it at the time.

Mr. HARKINS. In that report there was an analysis of all the exemptions of the conflict of interest statutes that had been promulgated and the effect of the exemptions. That report came to the conclusion that the exemptions were, in the light of the regulations that had subsequently been issued, of relatively little significance. Would you agree with that conclusion in that report?

Mr. KENDALL. Of little significance in the sense that they did not actually interfere with punishment for wrongdoing where wrongdoing occurred, but of great significance in that they let a man come down here without the fear that even if he behaved himself he would still be in trouble because the statutes were too broad.

I think the order can be described as an effort to have what I referred to earlier as the ideal criminal statute. Reduce the matter to the evil and all of the evil, but not the appearance of or the opportunity for evil.

Mr. HARKINS. Is your specific recommendation to the committee that language comparable to the language that has since been included in the Defense Production Act, the embodiment of executive order. Should that be incorporated or attached as an amendment to these bills the committee is now considering?

Mr. KENDALL. I hadn't intended to recommend that.

I had intended that you would leave it to the President to do that by regulation. But I would have no objection to the addition of those limitations, so long as they accomplished the purpose of letting us use businessmen temporarily in a national emergency.

Mr. HARKINS. That amendment to the Defense Production Act does not interfere with the semimobilization programs we have now, or the organization of the executive reserve, for instance.

Mr. KENDALL. No; it has not interfered with that—the language in the Defense Production Act to which we have been referring applies to WOC appointments. It does not apply to the executive reserve.

Strictly speaking I think the executive reservists are not Government employees, although they have an exemption from these statutes in DPA. I am not sure it is necessary because, from the language of the act, I would say they are not appointed as employees of the Government. They are chosen for some training, looking to appointment in the case of an emergency.

There is one thing. You asked whether those provisions that are in the Defense Production Act would be entirely acceptable. There is one that is difficult to handle. It is the provision that where policy matters are involved, a w.o.c. shall act only as an adviser to a full-time regular salaried employee. This would give us difficulty in an attempt to run a price control program, for instance, because policy goes way down the line when you are fixing prices, and some of these men would have to, if we are going to move quickly, would have to make policy decisions. There are thousands, hundreds of thousands of prices to be set, fixed, and I suppose they are all policy determinations.

And if you had to put a salaried man available to each one of those experts, put a clerk in with each expert so that he could make the policy decisions, this would be at least wasteful.

Mr. HARKINS. In other words, the Office of Defense Mobilization believes it is essential to have authority to bring people in from outside the Government to make policy decisions during the period of their service?

Mr. KENDALL. Yes, sir.

Mr. ROGERS. Mr. Maletz?

Mr. MALETZ. Mr. Kendall, your testimony is directed primarily to the need for having some kind of a continued exemption from the conflict-of-interest statutes for w.o.c.'s and people employed on an intermittent basis. Now what is the position of your agency with respect to the bills pending before the committee? Specifically what is the position of your agency with respect to H.R. 2156?

Mr. KENDALL. I promised not to defer to the Department, sir, we are not sure—

Mr. MALETZ. What is that?

Mr. KENDALL. I promised not to defer to the Department of Justice because you have heard that before, but we are not sure that this bill would accomplish the clarification and strengthening and improvement—

Mr. MALETZ. You are not sure?

Mr. KENDALL. That we hope for.

Mr. MALETZ. Well, would it or not?

Mr. KENDALL. In my opinion it would need quite a few changes yet, sir.

Mr. MALETZ. It would need some changes.

Mr. KENDALL. Yes.

Mr. MALETZ. All right, what changes would be needed?

Mr. KENDALL. I wouldn't know all the changes that would be needed.

Mr. MALETZ. Can you name some changes?

Mr. KENDALL. I might suggest a very few, but they are all familiar to the staff, I am sure, already. I am sure the staff is already familiar with some of the omissions or unintentional misstatements.

Mr. MALETZ. There have been some changes discussed before the committee this morning that the Department of Defense would deem desirable. For example, it was testified that the term "responsibility" in section 207 might be too broad.

Mr. KENDALL. Yes.

Mr. MALETZ. I take it you would agree with that suggestion?

Mr. KENDALL. I would agree with that, yes. I think it is too broad.

Mr. MALETZ. What other suggestions do you have?

Mr. KENDALL. I should like to associate myself with Mr. Meader's suggestion that to define a bribe as the taking of money, or anyway you want to describe it, without saying it is taking the money with intent to be influenced or to influence, is a mistake. It reminds me, if you could pardon me for a moment, of a draft bill that I ran into several years ago which involved voting rights or something of that sort, and the draftsman had defined the word "person" in the opening paragraph to mean a citizen of the United States. "Person means a citizen of the United States in this bill." And sure enough at the end of the bill he had a provision providing criminal penalties for any person who violated it. In other words all foreigners could violate this law with impunity.

Mr. MALETZ. You are not referring to any pending legislation?

Mr. KENDALL. This was a draft. Now when you define bribe without saying that it is somehow wrongful, it is just a payment.

Mr. MALETZ. Have you read section 201?

Mr. KENDALL. 201 before it gets through—

Mr. MALETZ. You are talking about the definition of the term bribe?

Mr. KENDALL. Yes; the definition of the term bribe.

Mr. MALETZ. Have you also read all of section 201?

Mr. KENDALL. Yes, and it later says if you take a payment with wrongful intent it is a violation of the law, but the word bribe itself suggests something wrongful. Otherwise you might say every time I am paid I receive a bribe because I receive money or a thing of value.

Mr. MALETZ. If you define the word "bribe" to include "wrongful intent" and then if you examine page 4, lines 18 to 20 which read:

Directly or indirectly asks, demands, exacts, solicits, seeks, accepts—

Mr. KENDALL. I am with you. My point, Mr. Maletz, is in the language you were just reading on page 4 if it said, instead of bribe, it said money or thing of value, you have stated the crime.

Mr. MALETZ. Wouldn't there be redundancy there? If you define the term "bribe" to include wrongful intent, and then subsequently you indicate that it is a violation of law to take a bribe with such an intent, aren't you twice covering the same subject matter?

Mr. KENDALL. Not necessarily, sir. A wrongful thing may not be punishable as a crime, as in the case of H.R. 2157 where we deal with a lot of things that we call improper and don't make them crimes. No, I am simply referring to the use of the word "bribe" as

though it did not have evil connotation. It does, but as defined in this act it has no such connotation, just to receive money.

Mr. MALETZ. Although the criminal offense is defined with some particularity.

Mr. KENDALL. Yes, that's right.

Mr. MALETZ. Now what other suggestions would you have?

Mr. KENDALL. I don't know how valuable these are, not being a criminal lawyer of standing. I was struck that if you pay more than a reasonable fee to a professional witness you may be guilty of a crime and he, too. Is this in existing law anywhere?

What is a reasonable fee? It is at least an unusual test I would say as to whether a crime has been committed.

In one place in the bill, I am now referring to H.R. 2156, on page 8, section 205, the language refers to—

Acting as agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any claim otherwise than in the proper discharge of his official duties—

or second—

receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim—

or third—

aids or assists anyone before any department, agency, court martial—

and so on.

The third one does not appear to be limited either by the requirement that it be outside of official employment or that he receive a fee.

Mr. MALETZ. May I ask you this: Do you feel, Mr. Kendall, that there is need for revision of the present conflict of interest statutes?

Mr. KENDALL. Yes, I think it requires a lot of work, and I certainly support and sympathize with the job of this committee in trying to do a rewrite that will consolidate, simplify, clarify, and strengthen the statutes.

Mr. MALETZ. Is it your position in essence that so far as H.R. 2156 is concerned, that your office believes such an enactment with amendments is desirable?

Mr. KENDALL. Yes, I think we could say it is desirable. And let me make perfectly clear that I am saying this too. We need an exemption for this special purpose that is of great interest to us—

Mr. MALETZ. Yes.

Mr. KENDALL (continuing). If the result still makes criminal the circumstances of temptation, the possibility of evil, the opportunity, the appearance of evil. Now, I firmly expect that that is where we will have to end up, because trying to express rights and liabilities on a sheet of the code is always an attempt to put something that is in three dimensions into two dimensions.

If it's going to be enforceable it has to be, almost has to be, broader than the offense. So I think the exemption will be necessary even if the best possible job is done. Theoretically if we could so rework the statutes that they forbade only the evil then we would need no exemption, because we don't wish these men to come down here and do evil, even in wartime.

Mr. MALETZ. One final question. What is the view of your office with respect to a measure such as H.R. 2157 which would legislate a code of ethics binding on all the agencies of Government?

Mr. KENDALL. May I just add one more thing? As long as we are taking the notes that I put on here in pencil for your help, if they are any help, may I point out that on page 12 of the bill the paragraph which makes it an offense for a person to supplement the salary of or make any payment to a Government employee does not go on and say "in consideration of his Government services."

Mr. MALETZ. What page is that?

Mr. KENDALL. Page 12 of 2156, line 10. It would seem to make any payment to a Government employee, whether or not intended to reimburse him for Government services, a crime.

Mr. MALETZ. You are talking about the general principle now?

Mr. KENDALL. Yes.

Mr. MALETZ. Do you believe it desirable for the Congress to enact a statute prescribing a code of ethics which would be controlling on all agencies of the Government?

Mr. KENDALL. I think that House Concurrent Resolution 175, wasn't it, of 1957 was a very fine statement of a code of ethics.

Mr. MALETZ. It has no sanctions.

Mr. KENDALL. No sanctions? I thought it was very well done indeed. The difficulty is if trying to put rights and liabilities into a law is trying to reduce to two dimensions something that is in three, trying to legislate ethics, or morality if you wish, is like trying to take things from three dimensions in full color down to two dimensions in black and white.

It is a very difficult thing to do. I have no objection to, and I think as I say that House Concurrent Resolution 175 was, a contribution to the concept of ethical standards.

But I am afraid that there are difficulties in trying to be more specific. Section 102(a) for instance, which makes—

Mr. MALETZ. We are not talking about a specific measure. I am talking about the general principle as to whether your office thinks it desirable for the Congress to adopt a statute prescribing a code of ethics for the various agencies of Government, a code of ethics which would have sanctions, such as dismissal or other action.

Mr. KENDALL. I haven't discussed that question with my chief. Let me say that if a code of ethics is to have criminal sanction, then I have grave fears for the effort. I don't see how you can express ethics with such clarity and definiteness that you would be justified in making a criminal penalty attach to them.

Mr. MALETZ. Suppose the sanction were dismissal?

Mr. KENDALL. If the sanction were dismissal, there would be of course only the question of whether these standards were ones that the department heads should be using anyway, and in the case of House Concurrent Resolution 175 I think they were standards they should be using anyway, so I would have no objection. It would be a good idea.

Mr. MALETZ. I don't think your answer, with all due deference, has been responsive. If I may repeat the question: Is it the position of your office that the Congress should or should not legislate a code of ethics with administrative sanctions controlling on the various executive agencies of Government?

Mr. KENDALL. I regret, as I say, that the absence of Mr. Hoegh from this table prevents my saying what the agency position is on that. I might myself, as the witness before the committee, say I think that legislating a code of ethics with sanctions is not necessary and may be dangerous.

Mr. MEADER. In other words, you believe that the administrators in the executive branch of the Government right today have authority to discharge a subordinate for wrongful action described in H.R. 2157 or perhaps for other wrongful action not included within the description?

Mr. KENDALL. That is correct, sir.

Mr. MEADER. And that therefore since the law today provides for dismissal and disciplinary action perhaps of other kinds, it is unnecessary to pass any law on the subject?

Mr. KENDALL. That is correct, sir.

Mr. MALETZ. I take it, Mr. Kendall that the President could, by Executive order, issue a code of ethics which would be binding on all agencies of Government?

Mr. KENDALL. Yes, sir. I think he could.

Mr. MALETZ. I take it it has been the policy up to this point for each agency if it so desires to issue its own code of ethics?

Mr. KENDALL. Yes; and I think that follows from the fact that the agencies have different problems, really. You have heard from the General Services Administration, yesterday, that is largely involved in making contracts. You can think of the sort of thing that they have to watch out for with a lot of contracting officers, a lot of negotiations with private industry.

Take my own agency. We have very little contact with industry. We have very little contract letting. We coordinate. We advise. We form policy. The danger in our office would be largely that of using information available to members of the staff for their personal aggrandizement.

This is something we would want to be watching out for particularly.

So from department to department ethical standards might emphasize different things.

Mr. MALETZ. You think it preferable that each agency handle the problem itself, by issuing a code of ethics—without having uniformity as between the agencies?

Mr. KENDALL. I think, yes, I would say it is preferable because it allows for greater adjustment to the circumstances.

Mr. MEADER. Let me ask a question, and this is a legal question. I hope I can phrase it clearly. If you contend as you have that plenary authority now exists in the executive branch of the Government to discipline subordinates for wrongful conduct, would the adoption of a law specifying a certain code of conduct be construed to exclude other kinds of misconduct?

Mr. KENDALL. It might very well, sir.

Mr. MEADER. Which were not within the four corners of the statute, and therefore in some way be a limitation upon the plenary authority of administrators in the executive branch of the Government to discipline subordinates for wrongful conduct?

Mr. KENDALL. It might suggest a congressional blessing upon the type of activity that was not prohibited.

Mr. ROGERS. Is that all?

Thank you, Mr. Kendall.

The committee now stands adjourned until next Wednesday when we will hear witnesses from the Interstate Commerce Commission, the Department of Commerce, and the Department of the Interior.

(Whereupon, at 12:15 p.m., the hearing was recessed, to reconvene at 10 a.m., February 24, 1960.)

(The statement referred to at p. 115 follows:)

STATEMENT OF STEPHEN S. JACKSON, DEPUTY ASSISTANT SECRETARY OF DEFENSE
FOR MANPOWER, PERSONNEL, AND RESERVE

Mr. Chairman and members of the committee, we, in the Department of Defense, appreciate the opportunity you have afforded us to express our views on the very important subject of conflicts-of-interest which is before your committee at this time.

While we do not propose to speak for the entire executive branch of the Government, we do have a very great interest in this subject, since more than half of the civilian employees of the executive branch are employees of the Defense Department, and, of course, all of the military personnel of the Armed Forces are in the Department of Defense.

We realize that members of the Armed Forces and civilian employees who serve the Department of Defense, or any other department of the Government, should be held to proper standards of conduct with respect to their duties. While it is true that employees and former employees in private enterprise certainly have an obligation of fair dealings toward their employers while employed and after leaving their employment, we think it is fair to say, however, that those who serve their country, in uniform or as civilians, are charged with an even graver responsibility of loyalty and integrity in relation to their employer, namely the U.S. Government.

As you know, there has been concern that retired officers of the Armed Forces, who have obtained great prestige and high rank might use these characteristics in the interest of an employer who had dealings with the Defense Department. With the tremendous amount of money which is being spent by the Defense Department on contracts with private defense contractors, it is certainly a prudent and warranted position to take all reasonable steps to preclude the probability of any such influence.

This subject has been explored during the past several months by another committee, which has made certain recommendations for legislative changes. The Department of Defense has given its views on these. It is significant perhaps to note that in some 1,300 pages of testimony and exhibits given by over 70 witnesses, there has been no reported instance of dishonest dealings on the part of those retired officers employed by defense contractors or by any active or former civilian or military personnel. However, the Defense Department is fully in accord with the establishment of clear, uniform intelligent norms which will guide both our employees and officers in the choice of employment and in the performance of duties in such employment after they have been retired or separated from the Department of Defense.

We believe that there is nothing about military officers or civilian employees which would give rise to the conclusion that they are more likely to engage in improper dealings than any other individuals, either before or after retirement.

For instance, with respect to the commissioned officer who has been retired after long years of service and attained a high rank, he has time and again been scrutinized for his character as well as his abilities under keen competition with his fellow officers. Retirement for him is a certification that he has given all that is required to the service of his country unless he should be needed in case of war or emergency. We have every reason to believe that these officers who have stood the rigid tests involved in a military career and have acquitted themselves with honor frequently during the hazards of combat will undoubtedly carry these characteristics with them into retirement.

Retirement in the military service is somewhat different from the ordinary concept of retirement. Age alone is generally not the determining factor. Retirement is an integral part of the overall program of keeping the forces vigorous and competent with a constant opening up of the higher ranks for opportunity of younger officers to develop their careers. Many officers are retired at a time when they have several years of active life before them. They also have acquired valuable, and in some instances, rare skills. It is also a fact that retirement frequently comes at a time when financial burdens are the greatest, with children pursuing higher education and their personal expenses generally higher. It is imperative, therefore, that no undue restrictions be placed on their seeking proper employment after retirement.

We feel that the principal problem is not that large numbers of these officers will become involved in dishonest dealings. What our retired military people and, indeed, retired civilians need are clear, understandable guidelines as to what they may and may not do. The laws at present do not provide such clarity.

The penal statute involving selling to the military departments as applied to retired officers has given rise to different interpretations among the services and certainly needs clarification. The Department of Defense recommends a change in this statute which would make it uniform in that retired officers should be prohibited from selling to any service of the Department of Defense (rather than only to their own military department) for a period of 2 years. We further believe that a definition of selling should be enacted into the statute, and we have proposed the following:

"Sell (selling, sale) means (1) signing a bid, proposal, or contract, (2) negotiating a contract, or (3) contacting an officer or employee of the Department of Defense for the purpose of (i) obtaining or negotiating contracts, (ii) negotiating or discussing changes in specifications, price, cost allowances, or other terms of a contract, or (iii) settling disputes concerning performance of a contract."

The Department of Defense is further of the opinion that this prohibition against selling to the Department of Defense should not apply to officers who have less than 10 years of continuous active service because such officers would probably not have ranks higher than lieutenant, senior grade, in the Navy or captain in the other services. It would seem apparent that officers of such rank would be unlikely to have a capability of any influence on their former associates in the Department of Defense. There are other cogent reasons why such a provision would be desirable. I would be happy to expand on this later if you are interested.

With respect to H.R. 2156, the Department of Defense defers to the Department of Justice with regard to section 201, "Bribery of Public Officers," and section 202, "Bribery of Witnesses." It interposes no objection to section 205 having to do with claims and other matters affecting the Government.

We suggest that section 206(2)(A) be modified in accordance with the remarks we have made previously in regard to selling to the Department of Defense.

We are fully in accord with the concept that a retired officer or any other employee of the Government should not successively act on two sides of a claim or transaction involving the Government and some non-Government interest. We feel, however, that the disqualifying relationship between an individual and a particular proceeding which in the proposed statute includes any such matter "concerning which he had any responsibility" is unduly broad. It might very well be construed to include matters of which he had no personal knowledge or dealings, but it could be said he had an overall responsibility since he was the head of the particular branch or bureau concerned.

With respect to proposed section 206(2)(B), we feel that it would be unnecessary if section 206(2)(A) were appropriately amended. We also feel that a matter in which the United States is a party directly or indirectly which involves a particular military department would be an extremely difficult judgment to make in all cases.

There is a tremendous turnover in civilian employment in the Government as a result of employees from private enterprise coming into Government service on a temporary basis. This is especially true, for instance, with regard to stenographers and secretaries, for whom there is a considerable demand outside of Government. With the very extensive dealings that the Defense Department and other agencies have with private industry, it would seem that the

prohibitions under section 207 of the bill would greatly narrow the opportunity for such persons to seek employment outside the Government if they were precluded thereafter from rendering any assistance to anyone in connection with any subject matter concerning which they had any responsibility.

We have had considerable difficulty in recruiting engineers and scientists which I might add has been recognized by Congress, and alleviated to some degree by helpful legislation. When such persons decide to leave Government employ almost invariably their likelihood of employment would be with a company having a contract with the U.S. Government. Another group which the Defense Department as well as other agencies of government must recruit are statutory appointees. Frequently these are men holding high positions in successful and large business operations which frequently deal with the Government. These appointees hold positions of great importance in the Government and at times it is difficult to recruit them. They are appointed with full knowledge that their tenure will be a comparatively temporary one, after which, as a rule, they will return to private enterprise. We suggest that careful consideration be given to exclude such appointees from any restrictions that would preclude their serving the Government in these important posts. We also feel that there is no need for any such restrictions to those workers in the lower grades.

The Department of Defense is opposed to H.R. 2157. This is not to say that we are opposed to the very desirable objectives that this bill is designed to attain. We feel, however, that these objectives as far as legislation is concerned should be restricted to a revision and clarification of existing penal statutes. The area of conduct embraced in this bill, in our opinion, should be restricted to appropriate administrative action. The Defense Department is presently completing a directive which deals with many of the areas which are dealt with in this bill. Furthermore, administrative powers are already in existence within the executive branch which may compel discipline and, when justified, dismissal. Control can be had also of contractors in that those who violate conflict-of-interest legislation as well as bribe, graft, and fraud laws may be debarred from doing business with the Government under existing regulations. Where Government transactions are found to have been the result of improper conduct amounting in reality to fraud upon the United States, authority exists for cancellation. We feel that additional legislative enactments which extend to the area of imprudent behavior might be deleterious to effective administration of laws which we believe are proper for punishment of crimes in this field.

Finally, a word about H.R. 7556. It is the position of the Department of Defense that there should be no objection to a Government employee seeking a position with private industry while serving with the Government, providing his efforts do not involve actions which are collusive, fraudulent, or designed to favor a contractor to further his own interests. It is believed that present criminal statutes adequately cover these types of situations. The Defense Department would have no objection to amending the criminal statutes to make it clear that the same standards should apply to a prospective employer. However, we believe that enactment of H.R. 7556 could result in many employers refusing to engage former Federal employees during the 2 years following their Federal employment for fear of becoming subject to criminal prosecution in spite of any safeguards which they might establish.

As this committee is undoubtedly aware, several other proposed bills seek to amend the same section of the law. One of these H.R. 2156, is before this committee; another, H.R. 9082, is pending before the House Armed Services Committee. In this connection, we are informed that a very extensive reexamination of the entire area of conflicts of interests has recently been accomplished by the Association of the Bar of the City of New York. Undoubtedly a bill containing their findings will also be introduced in the Congress.

In closing, Mr. Chairman, and members of the committee, I wish to emphasize the fact that the Defense Department is not taking a negative position in the matter of legislation in this area. We are anxious that clarifying legislation of a uniform nature be enacted. We believe the general objectives of your committee are the same as those of the Defense Department and that is that clear, understandable, reasonable laws be enacted which will guide the actions of our retired officers and former civilian employees of the Federal Government.

This concludes my formal statement.

FEDERAL CONFLICT OF INTEREST LEGISLATION

WEDNESDAY, FEBRUARY 24, 1960

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman) presiding.

Present: Representatives Celler, Rogers, Holtzman, Toll, and McCulloch.

Also present: Herbert N. Maletz, chief counsel; Kenneth R. Har-kins, cocounsel; and Richard C. Peet, associate counsel.

The CHAIRMAN. The committee will come to order. As our first witness this morning we have Mr. Robert J. Dodds, Jr., General Counsel of the U.S. Department of Commerce. He is accompanied by Mr. Griswold Forbes, Director of Agency Inspection.

**STATEMENT OF ROBERT J. DODDS, JR., GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE; ACCOMPANIED BY GRISWOLD
FORBES, DIRECTOR OF AGENCY INSPECTION; AND ERNEST NASH,
OF THE GENERAL COUNSEL'S OFFICE**

Mr. DODDS. Mr. Chairman, with your permission I felt that I would read into the record a short statement, and then ask Mr. Forbes to add a corollary statement. The differences in our two presentations will be identified very quickly. I will address myself primarily to the three bills, and then we thought it might be of interest to the committee for Mr. Forbes to explain how the conflict-of-interest concept is applied in the Department of Commerce.

The CHAIRMAN. You may proceed.

Mr. DODDS. I am happy to have this opportunity to present the views of the Department of Commerce on H.R. 2156, H.R. 2157, and H.R. 7556. Accompanying me is Mr. Griswold Forbes who is in charge of Agency Inspection for the Department of Commerce.

The group of statutes commonly referred to as the conflict-of-interest laws is composed of a conglomeration of enactments, criminal prohibitions, and specific and general exemptions going back about 100 years. We have never had a comprehensive body of statutes dealing with the conduct of officials and employees, such as is now being proposed, enacted into law. Our statutes in this field are a hodgepodge of overlapping, inadequate, and out-of-date prohibitions, limitations,

and sanctions. No one seriously concerned with the integrity and efficiency of the public service can dispute the real need for corrective action.

The problem in this area and the need for their solution have been with us for some time. In varying degree and from time to time they have engaged the attention of the committees of Congress and agencies of the executive branch as well as informed and expert groups outside of Government. The maintenance of high standards of conduct in Government has always been of the utmost concern to all our citizens.

We have reviewed the reports in which the staff of this subcommittee have dealt with the many troublesome aspects of our conflict of interest laws and the need for their improvement. We can appreciate the diligence, understanding, and sound judgment required for the preparation of these reports. We find ourselves in basic agreement with many of the views which have been expressed in them. The bills which you now have before you would carry out many of the recommendations of the staff reports. They are of vital importance to all of us as citizens and as public servants. They justify our most careful and thoughtful consideration.

We find ourselves in agreement with a good many of the proposals embodied in these bills. However, in some respects which I will go into in detail later on, we feel these bills go too far. We are particularly concerned that H.R. 7556, in its present form, may unduly burden the Government service by penalizing conduct not necessarily in conflict with the conscientious and impartial performance of public duties.

It is of the utmost importance that in our efforts to correct existing inadequacies and confusions in our law, we do not create unnecessary pitfalls for the honest and devoted public servant or insurmountable obstacles for the conscientious citizen willing to offer his skill and talent to the public service. The scope and impact of Government upon our private activities and the complexity and variety of tasks to be performed in the public service have grown tremendously. From a few simply constituted departments performing relatively routine functions, there has evolved a complex maze of Government corporations, independent agencies, and integrated departments. These establishments are charged with the administration of laws and the operation and construction of facilities which touch upon virtually every aspect of the well-being and economic advancement of our citizens; the development of our States; and the security of our Nation. We regulate, promote, or finance almost every aspect of our economy; we operate and direct scientific and technical laboratories searching for knowledge in practically every branch of science; we buy and use vast quantities of almost every product turned out by our private enterprise; we construct and operate vitally needed facilities for almost every form of transportation; all this and more are now included among the functions our citizens have come to accept and expect from the Federal Government. To perform these functions the Government needs people—people with intelligence, judgment, skill, experience, and training. Some of these

people come directly from school to spend their entire working career in the Government service; others come to serve a period of years to gain experience which they know will be of value to them in furthering their careers outside the Government; others interrupt useful and profitable careers outside of Government to give their experience and skill to the public service intending to resume their private endeavors after a few years; and still others serve for short periods as consultants and experts sometimes with and sometimes without compensation from the Government. All of these are necessary if we are to maintain the vital link of understanding between the Government service and the public at large; if we are to avoid a sterile bureaucracy condemned to enforced mediocrity.

The jobs these employees may be called upon to perform may vary from the quasi-judicial determination of rights in the administration of regulatory laws to the encouragement and facilitation of the participation by our business enterprises in export trade. The degree of circumspection and aloofness required of the export licensing officer would be fatal to the successful accomplishment of the mission of the foreign trade specialist. The prohibition against payment of salary by an outsider in connection with Government service would have little, if any, effect upon the full-time employee; it may have serious consequences in connection with the recruitment and employment of unpaid consultants and advisers necessary to such programs as those conducted by the Business and Defense Services Administration in assuring the readiness of industry for service to the Nation in time of emergency.

The CHAIRMAN. May I ask, do you still have w.o.c.'s in the Business and Defense Services Administration?

Mr. DODDS. Yes, we do, Mr. Chairman.

The CHAIRMAN. How many do you have?

Mr. DODDS. Mr. Forbes advises that we have 12.

The CHAIRMAN. Does the Department have a code of ethics applicable to the w.o.c.'s.

Mr. FORBES. Mr. Chairman, we take the position that our Department Order 77, which is our code of ethics, does apply to w.o.c.'s.

The CHAIRMAN. You will remember that this committee made certain recommendations on w.o.c.'s in BDSA. Has the Department adopted the standards that we suggested?

Mr. FORBES. We do have a specific administrative order in the Department which does apply to the w.o.c.'s and consultants and which does spell out in detail the basic principles, the cardinal one of which is that they function in an advisory capacity only. Under that order they have no authority to take any action other than to advise.

The CHAIRMAN. They don't determine any policy questions at all?

Mr. FORBES. That is right, sir.

Mr. ROGERS. Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. If they don't determine any policy questions at all, what is there to advise? Don't they advise what may be the proper thing, which may result in policy?

Mr. DODDS. Well, they submit their recommendations, if they are called upon, to the policymaking official or officials in the Department who may or may not accept their recommendations. I think this is true of advisory groups throughout the Government. I don't claim any particular peculiarity in that respect in the Department of Commerce.

Mr. ROGERS. But they do and can recommend policy. What you mean to say is that what they recommend is not necessarily adopted.

Mr. DODDS. Well, without playing on words, they can and do recommend action. The decision that is made respecting that recommendation, that is policy.

Mr. ROGERS. Thank you.

Mr. HOLTZMAN. As a matter of fact, Mr. Dodds, the purpose of having these w.o.c.'s is to assist the Department in formulating policy, isn't that so?

Mr. DODDS. Yes, indeed.

Mr. HOLTZMAN. So that it would be inaccurate to say that they play no part in the formulation of policy here?

Mr. DODDS. That would be inaccurate. But they do not make policy.

The CHAIRMAN. It is interesting to note that when we started our investigation some time ago I believe you had more than 150 w.o.c.'s on the rolls, and now there are only 12.

Mr. DODDS. Mr. Chairman, I would like to amplify that a little bit, or at least to ask Mr. Forbes to.

Mr. FORBES. Mr. Chairman, you might describe the w.o.c. situation as of today as being a revolving group of 12, about 12, who are on 6 months' tour of duty. Then there are about 50 on a list and who are called intermittently for advice. I am advised that they average—well, since the beginning of this fiscal year, they average terms of about 5.1 days each. Now, these are intermittent ones, who come in on an occasional basis.

The CHAIRMAN. So that there are really more than 12 w.o.c.'s if you include those on a temporary basis, is that it?

Mr. FORBES. There are more than 12 on call, sir; yes. A description of how many are on active duty as of today, for example, would be that as of today there are on the order of 12 w.o.c.'s working with BDSA.

The CHAIRMAN. I think our report, which was issued on April 24, 1956, says that at that time there were 154 full-time w.o.c.'s. Now there are only 12 w.o.c.'s on full time?

Mr. FORBES. That is right, sir.

The CHAIRMAN. I would like to ask you at this point something concerning the Business Advisory Council. In what category do the members of the so-called BAC come? Are they considered w.o.c.'s?

Mr. DODDS. Well, they only meet at the call of the Chairman. My conception of w.o.c.'s is, for the most part, people that are there every day throughout their tour of duty, in this case 6 months. The Business Advisory Council meets at the call of the Chairman or the Secretary of Commerce to give advice on whatever they are called upon.

The CHAIRMAN. Have the members of the BAC, the Business Advisory Council, exemption from any conflict-of-interest statutes?

Mr. DODDS. Well, that would require a rather sweeping generalization.

The CHAIRMAN. That is very important, though.

Mr. DODDS. They are not w.o.c.'s, as I said, Mr. Chairman, in the usual sense of the word. They all come from various divisions of industry, the business world. They of course have no part in policy-making.

The CHAIRMAN. Would you say that they are not Government employees?

Mr. DODDS. They are not Government employees.

The CHAIRMAN. How many members are there now in the Business Advisory Council, approximately?

Mr. DODDS. I think the number is not the same. I might ask Mr. Forbes to check on this, but I think there are 60 on the active list of the BAC. Is that right?

The CHAIRMAN. Where are the headquarters of the BAC?

Mr. DODDS. Well, they meet for the most part in Washington.

The CHAIRMAN. They have an office, haven't they?

Mr. DODDS. They have an office in the Commerce Department Building.

The CHAIRMAN. They have an office in the Department of Commerce Building?

Mr. DODDS. Yes. But they do not meet in that office. It is not large enough, they keep a room there for secretarial purposes.

The CHAIRMAN. They have a director?

Mr. DODDS. That is right.

The CHAIRMAN. How much pay does that director receive, do you know?

Mr. DODDS. Mr. Chairman, I don't know.

The CHAIRMAN. Who pays the director?

Mr. DODDS. The BAC does.

The CHAIRMAN. Who determines what each member of the BAC pays?

Mr. DODDS. I think the BAC itself does.

The CHAIRMAN. And is that director hired for a definite term?

Mr. DODDS. I think there is no contractual arrangement between him and the BAC.

The CHAIRMAN. Has that Business Advisory Council a fund which it keeps on deposit in a bank in Washington?

Mr. DODDS. I am quite sure that it does, because it would have occasional obligations to pay. It doesn't involve a great deal of money.

The CHAIRMAN. Do you know what the amount of that fund is?

Mr. DODDS. I haven't any idea, Mr. Chairman. I think it is relatively modest.

The CHAIRMAN. Will you supply for the record answers to these questions, please, that you are not able to answer now?

Do you know whether or not this director gets a pension if and when he retires?

Mr. DODDS. No.

The CHAIRMAN. He does not?

Mr. DODDS. No.

The CHAIRMAN. Is there a pension fund set up for him?

Mr. DODDS. I believe there is now a former executive director who receives a pension.

Mr. HOLTZMAN. From whom?

Mr. DODDS. From the BAC. He is paid by the BAC.

Mr. TOLL. When was this BAC created?

Mr. DODDS. In 1933, when Mr. Roper was Secretary of Commerce.

The CHAIRMAN. I want to emphasize that there is nothing partisan about this.

Mr. DODDS. No, Mr. Chairman, it is a nonpartisan organization.

The CHAIRMAN. When we were studying the activities of members of the BAC, we tried to get the records of the BAC. We asked the Secretary of Commerce to give us the records, but those records were refused us. We had to do the best we could to get that information from other sources.

Now, I would like to find out from your chief, the present Secretary of Commerce, whether he is now willing to give us the records of the Business Advisory Council which were refused us back in 1956.

Will you check on that, please?

Mr. DODDS. You mean just carte blanche all of the records, Mr. Chairman, without in any way limiting them or restricting them or defining them?

The CHAIRMAN. Well, if he is willing to give us the records, we will arrange through our counsel and counsel for the Department to work out something which will create the least difficulty in our getting the documents that we seek.

Mr. DODDS. I would be glad to have from you just what it is that you would like to see, Mr. Chairman, rather than just speaking about the records as such. That might be an extremely burdensome enterprise.

The CHAIRMAN. I would like to see all the correspondence from and to Mr. Walter White, the Executive Director of the BAC, within the last few years.

Mr. DODDS. No, he is no longer employed by the BAC, Mr. Chairman, to the best of my knowledge.

The CHAIRMAN. Who is the Director?

Mr. DODDS. Mr. John Burke.

The CHAIRMAN. All right, let us have the correspondence going to Mr. Burke's office, or that of his predecessor, Mr. White, and going out of that office, for the last 10 years.

Mr. DODDS. I would be glad to take that up with the—

The CHAIRMAN. And you don't have to bring it to us, we will be very glad to go down there and look at it.

Mr. DODDS. All right. Is there any particular goal you have, Mr. Chairman?

The CHAIRMAN. That is a matter for us to determine later.

Mr. DODDS. You just want to be given carte blanche to view all of the correspondence back and forth from the Executive Director?

The CHAIRMAN. We want to see exactly how this Business Advisory Council ticks.

Mr. DODDS. I think I can answer for you how it ticks.

The CHAIRMAN. No, we want to see it from the records.

Mr. DODDS. I will take that up with the Secretary of the Department, I would be most happy to.

The CHAIRMAN. In our subcommittee's report, we stated the following:

All expenses of the BAC are borne by the members who receive no compensation whatever from the Government for their services. Aside from office space furnished by the Department of Commerce and two departmental secretaries, the BAC is entirely self-sustaining. Funds for staff travel, technical services, costs of meetings, telegraph, telephone, printing, and postage expenses and the \$25,000 a year salary of BAC's Executive Director, Mr. Walter White, come from annual contributions solicited from the membership. Although individual contributions to the BAC are limited to a maximum of 1,500, the BAC has been able to cover adequately its annual expenses through individual donations. Contributions to the Council totaled \$58,981.25, \$68,481.25, \$87,577.50, and \$93,662.50 for the years 1950, 1951, 1952, and 1953, respectively.

As a matter of fact, the Council had built up a sufficient reserve by the year 1954 to enable it to declare a 1 year's moratorium on contributions. When solicitations were resumed, however, donations exceeded \$94,100 for the year 1955. The principal sources of BAC's funds are depicted in the table below showing the annual contributors to the BAC for years 1950-55.

There will be placed in the record a table showing the individual contributions and the names of the companies by whom the respective members of the BAC were employed in 1950-55. This list contains the names of persons from some of the most important manufacturing and industrial establishments in the Nation, and some of our most highly important banks.

(The table referred to follows:)

FEDERAL CONFLICT OF INTEREST LEGISLATION

Name	Company affiliation	1950	1951	1952	1953	1954	1955
Aldon Lucas A	W. R. Grace & Co.						
Altrich, Winthrop W.	The Chase National Bank	\$425.00	\$925.00	\$750.00	\$750.00		\$1,000
Allen, S. C.	The National Cash Register Co.		750.00	900.00	900.00		900
Andersen, Clarence	Aultman Cash Register Co.	500.00	500.00	600.00	600.00		250
Beecher, S. D.	Reidite Tools & Machines, Inc.		1,000.00	1,500.00	1,500.00		1,500
Biggers, John D.	Libby-Owens-Ford Glass Co.	500.00	500.00	600.00	600.00		1,000
Black, James B.	Pacific Gas & Electric Co.	1,000.00	1,000.00	1,200.00	1,200.00		1,200
Bolschenko, O.	Owens-Corning Fiberglas Corp.		1,000.00	1,500.00	1,500.00		1,500
Boldt, Fred O.	Merrell Publishing Co.						1,500
Bradley, Morris A.	M. H. Mann Co.						1,200
Brecht, Ernest R.	Ford Motor Co.						1,800
Britton, Mason	Metal Cutting Tool Institute	250.00	250.00	300.00	300.00		350
Brown, Edward E.	The First National Bank of Chicago	750.00	750.00	900.00	900.00		900
Brown, Prentiss M.	The Detroit Edison Co.						500.00
Bueck, Howard	Washington Corp.						
Cabot, Paul C.	State Street Research & Management Co.	400.00	400.00	480.00	480.00		500
Camp, Harold	Pitney Bowes, Inc.						500
Caster, Walker L.	Interstate Hardware Co., Inc.	250.00	250.00	280.00	280.00		900
Clay, James D.	Detroit Edison Co.						250
Clayton, Wm. I.	Continental Can Co., Inc.	1,250.00	1,250.00	1,500.00	1,500.00		1,500
Collmer, John I.	H. F. Gladrich Co.	1,000.00	2,000.00	1,200.00	1,200.00		1,000
Cordner, Ralph I.	General Electric Co.						1,000
Cosgrove, Edward B.	Green Glass Co.	1,000.00	1,000.00	1,200.00	1,200.00		1,200
Cowles, John, president	Minneapolis Star & Tribune						1,200
Cox, W. Howard	Kennecott Copper Corp.	300.00	850.00	600.00	600.00		1,000
Cushing, E. W.	U.S. General Life Insurance Co.		300.00	360.00	360.00		390
Danforth, William H.	U.S. Rubber Co.						
Davis, Paul Y.	Raisdon Purina Co.	300.00	300.00	300.00	300.00		300
De Belin, William F.	Food Machinery & Chemical Corp.						1,000
De Butts, Harry A.	The Quaker Oats Co.		500.00	600.00	600.00		
Denton, Frank R.	Southern Railway System						
Dezare, M. R.	Southern National Bank & Trust Co.						1,000
Dorgan, J. J.	The Proctor & Hamble Co.	1,000.00	1,000.00	1,250.00	1,250.00		1,250
Dunno, Frank, president	Continental Oil Co.						1,500
Earless, Benjamin F.	United States Steel Corp.	156.25	156.25	187.50	187.50		1,500
Firestone, Arden E.	The Goodyear Tire & Rubber Co.		1,250.00	1,500.00	1,500.00		1,000
Fisher, Charles T., Jr.	National Bank of Detroit						600
Fleming, Robert V.	The Riggs National Bank	500.00	500.00	600.00	600.00		625
Fogarty, J. F.	West Kentucky Coal Co.	625.00	625.00	625.00	625.00		100.00
Folsom, Marion B.	Eastman Kodak Co. (now Under Secretary of Treasury)	100.00	100.00	100.00	100.00		100.00
Ford, Henry, II.	Ford Motor Co.	750.00	750.00	900.00	900.00		900.00
Foster, R. W.	Corning Glass Works	1,250.00	1,250.00	1,500.00	1,500.00		1,200

Foster, William C.	1,000.00	1,000.00	1,000.00	1,000.00	250
France, Jacob	400.00	400.00	400.00	450.00	1,500
Francis, James D.	500.00	500.00	500.00	600.00	1,600
Franklin, John M.	625.00	625.00	625.00	625.00	625
Friele, H. B.	150.00	150.00	150.00	175.00	1,500
Fuson, G. Keith	1,000.00	1,000.00	1,000.00	1,000.00	1,500
Geler, Frederick V.	250.00	100.00	120.00	900.00	900
Greenwalt, Crawford H.	1,000.00	1,000.00	1,000.00	1,000.00	1,000
Greenwald, A. P.	500.00	500.00	500.00	500.00	500
Gurley, F. G.	1,000.00	1,000.00	1,000.00	1,000.00	1,000
Hagerson, Fred H.	1,000.00	1,000.00	1,000.00	1,000.00	1,000
Hall, Joseph B.	500.00	500.00	500.00	500.00	500
Hancock, John M.	1,000.00	1,000.00	1,000.00	1,000.00	1,000
Hanes, Robert Mareh.	500.00	500.00	500.00	500.00	500
Harrison, W. H.	350.00	350.00	350.00	250.00	250
Heinman, Henry H.	250.00	250.00	250.00	250.00	250
Heldin, Thomas S.	1,500.00	1,500.00	1,500.00	1,500.00	1,500
Holland, Lou E.	100.00	100.00	100.00	125.00	1,000
Hollman, Eugene, president.	325.00	325.00	325.00	300.00	300
Homes, Eugene	250.00	250.00	250.00	250.00	250
Hook, Charles R.	1,000.00	1,000.00	1,000.00	1,000.00	1,000
Hook, James W.	100.00	100.00	100.00	100.00	100
Hornel, Jay C.	1,000.00	1,000.00	1,000.00	1,000.00	1,000
Hotchkin, Preston, president.	150.00	150.00	150.00	150.00	150
Do	150.00	150.00	150.00	150.00	150
Do	100.00	100.00	100.00	100.00	100
Do	150.00	150.00	150.00	150.00	150
Houghton, Amory	1,000.00	1,000.00	1,000.00	1,200.00	1,500
Houser, T. U.	1,000.00	1,000.00	1,000.00	1,200.00	1,200
Hughes, A. W.	1,000.00	1,000.00	1,000.00	1,200.00	1,200
Humphrey, G. M.	750.00	750.00	750.00	750.00	1,000
Iglehart, Austin S.	250.00	250.00	250.00	250.00	250
Ivins, J. E.	1,000.00	1,000.00	1,000.00	1,200.00	1,200
Johnston, Eric A.	500.00	500.00	500.00	500.00	500
Jones, Harrison	500.00	500.00	500.00	500.00	500
Kanzler, Ernest	500.00	500.00	500.00	500.00	500
Do	500.00	500.00	500.00	500.00	500
Kendall, Henry P.	500.00	500.00	500.00	500.00	500
Kirch, F. P.	500.00	500.00	500.00	500.00	500
Knowlson, James S.	300.00	300.00	300.00	300.00	300
Lane, E. H., president.	1,000.00	1,000.00	1,000.00	1,200.00	1,200
Lazarus, Fred, Jr.	1,000.00	1,000.00	1,000.00	1,200.00	1,200
Levis, William E.	750.00	750.00	750.00	900.00	1,200
Litchfield, Paul W.	1,000.00	1,000.00	1,000.00	1,000.00	1,000
Long, A. C.	1,000.00	1,000.00	1,000.00	1,000.00	1,000
Louric, Donald B.	1,250.00	1,250.00	1,250.00	1,500.00	1,500
Lorr, George H.	500.00	500.00	500.00	600.00	1,500
Love, J. Spencer	500.00	500.00	500.00	600.00	1,000
Lund, Robert L.	50.00	50.00	50.00	50.00	1,000
McAfee, J. W.	1,000.00	1,000.00	1,000.00	1,000.00	1,000

See footnote at end of table.

TABLE II.—Business Advisory Council for the Department of Commerce contributions for 1950-55—Continued

Name	Company affiliation	1950	1951	1952	1953	1954	1955
McCabe, Thomas B.	Scott Paper Co.	\$600.00	\$400.00	\$750.00	\$750.00		\$750.00
McCaffrey, John I.	International Investor Co.	1,000.00	1,000.00	1,200.00	1,200.00		1,200.00
McCormick, Charles F.	McCormick & Co., Inc.	300.00	500.00	600.00	600.00		600.00
McGovern, Earl M.	W. T. Smith & Co.	500.00	300.00	350.00	350.00		350.00
McKee, Paul B.	Pacific Paper & Light Co.	625.00	625.00	750.00	750.00		750.00
McWilliams, John P.	The Youngstown Sheet & Iron Co.	500.00	500.00	600.00	600.00		600.00
Mead, George H.	The Mead Corp.	300.00	300.00	300.00	300.00		300.00
Montgomery, George G. Do.	Castle & Cook, Ltd. Kern County Land Co.				1,000.00		1,000.00
Morgan, Thomas A.	The Sperry Corp.	500.00	500.00	600.00	600.00		600.00
Morrison, George L., chairman-president.	General Baking Co.	750.00	750.00	1,000.00	1,000.00		1,000.00
Murphy, D. Hayes.	The Wiremold Co.	625.00	625.00	750.00	750.00		750.00
Murray, W. J., Jr.	McKesson & Robbins, Inc.	750.00	750.00	900.00	900.00		900.00
Nielsen, Aksel. Do.	Mortgage Investments Co. The Title Guaranty Co.						175
Norris, Ernest E.	Southern Railway System.	1,000.00	1,000.00	1,200.00	1,200.00		1,200.00
Noyes, Nicholas H.	Ell Lilly & Co.	500.00	500.00	500.00	500.00		500.00
Patchin, Robert H.	W. R. Grace & Co.	600.00	600.00	1,000.00	1,000.00		1,000.00
Petersen, A. Q.	Wesson Oil & Snowdrift Co., Inc., the (Southeastern Cotton Oil Co.).	500.00	550.00	600.00	600.00		600.00
Petersen, T. S.	Standard Oil Company of California.		1,250.00	1,500.00	1,500.00		1,500.00
Prentis, H. W., Jr.	Armstrong Cork Co.	900.00	900.00	1,000.00	1,000.00		1,000.00
Price, Gwilym A., president.	Westinghouse Electric Corp.	1,250.00	1,250.00	1,500.00	1,500.00		1,500.00
Queeny, Edgar M.	Monsanto Chemical Co.	500.00	500.00	600.00	600.00		600.00
Randall, Clarence B.	Inland Steel Co.				1,500.00		1,500.00
Reed, Philip D.	General Electric Co.	1,000.00	1,000.00	1,200.00	1,200.00		1,200.00
Rieger, Walter M.	Foley Manufacturing Co.	350.00	350.00	420.00	420.00		420.00
Robbins, William M.	General Foods Corp.				500.00		500.00
Roberts, E. A.	Waterman Steamship Corp.	625.00	625.00	750.00	750.00		750.00
Robertson, Reuben B., Jr.	The Champion Paper & Fibre Co.				1,000.00		1,000.00
Rodgers, W. S. S.	Texas Co.				600.00		600.00
Sarason, J. A.	General Motors Corp.	500.00	500.00	600.00	600.00		600.00
Smith, C. R.	American Airlines, Inc.						1,500
Spang, J. F., Jr.	The Gillette Co.				500.00		500.00
Spencer, Kenneth A.	Sponcor Chemical Co.				500.00		500.00
Staley, A. E., Jr.	A. E. Staley Manufacturing Co.	1,000.00	1,000.00	1,200.00	1,200.00		1,200.00
Stevens, R. T.	J. F. Stevens & Co., Inc.	1,250.00	1,250.00	1,500.00	1,500.00		1,500.00
Stres, Harold W.	Scudder, Stevens & Clark.	1,000.00	1,000.00	1,200.00	1,200.00		1,200.00
Stuart, R. Douglas.	The Quaker Oats Co.	1,000.00	1,000.00	1,200.00	1,200.00		1,200.00
Symonius, Gardner, president.	Tennessee Gas Transmission Co.				1,200.00		1,200.00
Thompson, L. R.	The Lane Co., Inc.				900.00		900.00
Trippie, Juan T.	Pan American World Airway System.	750.00	705.00	900.00	900.00		900.00
Yerren, N. J.	Riverside Manufacturing Co.	350.00	350.00	420.00	420.00		420.00
Yrden, John C.	John C. Yrden Co.	500.00	500.00	600.00	600.00		600.00
Ward, J. Carlton, Jr.	Vitro Corporation of America				1,250.00		1,250.00
Watson, Thomas J., Jr.	International Business Machines Corp.	1,250.00	1,270.00	1,500.00	1,500.00		1,500.00

Watzek, J. W., Jr.	Crossett Watzek Gates	300.00	300.00	350.00	350.00	350
Wegener, H. John	The First National Bank of Chicago	400.00	400.00	500.00	500.00	900
Weinberg, Sidney J.	Goldman, Sachs & Co	100.00	100.00	125.00	125.00	500
Wetherill, Samuel P.	Hyper-Humus Co.	500.00	500.00	600.00	600.00	125
Wheeler, W. H., Jr.	Pitney-Bowes, Inc.	500.00	500.00	600.00	600.00	
Whiteside, A. D.	Dun & Bradstreet, Inc	500.00	500.00	600.00	600.00	
Whitney, John Hay	J. H. Whitney & Co	1,250.00	1,250.00	1,500.00	1,500.00	250
Williams, Langbourne M., Jr.	Fresport Sulphur Co.	1,000.00	1,000.00	1,000.00	1,000.00	1,500
Williams, Roger	Newport News Shipbuilding & Dry Dock Co.	1,250.00	1,250.00	1,500.00	1,500.00	1,000
Wilson, Charles E.	General Motors Corp.	1,250.00	1,250.00	1,500.00	1,500.00	
Wood, R. E.	Sears, Roebuck & Co.	500.00	500.00	600.00	600.00	
Woodruff, R. W.	The Coca-Cola Co.	500.00	500.00	600.00	600.00	1,200
Zinsmaster, Harry W.	Zinsmaster Bread Co.	500.00	500.00	600.00	600.00	600
Total		58,981.25	68,481.25	87,577.50	93,662.50	94,100

¹ Check received in company name other than that in membership book, which name is shown above.

Note.—The attached list of contributions to the Business Advisory Council has been arranged alphabetically by person contributing.

Two corrections have been made in the material supplied to the Legislative Reference Service in the totals for 1951 and 1953. In the 1951 column, an error was made in adding the next to the last entry. In the 1953 total the contributions of Ernest Norris and Philip

Reed listed on p. 2, lines 35 and 36 of the photostat, were omitted from the list on the last page of the white monthly statements (this last page itemizes contributions for January and February 1953). The \$2,700 contributed by Mr. Norris and Mr. Reed has been added to the total given.

Source: Compiled by Geraldine Fowle, Economics Division, Legislative Reference Service, Aug. 31, 1955. From material supplied by House Judiciary Committee.

Mr. DODDS. What was that you just read from, Mr. Chairman?

The CHAIRMAN. I read from the Interim Report of the Antitrust Subcommittee (Subcommittee No. 5) of the Committee on the Judiciary of the House of Representatives, 84th Congress 1st session, on the Business Advisory Council for the Department of Commerce, page 5.

Can you at this time give us a little detail as to what the Business Advisory Council does aside from a meeting once a year, or whatever it may be. Can you tell us whether they are called in on occasion for one specific subject, or two specific subjects, for a week or a month. Just give us some idea of what they do.

Mr. DODDS. I think they meet four times a year, Mr. Chairman, and generally at the call of the Secretary of Commerce. Also they have a few committees, different areas of interest that change over the years. They may not meet in Washington; there is no hard and fast rule. They have at least two meetings a year in Washington, generally in the Department of Commerce, in one of the rooms that is made available, not in their regular permanent quarters where the executive secretary has his office.

The CHAIRMAN. Is the Chairman of the BAC a full-time Government employee?

Mr. DODDS. No.

The CHAIRMAN. Why not?

Mr. DODDS. Well, I think that any advisory council, of which there are many throughout the Government, the whole idea is that the men who make them up be non-Government men. It is true that the Secretary of Commerce presides at the meetings and takes a very active part in the direction of their meetings. I have never been to a BAC meeting of any sort in which the Under Secretary or the Secretary of Commerce was not the most vocal presiding official.

The CHAIRMAN. Are you aware that the Attorney General recommended that the Chairman of the BAC be made a full-time Government employee?

Mr. DODDS. I am not aware of that.

The CHAIRMAN. That recommendation has been repeated on a number of occasions by the Attorney General. I suggest that you look it up.

Are you aware that this committee also made such a recommendation?

Mr. DODDS. Are you referring to the report from which you read, Mr. Chairman?

The CHAIRMAN. I am referring to pages 32 and 33 of the report. I need not read that now, it is the very last paragraph beginning on page 32.

Aren't the chairman of the other advisory committees in your Department full-time Government employees?

Mr. FORBES. Mr. Chairman, regarding, for example, the BDSA advisory committees, industry advisory committees to BDSA, there is an administrative order of the Department, Department Order 114. This order requires that as a general rule there be a Government presiding officer at any advisory committee meeting. That practice, as I understand, is complied with in those committees, and the exceptions to that rule are few.

The CHAIRMAN. Why is that?

Mr. FORBES. I don't know the answer to that.

The CHAIRMAN. Well, will somebody in the Department tell us why the Chairman and Director of the Business Advisory Council is not a full-time Government employee? He is housed in the Department of Commerce, he permanently has his office in the Department of Commerce. If it is not a Government committee, why do they get rent free in a Government building in the Department of Commerce?

Those questions bother us a bit. If it is a part of the Government like BDSA, which has a Chairman and or a Director who is a full-time Government employee, I don't understand how the Business Advisory Council which meets, as you say, quarterly, should not likewise have a Chairman and a Director who are full-time Government employees.

I don't understand the distinction.

Mr. DODDS. I can discuss the philosophy of this, I think, Mr. Chairman, but I am a little at a loss to answer the specific factual questions, especially those of historical significance.

Don't be confused by the Executive Director—you referred to a Mr. White, I believe—

The CHAIRMAN. You say he has been succeeded by somebody else?

Mr. DODDS. His successor, Mr. Burke, is not Chairman of the Business Advisory Council; the chairmanship rotates periodically.

The CHAIRMAN. Let's say the Director, then. Why shouldn't the Director under those circumstances be a full-time employee?

Now, we also said in our report, on page 32, the following—

Mr. DODDS. I have a copy of the report.

The CHAIRMAN. On page 32, you can read in the second paragraph:

it is the creation of essentially private organizations and their endowment with the attributes of governmental bodies which creates confusion and opportunity for abuse. An organization which finances its operations from contributions of its membership, hires a private staff, including consultants, meets at the call of its own non-Government officers to consider agenda they have formulated, determines its own membership and the membership of its subcommittees, and whose subcommittees also meet at the call and under the guidance of industry officials, is for all practical purposes an autonomous private entity.

Mr. DODDS. That is at variance with my observation as to how this organization operates, Mr. Chairman. The agenda is formulated by the Secretary of Commerce. I myself participate in deliberations respecting the proposed agenda of the meeting.

The CHAIRMAN. Then there has been a change since our investigation.

Mr. DODDS. I would think so.

The CHAIRMAN. And I would like, if possible, for you to check on that and give us an up to date report on it.

Mr. HOLTZMAN. Mr. Chairman, may I inquire on that point?

The CHAIRMAN. Yes, sir.

Mr. HOLTZMAN. Do you at the BAC keep accurate minutes of your meetings?

Mr. DODDS. To the best of my knowledge, yes; minutes or notations of the proceedings are kept.

Mr. HOLTZMAN. Do you have regular reported minutes that are read each meeting?

Mr. DODDS. Yes.

Mr. HOLTZMAN. And adopted by the group?

Mr. DODDS. Oh, yes.

Mr. HOLTZMAN. Could you furnish us with them?

Mr. DODDS. Now, getting back to Mr. Celler—

The CHAIRMAN. Yes, I think it would be well to include in the data you are going to submit a copy of the minutes of their meetings. It can't be very much.

Mr. DODDS. In the data, the submission of which I will have to take up with the Secretary?

The CHAIRMAN. Of course, I don't expect you to determine the policy, if the policy of the Department is not to furnish a duly constituted committee with that information.

Mr. DODDS. I see this is quite an impressive report, just glancing through it.

The CHAIRMAN. I commend to you the reading thereof.

Mr. DODDS. I am quite impressed by just one sentence I see here:

What is more normal than that a Secretary of Commerce, charged by statute with the responsibility to foster and promote trade and commerce, would consult the business community, including a group of business leaders representing a broad diversification of economic, commercial, and industrial affiliations, who have an established record and reputation for accomplishment and public service?

From my observation, these men have done a magnificent job of giving without stint of their time and talent.

The CHAIRMAN. I thoroughly agree with that statement which you read from the minority report, that is perfectly proper, and I subscribe to that completely.

It is only a question of surrounding that kind of committee with appropriate safeguards.

Now, we are considering a conflict-of-interest statute, and it is meet and proper that we check on all these operations. I want you to know there is no personal criticism here.

Mr. DODDS. I am sure of that, Mr. Chairman. And I think you will find us cooperative.

I would like to work with your counsel or members of the subcommittee to see if we can't agree on a common ground here.

Mr. HOLTZMAN. One more question on the minutes, Mr. Chairman.

Do you have a regularly assigned stenographer taking minutes of the meetings of the BAC?

Mr. DODDS. Not a regularly assigned stenographer; one of the members of the Department does.

Mr. HOLTZMAN. In shorthand? Or is it only a summary? How do you get these minutes back?

Mr. DODDS. He prepares them. He takes them during the proceedings—I can't answer whether he does them in shorthand, but he takes an accurate record of the meeting.

The CHAIRMAN. You see, Mr. Dodds, we drew attention in our report to the fact that the BAC many times had acted as an administrative lobby. An administrative lobby in the Department of Commerce. You may not know about that. Our report may have been before your time. But we have evidence of its lobbying activities.

You read from a portion of the minority report. I will read from the majority report, on page 32, near the bottom:

Any organization created by a Government official to assist him by furnishing advice and information necessarily must be conceived in the context that the organization is to be a governmental body. Administrative officials have no authority to create private organizations or to vest attributes of their offices in private organizations. Procedures regulating the conduct of Government-created advisory groups should assure that all operations of such groups are those appropriate to governmental bodies.

What we are trying to do, consonant with that statement, is to find out whether the BAC is operating within the confines of our present conflict-of-interest statutes. If the operations of the BAC are of such a character as to require some changes in the present conflict-of-interest statutes, we must address ourselves to that.

You might proceed now, however.

Go ahead.

Mr. Dodds. Down at the last line on page 4 of the statement, these—referring to the BDSA consultants and advisers—these are some general examples of the conflicts we must resolve in seeking to assure that the integrity of the Federal service is maintained without strangling its efficiency and competence.

H.R. 2156 would enlarge the scope of the criminal laws against bribery, graft, and conflict of interest. In restating these prohibitions, this bill takes account of the vastly increased diversity of Government actions and broadens the application of sanctions to areas heretofore held to be outside the scope of the phrase, "claim against the United States." We agree that any bribery or graft in connection with determinations to be made on behalf of the Government by its officials or employees should be prohibited and punished. We agree that current law is in many respects inadequate. The provisions of H.R. 2156 would eliminate a good deal of these inadequacies. To the extent that it does this, we support its enactment. However, we are concerned that some of its provisions are so broad in scope that they may hinder the efficient conduct of the Government's business and serve as traps for the unwary.

Section 205, for example, is a broad prohibition against any officer or employee assisting anyone before the executive branch in any matter in which the United States is a party or is directly or indirectly interested. This prohibition is not based upon any payment being made for such assistance. I don't think that Congress would intend that the employee of the Government not be available to assist the citizen involved in a proceeding before a Government agency.

Such assistance, so long as it is not inconsistent with the faithful performance of the employee's duties, should be permitted. The exception in section 205 would make this possible only in the case of a person faced with disciplinary proceedings in connection with his Government position. What about the Government official who may advise an individual regarding the steps he needs to take to obtain a license, bid on a contract, seek redress for a claimed wrong, and many other of the situations in which the United States has an "interest"? After all, the Government is not the antagonist of its citizens in every case in which its interest is involved.

A person dealing with a Government agency or department can reasonably expect some assistance from the employees of the Government, and in many cases such assistance is clearly consistent with the faithful performance of duty. We believe section 205 ought to be

clearly limited so that Government employees may furnish necessary assistance without facing the possibility of criminal penalty for their diligence in serving the public.

(Subsequently, the following was received from the Department of Commerce:)

THE GENERAL COUNSEL OF COMMERCE,
Washington, D.C., March 7, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your invitation, the Secretary of Commerce asked me to appear before Subcommittee No. 5 of the Committee on the Judiciary to present the views of the Department on H.R. 2156, H.R. 2157, and H.R. 7556. These bills propose revision of the various laws dealing with bribery, graft, and conflicts of interest of officials and employees of the Federal Government.

During my testimony you asked me a number of questions regarding the Business Advisory Council. These questions were related not to the particular subjects regarding which I had been invited to testify, but were rather related to previous hearings concluded by the subcommittee about 5 years ago. These earlier hearings resulted in the publication of a report by the subcommittee which went, in considerable detail, into the organization, finances, and purpose of the Business Advisory Council. This report included both majority and minority views. As was pointed out in the minority report:

"There is no mystery about the Business Advisory Council for the Department of Commerce. Its members, as the record shows, are private citizens with long and distinguished service to their country, both as private citizens and in many cases as Government officials during periods of economic recessions, wars, and normal times. They have been invited by the Secretary of Commerce to advise him from time to time on matters submitted to them. They are not employees or officials of the Government; they have no governmental authority or responsibility whatever, beyond rendering this advice; they make no decisions binding on any public official, including the Secretary of Commerce."

You have made clear your own understanding that the members of the Business Advisory Council are not employees of the Government. Accordingly, none of the bills which the subcommittee had under consideration when I was testify would affect members of the Business Advisory Council as such.

The questions you asked me regarding the BAC dealt with the finances of the organization and its director and his employment arrangements. You also asked that I find out from the Secretary of Commerce if he would now be willing to give you the records of the Business Advisory Council which a predecessor declined to give you during the hearings held in 1955.

The present executive secretary of the Business Advisory Council is Mr. John W. Burke. His salary, paid by the Business Advisory Council, is \$22,500 per year. He has no formal employment contract, nor has any pension fund been set up for him. The assets of the Business Advisory Council as of January 31, 1960, consisted of the following, all contributed by the members of the BAC:

Reserve fund-----	\$60,000 U.S. Treasury bills due July 28, 1960.
	\$100,000 U.S. Treasury 4-percent notes due August 1, 1961.
Cash on hand-----	\$24,124.30 on deposit at the Riggs National Bank in Washington, D.C.

The Secretary has authorized me to advise you that he concurs in the position taken by Secretary of Commerce Sinclair Weeks in 1955 with regard to making available to you the records of the BAC. That position was stated in the letter of August 9, 1955, from Secretary Weeks to you. A copy of that letter is attached hereto. Your particular attention is directed to the final paragraph in which Mr. Weeks said:

" * * * I wish to assure you that it is the continuing objective of the Department to cooperate with your subcommittee to the fullest extent consistent with my constitutional, legal, and moral responsibilities. To this end the Department has furnished a great deal of material, covering a majority of your 50-odd requests, and has offered to answer any particular requests for information as to the activities of the Department or its advisory groups, or to supply any particular documents pertinent to your investigation, the release of which would not be inconsistent with law or the public interest."

Secretary Mueller fully concurs in this and the other statements in this letter. He believes firmly that any other course would seriously compromise the usefulness and effectiveness of the BAC.

The Business Advisory Council has served successive Secretaries of Commerce since its formation by Secretary of Commerce Roper in 1933 during the Administration of President Franklin D. Roosevelt. It has been of immeasurable value to each of the Secretaries it has served. Its membership has consisted of some of the best known and ablest leaders of our business community. A list of the current membership of the BAC, as well as a description of the qualifications for membership and the method of selection to the various classes of membership is attached.

The members of the BAC have, for over 25 years, given freely of their time and effort. It would constitute a most serious breach of faith were the Secretary of Commerce to make available, without regard to pertinency or necessity, material originally given with the clear understanding that it would be adequately safeguarded.

In my own testimony before the subcommittee dealing with the subject matter of the subcommittee hearings, I mentioned a number of objections which the Department of Commerce had to the particular language of some of the sections of H.R. 2156. You invited us to provide additional clarification of these views in the form of specific statutory language. Some of our objections to H.R. 2156 can be overcome by revisions of language. Others are of a more fundamental nature. These latter objections go to the question of whether certain matters should, in any event, be the subject of criminal statutes. We are very desirous of cooperating in every way possible in helping the subcommittee in its important work of enacting clear-cut and effective legislation in the fields of bribery, graft, and conflicts of interest.

I believe that it would be useful to discuss our suggestions further with members of the staff of the subcommittee so that we might reach an understanding as to the additional material which this Department could provide to the subcommittee with regard to the pending bills on which I testified.

I am prepared to make whatever arrangements you might deem desirable in this regard.

Sincerely yours,

ROBERT J. DODDS, Jr., *General Counsel.*

AUGUST 9, 1955.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

MY DEAR CHAIRMAN CELLER: By letter addressed to Mr. Walter White, Executive Director of the Business Advisory Council of the Department of Commerce, under date of July 5, 1955, you requested that your staff be given unlimited access to the files of the Department relating to the Business Advisory Council.

This demand is now reiterated in a subpoena addressed to Walter White demanding that all of these files be removed from the Department of Commerce and delivered to you on August 10.

In view of the foregoing, out of my respect for you and your subcommittee, I think it appropriate that I should communicate my views on the matter directly to you as chairman of the subcommittee.

There are many reasons why the Department cannot comply with requests for indiscriminate examination and publication of its files and, accordingly, cannot comply with this sweeping demand or with others of a similar character which you have delivered to this Department in recent weeks.

Such files contains individual business statistics and forecasts the disclosure of which is made a crime by law. They contain the advices of advisers and subordinates solicited, given, and received in confidence. The publication of such materials would tend to dry up some of the sources of information which this Department must consult in fulfilling its basic statutory responsibilities and would be contrary to the public interest.

I am bound to honor such confidences and my conclusions in this regard are supported by the established constitutional principle of the separation of powers in the Government.

These files rest in and are part of the Department files. They are in my custody and under my control, and Walter White has no right or authority to remove or produce them. The removal from this Department of segments of its

files would hamper and obstruct the work of the Department and would also be contrary to the public interest.

I understand that your staff was given access to these files in 1951. I think the record should show, however, that the investigation was then terminated and no materials were made public. Apparently the ultimate conclusion arrived at in 1951 was the same as that which we have now reached.

It is for these reasons, and with all deference to your subcommittee, that I have instructed Walter White that he has no power, right, or authority to make delivery of these files to you.

At the same time, I wish to assure you that it is the continuing objective of the Department to cooperate with your subcommittee to the fullest extent consistent with my constitutional, legal, and moral responsibilities. To this end the Department has furnished a great deal of material, covering a majority of your 50-odd recent requests, and has offered to answer any particular requests for information as to the activities of the Department or its advisory groups, or to supply any particular documents pertinent to your investigation, the release of which would not be inconsistent with law or the public interest.

I should like to reaffirm our willingness to do this and our desire to be of all possible assistance to your subcommittee.

Sincerely yours,

SINCLAIR WEEKS, *Secretary of Commerce.*

MEMBERSHIP IN THE BAC FOR THE DEPARTMENT OF COMMERCE

There are four classes of membership in the Business Advisory Council: active, ex officio, graduate, and honorary.

Active members, limited to a total of 60, are invited by the Secretary of Commerce, upon recommendation of the Council's membership committee and approval of its executive committee, to serve for 1 year. Active members may be renominated to serve for a maximum of no more than 5 consecutive years except for certain members who have served as Chairman of the Council.

The membership is chosen so that a majority of the Council consists of men actively identified with private enterprise in industry and commerce. Members are selected to be broadly representative from a geographical as well as functional and product point of view. There are no political qualifications for membership.

Active members who are not renominated are eligible for appointment as graduate members.

A recent change has been made to provide that all former Secretaries of Commerce are eligible to become ex officio members if they are under 70 years of age.

Active, ex officio, and graduate members become honorary members on reaching 70 years of age.

A current list of all the members of the BAC follows:

BUSINESS ADVISORY COUNCIL FOR THE DEPARTMENT OF COMMERCE

MEMBERSHIP FOR 1960

[Active indicated by (A); ex officio indicated by (E); graduate indicated by (G); honorary indicated by (H)]

- Winthrop W. Aldrich, 960 Fifth Avenue, New York, N.Y. (H)
 William M. Allen, president, Boeing Airplane Co., Post Office Box 3707, Seattle, Wash. (A)
 S. C. Allyn, chairman, the National Cash Register Co., Main and K Streets, Dayton, Ohio. (G)
 Robert B. Anderson, the Secretary of the Treasury, Washington, D.C. (A)
 Clarence Avildsen, chairman, Avildsen Tools & Machines, Inc., 100 Lafayette Street, New York, N.Y. (G)
 William L. Batt, Kenilworth Apartments, Philadelphia, Pa. (H)
 S. D. Bechtel, president, Bechtel Corp., 155 Sansome Street, San Francisco, Calif. (A)
 S. Clark Beise, president, Bank of America, National Trust & Savings Association, 300 Montgomery Street, San Francisco, Calif. (A)
 John D. Biggers, chairman, Libbey-Owens-Ford Glass Co., National Bank Building, Toledo, Ohio. (H)

- James B. Black, chairman, Pacific Gas & Electric Co., 245 Market Street, San Francisco, Calif. (G)
- Roger M. Blough, chairman, United States Steel Corp., 71 Broadway, New York, N.Y. (A)
- Harold Boeschstein, president, Owens-Corning Fiberglas Corp., Post Office Box 901, Toledo, Ohio. (A)
- Fred Bohem, president, Meredith Publishing Co., 1716 Loenst Street, Des Moines, Iowa. (G)
- Ernest R. Breech, chairman, Ford Motor Co., the American Road, Dearborn, Mich. (G)
- Mason Britton, consultant, Metal Cutting Tool Institute, Chrysler Building, New York, N.Y. (H)
- George R. Brown, executive vice president, Brown & Root, Inc., Box 3, Houston, Tex. (A)
- Prentiss M. Brown, chairman, Mackinac Bridge Authority, St. Ignace, Mich. (H)
- Howard Bruce, chairman, executive committee, Worthington Corp., Post Office Box 987, Baltimore, Md. (H)
- Carter L. Burgess, president, American Machine & Foundry Co., 261 Madison Avenue, New York, N.Y. (A)
- Paul C. Cabot, chairman, State Street Research & Management Co., 140 Federal Street, Boston, Mass. (G)
- James V. Carmichael, president, Scripto International, Post Office Box 4847, Atlanta, Ga. (G)
- C. S. Ching, Cyrus S. Ching Associates, 1625 Eye Street NW., Washington, D.C. (H)
- Walker L. Cislser, president, the Detroit Edison Co., 2000 Second Avenue, Detroit, Mich. (G)
- Lucius D. Clay, chairman, Continental Can Co., 100 East 42d Street, New York, N.Y. (A)
- John L. Collyer, chairman, the B. F. Goodrich Co., 500 S. Main Street, Akron, Ohio. (A)
- Ralph J. Cordiner, chairman, General Electric Co., 570 Lexington Avenue, New York, N.Y. (A)
- Edw. B. Cosgrove, chairman, Green Giant Co., Le Sueur, Minn. (II)
- John Cowles, president, the Minneapolis Star and Tribune, 425 Portland, Minneapolis, Minn. (G)
- C. R. Cox, president, Kennecott Copper Corp., 161 East 42d Street, New York, N.Y. (G)
- W. Howard Cox, chairman, the Union Central Life Insurance Co., Cincinnati, Ohio. (II)
- Harlow H. Curtice, Genesee Merchant Bank & Trust Co., 352 South Saginaw Street, Flint, Mich. (G)
- Charles E. Daniel, chairman, Daniel Construction Co., Post Office Box 2286, Greenville, S.C. (G)
- Donald K. David, vice chairman, the Ford Foundation, 447 Madison Avenue, New York, N.Y. (A)
- Paul L. Davies, chairman, Food Machinery & Chemical Corp., P. O. Box 760, San Jose, Calif. (A)
- Frank R. Denton, vice chairman, Mellon National Bank & Trust Co., Pittsburgh, Pa. (G)
- R. R. Denpree, honorary chairman, the Proctor & Gamble Co., P. O. Box 599, Cincinnati, Ohio. (H)
- Charles D. Dickey, chairman, committee on trust matters, Morgan Guaranty Trust Co., of New York, 23 Wall Street, New York, N.Y. (G)
- Frederic G. Donner, chairman, General Motors Corp., 1775 Broadway, New York, N.Y. (A)
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Mr. MALETZ. Mr. Chairman.

The CHAIRMAN. Mr. Maletz.

Mr. MALETZ. Mr. Dodds, doesn't the present draft of section 205 of H.R. 2156 permit a Government employee to furnish necessary assistance? I refer you to lines 7 and 8 of page 8 of H.R. 2156, which specifies that a Government employee—

Mr. DODDS. "Otherwise than in the proper discharge of his official duties"?

Mr. MALETZ. "Otherwise than in the proper discharge of his official duties." Doesn't that take care of the objection you have just raised?

Mr. DODDS. No; because starting at line 11—

or aid or assist anyone before any department—

et cetera—

in connection with any proceedings—

et cetera—

in which the United States is a party or directly or indirectly interested, shall be fined not more than \$10,000.

That means that if somebody comes in and says, "Do you mind telling me how I go about getting an export license," and I help him, in a rather liberal interpretation of this, I could conceivably be violating the penal provision.

Mr. MALETZ. I take it that your objection—

Mr. DODDS. My objection is not to the spirit at all.

Mr. MALETZ. Would be obviated by making the term "otherwise than in the proper discharge of his official duties" applicable to all of section 205.

Mr. DODDS. That is right. And I think my comment is more applicable in the Department than, let us say, it would be in a regulatory agency. We feel that to serve the business community our doors should be open to the members of the business community. And they come in frequently and ask us how they get through the labyrinthine channels of achieving whatever it is they want.

Mr. MALETZ. In other words, you would not want to have the term "otherwise than in the proper discharge of his official duties" apply only to the two parts of the section; but if it were applicable to the whole section your objection would be obviated, is that right?

Mr. DODDS. That is right. I completely agree with the spirit of this.

The CHAIRMAN. That is a very good point. Thank you very much.

Mr. DODDS. Section 207 would forbid officers and employees changing sides in matters in which the United States has an interest. We have no quarrel with this principle, but we believe that this section as written goes too far. The second paragraph of this section would, we believe, be an unnecessarily broad restriction which would hamper recruitment of employees for the Government and would unduly restrict employees in seeking and obtaining useful employment outside the Government.

A good example may be found in the case of the Patent Office. The Attorney General has ruled that the filing and prosecution of a patent application is a proceeding, "in which the United States is a party or directly or indirectly interested."

The Patent Office is organized in about 70 separate divisions. Many able young engineers enter the Patent Office as examiners to gain valuable experience. They are assigned to one or another of the various divisions. During the period of their service, the Patent Office has the benefit of their useful and highly competent efforts. Many remain in the Patent Office, but a good many prefer, after a time, to seek careers outside the Government as patent attorneys or agents.

If section 207 were enacted, these people would be barred from the practice of their profession for a period of 2 years.

We don't believe that this result is necessary to protect the integrity of the Government service. It would practically bar from employment with the Patent Office all but those who propose to remain with the Government for the rest of their careers. The most likely result of such a situation would be to dry up what is now the most fruitful source of "new blood" for the staffing of the Patent Office.

This provision, if enacted, would seriously penalize Government employees generally by curtailing their opportunity for employment outside of Government. We think this result would be much too harsh; and that, rather than assuring the integrity of the Federal service, it would drive out the competent, diligent, and ambitious individuals who can best be expected to provide the Government with the high level of efficiency needed to serve the Nation.

We believe that the result sought here could better be attained by regulations suited to the differing needs of the various departments and agencies. We can see no purpose, for example, in barring a former Patent Office employee from appearing before the Bureau of Public Roads in connection with a highway subsidy matter; or for a former employee of the Bureau of Foreign Commerce prosecuting a patent application; or a former Bureau of Standards employee seeking an export license.

Many other similar examples can be cited. The complexity of Government organization and activity makes it virtually impossible to formulate a fair rule of general applicability in this area.

We believe that this matter ought to be left to regulation by the individual agencies. An example of such regulation is found in section 341(g) of the rules of practice of the U.S. Patent Office which provides—and I think this is an excellent example of what I am endeavoring to cite, having to do with former examiners:

(g) *Former examiners.*—No person who has served in the examining corps of the Patent Office will be registered after termination of his services, nor, if registered before such service, be reinstated, unless he undertakes (1) not to prosecute or aid in any manner in the prosecution of any application pending in any examining division in which he served, on the date he left said division; and (2) not to prepare or prosecute nor to assist in any manner in the preparation or prosecution of any application of another filed within 2 years after the date he left such division, and assigned to such division, without the specific authorization of the Commissioner. Associated and related classes in other divisions may be required to be included in the undertaking or designated classes may be excluded. In case application for registration or reinstatement is made after resignation from the Office, the applicant will not be registered, or reinstated, if he has prepared or prosecuted, or assisted in the preparation or prosecution of any such application as indicated in this paragraph.

The CHAIRMAN. In other words, I take it you recognize the justice of the principle that is striven for.

Mr. DODDS. Indeed I do.

The CHAIRMAN. But you believe the language is too broad, and should be somewhat narrowed as it applies particularly to the Patent Office.

Mr. DODDS. Yes, I think it might be too broad when applied to our office, the Department of Commerce, than perhaps to any other agency.

The CHAIRMAN. Do you have language you would substitute for it?

Mr. DODDS. I would be very happy to come up with some, Mr. Chairman.

The CHAIRMAN. We would be very happy to receive it.

Do you object to the first part of section 207; do you object to a permanent disqualification?

Mr. DODDS. No, I have no objection to permanent disqualification respecting the subject matter of any controversy in which the party was involved.

Now, I realize I am saying something very general there, and it could be that the subject matter would change direction so drastically over a long period of years that it could become moot. But I think there should be that specific prohibition.

The CHAIRMAN. But in the second part of section 207—

Mr. DODDS. That is the difficult one.

The CHAIRMAN. You feel the disqualification is too broad when it applies to any matter "which involves the agency in which he was formerly employed or assigned to duty"?

Mr. DODDS. That is exactly it, just that last clause, and that is the part that my principal objection ran to.

The CHAIRMAN. But if he was assigned to a specific matter, you wouldn't want him to receive compensation subsequent to his leaving the service to prosecute a claim arising out of that specific matter?

Mr. DODDS. No.

The CHAIRMAN. And you would be willing to give us language that would clarify that and narrow the broad provisions that we have in this bill?

Mr. DODDS. Yes, I would.

Section 208 penalizes interested persons acting as Government agents. The scope of "interest" includes being "directly or indirectly interested in the pecuniary profits or contracts of any corporation * * *"

The CHAIRMAN. Before I leave that, are you satisfied with the rules of practice that you read on page 8 of your statement?

Mr. DODDS. With respect to its applicability as to the Patent Office, yes; it is strictly for the Patent Office.

Mr. ROGERS. In that regard, under (2), you say—

not to prepare or prosecute nor to assist in any manner in the preparation or prosecution of any application of another filed within 2 years after the date he left such division, and assigned to such division.

Now, my query is, Can an examiner ascertain in advance what division his application may be assigned to?

Mr. DODDS. That doesn't keep it from being a violation, though. If you leave the Patent Office and then help me file an application in your old division, you will be violating this provision, even though the examiner may not know it.

Mr. ROGERS. Now, if I am employed in the Patent Office in a certain division, and you have a claim or a patent or something you want to file, if I help you, and then when they file it it falls in the division in which I have been assigned within the last 2 years of my service, then I have committed an act which bars me from practice, when I may not have known that they were going to assign it to that division.

How can a former employee be certain that he is not violating subdivision (2)? How does he know whether the official who is going to make the assignment will send it to the division where he worked.

Mr. DODDS. That is a good question.

First of all, when you help, anonymously, we will say, collaborate with another in preparing an application, it is true that, strictly speaking, you are not sure what division it will go into; by virtue of your experience you could probably make a pretty good guess, but let's say you don't know, and let us say it is put, to your surprise, in your old division. Then I think you would be bound to make your participation in that known. And of course if it weren't, if it were innocent, then it would come out at a Patent Office hearing if it were discovered and you were called up to account.

But I don't think this is so hard and fast that there is no room for flexibility. That is not the intent of it.

Mr. HOLTZMAN. Mr. Dodds, your example on the Patent Office is fairly clear, and it seems to make sense.

Can you envisage a situation in the Department of Commerce that might lend itself to this objection?

Mr. DODDS. Yes. Let's say a former lawyer in the Bureau of Public Roads is retained by an exporter, and the exporter says, "Well, you used to be in that Department of Commerce, I would like you to help me get an export license—this is a rather strained example—I think that that former employee of the Bureau of Public Roads should not be barred from helping his client obtain an export license, because the two activities are so unrelated. I think he should not be allowed to go back into the Bureau of Public Roads, though, and participate in a case in which he formerly had a part.

Mr. ROGERS. Yes, but since we are making this a criminal statute, we have got to be specific—

Mr. DODDS. That is what troubles me. Again, I completely agree with the spirit of them, but I think that they might be so tight that the unwary could unknowingly violate the penalty provisions, and I think that is not the intent here. You don't want to discourage people from coming into the service because of the uncertainty of the law.

Section 208 penalizes interested persons acting as Government agents. The scope of "interest" includes being—

directly or indirectly interested in the pecuniary profits or contracts of any corporation * * *

We believe that the scope of this section is too broad. Interest in pecuniary profits may take a variety of forms from the ownership of stock in a highly diversified industrial enterprise to the ownership of a life insurance policy in a company heavily invested in the bonds of railroads, public utilities, or manufacturing enterprises. Government employees have savings which they may invest without their judgment in official matters necessarily becoming biased as a consequence.

Much of such pecuniary interest is too remote to be a serious threat to the diligent performance of their jobs. Here again, however, the broad scope of the prohibition may constitute a trap which could be of serious consequence to the employee and yet not be of any real benefit to the efficiency or integrity of the Government service. We would prefer to see the purpose sought here achieved by a more realistic means.

In most instances, a requirement for disclosure of interest which would give the agency head the authority to determine whether the employee's interest is sufficient to require that he be disqualified from acting would be enough. In any event, the scope of section 208 ought to be curtailed.

Mr. MALETZ. Mr. Dodds, it is correct, is it not, that section 208 adopts verbatim the test of section 434 of title 18, United States Code, the test being—

Mr. DODDS. I didn't know it was verbatim.

Mr. MALETZ. The test being "directly or indirectly interested in the pecuniary profits or contracts of any corporation, joint stock company, or association, or of any firm or partnership, or other business entity." That is the real test under section 434.

Mr. DODDS. May I make an answer?

Mr. MALETZ. Yes; of course.

Mr. DODDS. I recognized the old-fashioned fine of \$2,000 actually before I compared them, but I recognized that the language, if not verbatim, is certainly very similar to it.

My associate, Mr. Nash, points out that there has never been any action taken under this old section 434.

Mr. MALETZ. The point is this, that your objection to section 208 of the bill is addressed equally to present section 434.

Mr. DODDS. I am sorry, I didn't understand your question.

Mr. MALETZ. Do you feel that present section 434 is far too broad?

Mr. DODDS. Yes; I do.

Mr. MALETZ. Yes.

The CHAIRMAN. Would you also give us the benefit of your good counsel and advice and submit some language that you think might be appropriate to meet your objection?

Mr. DODDS. I would be glad to, Mr. Chairman.

Section 209 restates and expands—

Mr. MALETZ. Excuse me, Mr. Dodds. Is it not correct that because of section 434 various people appointed to Government have been required to divest themselves of certain stock interests?

Mr. DODDS. Yes, but I think it has never been judicially construed.

The CHAIRMAN. Notably in the case of Charles Wilson, before he took the office of the Secretary of Defense.

Mr. DODDS. Yes. I think it is an illustration of its application.

Section 209 restates and expands the coverage of the prohibition in section 1914 of title 18 which requires that the salary for Government services be paid by the United States. This provision poses no problem for the full-time Government employees. It would be a problem in the case of the part-time consultants and temporary employees—the w.o.c.'s and w.a.e.'s

The problem is now largely taken care of by the exemption authority Congress gave to the President in the Defense Production Act. In many areas these part-time consultants and temporary employees are a vital and necessary adjunct to the full-time Government employee in carrying out particular programs.

The mobilization planning activities of the Business and Defense Services Administration are a good example. These activities must, if they are to be useful, be carried on in close cooperation with industry. This can best be achieved by the use of active industry officials willing to give some time to the Government service. The scope of their authority to make and participate in policy determinations is necessarily limited. So too must we limit their liability under the conflict-of-interest laws ordinarily applicable to Government employment. Congress has provided for these exemptions. We believe they ought to be continued.

To sum up, we favor the principles sought to be achieved by H.R. 2156. We believe that in some respects, however, particular provisions of this bill need to be modified. Such modification is necessary if we are to avoid going from the extreme of inadequate regulation to the extreme of excessive and unrealistic prohibitions.

Mr. Forbes will discuss the details of H.R. 2157 in connection with the program in the Department of Commerce which he supervises. We certainly agree with the objectives stated in the declaration of policy of this bill. We question the advisability of seeking to attain all these objectives by general legislation. The functions and responsibilities of officials and employees of the Government are too diverse to make it possible to legislate fairly on a general basis with regard to ethical conduct. This is a subject which we believe should be largely the responsibility of the individual agencies.

Legislation should be limited to assuring that there is ample authority for agency executives to prescribe necessary rules and regulations within a broad framework prescribed by Congress and in keeping with the nature of the functions and responsibilities of their agencies.

H.R. 7556 deals with one subject—post-Government service employment. We believe that the prohibition it provides would work an

unfair hardship upon employees of the Government. As I have already indicated, we do not believe it necessary to impose general restrictions of this type upon government employees. Rather than protect the integrity of the Government service, we believe that H.R. 7556, if enacted, would seriously hamper recruitment and unfairly penalize the Government employee seeking to change his status.

To the extent that restrictions of this nature may be needed to protect the integrity of the Government service, they ought to be left to the individual agencies.

Insofar as employment or a promise of employment may be used to influence the judgment of a public officer, the criminal sanctions against bribery and graft should be sufficiently broad to take care of the situation.

We find ourselves in general agreement with the objectives sought by this subcommittee. We favor enactment of H.R. 2156, provided it is modified to limit the unnecessarily broad scope of some of its provisions. We do not favor enactment of H.R. 2157 in its present form as a code of ethics to apply to all Government employees. We believe that many of the standards sought in this bill could be better attained by agency regulation. We are opposed to the enactment of H.R. 7556.

I would be pleased to try to answer any questions you may have either now or upon completion of Mr. Forbes' statement.

Thank you very much, gentlemen.

(Mr. Dodd's complete statement appears at p. 198.)

The CHAIRMAN. We are very grateful to you for a very cogent statement. Do you want Mr. Forbes to make a statement?

Mr. DODDS. I would like to have him make a statement, yes.

The CHAIRMAN. Very well.

Mr. FORBES.

Mr. FORBES. Mr. Chairman and members of the subcommittee, generally speaking, we believe that problems of improper conduct as distinguished from criminal conduct can most appropriately be dealt with by administrative regulations and procedures of the agencies concerned, rather than by legislation. We see in this bill a legislative measure that can strengthen this approach by providing a basic foundation for administrative regulation, provided it is made clear that the bill is not intended to be a substitute for such regulation.

We heartily endorse the expression of congressional intent that, in the transaction of Government business, it is not enough for individuals to avoid indictable violations of criminal statutes; that basic ethical standards should apply to private individuals dealing with the Government, as well as the public servants with whom they deal; and that administrative sanctions should be available to back up the standards.

Your committee has already received copies of our departmental regulations on ethical conduct and conflict of interests, together with Bureau regulations which have special features. We believe that we already have the authority to make and enforce these regulations as to our own employees—5 U.S.C. 22. In actual practice, we have found these regulations as valuable for guidance purposes as for enforcement purposes.

Responsibility for administrative interpretation of these regulations is in the Director of Agency Inspection. Under this approach,

we have been able to introduce what might be described as an informal "conflict-of-interest advisory service." Our experience has been that most conflict-of-interest questions have arisen under the administrative regulations. Only a few have arisen under the statutes. This experience is the basis for our view that the criminal statutes, necessary as they are, are not effective in covering the majority of day-to-day questions of proper conduct and ethics. We would regard this bill as further strengthening this administrative approach to the problem of noncriminal but none the less improper activities.

The CHAIRMAN. Mr. Forbes, may I ask you, as Director of Agency Inspection, have you had any cases involving dismissal of the employees of the Department of Commerce because of conflict of interest?

Mr. FORBES. Not as such, sir; no, we have not had a proceeding for dismissal of employees under the Department Order 77.

The CHAIRMAN. You have had no proceedings?

Mr. FORBES. We have not.

The CHAIRMAN. You have had none at all?

Mr. FORBES. That is right, sir. We have had a couple of instances where the clear existence of these regulations has been the basis upon which employees have resigned. Those are very few instances—

The CHAIRMAN. Did they resign when charges were preferred against them?

Mr. FORBES. Now, this would be an example—

The CHAIRMAN. I beg your pardon?

Mr. FORBES. I will give you an example without giving you the details of who and when. But this would be an instance where a complaint came to the Department that an employee had solicited a loan from an officer of a company that was doing business with his function, his certification function.

That came in; he was faced with it; he didn't have an answer for it, and he said, "Well, the loan was not going to influence me on what I did." Well, it was pointed out to him that the rule says you mustn't take that from someone in that relationship to your function, regardless of whether or not it is going to influence you. On the basis of that, he saw the picture, and he resigned. That would be an example of what we mean.

We agree with the principles which lead to omission from the proposed bill of requirements for mandatory disclosure of income and financial interests and mandatory preapproval of outside employment. We would consider that this omission should not be regarded as showing a congressional intent that these devices not be used at all, but rather that they should be used only when and if appropriate in the discretion of the agency concerned.

For example, in one Bureau, the Bureau of Foreign Commerce, mandatory preapproval of outside employment is the rule, since it has been regarded by the Bureau since 1948 as appropriate to their export control operation.

Now, regarding section 102, Improper Conduct of Government Employees, and sections 103 and 104, relating to changes of sides, we agree with the main outline of these sections in terms of subject matter covered, and subject matter left to the agencies.

As to the drafting details, we suggest that where these sections correspond to provisions in the criminal law, they be keyed to make

criminal conduct improper conduct as well. Then, by making such improper conduct subject to administrative interpretations and sanctions, the legislative foundations for administrative arrangements has been strengthened. This means that the final drafting details of these sections should be related to the final outcome of the revision and re-codification in H.R. 2156.

In these sections, some situations covered may involve the appearance rather than the actuality of improper conduct, for example:

- (1) Discussion of future employment, section 102(a);
- (2) Disqualification from official action in presence of certain private interests, section 102(e); and
- (3) Representation of private interests by a former employee before his former agency where he had no actual connection with the subject matter, section 104.

We suggest absolute prohibition in such instances goes too far, and that such prohibition should be subject to waiver upon disclosure, and prior approval of the agency head or his designated representative.

Regarding section 106, or ex parte contacts, we agree with this section in principle, but suggest that the prohibition of ex parte contacts with "any agency member or employee" is too broad, and should be limited to agency employees directly involved in adjudicating a contested proceeding of the sort which is subject to section 5 on adjudication in the Administrative Procedure Act.

Regarding section 107, or the administrative sanctions, whatever is done here as to dismissal of Government employees should be related to existing provisions on dismissals in the Lloyd-La Follette Act of 1912 and the Veterans' Preference Act of 1944.

As to the sanctions bearing on members of the public, we regard these provisions giving authority to agency heads as a constructive element of the bill. The procedures and arrangements for review of such actions are a topic beyond the scope of these comments.

In conclusion, our main constructive suggestion is this:

That an explicit provision should be added to the bill making it clear that it is not intended to take the place of administrative arrangements in this field, but rather to strengthen the basis for such arrangements. This provision might appropriately make it mandatory for agencies to develop and issue administrative regulations and procedures to interpret and supplement the statute in a manner appropriate for each program concerned.

(Mr. Forbes' complete statement appears on p. 202.)

Mr. PEET. I have one or two questions to address to you regarding the Business Advisory Council as it is presently set up.

I believe you testified that there were approximately 60 members.

Mr. DODDS. Acting members.

Mr. PEET. Acting members of the Business Advisory Council.

And these are members of business organizations, of course, throughout the country?

Mr. DODDS. They for the most part are officials, executives of business organizations, but all living former Secretaries of Commerce, I believe, are members—I wouldn't want to say absolutely to that.

Mr. PEET. As the statute now stands on the books, are the representatives of these organizations active in the Business Advisory Council subject to the conflict of interest laws?

Mr. DODDS. The individuals?

Mr. PEET. Yes, those representing the basic activities adverted to.

Mr. DODDS. Are they subject to the conflict of interest law?

Mr. PEET. Yes.

Mr. DODDS. It would not be applicable.

The CHAIRMAN. They have not exemption from the conflict of interest laws?

Mr. DODDS. Excuse me just 1 minute, please.

The CHAIRMAN. If they are not employees, they are not serving, but they have not exemptions.

Mr. DODDS. That is right. And they are not employees.

Mr. PEET. My point was to bring out the fact that they were not covered at the present time.

Mr. DODDS. That is right. I misunderstood the question.

Mr. PEET. I should have phrased it more clearly.

Now, could you give us an opinion as to whether or not you feel that if these individuals were made subject to the conflict of interest laws, whether these individuals would be willing to serve on the Business Advisory Council?

Mr. DODDS. It is a purely subjective reaction that I will give you. I am in fact putting myself in their place.

I would say absolutely not; no.

The CHAIRMAN. Of course, it is quite obvious they wouldn't serve if they were made subject to the conflict of interest provision, and I don't blame them for not wanting to serve.

Mr. PEET. I have no further questions.

The CHAIRMAN. Very well, thank you very much, Mr. Dodds, and your colleagues. We will be glad to receive that information if you will let us have it.

Mr. DODDS. Very good, sir.

The CHAIRMAN. Our next witness is Abe McGregor Goff, member of the Interstate Commerce Commission.

STATEMENT OF HON. ABE MCGREGOR GOFF, MEMBER, INTERSTATE COMMERCE COMMISSION

The CHAIRMAN. Commissioner Goff, you are doubly welcome, first as a Commissioner, and second as a former Member of the House.

Mr. GOFF. It is a pleasure to appear before you, it was an honor and a privilege to serve with you, and I treasure that experience.

Shall I proceed, Mr. Chairman?

The CHAIRMAN. Yes, you may proceed.

Mr. GOFF. Mr. Chairman, and members of the subcommittee, my name, as has been stated, is Abe McGregor Goff. I am a member of the Interstate Commerce Commission, and am appearing today to testify on its behalf on bills H.R. 2156, H.R. 2157, and H.R. 7556. All three of these proposals are concerned with ethics in Government. Two of them would amend existing statutes relating to bribery, graft, and conflicts of interest, and the third would establish a code of ethics for officers and employees in the executive branch of the Government. With your permission, Mr. Chairman, I shall discuss these bills in their numerical order. Let me say at the outset, that we are in accord with the overall intent and purpose of these proposals.

H.R. 2156

The purpose of this bill, as we understand it, is to consolidate, revise, and "tighten up" existing bribery, graft, and conflict of interest laws, which are now scattered throughout some 30 sections of the United States Code.

Mechanically, this would be accomplished by repealing certain existing sections and incorporating the provisions of others, either intact or with amendments, into 18 new sections (secs. 201 through 218) of title 18 of the code. In brief, the effect of the proposed consolidation and revision would be to provide greater uniformity of language in this part of the law, eliminate existing inequities in the application thereof, and the penalties provided, and broaden its coverage to include conduct within the spirit, but not within the letter of present laws.

Proposed new section 201 would simplify and strengthen existing laws relating to bribery of public officials and employees in the Federal establishment. This it would do by eliminating repetitious language, providing a universally applicable definition of bribery, and by expanding the definition to preclude the use of indirect, postponed, or intangible considerations to circumvent the intent and purpose of such laws. Payment and receipt of anything of value "for" or "because of" any official act would also be outlawed as bribery, notwithstanding the absence of any intent on the part of the giver or the taker to influence or to be influenced by such a "reward" or expression of appreciation. In addition, the proposed new section would make it clear that the bribery laws apply to receipts and payments for acts purportedly, but not actually, performed, and to receipts and payments for the official act of other public officials or for influencing the act of other public officials.

While we feel that the expanded coverage and other changes proposed in this section represent a considerable improvement over existing bribery laws, we believe that they could be further improved by making them apply to payments to and receipts by prospective public officials for influencing the official action of other public officials. Conceivably, a corrupt agreement to this effect could be entered into prior to the taking of office. I suggest this could be covered by simply striking the words "him in" in line 1, page 4, of H.R. 2156, to broaden the intent.

THE CHAIRMAN. What is meant by prospective officers? Would a man who announces candidacy for Congress be a prospective officer? Would that mean between the time of his election and the taking of his oath?

MR. GOFF. I am not sure about a prospective candidate for Congress. What I had in mind was a man who might receive his appointment to some board, such as ours, and before the time he took his oath.

THE CHAIRMAN. Oh, a man who might have his name sent to the Senate, and between the time his name is sent up and the time of his confirmation?

MR. GOFF. I think that would be clearly covered.

Proposed section 202 is, basically, a consolidation of present sections 209 and 210 of title 18, prohibiting the bribery of witnesses. As consolidated and revised, it would be made clear that these laws

apply not only to witnesses before the courts, but also to witnesses before the congressional committees and agencies and commissions of the Federal Government. The proposed new section would also remove an inconsistency in the present law by making payments as well as receipts "for" or "because of" testimony unlawful, regardless of the intent of the parties. The payment of professional fees to expert witnesses, and reimbursement of reasonable expenses actually incurred by any witness would be specifically excepted. While the penalties proposed are considerably more severe than at present, they would conform to those proposed in section 201 respecting the bribery of public officials and employees.

In our opinion, the changes here proposed also represent an improvement over existing law, and we recommend their enactment.

The remaining provisions of this measure relate primarily to the conflict-of-interest statutes applicable to officers and employees of the Federal Government. Under present section 281 of title 18, from which proposed section 203 is derived, Members of Congress, Resident Commissioners, and officers and employees of the Federal departments and agencies are prohibited from participating, for compensation, in proceedings before the various departments and agencies of the Government in any matter in which the United States is directly or indirectly interested. The prohibition of section 281 does not specifically apply, however, to congressional or judicial employees, nor is it applicable to proceedings before the courts or congressional committees. The present section also contains specific exemptions respecting retired officers of the Armed Forces and members of the District of Columbia National Guard.

Other conduct which falls outside the present prohibitions includes receipt of compensation for services purportedly, but not actually, rendered, and pre- or post-employment receipts for services rendered during the period of Government employment. The present law also fails to penalize the payor of the prohibited compensation. Oddly enough, however, the present law prohibits the acceptance, while in the Government service, of compensation for services fully and legitimately rendered prior to Government employment. The present law also contains no specific exemption respecting persons acting in the discharge of their official duties: that is, no distinction is made between the receipt of compensation from private or public sources.

The proposed new section would rectify these shortcomings and inequities in the present law, except that the exemption of proceedings before the courts, the Congress, and congressional committees would be continued. In addition, under the proposed new section, the violation would turn on the status of the recipient at the time he rendered the services instead of as at present, upon his status at the time of the agreement or receipt. The exemptions respecting retired officers of the Armed Forces and members of the District of Columbia National Guard would be omitted from the new section, but would be reenacted, with certain additional restrictions, in proposed section 206.

The changes that would be effected by enactment of proposed section 203 are, we feel, desirable. We have some reservations, however, with respect to continuing the exemption of proceedings before the courts, the Congress, and congressional committees. Since the prin-

ciple involved is the same, we would favor making the prohibitions apply irrespective of forum.

Since proposed section 204 is identical to present section 282 of title 18, prohibiting Members of Congress from practicing before the Court of Claims, it appears to have been included in the bill at this point only for the purpose of editorial continuity.

Proposed section 205 would be substituted for present section 283 of title 18, under which officers and employees of the United States, including both Houses of the Congress, are prohibited, except in the discharge of their official duties, from prosecuting claims against the Government, irrespective of forum. Also prohibited is the receipt of any gratuity, or share of or interest in any such claim for assisting in the prosecution thereof. Members of the Congress and Resident Commissioners are not specifically included within the present prohibition. There is also no mention made of judges or officers and employees of the judicial branch.

The proposed new section would add to the present prohibitions the aiding or assisting of—

anyone before any department, agency, court-martial, officer, or any civil, military, or naval commission in connection with the prosecution of any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter—

in which the Government is directly or indirectly interested. The emphasis is supplied.

These additions correspond to the category of activities for which the receipt of compensation would be prohibited under proposed section 203. We find the additional language somewhat confusing. Under the original language, which would be retained, the prosecution of "claims" against the Government is forbidden, regardless of forum. Under the proposed new language, however, the prohibition against the prosecution of "claims" would not apply to proceedings before a court or congressional committee. Thus, as we see it, the activity forbidden under the proposed new language is broad enough to include the activity forbidden in the first instance. The question arises, therefore, as to whether the activities proscribed are to be forbidden irrespective of forum, or only where they occur before a forum other than a court or congressional committee. As I have already stated with respect to proposed section 203, since the principle involved is the same, we are of the view that the prohibitions should apply without regard to forum. Moreover, I might add that since that portion of proposed section 205 forbidding the receipt of any gratuity, share, or interest "in any such claim" would appear to be covered by proposed section 203, if the other changes which we have suggested are made, it might very well be eliminated.

The proposed new section 205 would specifically exempt uncompensated assistance to a fellow employee in a disciplinary proceeding involving possible removal or suspension from his position. We believe this exception is reasonable and favor it. The proposed new section, however, would effect no change respecting its applicability to judges and officers and employees of the judicial branch. It seems to us that it should be made clear that such persons are included within the prohibitions.

Proposed section 205 would also effect no change respecting the applicability thereof to Members of the Congress and Resident Commis-

sioners. Whether the particular relationship between such persons and their constituents is such to justify allowing them to engage in most of the activities forbidden to others, so long as no compensation is received, involves a policy consideration on which we express no opinion. Under proposed section 204, the prohibitions against such persons practicing in the Court of Claims would continue to apply. The existing exceptions concerning retired officers of the Armed Services and District of Columbia National Guard members would be omitted from this proposed section, but would be incorporated in proposed new section 206.

As I have previously stated, proposed section 206(1) constitutes a revision and restatement of exceptions applicable to retired members of the Armed Forces and members of the District of Columbia National Guard, and is not of direct concern to this Commission. However, we favor this exemption since Commission personnel may well fall within its provisions. We believe section 206(2)(A) is too broad. It is unlimited in duration, and what I shall say respecting proposed section 207 shall be equally applicable to section 206.

The first paragraph of proposed new section 207 would prohibit any former employee of any agency from knowingly participating in any case or proceeding in which the United States is a party or directly or indirectly interested and which involved—

any subject matter concerning which he had any responsibility—

during the period of his Government employment. Presumably, the term "former employee" would include members as well as the staffs of the various agencies. There is some doubt, however, as to whether the phrase "in any agency" would include employees of the executive departments. These employees are specifically covered by sections 103 and 104 of H.R. 2157, which are comparable to section 207 of this bill. We therefore recommend that proposed section 207 be clarified in this respect so as to leave no doubt as to the intended scope of its application.

It appears to us that this paragraph would bar former members and senior staff members of the Interstate Commerce Commission from ever representing any person on matters concerned with surface transportation. The disqualification applies not only to particular proceedings in which the employee had any responsibility, but also to any case or proceeding "involving any subject matter concerning which he had any responsibility." In the performance of their duties over a period of time, former members and staff members of the Commission, would have been involved, in some way, in every aspect of the Commission's work. It is, therefore, doubtful whether there would be any "subject matter" in the area of surface transportation concerning which they had not had some responsibility.

Considering that a lawyer, and in some instances a nonlawyer, who has spent some years as a member or employee of this Commission becomes a specialist in transportation matters, we believe it readily apparent that this paragraph, as presently drafted, would impose an exceedingly heavy financial penalty upon prior service with the Commission. It is our view that the provisions of this paragraph should go no further than to prohibit any former member or employee from appearing in a representative capacity in connection with any particular matter upon which he acted in an official capacity.

The CHAIRMAN. In other words, you agree with the previous witness that the language is too broad?

Mr. GOFF. I think it is. I think what you intend to cover is something that he has passed on upon the merits, some specific matter he has acted upon. And on that I agree, that he should, I think, as a matter of policy, be forever barred from participation.

Under the second paragraph of this proposed section, former members and employees would be prohibited from participating in any case or proceeding involving any agency of which he was a member or by whom employed for a period of 2 years after the termination of his Government employment. The prohibition here applies to any case or proceeding—

in which the United States is a party or directly or indirectly interested, and involves an agency in which he was employed * * *.

We assume that the words—

in which the United States * * * is directly or indirectly interested—

are intended to include not only the financial interests of the United States but its governmental interests as well.

And I might interpolate by saying the Government has some interest. For instance, in the granting or not granting of an application for a certificate of convenience and necessity to operate a truckline to some place in the United States. There is some governmental interest, or it would not by law be required to be handled by a regulatory body.

If this is true, then this paragraph would constitute an absolute bar to a former officer or employee appearing before the agency by which he had been employed for a period of 2 years after his employment had ceased.

The effect, as in the case of the first paragraph, would be to impose an inordinate financial penalty, in most cases resulting in economic hardship, on prior service with the Commission. Although the bar is for 2 years only, rather than forever, nevertheless for that period of 2 years only persons with independent means could afford to accept appointment to, or employment with the Commission.

We believe, therefore, that if the first paragraph were to be enacted in its present form, and if the second paragraph were to be enacted at all, the effect would be to deprive the public of the services of a class of specialists generally better qualified than others who have not had the benefit of experience in Government service. At the same time, the efforts of the Government to recruit capable personnel would very likely be hampered, since it seems clear that many qualified prospective employees would be quite reluctant to seek, or to accept, Government employment under the postemployment restrictions imposed as conditions of employment with the Government.

Accordingly, we suggest the elimination of the second paragraph of this proposed section.

The CHAIRMAN. Just a minute, Commissioner. Counsel wishes to ask a question.

Mr. HARKINS. Mr. Goff, with respect to section 207, does the Commission object to the lifetime ban that would operate against former employees dealing in any matter with which they were directly connected?

Mr. GOFF. No, we have no objection to that. We think that if it is a matter, a particular matter, in which they were directly connected, or in which they had passed on the merits that, as I stated to the chairman, there are strong reasons of public policy why they should not ever have a right to participate concerning them.

Mr. HARKINS. Then your objection is to the words "had any responsibility" as being too broad, is that right?

Mr. GOFF. Yes; it is. I would not object to the 2-year ban on a matter for which they had real responsibility. But it seems to me that it ought to be confined to something that they directly passed on, that they had some active participation in. It should be a specific and particular matter and not just confined to the subject matter. Because the subject matter is, I think, too broad a term.

Mr. HARKINS. Where they did have a personal, direct responsibility, and were directly connected with that matter, the lifetime ban is appropriate?

Mr. GOFF. I think it would be.

Mr. HARKINS. Thank you.

Mr. GOFF. Proposed section 208 is based on present section 434 of title 18, which prohibits Federal officers and employees from transacting business enterprise in which they have a direct or indirect interest. Under the new section, the coverage of the present law would be extended to include employees on leave of absence from their private employment and employees of Government-owned corporations. The present prohibition would also be extended to include recommending or advising with respect to any such transaction.

The changes here proposed appear to be desirable, and we are unable to see that they would impede the effective functioning of our Commission.

In fact, the Interstate Commerce Act already contains provisions prohibiting its members and examiners from having an interest in any railroad, motor or water carrier, or other form of transportation. Under other provisions of that Act, Commissioners and employees are prohibited from participating in any hearing or proceeding in which they may be pecuniarily interested. (See 49 U.S.C., secs. 11, 17(3), and 205(i)).

Proposed section 209, which would be substituted for present section 1914 of title 18, would broaden and make more uniform existing law forbidding the payment or receipt of salaries from private sources for services performed for the Government by Government officers and employees. At present, for example, private persons or business entities are prohibited from supplementing or making contributions to Government salaries for services performed for the Government. Government officials and employees, on the other hand, are prohibited only from receiving salaries from private sources.

The proposed new section would make these provisions uniform by providing that the receipt of lump-sum payments, which supplement salary although not in and of themselves salary, are also forbidden. The prohibitions in the proposed new section would also be made expressly applicable to Members of Congress. Resident Commissioners, and officers, agents, and employees of all three branches of the Government. This would make its coverage coextensive with proposed section 203.

Now, a Member of the Congress is in a different situation from other Government officials. If he is to remain in office he must come up for reelection. The proposed section covers payments which "in any way supplements the salary of, any such a Member."

Could this include campaign contributions? If so, in this day of expensive campaigns, succession in office, for all practical purposes, would by this enactment be confined to those of great wealth. Of course, you would have no such intention.

Mr. MALLETZ. Mr. Goff, I believe section 209 of the bill applies only to the receipt of salary, or any contribution to or supplementation of salary in connection with services as a Government official or employee. In other words, the crucial term is "in connection with" which is the same as the term in present section 1914 of title 18, United States Code. Is that correct?

Mr. GOFF. Well, it seems to me that it leaves some question, and it would be easily avoided by a slight amendment.

You see, I do not believe we can take any chance on this because I have experienced myself the difficulties of a campaign for reelection, and I think that clearly ought to be excluded.

Mr. ROGERS. What you mean is that a contribution made to a Member, of course, by corporations is prohibited, but if a contribution is received, and it probably is not a supplement of his salary, that nevertheless it is used in the performance of a noble purpose, to bring about his reelection.

Mr. GOFF. Well, the difficulty with supplementation is, you see, down here further it says "in any way supplements." That is a pretty broad term. And in a larger sense, I suppose that anything that a Congressman receives in a monetary way does supplement his salary.

Mr. ROGERS. Well, as an example, throughout the term of 2 years that we occupy the position, we may have been called upon by some deserving person to intercede on their behalf and see that justice is done. And whatever the request was that was made, the constituent was satisfied.

Now are you fearful that when the next campaign comes along, that you will have a campaign committee say, "Look, expenses are great, would you like to donate over there and help take care of those expenses," that there is a possibility that this law would make that a crime for the Member to accept it? That is what you are getting at, isn't it?

Mr. GOFF. That is what I am getting at, and I am also concerned, as a practical matter—after all, you expect help from your friends who are satisfied with your service, and I would want to avoid any possibility that someone could say, "Well, I should not make a contribution. I am facing a criminal statute here."

Mr. ROGERS. That is right. What you want to do is clear it up?

Mr. GOFF. That is right. Here you are drafting a law, why not remove any possible question? And there would always be the question then they would say, "Well, I think he did this, I think that supplemented his salary." Well, why put him in that position?

Mr. ROGERS. Thank you, sir.

Mr. GOFF. Proposed section 218 is derived from present section 216 empowering the President to declare void any contract or agreement entered into in violation of its terms. Under the proposed new

section, the President or, under such regulations as he may prescribe, the head of the agency involved, would be authorized to void or rescind transactions, agreements, or benefits entered into or obtained in violation of the bribery, graft, or conflicts of interest laws. In addition, the Government would be entitled to recover the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof.

We are in complete accord with the principle here involved. It is our view, however, that it would be more desirable to provide that such action may be taken by the particular department or agency. Ordinarily, they would be closer to the situation and therefore in a better position than the President to determine whether such action would best serve the public interest. Furthermore, an independent agency such as the Interstate Commerce Commission does not function under the direction of the President.

With regard to the overall aims and purposes of H.R. 2156, we feel that it would have a salutary effect on all phases of Government activity. Therefore, except as I have otherwise stated with respect to particular provisions, the Commission would have no objection to its enactment. In fact, we would favor it.

H.R. 2157

The express purpose of H.R. 2157 is to implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government. In short the bill would establish a code of official conduct for Government officers and employees by adding a new title II at the end of the Administrative Procedure Act.

Sections 101 and 102 of proposed title II refer to the "executive branch" and to officers and employees "in the executive branch," respectively. If it is intended that H.R. 2157 apply to members and employees of independent commissions we suggest that more comprehensive terms be used. The comments that now follow are on the assumption this is contemplated.

Conduct which would constitute "improper conduct for any officer or employee in the executive branch of the Government" is defined in section 102(a)(1) as the acceptance, directly or indirectly, of any gift, favor, or service from any person outside the Government with whom he transacts business on behalf of the United States or whose interests may be substantially affected by his performance of official duty. This broad definition raises a question as to whether the Congress intends to prohibit, as improper, the acceptance of minor amenities. We, at the Interstate Commerce Commission, have no objection if Congress desires to prohibit the acceptance, for example, of a modest lunch or a souvenir ashtray.

The CHAIRMAN. How about a vicuna coat?

Mr. GOFF. I hardly think that would in the ordinary social amenities, Mr. Chairman.

If, on the other hand, the Congress does not wish to make the prohibition all inclusive, an alternative would be a modification prohibiting as improper conduct the acceptance of any substantial gift, favor, or service. For example, paragraph 3 of the Commission's restatement of ethical principles reads as follows:

Members and employees of the Commission should not accept any loans or substantial gifts or favors from persons subject to regulation by the Commission, or who have a pecuniary interest in a matter pending before the Commission, or who represent others before the Commission. They should not accept from such persons unusual hospitality which is unwarranted by the personal relations of the parties.

The Federal Government employs many persons possessing specialized knowledge or skills, the demand for which is limited to a relatively small segment of private industry. Section 102(a)(2) of this bill would label it improper conduct for an officer or employee of the Government "to discuss or consider his future employment with" the described person outside the Government. The effect of this provision would be to prohibit such officers and employees from considering legitimate offers of employment with carriers, shippers, or any law firm handling transportation matters since their "interests may be substantially affected by his performance of official duty." An additional effect arising from this provision might well be the creation of a serious handicap to the effective recruitment for public service of persons possessing specialized knowledge or skills. We all know that a very real problem may arise in the way of a conflict of interest when a Government employee negotiates for private employment. We would recommend, therefore, that this provision in the bill be amended to require that Government employees refrain from transacting business on behalf of the United States with persons outside the Government with whom they are negotiating for employment. This is the approach which has been taken at the Commission. Paragraph 5 of our restatement of ethical principles read as follows:

If a member or employee of the Commission entertains a proposal for future employment by any person subject to regulation by the Commission, such member or employee should refrain from participating in the decision of any matter in which such person is known to have a direct or substantial interest, both during such negotiations and, if such employment is accepted, until he severs his connection with the Commission.

Mr. MALETZ. Mr. Goff, several weeks ago an article appeared in the newspapers to the effect that an examiner at the Interstate Commerce Commission was entertained by a counsel who was to appear before that examiner in a litigated matter. If I recall, too, the article indicated that the counsel drove the examiner to the place of the hearing, some few hundred miles from Washington, and socialized extensively with the examiner throughout the course of this hearing. Did that case ever come to your attention?

Mr. GOFF. Yes, it did. I think there was something in the papers about it, and it was the occasion for a memorandum that was sent to all of our employees and examiners.

Now in this case we did not feel—he was examined about the matter—that it had any effect upon his decision. Yet, it was the appearance of the thing that disturbed us.

Mr. MALETZ. What action does the Commission take in a case of this kind?

Mr. GOFF. Well, in that particular case I believe a letter of admonition or reprimand was sent him, and we did cite it, without citing the name, and referred to it, and sent to all our personnel the statement of ethics that was adopted by the Congress, a statement of our reaffirmation of ethical principles. And I believe there was some other statement that was sent along, "Standards of Conduct for Ein-

ployees." That was another official publication—a directive, put out by the Commission.

We thought the circumstances were such that it ought to be brought to the attention of all our employees, and we simply cited it and said we felt that the appearance of evil, though not in those words, was something that should be avoided. In other words, here is an examiner who went out and, like a judge, he was performing a quasi-judicial function, and it seemed to us that the fellow on the other side—I do not know the circumstances, but you can understand that if he were a man of small means, and saw the examiner ride up with the attorney for the other side and socialize with him, we felt that it would give him the impression, "Well, what is the use, I cannot afford to give this entertainment to the man who in effect is judging the case." We thought it made a bad appearance and reflected on the Commission.

Commissioner Arpaia reminds me that we also notified the party, the opposing party, that if he entertained any doubt about it we would be glad to have a rehearing of the matter. I do not believe, though, that he requested it.

MR. ARPAIA. No.

Mr. Goff. Now that was a directive that was sent out, intended merely as an internal memorandum. But of course someone did give it to the newspapers and it served to, we felt, emphasize to our employees the necessity of avoiding even the appearance of evil.

And it also accomplished this, that we sent all of them a set of these various statements so that no one hereafter could say that they were unaware of it.

We also said that persistence in such conduct would, of course, warrant dismissal.

Of course I am also reminded that in the case of even a hearing examiner the Civil Service Commission would have charge of any complaint or any charges that were filed against him. We did say that it would be the subject of preferring charges before the Civil Service Commission.

Mr. MALETZ. Did the Civil Service Commission actually take any action in this particular matter?

Mr. Goff. No, it was not brought to their attention officially.

We are in complete agreement with the obvious purpose of section 102(a)(3) which makes it improper conduct for any officer or employee "to become unduly involved, through frequent or expensive social engagements with" the described persons outside the Government. We do believe, however, that it should be made clear that this is not intended to prohibit, between friends, the reciprocal hospitality which constitutes the only basis upon which a gentleman will allow himself to be entertained.

Accordingly, we would suggest that this clause be phrased in such terms that the test would be entertainment or hospitality unwarranted by the personal relationship between parties.

And I might add also on the question just asked me by counsel, that we did not consider that there was any widespread action of this kind, and we stated in our memorandum that it was for those few who might be tempted to any misconduct of this kind.

And I think I ought to say also that from my experience in Government there are far more people whom no base motive could touch than some people might be led to believe from reading the papers.

We made it very plain that we did not consider it applied to all of them, but it was an example of conduct that we thought was very unwise.

Under the provisions of section 102(e) an officer or employee would be prohibited from participating in certain activities on behalf of the United States when those activities "affect chiefly a person" by whom he has been employed or with whom he has had any economic interest within the preceding 2 years. The clause "which affects chiefly a person" sharply limits the scope of this provision and would thus not constitute an impediment to the effective functioning of the Interstate Commerce Commission. There may be other areas however in which such a prohibition might preclude the United States, especially in time of an emergency, from utilizing the services of some person or persons with unique knowledge or skills.

We believe that section 102(f), which makes it improper conduct for any officer or employee "to fail to conduct his personal and official affairs so that no reasonable suspicion or appearance of the violation of subsections (a) through (e) of this section can arise" are essentially superfluous in view of the other provisions of section 102. More importantly, however, is the fact that, when read with section 107(a)(1), more suspicion or appearance of a violation would become a basis for the dismissal of a Government officer or employee.

We strongly urge the deletion of subsection (f) of the present section 102.

The provisions of sections 103 and 104 of this bill are, in substance, comparable to those in section 207 of H.R. 2156. My observations respecting section 207 are, therefore, equally applicable to sections 103 and 104, and I shall not consume the subcommittee's time by repeating them.

Section 105 would impose on persons outside the Government standards of conduct corollary to those prescribed for Government officers and employees in sections 102, 103, and 104, and my comments on those sections would apply also to the corresponding provisions of this section. Again, therefore, in the interest of conserving time, I shall not repeat those observations.

Section 106 would make it improper conduct for any party or his representative to consult with, advise, or make any written or oral presentation to any agency member or employee concerning any question of law or fact involved in any contested agency proceeding which has been designated for hearing, except upon notice and opportunity for all parties to participate. We certainly agree that it is improper for any party or his representative to make ex parte representations concerning the merits of a proceeding required to be determined upon evidence received in a hearing—either to hearing examiners or to agency members and those employees who assist in the final determination of such proceedings.

Caution must be exercised, however, in adopting language prescribing such conduct, since it might otherwise lead to undesirable

and unintended results. The prohibition in section 106, for example, would be applicable to such communications addressed to any employee of the Commission. Since there are some proceedings in which the Commission is represented by attorneys, we feel that in such cases the parties and their representatives should be free to discuss with such Commission attorneys and investigators the handling of these cases.

Since the provisions of H.R. 2157 would become a part of the Administrative Procedure Act, it is assumed that the term "agency proceeding" as used in section 106 would be given the meaning set forth in section 2(g) of that act, as including both adjudication and rule-making. We feel that this is too broad, and earnestly urge that the prohibition be made applicable only to proceedings in which the agency's decision is required by law to be based solely upon the evidence received in a hearing.

The effect of this change would be to exclude cases of rulemaking in which the Congress has not required rules, such as motor carrier safety rules, to be based solely upon evidence received at a hearing. This is important since the Commission would remain free to obtain information from any source in promulgating such rules, which are truly legislative in character, without being so judicialized as to cut off valuable sources of information.

I have no particular observations to make with respect to section 107(a) which provides administrative sanctions for violations of sections 102 through 106, except that my comments on section 218 of H.R. 2156 would be equally applicable to paragraph (5) of this section respecting the cancellation of agreements or benefits procured as a result of improper conduct.

We are also not inclined to agree with the provision of subsection (b) requiring publication of findings in the Federal Register. It is our view that the Federal Register should be reserved, insofar as possible, for matters of general applicability and effect.

While, as I have stated, we are in general accord with the overall aims and purposes of these measures, we are unable, for the reasons I have given, to recommend enactment of H.R. 2157 in its present form.

H.R. 7556

This bill would add four new subsections to present section 284 of title 18, which forbids former Federal employees from prosecuting, for a period of 2 years following the termination of their Government employment, any claim against the United States involving any subject matter directly connected with their former employment. Proposed new subsections (b) and (c) would broaden this prohibition considerably.

Under subsection (b), persons and "concerns" would be precluded from hiring former Federal employees who had within a 2-year period prior to the termination of their Government service, dealt with a claim against the Government by the prospective employer or with such employer's business. This provision is broader than the present law in that it would bar the hiring of such former employee in any capacity whatsoever, and would include the "offer or promise" of employment.

In addition, the proposed new provision would apply to employees of "the Federal Government" which is much broader than the present prohibition against employees "in any agency."

In this connection we suggest, if the bill is favorably considered, that all subsections be made consistent in this respect either by amending present section 284, or by changing the provisions of H.R. 7556.

It is also not entirely clear what is intended by the use of the word "concern" in the bill. It is not defined, and could mean groups or associations as well as corporations and partnerships. We suggest that this uncertainty be removed either by defining the term "concern" or by employing different phraseology.

We also have some difficulty with the first proviso of subsection (b) excepting minor ministerial dealings from the prohibition, since the phrase "dealt with the claim" is subject to some question. There are, for example, circumstances in which individuals have responsibilities relating to procedure, and on which they may be said to have "dealt with" a claim, but which could not be said to be ministerial in nature.

We suggest, therefore, that this subsection be changed to provide that the prohibition shall apply to one who is involved, other than in a clerical or ministerial capacity, in the rendering of a decision on the merits in connection with such claim or transaction.

The second proviso of subsection (b), excepts regulations or orders of "general application." Under this language, the question arises as to whether, for example, orders relating to the rates of a particular carrier would be included within the prohibition. We therefore also urge that the bill be clarified in this connection.

Subsection (c) of the bill would prohibit a former Federal employee, for a 2-year period after the termination of his Government service, from accepting or promising to accept employment with any person, concern, or foreign government if, "within 2 years prior to his leaving the Government he had dealt with a claim of such prospective employer against the United States or with such employer's business."

Under this subsection an attorney for the Internal Revenue Service might pass on a corporate taxpayer's claim for refund of taxes 2 years and 1 month prior to his resignation from the Government. If the claim were still pending at the time of his resignation, it would appear that subsection (c) would not be a bar to the immediate offer or acceptance of employment with the taxpayer, or to the attorney's assisting in the prosecution of the taxpayer's claim. It appears to us that this is the very type of situation that is the target of these legislative proposals.

A more realistic approach, we believe, would be to prohibit any former employee from appearing in a representative capacity or assisting in connection with any particular matter with respect to which he had any responsibility or acted in an official capacity during his Government service. The prohibition would thus run to the subject matter which the former employee would be precluded from handling, rather than constitute an outright prohibition against employment in any capacity whatsoever.

To make it a crime to accept any sort of employment with the classes of employers embraced in subsections (b) and (c) for 2 years could result in the imposition of severe economic hardship on former

employees, and as I have previously stated, would hamper the Government's efforts to recruit capable personnel.

As to subsection (d), we are unaware of the reasons for excepting former employment with the Atomic Energy Commission or the Securities and Exchange Commission.

Under the provisions of subsection (e) penalties may be imposed upon "any person who violates subsections (b) and (c) of this section." The word "person" is not defined in the bill, and since subsection (b) also applies to any "concern," it would seem that the words "or concern," if defined, should be inserted after the word "person" in line 25 of page 2.

A technical reading of subsection (e) would require that a person violate both subsections (b) and (c) before any penalty could be imposed. Employer and employee being separate parties, neither could violate both subsections (b) and (c).

We suggest, therefore, that the word "and" at the end of line 25 on page 2 be changed to "or."

It is our view that the provisions of H.R. 7556 are overly harsh, and we therefore recommend against its enactment.

Please understand that it is not my intention to be over-critical. Actually the more I study the whole problem and consider the results sought to be attained the greater is my appreciation of the efforts of the drafters of the various legislative proposals. The comprehensive studies prepared by the subcommittee staff are extremely helpful. All who had a part in the making and publication of the studies certainly deserve commendation for a job well done.

Mr. Chairman, that concludes my prepared statement. If there are any questions the subcommittee may wish to ask, I shall be glad to try to answer them.

(Mr. Goff's prepared statement appears at p. 203.)

The CHAIRMAN. Commissioner, we are very grateful to you for your contribution. You have been very helpful and your statement is an excellent one.

The reports from the Interstate Commerce Commission on H.R. 2156 and H.R. 2157 will be placed in the record.

(The reports referred to follow:)

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., February 23, 1960.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN CELLER: Your letter of February 4, 1959, addressed to former Chairman Tuggle, requesting an expression of views on a bill, H.R. 2156, introduced by you, to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, has been considered by the Commission and I am authorized to submit the following comments:

The apparent purpose of H.R. 2156 is to consolidate, revise, and "tighten up" existing bribery, graft, and conflicts of interest laws in order to provide greater uniformity of language; eliminate inequities, both as to the application of such laws and the penalties provided; and to broaden their coverage so as to embrace conduct within the spirit, but not within the letter of present laws. This would be accomplished by repealing certain existing statutes and incorporating the provisions of others, either intact or with amendments, into 18 new sections (201 through 218) of title 18, United States Code, entitled "Crime and Criminal Procedure".

Proposed new section 201, which relates to bribery of public officials and employees, would be substituted for present sections 201 through 208 and 211 through 213 of title 18. The proposed new section would simplify and strengthen the existing law in a number of respects. Among other things, it would eliminate repetitious language, provide a universally applicable definition of bribery, expand the definition to include specifically "an emolument, profit, commission, loan, honorarium, advantage, benefit, position, employment, or opportunity," and extend its application to future delivery, conveyance, or procurement of anything that would constitute a bribe. Such extension of application would preclude the use of indirect, postponed, or intangible considerations to circumvent the intent and purpose of the bribery laws.

Under this proposed new section payment to and receipt by any public official or employee of anything of value "for" or "because of" an official act would be outlawed as bribery, notwithstanding the absence of any intent to influence or to be influenced by such a "reward" or expression of appreciation. This provision would have the effect of broadening and providing a more uniform application of several somewhat similar laws now applicable to Members of Congress and judges and officers of the judicial branch of the Government. Proposed section 201 would also prohibit payments to and receipts by a public official for the official act of another public official or for the exertion of influence upon the action of another public official. The purpose of this provision is, of course, to protect the public against the sale of the influence which one public official may have, by reason of his office, over other public officials.

The existing bribery laws would be further strengthened by proposed section 201 by including within its prohibitions payments to or receipts by public officials for actions purportedly, but not actually, performed by them, and by making its provisions applicable, except for the exercise of unlawful influence by one public official over another, to both former and prospective public officials as well as to those currently in office.

While this proposed section is a considerable improvement over existing laws relating to bribery, it is not entirely clear as to why payment to and receipt by a public official for influencing the official action of another public official should not apply to prospective public officials as well as to those in office, since a corrupt agreement could be entered into prior to the taking of office.

Proposed section 202, relating to bribery of witnesses, appears to be designed as a substitute for present sections 209 and 210 of title 18, which apply to the bribe-giver and the bribe-taker, respectively. This proposed section would rectify certain inconsistencies in the present law on this subject and make it clear that its provisions shall apply to witnesses before congressional committees and Federal agencies and commissions as well as to witnesses before the court. Payments to defray expenses actually incurred and the professional fees of expert witnesses are specifically excluded. The penalties provided are considerably more severe, however, than those under existing law, but conform to those which would be made applicable for bribery of public officials under proposed section 201. This proposed new section also represents, in our opinion, a commendable improvement over existing law.

Proposed section 203, relating to conflicts of interest, is derived from present section 281 of title 18. Under existing law public officials and employees are prohibited from receiving or agreeing to receive any compensation for services performed either by himself or by another before any department, agency, court martial, officer or any civil, military, or naval commission in connection with any "proceeding, contract claim, controversy, charge, accusation, arrest, or other matter" in which the United States is a party or is directly or indirectly interested. Proceedings before courts, the Congress, or congressional committees are not, however, embraced within its prohibitions. While Members of Congress, Resident Commissioners, and officers and employees of the Federal departments and agencies are included within its prohibitions, it does not apply specifically to congressional or judicial employees. Certain specific exemptions are provided with respect to retired officers of the Armed Forces and members of the National Guard of the District of Columbia.

Present section 281 also contains no prohibitions or penalties against the receipt of compensation for services purportedly, but not actually, rendered; against preemployment or postemployment receipts for services rendered during Government employment; nor is there any provision for the imposition of penalties against payors of the prohibited compensation. On the other hand, however, acceptance, while in the Government service, of compensation for services fully

and legitimately performed prior to entry into the service fails within the present prohibitions. The present section also contains no provision expressly excepting persons acting in the discharge of their official duties; i.e., it fails to specify that only compensation from private sources is prohibited.

Proposed section 203, which would be substituted for present section 281, would eliminate the aforementioned inequities and at the same time would make its provisions applicable to the omissions set forth above, except that the present exemption of services before courts, the Congress, and congressional committees would be continued. In addition, under the proposed new section, the violation would turn on the status of the recipient at the time of the rendition of the services, instead of, as now, upon his status at the time of the agreement or receipt.

The present exemptions in section 281 respecting retired officers of the Armed Forces and members of the National Guard of the District of Columbia would be omitted in proposed new section 203, but would be reenacted, with certain additional restrictions, in proposed section 206.

The changes which would be effected by the enactment of section 203 are, in our opinion desirable. We have some reservations, however, with respect to continuing the exemption of proceedings before the courts, the Congress, and congressional committees. The principle involved is the same whatever the forum. It is our view, therefore, that the prohibitions in this section be made applicable to all proceedings in which the Government is a party or has an interest irrespective of forum.

Proposed section 204, which would prohibit Members of and Delegates to Congress from practicing before the Court of Claims, is identical to present section 282 of title 18, and appears to have been included in the bill only for the purpose of editorial continuity.

Proposed section 205 is derived from present section 283 of title 18. Under the present section officers and employees of the United States or of either House of the Congress are prohibited, except in the discharge of their official duties, from prosecuting or assisting in the prosecution of any claim against the Government, irrespective of forum. Receipt of any gratuity, or share of or interest in any such claim for assisting in the prosecution thereof, is also prohibited. Members of the Congress and Resident Commissioners are not specifically included within the prohibitions; nor are judges or officers and employees of the judicial branch specifically mentioned. Certain specific exceptions are made, however, with respect to retired officers of the Armed Forces and members of the District of Columbia National Guard.

Under the proposed new section there would be added to the present prohibitions, the aiding or assisting of "anyone before any department, agency, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, contract, *claim*, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested." [Emphasis supplied.] This corresponds to the category of activities for which the receipt of compensation would be prohibited under proposed section 203. We believe, however, that this additional language is somewhat confusing since under the original language, which would be retained, the prosecution of "claims" against the Government is forbidden, irrespective of forum, whereas under the added language the prohibition against aiding or assisting in the prosecution of "claims" would not apply to proceedings before a court or congressional committee. In our view, the activity forbidden under the added language is broad enough to embrace the activity forbidden in the first instance. The question arises as to whether the activities proscribed are to be forbidden regardless of forum or only where they occur before a forum other than a court or congressional committee.

Consistent with the view expressed with respect to proposed section 203, we are of the opinion that since the principle involved is the same, the prohibitions should apply regardless of forum. In addition, since that portion of the proposed section 205 forbidding the receipt of any gratuity, share, or interest "in any such claim would appear to be covered by the provisions of proposed section 203, if our other suggested changes are favorably considered, it might well be eliminated."

Specifically excepted under the proposed new section 205 would be the uncompensated assistance to a fellow employee who may have become subject to disciplinary proceedings involving possible removal or suspension from his position. We believe this exemption is sound and favor it. The existing

exceptions with respect to retired officers of the armed services and members of the District of Columbia National Guard would be omitted from this proposed new section, but would be incorporated in proposed section 206.

This proposed new section would effect no change respecting applicability of the prohibitions to Members of and Delegates to the Congress and Resident Commissioners. Whether the particular relationship between such persons and their constituents is such to justify permitting them to engage in most of the activities forbidden to others, so long as no compensation is received therefor, involves a policy consideration on which we express no opinion. It is noted, however, that proposed section 204 would continue to forbid Members, Delegates, and Resident Commissioners from practicing in the Court of Claims, and to that extent activity on their part in connection with claims against the Government would be forbidden. The proposed new section would also effect no change respecting the applicability thereof to judges and officers and employees of the judicial branch. In this connection, it is suggested that it be made clear that the section would apply to such persons.

Proposed section 206(1), which is a revision and restatement of exceptions applicable to retired officers of the Armed Forces and members of the District of Columbia National Guard, is not of direct concern to this Commission. However, we favor this exemption since Commission personnel may well fall within its provisions. We believe section 206(2)(A) is too broad. It is unlimited in duration, and what is said with regard to proposed section 207 is equally applicable to section 206.

Proposed section 207 is derived from present section 284 of title 18 of section 99 of title 5 of the United States Code. The first paragraph of the proposed new section would prohibit any former employee of any agency of the United States, including anyone formerly assigned to duty in such agency as a commissioned officer, from knowingly acting as an agent or attorney for, or aiding or assisting anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the Government is a party or is directly or indirectly interested involving any subject matter concerning which he had any responsibility while so employed or assigned to duty. While not specifically so stated, it is presumed that the term "former employee" would include members as well as the staffs of such agencies. On the other hand, the use of the phrase "in any agency" would seem to exclude former officers and employees of the executive departments. It is suggested, however, that the proposed section be clarified in this connection so as to leave no doubt as to the scope of its application.

We believe that the effect of this section would be to bar, for example, any former member or senior staff member of this Commission from ever representing any person on matters concerned with surface transportation, for the disqualification applies not only to particular proceedings with respect to which such member or employee had responsibility, but also to any case or proceeding "involving any subject matter concerning which he had any responsibility." Performance of their duties by former members and former senior staff members of this Commission would, over a period of time, have involved them in some way in every aspect of the Commission's work so that there might be no "subject matter" in the area of surface transportation concerning which they had not had some responsibility. When it is considered that a lawyer, and in some instances a nonlawyer, who has spent some years as a member or employee of this Commission becomes a specialist in transportation matters, it is apparent that proposed section 207, as presently drafted, would impose an exceedingly heavy financial penalty upon prior service with this Commission or any regulatory agency of a similar type. In our opinion, the provisions of this section should go no further than to prohibit any former member or employee from appearing in a representative capacity in connection with any particular matter with respect to which he had any responsibility or acted in an official capacity.

The second paragraph of proposed section 207 is likewise concerned with activities of former members and employees of agencies, and would prohibit participation by any such person in any case or proceeding involving any agency of which he was a member or by whom employed, for a period of 2 years after the termination of his Government employment. As in the first paragraph of this proposed section, the bar would apply to any case or proceeding "in which the United States is a party or directly or indirectly interested, and which involves any agency in which he [the member or employee] was employed * * *." It is assumed that the words "in which the United States * * * is directly or

indirectly interested" are intended to include not only the financial interests of the United States, but its governmental interests as well.

If this assumption is correct, then the impact of this paragraph would be to place an absolute ban on a former member or employee appearing before his former agency-employer for a period of 2 years after his employment had ceased. Here, as in the case of the first paragraph, the effect would be to impose a crushing financial penalty, in some cases resulting in economic hardship, upon prior service with this Commission or any similar agency. Although the bar here imposed is only 2 years rather than for life, nevertheless, even for that period, only persons with independent means could afford to accept appointment to or employment with this Commission.

If the first paragraph is enacted in its present form, and if the second paragraph is enacted at all, the public would be deprived of the services of a class of specialists generally better qualified than others who have not had experience in Government service. Moreover, the Government's efforts to recruit capable personnel are likely to be hampered, for it seems clear that many qualified prospective employees would be reluctant to seek or accept Government employment if the restrictions of these two paragraphs on postemployment activities were to become conditions of employment with the Government. We therefore suggest that the second paragraph of this proposed section be eliminated.

Proposed section 208 is based on present section 434 of title 18 prohibiting Federal officers, agents, and employees from transacting Government business with private business enterprises in whose profits they have any direct or indirect interest. The proposed new section would extend the coverage of the existing statute to include employees on leave of absence from their private employment and to employees of Government-owned corporations. It would also extend the present prohibition to include recommending or advising with respect to a transaction of the Government with any such private business entity.

We do not believe that this proposed provision would impede the effective functioning of this Commission, especially in view of the fact that under the Interstate Commerce Act members and examiners of the Commission are now prohibited from holding any official relation to, owning any securities of, or being in any manner pecuniarily interested in any railroad, motor or water carrier, or other form of transportation. Other provisions of the act provide that no member of the Commission or employee shall participate in any hearing or proceeding in which he has a pecuniary interest.

Proposed section 209 is based on present section 1914 of title 18 which prohibits the payment or receipt of salaries from private sources for services performed for the Government. The proposed new section would broaden the application of the present law and make its restrictions more uniform.

At present, private persons or entities are prohibited from supplementing or making contributions to Government salaries for services performed for the Government. Government officials and employees, on the other hand, are prohibited only from receiving salaries from private sources for any such service. The proposed new section would make it clear that the receipt of lump-sum payments, which supplement salary although they may not themselves constitute salary, are also forbidden. Under the proposed new section the prohibitions therein would also be made expressly applicable to Members of or Delegates to the Congress, Resident Commissioners, and officers, agents, and employees of the three branches of Government, or of any agency of the United States. This would eliminate any uncertainty with respect to its application, and would make its coverage coextensive with proposed section 203, which it would implement.

Proposed section 218 has its derivation in the last paragraph of present section 216 pursuant to which the President may declare void any contract or agreement entered into in violation of its terms. Under the proposed new section, the President or, under regulations prescribed by him, the head of the agency involved, would be empowered to declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published in violation of the bribery, graft, or conflict-of-interest laws in chapter 11 of title 18, as revised and consolidated. In addition, to the prescribed penalties, the Government would be entitled to recover the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof.

While we agree, in principle, with this proposed section, we are of the view that it would be more desirable to provide that such action may be taken by the department or agency involved since the department or agency would ordi-

narily be closer to the matter and therefore in a better position than the President to determine whether such action would be in the best interest of the general public.

As to the overall general aims and purposes of this proposed measure, we believe that it would have a salutary effect on all phases of Government activity. Therefore, except as otherwise noted with respect to particular provisions, we would have no objection to its enactment.

Respectfully submitted.

JOHN H. WINCHELL, *Chairman.*

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., February 23, 1960.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN CELLER: Your letter of February 4, 1959, addressed to former Chairman Tuggle of the Commission, and requesting an expression of views on a bill (H.R. 2157), introduced by you, to implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government, has been considered by the Commission, and I am authorized to submit the following comments:

H.R. 2157 would establish a code of official conduct for Government officers and employees by adding a new title II at the end of the Administrative Procedure Act (5 U.S.C. 1001-1011), comprising sections 101 through 107. Section 101 provides that the new title may be cited as the "Code of Official Conduct for the Executive Branch," and in section 102 certain actions are referred to as being "improper conduct for any officer or employee in the executive branch of the Government." [Emphasis supplied.] If it is intended that the proposed code apply to members and employees of the independent commissions, as well as to the officers and employees of the executive departments, we suggest that such purpose be made clear, as by defining the term "executive branch," for the purpose of the proposed legislation, to include the independent agencies of the Government.

Section 102 defines conduct which would constitute "improper conduct for any officer or employee in the executive branch of the Government." Section 102 (a) (1) would condemn the acceptance by any officer or employee, directly or indirectly, of any gift, favor, or service from any person outside the Government with whom he transacts business on behalf of the United States or whose interests may be substantially affected by his performance of official duty. This all-inclusive proscription raises the question of whether the Congress desires to prohibit as improper the acceptance of minor amenities. It must be emphasized that we have no objection if Congress desires to prohibit acceptance of modest lunches or a souvenir ashtray under any circumstances. However, if Congress does not wish to go this far, an alternative would be to modify the provision so as to prohibit as improper conduct the acceptances of any substantial gift, favor, or service. As an example, the following is quoted from paragraph 3 of the Commission's "Restatement of Ethical Principles":

"Members and employees of the Commission should not accept any loans or substantial gifts or favors from persons subject to regulation by the Commission, or who have a pecuniary interest in a matter pending before the Commission, or who represent others before the Commission. They should not accept from such persons unusual hospitality which is unwarranted by the personal relations of the parties."

Section 102(a) (2) would provide that it shall constitute improper conduct for an officer or an employee of the Government "to discuss or consider his future employment with" the above-described persons outside the Government. The Government employs many persons possessing specialized knowledge or skills, the demand for which is limited to a relatively small area of private industry. These provisions would seem to prohibit officers and employees from considering legitimate offers of employment with any carrier, any major shipper, or any law firm handling transportation matters, since such firms or persons might be those "whose interests may be substantially affected by his performance of official duty." Also, we have no doubt that such a restriction could

create a further handicap to the effective recruitment for public service of persons possessing specialized knowledge or skills. We recognize that negotiation by Government employees for private employment could give rise to conflict of interest. Therefore, we recommend that the provision be amended to require Government employees to refrain from transacting business on behalf of the United States with persons outside the Government with whom they are negotiating for employment. The Commission has followed this approach in the following provision taken from paragraph 5 of its Restatement of Ethical Principles:

"If a member or employee of the Commission entertains a proposal for future employment by any person subject to regulation by the Commission, such member or employee should refrain from participating in the decision of any matter in which such person is known to have a direct or substantial interest, both during such negotiations and, if such employment is accepted, until he severs his connection with the Commission."

Section 102(a) (3) provides that it shall be improper conduct for any officer or employee "to become unduly involved, through frequent or expensive social engagements with" the above-described persons outside the Government. We agree entirely with the obvious purpose of this provision. However, we think it should be made clear that the quoted language is not intended to prohibit between friends the reciprocal hospitality which is the only basis upon which a gentleman will allow himself to be entertained. Accordingly, we suggest that the clause be phrased in terms of entertainment or hospitality not warranted by the personal relationship between the parties.

Section 102(e) provides that it shall be improper conduct for any officer or employee "to participate in any manner on behalf of the United States in the negotiation of contracts, the making of loans, the granting of subsidies, the fixing of rates or the issuance of permits or certificates, or in any investigation or prosecution, which affects chiefly a person (1) by whom he has been employed or with whom he has had any economic interest within the preceding 2 years, or (2) with whom he has any economic interest, or any pending negotiations concerning a prospective economic interest."

We realize that the scope of the quoted provision is sharply limited by the clause "which affects chiefly a person" etc. As thus limited, we cannot see that it would impede the effective functioning of this Commission. Nevertheless, we raise the question whether the prohibition against an employee's dealing with a person by whom he had been employed or with whom he had had any economic interest within the preceding 2 years, might prevent the United States, particularly in time of emergency, from utilizing the services of persons with unique knowledge and skills.

Section 102(f) provides that it shall be improper conduct for any officer or employee "to fail to conduct his personal and official affairs so that no reasonable suspicion or appearance of the violation of subsections (a) through (e) of this section can arise." We submit that the quoted provision is essentially superfluous in view of the preceding provisions of section 102. We also submit that it is dangerous in that, when read with section 107(a) (1), it would make mere suspicion or appearance of a violation a basis for dismissal of a Government officer or employee. We strongly urge the deletion of subsection (f) of section 102.

Section 103 would define as improper conduct participation at any time by any former officer or employee in any case or proceeding "in which the United States is a party or directly or indirectly interested and which involves a subject matter concerning which he had any official responsibility or officially acquired confidential information during the period of his Government employment." We believe that the effect of this section, as it stands, would be to bar, for example, the former members and senior staff members of this Commission from ever representing any person on matters concerned with surface transportation, for the disqualification therein applies not only to particular proceedings with respect to which such an officer or employee had official responsibility but to any case or proceedings "which involves a subject matter concerning which he had any official responsibility." Performance of their duties by former members and senior staff members of this Commission would, over a period of time, have involved them in some way in every aspect of the Commission's work, so that there might be no "subject matter" in the area of surface transportation of persons and property concerning which they had not had some official responsibility. When it is considered that a lawyer, and in some in-

stances a nonlawyer, who has spent some years as a member or employee of this Commission becomes a specialist in transportation matters, it is apparent that section 103, as presently drafted, would impose an exceedingly heavy financial penalty upon prior service with this Commission or any regulatory agency of a similar type. In our opinion, the provisions of this section should go no further than to prohibit any former member or employee from appearing in a representative capacity in connection with any particular matter upon which he acted in an official capacity.

Section 104 is likewise concerned with activities of former officers and employees, and it would define as improper conduct participation by any such former officer or employee in any case or proceeding which involves the agency by which he was employed, for a period of 2 years after his Government employment has ceased. The bar applies to any case or proceeding "in which the United States is a party or directly or indirectly interested, and which involves the agency in which he [the former employee] was employed." We assume that the words "in which the United States * * * is directly or indirectly interested" are intended to include not only the financial interests of the United States, but also its governmental interests as well. If we are correct in this assumption, then the impact of section 104 would be to place an absolute ban on a former officer or employee appearing before his former agency-employer for a period of 2 years after his employment therewith had ceased. Here, as in the case of section 103, the effect would be to impose a crushing financial penalty, in some cases resulting in economic hardship, upon prior service with this Commission or any other similar agency. Although the bar here is only 2 years rather than for life, nevertheless even for that period only persons with independent means could afford to accept appointment to, or employment with, this Commission.

If section 103 is enacted in its present form, and if section 104 is enacted at all, the public would be deprived of the services of a class of specialists generally better qualified than others who have not had experience in Government service. Moreover, the Government's efforts to recruit capable personnel are likely to be hampered, for it seems clear that many qualified prospective employees would be reluctant to seek or accept Government employment, if the restrictions of sections 103 and 104 on post-employment activities were to become conditions of employment with the Government. We would therefore suggest the elimination of section 104.

Section 105 would impose upon persons outside the Government standards of conduct corollary to those prescribed for Government officers and employees in sections 102, 103, and 104. Accordingly, the comments which we have set forth above with respect to some of the provisions of those sections are equally applicable to the corresponding provisions of section 105.

Section 106 would provide as follows:

"It shall be improper conduct for any party to a contested agency proceeding which has been designated for hearing, or his representative, or any person on his behalf, to consult with, advise, or make oral or written presentation to any agency member or employee concerning any question of law or fact involved in the proceeding, except upon notice and opportunity for all parties to participate."

We certainly agree that it is improper for any party or any person representing a party to make ex parte representations concerning the merits of proceedings which must be determined upon the evidence received in a hearing, either to hearing examiners or to members of the Commission and those employees of the Commission who assist it in the final determination of such proceedings. However, we suggest that unless such a provision is drafted precisely, it may very well have results not intended by its proponents. For example, the prohibition of section 106 would be applicable to such communications when addressed to any employee of the Commission. In certain proceedings, the Commission is represented by attorneys. In such cases, we believe that parties and their representatives should be free to discuss with such Commission attorneys and investigators the handling of the cases.

The prohibition of section 106 is applicable "to a contested agency proceeding which has been designated for hearing." Since the "Code of Official Conduct" proposed by H.R. 2157 would be a part of the Administrative Procedure Act, we assume that the term "agency proceeding" will be given the meaning set forth in section 2 (g) of that act, as including both adjudication and rulemaking. We recommend that any such prohibition should be made applicable only to proceedings in which the agency's decision is required by law to be based solely upon the evidence received in a hearing. The result of our proposed change

would be that in cases of rulemaking in which Congress has not required rules to be based solely upon the evidence received at a hearing, such as motor carrier safety rules issued pursuant to section 204 of the Interstate Commerce Act (49 U.S.C. 304), the Commission would remain free to base such safety rules not only upon information received from interested persons in rulemaking proceedings pursuant to section 4 of the Administrative Procedure Act but also upon information received in other ways. It is particularly important in formulating such rules of general applicability, which are truly legislative in character, that the procedure of regulatory agencies should not be so judicialized as to cut off valuable sources of information.

Generally, we have no comment as to the provisions of section 107(a) which provide administrative sanctions for violations of sections 102 through 106 of the bill. However, we are not inclined to agree with the requirement of section 107(b) for the publication of findings in the Federal Register, since it seems to us that the Federal Register should be reserved, so far as possible, for matters of general applicability and effect.

It is suggested that the committee may wish to give consideration to H. Con. Res. 175, entitled "Code of Ethics for Government Service," adopted during the 2d session of the 85th Congress, with a view toward making clear whether H.R. 2157 is intended to supplement or to supersede H. Con. Res. 175.

For the reasons set forth above, we do not recommend enactment of H.R. 2157 in its present form.

Respectfully submitted.

JOHN H. WINCHELL, *Chairman.*

Mr. GOFF. Thank you.

The CHAIRMAN. There being no questions, the committee will now adjourn until tomorrow morning at 10 o'clock.

Thank you very much.

(Whereupon, at 12:20 p.m., a recess was taken, to reconvene at 10 a.m., Thursday, February 25, 1960.)

(The statement referred to at p. 173 follows:)

STATEMENT OF ROBERT J. DODDS, JR., GENERAL COUNSEL, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman, members of the subcommittee, I am happy to have this opportunity to present the views of the Department of Commerce on H.R. 2156, H.R. 2157, and H.R. 7556. Accompanying me is Mr. Griswold Forbes who is in charge of Agency Inspection for the Department of Commerce.

The group of statutes commonly referred to as the conflicts-of-interest laws is composed of a conglomeration of enactments, criminal prohibitions, and specific and general exemptions going back about 100 years. We have never had a comprehensive body of statutes dealing with the conduct of officials and employees, such as is now being proposed, enacted into law. Our statutes in this field are a hodgepodge of overlapping, inadequate, and out-of-date prohibitions, limitations, and sanctions. No one seriously concerned with the integrity and efficiency of the public service can dispute the real need for corrective action.

The problems in this area and the need for their solution have been with us for some time. In varying degrees and from time to time they have engaged the attention of the committees of Congress and agencies of the executive branch as well as informed and expert groups outside of Government. The maintenance of high standards of conduct in Government has always been of the utmost concern to all our citizens.

We have reviewed the reports in which the staff of this subcommittee have dealt with the many troublesome aspects of our conflict-of-interest laws and the need for their improvement. We can appreciate the diligence, understanding, and sound judgment required for the preparation of these reports. We find ourselves in basic agreement with many of the views which have been expressed in them. The bills which you now have before you would carry out many of the recommendations of the staff reports. They are of vital importance to all of us as citizens and as public servants. They justify our most careful and thoughtful consideration.

We find ourselves in agreement with a good many of the proposals embodied in these bills. However, in some respects which I will go into in detail later on, we feel these bills go too far. We are particularly concerned that H.R. 7556,

In its present form, may unduly burden the Government service by penalizing conduct not necessarily in conflict with the conscientious and impartial performance of public duties.

It is of the utmost importance that in our efforts to correct existing inadequacies and confusions in our law, we do not create unnecessary pitfalls for the honest and devoted public servant or insurmountable obstacles for the conscientious citizen willing to offer his skill and talent to the public service. The scope and impact of Government upon our private activities and the complexity and variety of tasks to be performed in the public service have grown tremendously. From a few simply constituted departments performing relatively routine functions, there has evolved a complex maze of Government corporations, independent agencies, and integrated departments. These establishments are charged with the administration of laws and the operation and construction of facilities which touch upon virtually every aspect of the well-being and economic advancement of our citizens; the development of our States; and the security of our Nation. We regulate, promote, or finance almost every aspect of our economy; we operate and direct scientific and technical laboratories searching for knowledge in practically every branch of science; we buy and use vast quantities of almost every product turned out by our private enterprise; we construct and operate vitally needed facilities for almost every form of transportation; all this and more are now included among the functions our citizens have come to accept and expect from the Federal Government. To perform these functions the Government needs people—it needs people with intelligence, judgment, skill, experience, and training. Some of these people come directly from school to spend their entire working career in the Government service; others come to serve a period of years to gain experience which they know will be of value to them in furthering their careers outside the Government; others interrupt useful and profitable careers outside of Government to give their experience and skill to the public service intending to resume their private endeavors after a few years; and still others serve for short periods as consultants and experts sometimes with and sometimes without compensation from the Government. All of these are necessary if we are to maintain the vital link of understanding between the Government service and the public at large; if we are to avoid a sterile bureaucracy condemned to enforced mediocrity.

The jobs these employees may be called upon to perform may vary from the quasi-judicial determination of rights in the administration of regulatory laws to the encouragement and facilitation of the participation by our business enterprises in export trade. The degree of circumspection and aloofness required of the export licensing officer would be fatal to the successful accomplishment of the mission of the foreign trade specialist. The prohibition against payment of salary by an outsider in connection with Government service would have little, if any, effect upon the full-time employee; it may have serious consequences in connection with the recruitment and employment of unpaid consultants and advisers—necessary to such programs as those conducted by the Business and Defense Services Administration in assuring the readiness of industry for service to the Nation in time of emergency. These are some general examples of the conflicts which we must resolve in seeking to assure that the integrity of the Federal service is maintained without strangling its efficiency and competence. H.R. 2156 would enlarge the scope of the criminal laws against bribery, graft, and conflict of interest. In resetting these prohibitions, this bill takes account of the vastly increased diversity of Government actions and broadens the application of sanctions to areas heretofore held to be outside the scope of the phrase "claim against the United States." We agree that any bribery or graft in connection with determinations to be made on behalf of the Government by its officials or employees should be prohibited and punished. We agree that current law is in many respects inadequate. The provisions of H.R. 2156 would eliminate a good deal of these inadequacies. To the extent that it does this, we support its enactment. However, we are concerned that some of its provisions are so broad in scope that they may hinder the efficient conduct of the Government's business and serve as "traps for the unwary."

Section 205, for example, is a broad prohibition against any officer or employee assisting anyone before the executive branch in any matter in which the United States is a party or is directly or indirectly interested. This prohibition is not based upon any payment being made for such assistance. I don't think that Congress would intend that the employee of the Government not be available to assist the citizen involved in a proceeding before a Government agency. Such

assistance, so long as it is not inconsistent with the faithful performance of the employee's duties should be permitted. The exception in section 205 would make this possible only in the case of a person faced with disciplinary proceedings in connection with his Government position. What about the Government official who may advise an individual regarding the steps he needs to take to obtain a license, bid on a contract, seek redress for a claimed wrong, and many other of the situations in which the United States has an "interest." After all, the Government is not the antagonist of its citizens in every case in which its interest is involved. A person dealing with a Government agency or department can reasonably expect some assistance from the employees of the Government, and in many cases such assistance is clearly consistent with the faithful performance of duty. We believe that section 205 ought to be clearly limited so that Government employees may furnish necessary assistance without facing the possibility of criminal penalty for their diligence in serving the public.

Section 207 would forbid officers and employees changing sides in matters in which the United States has an interest. We have no quarrel with this principle, but we believe that this section as written goes too far. The second paragraph of this section would, we believe, be an unnecessarily broad restriction which would hamper recruitment of employees for the Government and would unduly restrict employees in seeking and obtaining useful employment outside the Government. A good example may be found in the case of the Patent Office. The Attorney General has ruled that the filing and prosecution of a patent application is a proceeding, "in which the United States is a party or directly or indirectly interested." The Patent Office is organized in about 70 separate divisions. Many able young engineers enter the Patent Office as examiners to gain valuable experience. They are assigned to one or another of the various divisions. During the period of their service, the Patent Office has the benefit of their useful and highly competent efforts. Many remain in the Patent Office, but a good many prefer, after a time, to seek careers outside the Government as patent attorneys or agents. If section 207 were enacted, these people would be barred from the practice of their profession for a period of 2 years. We don't believe that this result is necessary to protect the integrity of the Government service. It would practically bar from employment with the Patent Office all but those who propose to remain with the Government for the rest of their careers. The most likely result of such a situation would be to dry up what is now the most fruitful source of "new blood" for the staffing of the Patent Office.

This provision, if enacted, would seriously penalize Government employees generally by curtailing their opportunity for employment outside of Government. We think this result would be much too harsh; and that, rather than assuring the integrity of the Federal service, it would drive out the competent, diligent, and ambitious individuals who can best be expected to provide the Government with a high level of efficiency needed to serve the Nation. We believe that the result sought here could better be attained by regulations suited to the differing needs of the various departments and agencies. We can see no purpose, for example, in barring a former Patent Office employee from appearing before the Bureau of Public Roads in connection with a highway subsidy matter; or for a former employee of the Bureau of Foreign Commerce prosecuting a patent application; or a former Bureau of Standards employee seeking an export license. Many other similar examples can be cited. The complexity of Government organization and activity makes it virtually impossible to formulate a fair rule of general applicability in this area. We believe that this matter ought to be left to regulation by the individual agencies. An example of such regulation is found in section 341(g) of the Rules of Practice of the United States Patent Office which provides:

"(g) *Former examiners.*—No person who has served in the examining corps of the Patent Office, will be registered after termination of his services, nor, if registered before such service, be reinstated, unless he undertakes (1) not to prosecute or aid in any manner in the prosecution of any application pending in any examining division in which he served, on the date he left said divisions; and (2) not to prepare or prosecute nor to assist in any manner in the preparation or prosecution of any application of another filed within two years after the date he left such division, and assigned to such division, without the specific authorization of the Commissioner. Associated and related classes in other divisions may be required to be included in the undertaking or designated classes may be excluded. In case application for registration or reinstatement is made

after resignation from the Office, the applicant will not be registered, or reinstated, if he has prepared or prosecuted, or assisted in the preparation or prosecution of any such application as indicated in this paragraph."

Section 208 penalizes interested persons acting as Government agents. The scope of "interest" includes being "directly or indirectly interested in the pecuniary profits or contracts of any corporation * * *." We believe that the scope of this section is too broad. Interest in pecuniary profits may take a variety of forms from the ownership of stock in a highly diversified industrial enterprise to the ownership of a life insurance policy in a company heavily invested in the bonds of railroads, public utilities, or manufacturing enterprises. Government employees have savings which they may invest without their judgment in official matters necessarily becoming biased as a consequence. Much of such pecuniary interest is too remote to be a serious threat to the diligent performance of their jobs. Here again, however, the broad scope of the prohibition may constitute a trap which could be of serious consequence to the employee and yet not be of any real benefit to the efficiency or integrity of the Government service. We would prefer to see the purpose sought here achieved by a more realistic means. In most instances, a requirement for disclosure of interest which would give the agency head the authority to determine whether the employee's interest is sufficient to require that he be disqualified from acting would be enough. In any event, the scope of section 208 ought to be curtailed.

Section 209 restates and expands the coverage of the prohibition in section 1914 of title 18 which requires that the salary for Government services be paid by the United States. This provision poses no problem for the full-time Government employee. It would be a problem in the case of the part-time consultants and temporary employees—the w.o.c.'s and w.a.e.'s. The problem is now largely taken care of by the exemption authority Congress gave to the President in the Defense Production Act. In many areas these part-time consultants and temporary employees are a vital and necessary adjunct to the full-time Government employee in carrying out particular programs. The mobilization planning activities of the Business and Defense Services Administration are a good example. These activities must, if they are to be useful, be carried on in close cooperation with industry. This can best be achieved by the use of active industry officials willing to give some time to the Government service. The scope of their authority to make and participate in policy determinations is necessarily limited. So too must we limit their liability under the conflict of interest laws ordinarily applicable to Government employment. Congress has provided for these exemptions. We believe they ought to be continued.

To sum up, we favor the principles sought to be achieved by H.R. 2156. We believe that in some respects, however, particular provisions of this bill need to be modified. Such modification is necessary if we are to avoid going from the extreme of inadequate regulation to the extreme of excessive and unrealistic prohibitions.

Mr. Forbes will discuss the details of H.R. 2157 in connection with the program in the Department of Commerce which he supervises. We certainly agree with the objectives stated in the declaration of policy of this bill. We question the advisability of seeking to attain all these objectives by general legislation. The functions and responsibilities of officials and employees of the Government are too diverse to make it possible to legislate fairly on a general basis with regard to ethical conduct. This is a subject which we believe should be largely the responsibility of the individual agencies. Legislation should be limited to assuring that there is ample authority for agency executives to prescribe necessary rules and regulations within a broad framework prescribed by Congress and in keeping with the nature of the functions and responsibilities of their agencies.

H.R. 7556 deals with one subject—post-Government service employment. We believe that the prohibition it provides would work an unfair hardship upon employees of the Government. As I have already indicated, we do not believe it necessary to impose general restrictions of this type upon Government employees. Rather than protect the integrity of the Government service, we believe that H.R. 7556, if enacted, would seriously hamper recruitment and unfairly penalize the Government employee seeking to change his status. To the extent that restrictions of this nature may be needed to protect the integrity of the Government service, they ought to be left to the individual agencies. Insofar as employment or a promise of employment may be used to influence

the judgment of a public officer, the criminal sanctions against bribery and graft should be sufficiently broad to take care of the situation.

We find ourselves in general agreement with the objectives sought by this subcommittee. We favor enactment of H.R. 2156 provided it is modified to limit the unnecessarily broad scope of some of its provisions. We do not favor enactment of H.R. 2157 in its present form as a code of ethics to apply to all Government employees. We believe that many of the standards sought in this bill could be better attained by agency regulation. We are opposed to enactment of H.R. 7556.

I would be pleased to try to answer any questions you may have either now or upon completion of Mr. Forbes' statement. Thank you very much.

(The statement referred to at p. 175 follows:)

STATEMENT OF GRISWOLD FORBES, DIRECTOR OF AGENCY INSPECTION, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman, members of the subcommittee, generally speaking, we believe that problems of improper conduct as distinguished from criminal conduct can most appropriately be dealt with by administrative regulations and procedures of the agencies concerned, rather than by legislation. We see in this bill a legislative measure that can strengthen this approach by providing a basic foundation for administrative regulation, provided it is made clear that the bill is not intended to be a substitute for such regulation.

We heartily endorse the expression of congressional intent that, in the transaction of Government business, it is not enough for individuals to avoid indictable violations of criminal statutes; that basic ethical standards should apply to private individuals dealing with the Government, as well as the public servants with whom they deal; and that administrative sanctions should be available to back up the standards.

Your committee has already received copies of our departmental regulations on ethical conduct and conflict of interests, together with Bureau regulations which have special features. We believe that we already have the authority to make and enforce these regulations as to our own employees (5 U.S.C. 22). In actual practice, we have found these regulations as valuable for guidance purposes as for enforcement purposes.

Responsibility for administrative interpretation of these regulations is in the Director of Agency Inspection. Under this approach, we have been able to introduce what might be described as an informal "conflicts of interest advisory service." Our experience has been that most conflict of interest questions have arisen under the administrative regulations. Only a few have arisen under the statutes. This experience is the basis for our view that the criminal statutes, necessary as they are, are not effective in covering the majority of day to day questions of proper conduct and ethics. We would regard this bill as further strengthening this administrative approach to the problem of noncriminal but nonetheless improper activities.

We agree with the principles which lead to omission from the proposed bill of requirements for mandatory disclosure of income and financial interests and mandatory preapproval of outside employment. We would consider that this omission should not be regarded as showing a congressional intent that these devices not be used at all, but rather that they should be used only when and if appropriate in the discretion of the agency concerned. For example, in one Bureau, the Bureau of Foreign Commerce, mandatory preapproval of outside employment is the rule, since it has been regarded by the Bureau since 1948 as appropriate to their export control operation.

Turning to particular provisions of the bill, our comments follow.

SECTION 102, IMPROPER CONDUCT OF GOVERNMENT EMPLOYEES, AND SECTIONS 103 AND 104, CHANGE OF SIDES

We agree with the main outline of these sections in terms of subject matter covered, and subject matter left to the agencies.

As to the drafting details, we suggest that where these sections correspond to provisions in the criminal law they be keyed to make criminal conduct improper conduct as well. Then, by making such improper conduct subject to administrative interpretations and sanctions, the legislative foundation for administrative arrangements has been strengthened. This means that the final

drafting details of these sections should be related to the final outcome of the revision and recodification in H.R. 2156.

In these sections, some situations covered may involve the appearance rather than the actuality of improper conduct, for example: (1) discussion of future employment, section 102(a); (2) disqualification from official action in presence of certain private interests, section 102(e); and (3) representation of private interests by a former employee before his former agency where he had no actual official connection with the subject matter, section 104. We suggest absolute prohibition in such instances goes too far, and that such prohibition should be subject to waiver upon disclosure, and prior approval of the agency head or his designated representative.

SECTION 106, EX-PARTE CONTACTS

We agree with this section in principle, but suggest that the prohibition of ex-parte contact with "any agency member or employee" is too broad, and should be limited to agency employees directly involved in adjudicating a contested proceeding of the sort which is subject to section 5 on adjudication in the Administrative Procedure Act.

SECTION 107, ADMINISTRATIVE SANCTIONS

Whatever is done here as to dismissal of Government employees should be related to existing provisions on dismissals in the Lloyd-La Follette Act of 1912 and the Veteran's Preference Act of 1944.

As to the sanctions bearing on members of the public, we regard these provisions giving authority to agency heads as a constructive element of the bill. The procedures and arrangements for review of such actions are a topic beyond the scope of these comments.

In conclusion, our main constructive suggestion is this: That an explicit provision should be added to the bill making it clear that it is not intended to take the place of administrative arrangements in this field, but rather to strengthen the basis for such arrangements. This provision might appropriately make it mandatory for agencies to develop and issue administrative regulations and procedures to interpret and supplement the statute in a manner appropriate for each program concerned.

(The statement referred to at p. 190 follows:)

STATEMENT OF COMMISSIONER ABE MCGREGOR GOFF, MEMBER, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and members of the subcommittee, my name is Abe McGregor Goff. I am a member of the Interstate Commerce Commission, and am appearing today to testify on its behalf on bills H.R. 2156, H.R. 2157, and H.R. 7556. All three of these proposals are concerned with ethics in Government. Two of them would amend existing statutes relating to bribery, graft, and conflicts of interest, and the third would establish a code of ethics for officers and employees in the executive branch of the Government. With your permission, Mr. Chairman, I shall discuss these bills in their numerical order. Let me say at the outset, that we are in accord with the overall intent and purpose of these proposals.

H.R. 2156

The purpose of this bill, as we understand it, is to consolidate, revise, and "tighten up" existing bribery, graft, and conflict-of-interest laws, which are now scattered throughout some 30 sections of the United States Code. Mechanically, this would be accomplished by repealing certain existing sections and incorporating the provisions of others, either intact or with amendments, into 18 new sections (sections 201 through 218) of title 18 of the Code. In brief, the effect of the proposed consolidation and revision would be to provide greater uniformity of language in this part of the law, eliminate existing inequities in the application thereof, and the penalties provided, and broaden its coverage to include conduct within the spirit, but not within the letter of present laws.

Proposed new section 201 would simplify and strengthen existing laws relating to bribery of public officials and employees in the Federal Establishment.

This it would do by eliminating repetitious language, providing a universally applicable definition of bribery, and by expanding the definition to preclude the use of indirect, postponed, or intangible considerations to circumvent the intent and purpose of such laws. Payment and receipt of anything of value "for" or "because of" any official act would also be outlawed as bribery, notwithstanding the absence of any intent on the part of the giver or the taker to influence or to be influenced by such a "reward" or expression of appreciation. In addition, the proposed new section would make it clear that the bribery laws apply to receipts and payments for acts purportedly, but not actually, performed, and to receipts and payments for the official act of another public official or for influencing the act of another public official.

While we feel that the expanded coverage and other changes proposed in this section represent a considerable improvement over existing bribery laws, we believe that they could be further improved by making them apply to payments to and receipts by prospective public officials for influencing the official action of another public official. Conceivably, a corrupt agreement to this effect could be entered into prior to the taking of office. I suggest this could be covered by simply striking the words "him in" in line 1, page 4, of H.R. 2156, to broaden the intent.

Proposed section 202 is, basically, a consolidation of present sections 209 and 210 of title 18, prohibiting the bribery of witnesses. As consolidated and revised, it would be made clear that these laws apply not only to witnesses before the courts, but also to witnesses before congressional committees and agencies and commissions of the Federal Government. The proposed new section would also remove an inconsistency in the present law by making payments as well as receipts "for" or "because of" testimony unlawful, regardless of the intent of the parties. The payment of professional fees to expert witnesses, and reimbursement of reasonable expenses actually incurred by any witness would be specifically excepted. While the penalties proposed are considerably more severe than at present, they would conform to those proposed in section 201 respecting the bribery of public officials and employees.

In our opinion, the changes here proposed also represent an improvement over existing law, and we recommend their enactment.

The remaining provisions of this measure relate primarily to the conflict-of-interest statutes applicable to officers and employees of the Federal Government. Under present section 281 of title 18, from which proposed section 203 is derived, Members of Congress, Resident Commissioners, and officers and employees of the Federal departments and agencies are prohibited from participating, for compensation, in proceedings before the various departments and agencies of the Government in any matter in which the United States is directly or indirectly interested. The prohibition does not specifically apply, however, to congressional or judicial employees, nor is it applicable to proceedings before the courts or congressional committees. The present section also contains specific exemptions respecting retired officers of the Armed Forces and members of the District of Columbia National Guard.

Other conduct which falls outside the present prohibitions includes receipt of compensation for services purportedly, but not actually, rendered, and pre- or post-employment receipts for services rendered during the period of Government employment. The present law also fails to penalize the payor of the prohibited compensation. Oddly enough, however, the present law prohibits the acceptance, while in the Government service, of compensation for services fully and legitimately rendered prior to Government employment. The present law also contains no specific exception respecting persons acting in the discharge of their official duties; i.e., no distinction is made between the receipt of compensation from private or public sources.

The proposed new section would rectify these shortcomings and inequities in the present law, except that the exemption of proceedings before the courts, the Congress, and congressional committees would be continued. In addition under the proposed new section, the violation would turn on the status of the recipient at the time he rendered the services instead of as at present, upon his status at the time of the agreement or receipt. The exemptions respecting retired officers of the Armed Forces and members of the District of Columbia National Guard would be omitted from the new section, but would be reenacted, with certain additional restrictions, in proposed section 206.

The changes that would be effected by enactment of proposed section 203 are, we feel, desirable. We have some reservations, however, with respect to continuing the exemption of proceedings before the courts, the Congress, and con-

gressional committees. Since the principle involved is the same, we would favor making the prohibitions apply irrespective of forum.

Since proposed section 204 is identical to present section 282 of title 18, prohibiting Members of Congress from practicing before the Court of Claims, it appears to have been included in the bill at this point only for the purpose of editorial continuity.

Proposed section 205 would be substituted for present section 283 of title 18 under which officers and employees of the United States, including both Houses of the Congress, are prohibited, except in the discharge of their official duties, from prosecuting claims against the Government, irrespective of forum. Also prohibited is the receipt of any gratuity, or share of or interest in any such claim for assisting in the prosecution thereof. Members of the Congress and Resident Commissioners are not specifically included within the present prohibition. There is also no mention made of judges or officers and employees of the judicial branch.

The proposed new section would add to the present prohibitions the aiding or assisting of "anyone before any department, agency, court-martial, officer, or any civil, military, or naval commission in connection with the prosecution of any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter" in which the Government is directly or indirectly interested. [Emphasis supplied.] These additions correspond to the category of activities for which the receipt of compensation would be prohibited under proposed section 203. We find the additional language somewhat confusing. Under the original language, which would be retained, the prosecution of "claims" against the Government is forbidden, regardless of forum. Under the proposed new language, however, the prohibition against the prosecution of "claims" would not apply to proceedings before a court or congressional committee. Thus, as we see it, the activity forbidden under the proposed new language is broad enough to include the activity forbidden in the first instance. The question arises, therefore, as to whether the activities proscribed are to be forbidden irrespective of forum, or only where they occur before a forum other than a court or congressional committee. As I have already stated with respect to proposed section 203, since the principle involved is the same, we are of the view that the prohibitions should apply without regard to forum. Moreover, I might add that since that portion of proposed section 205 forbidding the receipt of any gratuity, share, or interest "in any such claim" would appear to be covered by proposed section 203, if the other changes which we have suggested are made, it might very well be eliminated.

The proposed new section 205 would specifically exempt uncompensated assistance to a fellow employee in a disciplinary proceeding involving possible removal or suspension from his position. We believe this exception is reasonable and favor it. The proposed new section, however, would effect no change respecting its applicability to judges and officers and employees of the judicial branch. It seems to us that it should be made clear that such persons are included within the prohibitions.

Proposed section 205 would also effect no change respecting the applicability thereof to Members of the Congress and Resident Commissioners. Whether the particular relationship between such persons and their constituents is such to justify allowing them to engage in most of the activities forbidden to others, so long as no compensation is received, involves a policy consideration on which we express no opinion. Under proposed section 204, the prohibitions against such persons practicing in the Court of Claims would continue to apply. The existing exceptions concerning retired officers of the armed services and District of Columbia National Guard members would be omitted from this proposed section, but would be incorporated in proposed new section 206.

As I have previously stated, proposed section 206(1) constitutes a revision and restatement of exceptions applicable to retired members of the Armed Forces and members of the District of Columbia National Guard, and is not of direct concern to this Commission. However, we favor this exemption since Commission personnel may well fall within its provisions. We believe section 206(2)(A) is too broad. It is unlimited in duration, and what I shall say respecting proposed section 207 shall be equally applicable to section 206.

The first paragraph of proposed new section 207 would prohibit any former employee of any agency from knowingly participating in any case or proceeding in which the United States is a party or directly or indirectly interested and which involved "any subject matter concerning which he had any responsibility

* * * during the period of his Government employment. Presumably, the term "former employee" would include members as well as the staffs of the various agencies. There is some doubt, however, as to whether the phrase "in any agency" would include employees of the executive departments. These employees are specifically covered by sections 103 and 104 of H.R. 2157, which are comparable to section 207 of this bill. We therefore recommend that proposed section 207 be clarified in this respect so as to leave no doubt as to the intended scope of its application.

It appears to us that this paragraph would bar former members and senior staff members of the Interstate Commerce Commission from ever representing any person on matters concerned with surface transportation. The disqualification applies not only to particular proceedings in which the employee had any responsibility, but also to any case or proceeding "involving any subject matter concerning which he had any responsibility." [Emphasis supplied.] In the performance of their duties over a period of time, former members and staff members of the Commission, would have been involved, in some way, in every aspect of the Commission's work. It is therefore doubtful whether there would be any "subject matter" in the area of surface transportation concerning which they had not had some responsibility.

Considering that a lawyer, and in some instances a nonlawyer, who has spent some years as a member or employee of this Commission becomes a specialist in transportation matters, we believe it readily apparent that this paragraph, as presently drafted, would impose an exceedingly heavy financial penalty upon prior service with the Commission. It is our view that the provisions of this paragraph should go no further than to prohibit any former member or employee from appearing in a representative capacity in connection with any particular matter upon which he acted in an official capacity.

Under the second paragraph of this proposed section, former members and employees would be prohibited from participating in any case or proceeding involving any agency of which he was a member or by whom employed for a period of 2 years after the termination of his Government employment. The prohibition here applies to any case or proceeding "in which the United States is a party or directly or indirectly interested, and involves an agency in which he was employed. * * *" We assume that the words "in which the United States * * * is directly or indirectly interested" are intended to include not only the financial interests of the United States but its governmental interests as well. If this is true, then this paragraph would constitute an absolute bar to a former officer or employee appearing before the agency by which he had been employed for a period of 2 years after his employment had ceased. The effect, as in the case of the first paragraph, would be to impose an inordinate financial penalty, in most cases resulting in economic hardship, on prior service with the Commission. Although the bar is for 2 years only, rather than forever, nevertheless for that period of 2 years only persons with independent means could afford to accept appointment to, or employment with, the Commission.

We believe, therefore, that if the first paragraph were to be enacted in its present form, and if the second paragraph were to be enacted at all, the effect would be to deprive the public of the services of a class of specialists generally better qualified than others who have not had the benefit of experience in Government service. At the same time, the efforts of the Government to recruit capable personnel would very likely be hampered, since it seems clear that many qualified prospective employees would be quite reluctant to seek, or to accept, Government employment under the postemployment restrictions imposed as conditions of employment with the Government. Accordingly, we suggest the elimination of the second paragraph of this proposed section.

Proposed section 208 is based on present section 434 of title 18, which prohibits Federal officers and employees from transacting business on the Government's behalf with any private business enterprise in which they have a direct or indirect interest. Under the new section, the coverage of the present law would be extended to include employees on leave of absence from their private employment and employees of Government-owned corporations. The present prohibition would also be extended to include recommending or advising with respect to any such transaction.

The changes here proposed appear to be desirable, and we are unable to see that they would impede the effective functioning of our Commission. In fact, the Interstate Commerce Act already contains provisions prohibiting its members and examiners from having an interest in any railroad, motor or water carrier,

or other form of transportation. Under other provisions of that act, Commissioners and employees are prohibited from participating in any hearing or proceeding in which they may be peculiarly interested. See 49 U.S.C., secs. 11, 17(3), and 205(1).

Proposed section 209, which would be substituted for present section 1914 of title 18, would broaden and make more uniform existing law forbidding the payment or receipt of salaries from private sources for services performed for the Government by Government officers and employees. At present, for example, private persons or business entities are prohibited from supplementing or making contributions to Government salaries for services performed for the Government. Government officials and employees, on the other hand, are prohibited only from receiving salaries from private sources. The proposed new section would make these provisions uniform by providing that the receipt of lump-sum payments, which supplement salary although not in and of themselves salary, are also forbidden. The prohibitions in the proposed new section would also be made expressly applicable to Members of Congress, Resident Commissioners, and officers, agents, and employees of all three branches of the Government. This would make its coverage coextensive with proposed section 203.

Now a Member of the Congress is in a different situation from other Government officials. If he is to remain in office he must come up for reelection. The proposed section covers payments which "in any way supplement the salary of any such a Member." Could this include campaign contributions? If so, in this day of expensive campaigns, succession in office, for all practical purposes, would by this enactment be confined to those of great wealth. Of course you would have no such intention.

Proposed section 218 is derived from present section 216 empowering the President to declare void any contract or agreement entered into in violation of its terms. Under the proposed new section, the President or, under such regulations as he may prescribe, the head of the agency involved, would be authorized to void or rescind transactions, agreements, or benefits entered into or obtained in violation of the bribery, graft, or conflicts-of-interest laws. In addition, the Government would be entitled to recover the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof.

We are in complete accord with the principle here involved. It is our view, however, that it would be more desirable to provide that such action may be taken by the particular department or agency. Ordinarily, they would be closer to the situation and therefore in a better position than the President to determine whether such action would best serve the public interest. Furthermore, an independent agency such as the Interstate Commerce Commission does not function under the direction of the President.

With respect to the overall aims and purposes of H.R. 2156, we feel that it would have a salutary effect on all phases of Government activity. Therefore, except as I have otherwise stated with respect to particular provisions, the Commission has no objection to its enactment.

H.R. 2157

The express purpose of H.R. 2157 is to implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment and to promote ethics in Government. In short the bill would establish a code of official conduct for Government officers and employees by adding a new title II at the end of the Administrative Procedure Act.

Sections 101 and 102 of proposed title II refer to the "executive branch" and to officers and employees "in the executive branch", respectively. If it is intended that H.R. 2157 apply to members and employees of independent commissions we suggest that more comprehensive terms be used. The comments that now follow are on the assumption this is contemplated.

Conduct which would constitute "improper conduct for any officer or employee in the executive branch of the Government" is defined in section 102(a) (1) as the acceptance, directly or indirectly, of any gift, favor, or service from any person outside the Government with whom he transacts business on behalf of the United States or whose interests may be substantially affected by his performance of official duty. This broad definition raises a question as to whether the Congress intends to prohibit, as improper, the acceptance of minor amenities. We, at the Interstate Commerce Commission, have no objection if Congress desires to prohibit the acceptance, for example, of a modest lunch or a souvenir ashtray. If, on the other hand, the Congress does not wish to make the pro-

... a modification prohibiting as im-
 ... substantial gift, favor or service. For
 ... Restatement of Ethical Principles

... Commission should not accept any loans or
 ... subject to regulation by the Commis-
 ... interest in a matter pending before the Com-
 ... before the Commission. They should not accept
 ... hospitality which is unwarranted by the personal

... employs many persons possessing specialized knowl-
 ... for which is limited to a relatively small segment of
 ... 102(a)(2) of this bill would label it improper con-
 ... employee of the Government "to discuss or consider his
 ... with" the described person outside the Government. The
 ... would be to prohibit such officers and employees from
 ... offers of employment with carriers, shippers, or any law
 ... transportation matters since their "interests may be substantially
 ... performance of official duty." An additional effect arising from
 ... might well be the creation of a serious handicap to the effective
 ... for public service of persons possessing specialized knowledge or
 ... We all know that a very real problem may arise in the way of a conflict
 ... when a Government employee negotiates for private employment.
 ... would recommend, therefore, that this provision in the bill be amended to
 ... that Government employees refrain from transacting business on behalf
 ... the United States with persons outside the Government with whom they are
 ... negotiating for employment. This is the approach which has been taken at the
 ... Commission. Paragraph 5 of our Restatement of Ethical Principles reads as
 follows:

"If a member or employee of the Commission entertains a proposal for future employment by any person subject to regulation by the Commission, such member or employee should refrain from participating in the decision of any matter in which such person is known to have a direct or substantial interest, both during such negotiations and, if such employment is accepted until he severs his connection with the Commission."

We are in complete agreement with the obvious purpose of section 102(a)(3) which makes it improper conduct for any officer or employee "to become unduly involved, through frequent or expensive social engagements with" the described persons outside the Government. We do believe, however, that it should be made clear that this is not intended to prohibit, between friends, the reciprocal hospitality which constitutes the only basis upon which a gentleman will allow himself to be entertained. Accordingly, we would suggest that this clause be phrased in such terms that the test would be entertainment or hospitality unwarranted by the personal relationship between parties.

Under the provisions of section 102(e) an officer or employee would be prohibited from participating in certain activities on behalf of the United States when those activities "affect chiefly a person" by whom he has been employed or with whom he has had any economic interest within the preceding 2 years. The clause "which affects chiefly a person" sharply limits the scope of this provision and would thus not constitute an impediment to the effective functioning of the Interstate Commerce Commission. There may be other areas however in which such a prohibition might preclude the United States, especially in time of an emergency, from utilizing the services of some person or persons with unique knowledge or skills.

We believe that section 102(f), which makes it improper conduct for any officer or employee "to fail to conduct his personal and official affairs so that no reasonable suspicion or appearance of the violation of subsections (a) through (e) of this section can arise" are essentially superfluous in view of the other provisions of section 102. More importantly, however, is the fact that, when read with section 107(a)(1), mere suspicion or appearance of a violation would become a basis for the dismissal of a Government officer or employee. We strongly urge the deletion of subsection (f) of section 102.

The provisions of sections 103 and 104 of this bill are, in substance, comparable to those in section 207 of H.R. 2156. My observations respecting section 207 are, therefore, equally applicable to sections 103 and 104, and I shall not consume the subcommittee's time by repeating them.

Section 105 would impose on persons outside the Government standards of conduct corollary to those prescribed for Government officers and employees in sections 102, 103, and 104, and my comments on those sections would apply also to the corresponding provisions of this section. Again, therefore, in the interest of conserving time, I shall not repeat those observations.

Section 106 would make it improper conduct for any party or his representative to consult with, advise, or make any written or oral presentation to any agency member or employee concerning any question of law or fact involved in any contested agency proceeding which has been designated for hearing, except upon notice and opportunity for all parties to participate. We certainly agree that it is improper for any party or his representative to make ex parte representations concerning the merits of a proceeding required to be determined upon evidence received in a hearing—either to hearing examiners or to agency members and those employees who assist in the final determination of such proceedings. Caution must be exercised, however, in adopting language proscribing such conduct, since it might otherwise lead to undesirable and unintended results. The prohibition in section 106, for example, would be applicable to such communications addressed to any employee of the Commission. Since there are some proceedings in which the Commission is represented by attorneys, we feel that in such cases the parties and their representatives should be free to discuss with such Commission attorneys and investigators the handling of these cases.

Since the provisions of H.R. 2157 would become a part of the Administrative Procedure Act, it is assumed that the term "agency proceeding" as used in section 106 would be given the meaning set forth in section 2(g) of that act, as including both adjudication and rulemaking. We feel that this is too broad, and strongly urge that the prohibition be made applicable only to proceedings in which the agency's decision is required by law to be based solely upon the evidence received in a hearing. The effect of this change would be to exclude cases of rulemaking in which the Congress has not required rules, such as motor carrier safety rules, to be based solely upon evidence received at a hearing. This is important since the Commission would remain free to obtain information from any source in promulgating such rules, which are truly legislative in character, without being so judicialized as to cut off valuable sources of information.

I have no particular observations to make with respect to section 107(a) which provides administrative sanctions for violations of sections 102 through 106, except that my comments on section 218 of H.R. 2156 would be equally applicable to paragraph (5) of this section respecting the cancellation of agreements or benefits procured as a result of improper conduct. We are also not inclined to agree with the provision of subsection (b) requiring publication of findings in the Federal Register. It is our view that the Federal Register should be reserved, insofar as possible, for matters of general applicability and effect.

While, as I have stated, we are in general accord with the overall aims and purposes of these measures, we are unable, for the reasons I have given, to recommend enactment of H.R. 2157 in its present form.

H.R. 7556

This bill would add four new subsections to present section 284 of title 18, which forbids former Federal employees from prosecuting, for a period of 2 years following the termination of their Government employment, any claim against the United States involving any subject matter directly connected with their former employment. Proposed new subsections (b) and (c) would broaden this prohibition considerably.

Under subsection (b), persons and "concerns" would be precluded from hiring former Federal employees who had within a 2-year period prior to the termination of their Government service, dealt with a claim against the Government by the prospective employer or with such employer's business. This provision is broader than the present law in that it would bar the hiring of such former employee in any capacity whatsoever, and would include the "offer or promise" of employment. In addition, the proposed new provision would apply to employees of "the Federal Government" which is much broader than the present prohibition against employees "in any agency." In this connection we suggest, if the bill is favorably considered, that all subsections be made consistent in this respect either by amending present section 284, or by changing the provisions of H.R. 7556. It is also not entirely clear what is intended by the use of the word

"concern" in the bill. It is not defined, and could mean groups or associations as well as corporations and partnerships. We suggest that this uncertainty be removed either by defining the term "concern" or by employing different phraseology.

We also have some difficulty with the first proviso of subsection (b) excepting minor ministerial dealings from the prohibition, since the phrase "dealt with the claim" is subject to some question. There are, for example, circumstances in which individuals have responsibilities relating to procedure, and on which they may be said to have "dealt with" a claim, but which could not be said to be ministerial in nature. We suggest, therefore, that this subsection be changed to provide that the prohibition shall apply to one who is involved, other than in a clerical or ministerial capacity, in the rendering of a decision on the merits in connection with such claim or transaction.

The second proviso of subsection (b), excepts regulations or orders of "general application." Under this language, the question arises as to whether, for example, orders relating to the rates of a particular carrier would be included within the prohibition. We therefore also urge that the bill be clarified in this connection.

Subsection (c) of the bill would prohibit a former Federal employee, for a 2-year period after the termination of his Government service, from accepting or promising to accept employment with any person, concern, or foreign government if, within 2 years prior to his leaving the Government, he had dealt with a claim of such prospective employer against the United States or with such employer's business. Under this subsection an attorney for the Internal Revenue Service might pass on a corporate taxpayer's claim for refund of taxes 2 years and 1 month prior to his resignation from the Government. If the claim were still pending at the time of his resignation, it would appear that subsection (c) would not be a bar to the immediate offer or acceptance of employment with the taxpayer, or to the attorney's assisting in the prosecution of the taxpayer's claim. It appears to us that this is the very type of situation that is the target of these legislative proposals.

A more realistic approach, we believe, would be to prohibit any former employee from appearing in a representative capacity or assisting in connection with any particular matter with respect to which he had any responsibility or acted in an official capacity during his Government service. The prohibition would thus run to the subject matter which the former employee would be precluded from handling, rather than constitute an outright prohibition against employment in any capacity whatsoever.

To make it a crime to accept any sort of employment with the classes of employers embraced in subsections (b) and (c) for 2 years could result in the imposition of severe economic hardship on former employees, and as I have previously stated would hamper the Government's efforts to recruit capable personnel.

As to subsection (d), we are unaware of the reasons for excepting former employment with the Atomic Energy Commission or the Securities and Exchange Commission.

Under the provisions of subsection (e) penalties may be imposed upon "any person who violates subsections (b) and (c) of this section." The word "person" is not defined in the bill, and since subsection (b) also applies to any "concern," it would seem that the words "or concern", if defined, should be inserted after the word "person" in line 25 of page 2.

A technical reading of subsection (e) would require that a person violate both subsections (b) and (c) before any penalty could be imposed. Employer and employee being separate parties, neither could violate both subsections (b) and (c). We suggest, therefore, that the word "and" at the end of line 25 on page 2 be changed to "or".

It is our view that the provisions of H.R. 7556 are overly harsh, and therefore recommend against its enactment.

Please understand that it is not my intention to be overcritical. Actually the more I study the whole problem and consider the results sought to be attained the greater is my appreciation of the efforts of the drafters of the various legislative proposals. The comprehensive studies prepared by the subcommittee staff are extremely helpful. All who had a part in the making and publication of the studies certainly deserve commendation for a job well done.

Mr. Chairman, that concludes my prepared statement. If there are any questions the subcommittee may wish to ask, I shall be glad to try to answer them.

FEDERAL CONFLICT OF INTEREST LEGISLATION

THURSDAY, FEBRUARY 25, 1960

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman) presiding.

Present: Representatives Celler, Rogers, Holtzman, Donohue, Toll, McCulloch, and Meader.

Also present: Herbert N. Maletz, chief counsel, Kenneth R. Harkins, cocounsel, and Richard C. Peet, associate counsel.

The CHAIRMAN. The committee will come to order.

Our first witness this morning is the distinguished General Counsel of the Securities and Exchange Commission, Mr. Thomas G. Meeker.

Mr. Meeker, we will be glad to hear from you.

STATEMENT OF THOMAS G. MEEKER, GENERAL COUNSEL, SECURITIES AND EXCHANGE COMMISSION; ACCOMPANIED BY IRVING M. POLLACK, ASSISTANT GENERAL COUNSEL

Mr. MEEKER. Thank you, Mr. Chairman, and members of the subcommittee. I am Thomas G. Meeker, General Counsel of the Securities and Exchange Commission. I am pleased to appear here today to offer my comments on behalf of the Commission on three bills now under consideration by this subcommittee: H.R. 2156, which amends chapter 11 of title 18, United States Code; H.R. 2157, which would create a title II of the Administrative Procedure Act; and H. R. 7556, which would amend section 284 of title 18, United States Code, all of which generally deal with conflicts of interest of Government employees. In preparing my comments on these bills, I have been greatly aided by having access to the detailed staff reports submitted to this subcommittee when similar legislation was under consideration in 1958.

Now the Securities and Exchange Commission was one of the first governmental agencies to recognize the importance of establishing the highest standards of integrity and impartiality of administrative agencies. In 1953 it codified standards of conduct which it had previously prescribed and promulgated comprehensive standards, rules of conduct for members and employees, and former members and employees, and in 1958 further promulgated canons of ethics for members of the Commission.

I might say incidentally, Mr. Chairman, that at various points in the staff report which this subcommittee published December 8, 1958, there are references to these rules of conduct which I have just referred to, and particularly page 37 of that staff report.

For the convenience of the subcommittee, I will offer for the record a copy of these rules and canons, and ask, Mr. Chairman, that they be made a part of the record.

The CHAIRMAN. You may have that permission.

Mr. MEEKER. Thank you, sir.

(The document referred to is as follows:)

CANONS OF ETHICS FOR MEMBERS OF THE SECURITIES AND EXCHANGE COMMISSION

PREAMBLE

Members of the Securities and Exchange Commission are entrusted by various enactments of the Congress with powers and duties of great social and economic significance to the American people. It is their task to regulate varied aspects of the American economy, within the limits prescribed by Congress, to insure that our private enterprise system serves the welfare of all citizens. Their success in this endeavor is a bulwark against possible abuses and injustice which, if left unchecked, might jeopardize the strength of our economic institutions.

It is imperative that the members of this agency continue to conduct themselves in their official and personal relationships in a manner which commands the respect and confidence of their fellow citizens. Members of the Commission should continue to be mindful of, and strictly abide by, the standards of personal conduct set forth in its regulation regarding conduct of members and employees and former members and employees of the Commission most of which has been in effect for many years, and which was codified in substantially its present form in 1953. Rule 1 of said regulation enunciates a general statement of policy as follows:

"It is deemed contrary to Commission policy for a member or employee of the Commission to—

"(a) engage, directly or indirectly, in any personal business transaction or private arrangement for personal profit which accrues from or is based upon his official position or authority or upon confidential information which he gains by reason of such position or authority;

"(b) accept, directly or indirectly, any valuable gift, favor, or service from any person with whom he transacts business on behalf of the United States;

"(c) discuss or entertain proposals for future employment by any person outside the Government with whom he is transacting business on behalf of the United States;

"(d) divulge confidential commercial or economic information to any unauthorized person, or release any such information in advance of authorization for its release;

"(e) become unduly involved, through frequent or expensive social engagements or otherwise, with any person outside the Government with whom he transacts business on behalf of the United States; or

"(f) act in any official matter with respect to which there exists a personal interest incompatible with an unbiased exercise of official judgment;

"(g) fail reasonably to restrict his personal business affairs so as to avoid conflicts of interest with his official duties."

In addition to the continued observance of these foregoing principles of personal conduct, it is fitting and proper for the members of the Commission to restate and resubscribe to the standards of conduct applicable to its executive, legislative, and judicial responsibilities.

1. Constitutional obligations

The members of the Securities and Exchange Commission have undertaken in their oaths of office to support the Federal Constitution. Insofar as the enactments of the Congress impose executive duties upon the members, they must faithfully execute the laws which they are charged with administering.

Members shall also carefully guard against any infringement of the constitutional rights, privileges, or immunities of those who are subject to regulation by the agency.

2. Statutory obligations

In administering the law, members of the Securities and Exchange Commission should vigorously enforce compliance with the law by all persons affected thereby. In the exercise of the rulemaking powers delegated the agency by the Congress, members should always be concerned that the rulemaking power be confined to the proper limits of the law and be consistent with the intent of the Congress. In the exercise of their judicial functions, members shall honestly, fairly, and impartially determine the rights of all persons under the law.

3. Personal conduct

Appointment to the office of the Commissioner of the Securities and Exchange Commission is a high honor and requires that the conduct of a member, not only in the performance of the duties of his office but also in his everyday life, should be "beyond reproach."

4. Relationship with other members

Each member should recognize that his conscience and those of other members are distinct entities and that differing shades of opinion should be anticipated. The free expression of opinion is a safeguard against the domination of the agency by less than a majority, and is a keystone of the commission type of administration. However, a member should never permit his personal opinion so to conflict with the opinion of another member as to develop animosity or unfriendliness in the agency. Every effort should be made to promote solidarity of conclusion. Unless there are differences of opinion based on fundamental principle, dissenting opinions are to be discouraged.

5. Maintenance of independence

The Securities and Exchange Commission has been established to administer laws enacted by the Congress. Its members are appointed by the President by and with the advice and consent of the Senate to serve terms as provided by law. However, under the law, this is an independent agency, and in performing their duties, members should exhibit a spirit of firm independence and reject any effort by representatives of the executive or legislative branches of the Government to affect their independent determination of any matter being considered by the agency. A member should not be swayed by partisan demands, public clamor, or considerations of personal popularity or notoriety; so also he should be above fear of unjust criticism by anyone.

6. Relationship with persons subject to agency regulation

In all matters before him, a member should administer the law without regard to any personality involved. His attention should be directed only to the issues. Members should not become indebted in any way to persons who are or may become subject to their jurisdiction. No member should accept the loan of anything of value or accept presents or favors from persons who are regulated or who represent those who are regulated. In performing their judicial functions, members should avoid discussion of a matter with any person outside the agency while that matter is pending. In the performance of their rulemaking and administrative functions, a member has a duty to solicit the views of interested persons. Care must be taken by a member in his relationship with persons outside of the agency to separate the judicial and the rulemaking functions and to observe the liberties of discussion respectively appropriate. Insofar as it is consistent with the dignity of his official position, he should maintain such contact with the persons who may be affected by his rulemaking functions as is necessary for him fully to understand their problems, but he should not accept unreasonable or lavish hospitality in so doing.

7. Qualification to participate in particular matters

The question of qualification of an individual member to vote or participate in a particular matter rests with that individual member. Each member should weigh carefully the question of his qualification with respect to any matter wherein he or any relatives or former business associates or clients are involved. He should disqualify himself in the event he obtained knowledge prior to becoming a member of the facts at issue before him in a quasi-judicial proceeding, or in other types of proceeding in any matter involving parties in whom he has

any interest or relationship directly or indirectly. If an interested person suggests that a member should disqualify himself in a particular matter because of bias or prejudice, the member shall be the judge of his own qualification.

8. *Impressions of influence*

A member should not, by his conduct, permit the impression to prevail that any person may unduly influence him, that any person unduly enjoys his favor, or that he is unduly affected in any way by the rank, position, prestige, or affluence of any person.

9. *Ex parte communications*

Matters of a quasi-judicial nature should be determined by a member solely upon the record made in the proceeding and the arguments of the parties or their counsel properly made in the regular course of such proceeding. All communications by parties or their counsel to a member in a quasi-judicial proceeding which are intended or calculated to influence action by the member should at once be made known by him to all parties concerned. A member should not at any time permit ex parte interviews, arguments, or communications designed to influence his action in such a matter.

10. *Agency opinions*

Members should take care that agency opinions state the reasons for the action taken and contain a clear showing that no serious argument of counsel has been disregarded or overlooked. In such manner, a member shows a full understanding of the matter before him, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity, and may contribute some useful precedent to the growth of the law. A member should be guided in his decisions by a deep regard for the integrity of the system of law which he administers. He should recall that he is not a repository of arbitrary power, but is acting on behalf of the public under the sanction of the law.

11. *Judicial review*

The Congress has provided for review by the courts of the decisions and orders by the Securities and Exchange Commission. Members should recognize that their obligation to preserve the sanctity of the laws administered by them requires that the agency pursue and prosecute vigorously and diligently but at the same time fairly and impartially and with dignity all matters which they or others take to the courts for judicial review.

12. *Legislative proposals*

Members must recognize that the changing conditions in a volatile economy may require that they bring to the attention of the Congress proposals to amend, modify, or repeal the laws administered by them. They should urge the Congress, whenever necessary, to affect such amendment, modification, or repeal of particular parts of the statutes which they administer. In any such action a member's motivation should be the commonweal and not the particular interests of any particular group.

13. *Investigations*

The power to investigate carries with it the power to defame and destroy. In determining to exercise their investigatory power, members should concern themselves only with the facts known to them and the reasonable inferences from those facts. A member should never suggest, vote for or participate in an investigation aimed at a particular individual for reasons of animus, prejudice, or vindictiveness. The requirements of the particular case alone should induce the exercise of the investigatory power, and no public pronouncement of the pendency of such an investigation should be made in the absence of a reasonable suspicion that the law has been violated or reasonable evidence that the public welfare demands it.

14. *The power to adopt rules*

The Securities and Exchange Commission in exercising its rulemaking power performs a legislative function. The delegation of this power by the Congress implies the obligation upon the members to adopt rules to effectuate the policies of the statute and the intent of the Congress in the interest of all of the people. Care should be taken to avoid the adoption of rules which seek to extend the agency's power beyond proper statutory limits. Agency rules should never tend to stifle or discourage legitimate business enterprise or activities, nor should they be interpreted so as unduly and unnecessarily to burden those regu-

lated with onerous obligations. On the other hand, the very statutory enactments evidence the need for regulation, and the necessary rules should be adopted or modifications made or rules should be repealed as changing requirements demand without fear or favor.

15. Promptness

Each member should promptly perform the duties with which he is charged by the statutes. The agency should evaluate continuously its practices and procedures to assure that it promptly disposes of all matters affecting the rights of those regulated. This is particularly desirable in quasi-judicial proceedings. While avoiding arbitrary action in unreasonably or unjustly forcing matters to trial, members should endeavor to hold counsel to a proper appreciation of their duties to the public, their clients, and others who are interested. Requests for continuances of matters should be determined in a manner consistent with this policy.

16. Conduct toward parties and their counsel

Members should be temperate, attentive, patient, and impartial when hearing the arguments of parties or their counsel. Members should not condone unprofessional conduct by attorneys in their representation of parties. The agency should continuously assure that its staff follows the same principles in their relationships with parties and counsel.

17. Business promotions

A member must not engage in any other business, employment, or vocation while in office, nor may he ever use the power of his office or the influence of his name to promote the business interests of others.

18. Fiduciary relationships

A member should avoid serving as a fiduciary if it would interfere or seem to interfere with the proper performance of his duties, or if the interests of those represented require investments in enterprises which are involved in questions to be determined by him. Such relationships would include trustees, executors, corporate directors, and the like.

19. Agency organization

Members and particularly the Chairman of the agency should scrutinize continuously the internal organization of the agency in order to assure that such organization handles all matters before it efficiently and expeditiously, while recognizing that changing times bring changing emphasis in the administration of the laws.

SECTION 701: CONDUCT REGULATION

701.01 Authority. This Conduct Regulation, as amended, was approved by the Commission on November 2, 1956. It was signed by Orval L. DuBois, Secretary of the Commission, and became effective immediately with respect to members and employees having actual knowledge of the Regulation.

701.02 Purpose. The Securities and Exchange Commission is adopting a comprehensive regulation to restate the ethical principles which it believes should govern and have governed the conduct of members and employees and former members and employees of the Commission. The regulation includes a general statement of policy following essentially language used by a Subcommittee of the Senate Committee on Labor and Public Welfare in its report on Ethical Standards in Government, and in the related bill, S. 2293, 82nd Cong., 1st Sess., 1951. The regulation also deals more specifically with limitations on outside or private employment, securities transactions, disclosure to superiors of personal interests which might conflict with official duties, negotiation for private employment by persons interested in matters pending before the Commission, and practice before the Commission by former members and employees of the Commission.

The more specific regulations are largely a revision of existing rules set forth in memoranda of instructions which have been issued to the staff from time to time, and previously published opinions concerning the propriety of practice by former employees. Among other things, the revision makes clear that the substantive rules apply to members of the Commission as well as employees. Some of the rules (particularly Rules 4 and 5) contain procedural provisions for reference of questions arising under the rules by an employee to his superior.

While the Commissioners themselves cannot refer such a problem to a superior, it is contemplated that, in case of doubt as to the applicability of the substantive provisions, they will either refrain from participation in the matter or will request the advice of their associates, in accordance with past practice.

Paragraph A of Rule 6 prohibits without limit of time former members and employees from appearing before the Commission in a "particular matter" with respect to which they had a prior official responsibility or specific knowledge. This rule is intended to be declaratory of the practice which the Commission has applied in the advisory rulings that have been rendered from time to time in the past concerning the propriety of specific appearances by former members and employees. In attempting to state the rule in concrete terms, it is recognized that the concept of what constitutes a "particular matter" will require interpretation. In rendering such interpretations the basic policy consideration underlying the rule will require consideration of whether the appearance in question will involve an unethical conflict with prior official responsibilities.

Following is an illustration of the way the Commission believes Rule 6 A should be interpreted. An accountant on the Commission's staff has had occasion to deal officially with a registration statement or annual report for a particular company and after leaving the Commission joins an accounting firm which does accounting work for that company. In the absence of unusual circumstances, such an accountant would not be barred from doing accounting work in connection with future registration statements or annual reports for the same company. If, however, the accountant's official responsibilities had involved an investigation or accounting controversy of a continuing character, subsequent activities for the company involved, although pertaining to new filings, might be so related to the continuing investigation or controversy as to constitute an appearance in respect to the "particular matter" previously dealt with on behalf of the Commission.

Paragraph B of Rule 6 is a new provision which is designed to aid in the administration of the first part of the rule by requiring the filing of reports covering all appearances before the Commission during the first two years after ceasing to be a member or employee of the Commission.

The new regulation supersedes the previous memorandums on Outside or Private Employment (dated February 14, 1949) and on Employees' Securities Transactions (Office Memorandum No. 51-F, dated July 14, 1950) and the statement of Commission policy on negotiation for private employment, as set forth in the minute of June 14, 1939. Rule 6 is intended to be the primary provision governing practice before the Commission by former members and employees and to make more specific and implement the principles enunciated in the statement of the Commission on that subject contained in Securities Act Release No. 1761 and in the opinion of general counsel contained in Securities Act Release No. 1934. However, the new regulation does not repeal the more general provision of Rule II(e) of the Rules of Practice relating to denial of the privilege of practicing before the Commission for unethical or improper professional conduct, on which Releases 1761 and 1934 were based.

The Commission deems this regulation to be included within the exception to Section 4(a) of the Administrative Procedure Act applicable, among other things, to "general statements of policy, rules of agency organization, procedure or practice," and deems notice and public procedures of the character specified in that section to be unnecessary. The Commission, of course, is open to suggestions with respect to the scope and content of the regulation, whether received before or after its effective date.

701.03 Rule 1. General Statement of Policy. It is deemed contrary to Commission policy for a member or employee of the Commission to:

A. engage, directly or indirectly, in any personal business transaction or private arrangement for personal profit which accrues from or is based upon his official position or authority or upon confidential information which he gains by reason of such position or authority;¹

¹ Members of the Commission are subject also to the following prohibition in Section 4(a) of the Securities Exchange Act of 1934:

"* * * No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title * * *"

Detailed provisions regarding outside or private employment and transactions in securities and commodities are set forth in Rules 2 and 3. Further provisions regarding use and disclosure of confidential information are set forth in paragraph D of this rule and in the note appended thereto.

B. accept, directly or indirectly, any valuable gift, favor, or service from any person with whom he transacts business on behalf of the United States;

C. discuss or entertain proposal for future employment by any person outside the Government with whom he is transacting business on behalf of the United States;²

D. divulge confidential commercial or economic information to any unauthorized person, or release any such information in advance of authorization for its release;³

E. become unduly involved, through frequent or expensive social engagements or otherwise, with any person outside the Government with whom he transacts business on behalf of the United States; or

F. act in any official matter with respect to which there exists a personal interest incompatible with an unbiased exercise of official judgment.⁴

G. fall reasonably to restrict his personal business affairs so as to avoid conflicts of interest with his official duties.

701.04 Rule 2. Outside or Private Employment.

A. No member or employee shall permit his name to be associated in any way with any legal, accounting, or other professional firm or office.⁵

B. No employee shall have any outside or private employment or affiliation with any firm or organization incompatible with concurrent employment by the Commission. This applies particularly to employment or association with any registered broker, dealer, public utility holding company, investment company or investment adviser or directly or indirectly related to the issuance, sale, or purchase of securities. It applies also to any legal, accounting, or engineering work for compensation involving matters in which the Federal Government or any State, Territorial, or municipal authority may be significantly interested.

C. No employee shall accept or perform any outside or private employment which interferes with the efficient performance of his official duties. An employee who intends to perform services for compensation or engage in any business shall report his intention to do so to the Director of Personnel prior to such acceptance or performance.

D. No employee shall accept or perform any outside or private employment specifically prohibited to Federal employees by statutes or Executive order. For example:

(1) 18 United States Code, section 283, provides, among other things, that Federal employees are prohibited from acting as agent or attorney in prosecuting any claim against the United States or from aiding or assisting in any way, except as otherwise permitted in the discharge of official duties, in the prosecution or support of any such claims, or from receiving any gratuity, or any share of an interest in any claim from any claimant against the United States.

(2) 18 United States Code, section 281, provides, among other things, that Federal employees are prohibited from directly or indirectly receiving or agreeing to receive any compensation whatever for services rendered or to be rendered to any person in relation to any matter in which the United States is a party or directly or indirectly interested.

(3) 5 United States Code, section 58, provides that unless otherwise specifically authorized by law, no money appropriated by any act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum.

(4) Executive Order No. 9 of January 17, 1873, prohibits, subject to exceptions, Federal employees from accepting or holding office under a State, Territorial, County, or municipal authority.

¹ Detailed provisions regarding negotiation for future employment are set forth in Rule 5.

² The policy regarding confidential information stated in paragraphs A and D of this rule is intended to cover cases where, apart from specific prohibitions in any statute or other rule, the disclosure or use of such information would be unethical. Detailed prohibitions regarding disclosure or use of confidential information are set forth in Rule 122 under the Securities Act of 1933; Section 24(e) and Rule X-4 under the Securities Exchange Act of 1934; Section 22(a) and Rule U-104 under the Public Utility Holding Company Act of 1935; Section 45(a) and Rule N-45A-1 under the Investment Company Act of 1940; and Section 210(h) under the Investment Advisers Act of 1940.

³ Rule 4 provides a procedure for relieving employees from assignments in certain cases, including those covered by paragraph F of Rule 1.

⁴ With respect to members, this paragraph supplements the statutory prohibition of outside employment contained in Section 4(a) of the Securities Exchange Act, quoted in footnote 1. The remaining provisions of this rule are not made applicable to members in view of the provisions of Section 4(a).

F. No employee shall appear in court or on a brief in a representative capacity (with or without compensation) or otherwise accept or perform legal, accounting, or engineering work for compensation unless specifically authorized by the Commission. Requests for such authorization shall be submitted to the division or office head or regional administrator concerned, together with all pertinent facts regarding the proposed employment, such as the name of the employer, the nature of the work to be performed, and its estimated duration. Division and other office heads and regional administrators shall forward all requests, together with their recommendations thereon, to the Director of Personnel for presentation to the Commission.

F. No employee shall publish any article or treatise or deliver any prepared speech or address relating to the Commission or the statutes and rules that it administers without having obtained clearance from the Commission. The proposed publication or speech will be examined to determine whether it contains confidential information or whether there is any reason why the publication or delivery of the employee's private views on the subject matter would be otherwise inappropriate. Clearance for publication or delivery will not involve adoption of or concurrence in the views expressed, and any such publication or speech shall include at an appropriate place by way of footnote or otherwise the following disclaimer of responsibility:

"The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author's colleagues upon the staff of the Commission."

G. No employee shall hold office in or be a director of any company which has public security holders, except not for profit corporations, savings and loan associations, and similar institutions, whose securities are exempted under Section 3(a)(4) or 3(a)(5) of the Securities Act of 1933.

701.05 Rule 3. Securities Transactions.

A. This rule applies to all transactions effected by or on behalf of a member or employee. Members and employees are considered to have sufficient interest in the security and commodity transactions of their husbands or wives so that such transactions must be reported and are subject to all the terms of this rule.

B. No member or employee shall effect or cause to be effected any transaction in a security except for bona fide investment purposes. Unless otherwise determined by the Commission for cause shown, any purchase which is held for less than one year will be presumed not to be for investment purposes. Any employee who believes the application of this paragraph will result in undue hardship in a particular case may make written application to the Commission (through the Branch of Personnel, attention of Director of Personnel) setting out in detail the reasons for his belief and requesting a waiver.

C. No member or employee shall effect any purchase or sale of a future contract for any commodity without the prior approval of the Commission.

D. No member or employee shall carry securities on margin; nor shall any member or employee borrow funds or securities with or without collateral for the purpose of purchasing or carrying securities or commodities with the proceeds unless prior approval of the Commission has been secured.

E. No member or employee shall sell a security which he does not own, or the sale of which is consummated by the delivery of a security borrowed by or for such member's or employee's account.

F. No member or employee shall purchase any security which is the subject of a registration statement filed under the Securities Act of 1933, or of a letter of notification filed under Regulation A, or any other security of the same issuer, while such a registration statement or letter of notification is pending or during the first sixty days after its effective date.

G. No member or employee shall purchase securities of (1) any holding company registered under Section 5 of the Public Utility Holding Company Act of 1935, or any subsidiary thereof, or (2) any company if its status under such Act or the applicability of any provision of the Act to it is known by the employee to be under consideration.

H. No member or employee shall purchase any securities issued by any investment company *prima facie* subject to the jurisdiction of the Commission under the provisions of the Investment Company Act of 1940.

I. No member or employee shall purchase any security which to his knowledge is involved in any pending investigation by the Commission or in any proceeding before the Commission or to which the Commission is a party.

J. No member or employee shall purchase any securities of any company which is in receivership or which is undergoing reorganization under Section 77-B or Chapter X of the Bankruptcy Act.

K. The restrictions imposed in paragraphs F to J above do not apply to the exercise of a privilege to convert or exchange securities; to the exercise of rights accruing unconditionally by virtue of ownership of other securities (as distinguished from a contingent right to acquire securities not subscribed for by others); or to the acquisition and exercise of rights in order to round out fractional shares.

L. Members and employees shall report every transaction in any security or commodity within five business days. (Reports submitted by employees in field offices must be placed in the mails within five days of the date of each transaction.) Other changes in holdings resulting from inheritance or from reclassifications, gifts, stock dividends or split-ups, for example, shall be reported promptly. These reports shall be prepared on the official form provided for this purpose, copies of which may be procured from the Branch of Personnel (Form SE-P-3, revised). These reports shall be transmitted to the Director of Personnel. The envelope should be marked "Confidential—Securities Transactions."

M. At the time of taking the Oath of Office a new member or employee shall fill in the information required on Form SE-P-4, revised, relating to securities owned by him or his spouse or any trust or estate of which he is a trustee or other fiduciary or beneficiary, and relating to accounts with securities firms, and relatives who are partners or officers of securities firms, investment companies, investment advisers, or public utilities.

N. This rule does not apply to personal notes, individual real-estate mortgages, United States Government securities, and securities issued by building and loan associations or co-operatives.

O. (revised April 1, 1959). Any member or employee who is a trustee or other fiduciary or a beneficiary of a trust or estate holding securities not exempted by paragraph N of Rule 3 shall report the existence and nature of such trust or estate to the Director of Personnel. The transactions of such trust or estate shall be subject to all the provisions of Rule 3 except in situations where the member or employee is solely a beneficiary and has no power to control, and does not in fact control or advise with respect to, the investments of the trust or estate, and except to the extent that the Commission shall otherwise direct in view of the circumstances of the particular case.

06 *Rule 4. Action in Cases of Personal Interest.* Any employee assigned to work on any application, filing, or matter of a company in which he then owns any securities or has any personal interest or with which he has been employed or associated in the past shall immediately advise the division director or other office head or regional administrator of the fact. Division directors, other office heads and regional administrators are authorized to direct the reporting employee to continue with the assignment in question where this appears in the interest of the Government, taking into account (a) the policy stated in Rule 1 F and G, (b) the general desirability of avoiding situations that require a question of conflict of interest to be resolved, (c) the extent the employee's activities will be supervised, and (d) the difficulty of assigning the matter to some other employee. Where the employee in question is not relieved of the assignment, his written report concerning the nature of his interest shall be forwarded to the Director of Personnel with a notation that he has been directed to continue the assignment together with such explanation, if any as may seem appropriate. In the event that a division director or other office head or regional administrator deems that he has, himself, such personal interest in a transaction as may raise a question as to his disinterestedness, he may delegate his responsibility in the matter to a subordinate, but in that event shall submit a brief memorandum of the circumstances to the Director of Personnel.

701.07 *Rule 5. Negotiation for Private Employment.*

A. The provisions of Rule 1 C are deemed to preclude negotiation for private employment by an employee who is immediately engaged in representing the Commission in any matter in which the prospective employer is opposing counsel or person chiefly affected. With the approval of his superior or the Commission an employee may be relieved of any assignment which, in the absence of such relief, might preclude such negotiation.

B. No employee shall undertake to act on behalf of the Commission in any capacity in a matter that, to his knowledge, affects even indirectly any person outside the Government with whom he is discussing or entertaining any proposal for future employment, except pursuant to the direction of the Commission, his division director or other office head, or his regional administrator, as provided in Rule 4.

701.08 *Rule 6. Practice by Former Members and Employees of the Commission.*

A. No person shall appear in a representative capacity before the Commission in a particular matter if such person, or one participating with him in the particular matter, personally considered it or gained personal knowledge of the facts thereof while he was a member or employee of the Commission. As used in this paragraph, a single investigation or formal proceeding or both if they are related, shall be presumed to constitute a particular matter for at least two years irrespective changes in the issues. However, in cases of proceedings in which the issues change from time to time, such as proceedings involving compliance with Section 11 of the Public Utility Holding Company Act, this paragraph shall not be construed as prohibiting appearance in such a proceeding, more than two years after ceasing to be a member or employee of the Commission, unless it appears to the Commission that there is such identity of particular issues or pertinent facts as to make it likely that confidential information, derived while a member or employee of the Commission, would have continuing relevance to the proceeding, so as to make the participation therein by the former member or employee of the Commission unethical or prejudicial to the interests of the Commission.

B. Any former member or employee of the Commission who, within two years after ceasing to be such, is employed or retained as the representative of any person outside the Government in any matter in which it is contemplated that he will appear before the Commission shall, within ten days of such retainer or employment, or of the time when appearance before the Commission is first contemplated, file with the Secretary of the Commission a statement as to the nature thereof together with any desired explanation as to why it is deemed consistent with this rule. Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this rule. The reporting requirements of this paragraph do not apply to communications incidental to court appearances in litigation involving the Commission.

C. As used in this rule, the term "appear before the Commission" means personal appearance before or personal communication with the Commission or any member or employee thereof, in connection with any interpretation or matter of substance arising under the statutes administered by the Commission. As used in this rule, the term "representative" or "representative capacity" shall include not only the usual type of representation by an attorney, etc., but also representation of a corporation in the capacity of an officer, director, or controlling stockholder thereof.

D. Persons in doubt as to the applicability of this rule may apply for an advisory ruling of the Commission.

701.09 *Rule 7. Employees on Leave of Absence.* The provisions of these rules relative to employees of the Commission are applicable to employees on leave with pay or on leave without pay other than extended military service.

701.10 *Rule 8. Violation and Participation in Violation of Rules.* Knowing participation in a violation of this regulation by persons not within the scope of the foregoing rules shall likewise be deemed improper conduct and in contravention of Commission Rules. Departure from any of these rules without specific approval may be cause for removal or for disqualification from appearing and practicing before the Commission.

701.11 *Rule 9. Payment of Tax Obligations of Employees.* Failure of an employee to pay his just tax obligation (except where there exists a bona fide dispute as to the employee's liability therefor) may be a cause for removal or other disciplinary action.

NOTES TO CONDUCT REGULATIONS

701.05 L. "Form SE-P-3, revised, Employee Report of Securities Transactions, now consists of three parts; an original, an employee copy, and a division or office copy. When reporting a securities transaction, employees are requested to use the three parts and submit *all* copies to the Director of Per-

sonnel. The employee copy will be date stamped and returned to the employee for his records. The division or office copy, without information as to number of shares and price, will be forwarded to the employee's division or office head, to assist him in connection with making case assignment." (Memorandum of February 6, 1957, from A. K. Scheidenhelm, Executive Director, to all Members of the Staff.)

O. "A number of situations have come to the attention of the Commission in which employees or their spouses have purchased securities for their minor children. Title to such securities frequently is held in the names of the children or in the names of the parent or parents as trustees, or custodians, or some similar designation.

"To the extent that Rule 3 O of the Regulation Regarding Conduct of Members and Employees and Former Members and Employees of the Commission appears to grant a conditional exemption from the requirements of Rule 3, the Commission has directed that Rule 3 O shall not apply to any situation in which an employee or his or her spouse holds title to securities as trustee or other fiduciary for his or her minor children.

"The Commission has determined that all purchases by an employee or his or her spouse are subject to the restrictions and reporting requirements of Rule 3 notwithstanding that the securities are purchased for their minor children and irrespective of the manner in which title is taken." (Memorandum of October 4, 1957, from A. K. Scheidenhelm, Executive Director, to all Members of the Staff.)

701.07 A. "The Commission has noted two recent instances in which employees have advertised in New York papers for positions. In each case, current employment by the Commission was mentioned.

"The Commission does not wish to deny to any employee the right to advertise for a position, but considers it in bad taste and a source of possible embarrassment both to the Commission and the employee to reflect in the advertisement present employment with the Commission. This does not preclude a claim of general SEC experience or of special experience in a particular division." (Office Memorandum No. 154, dated July 29, 1947.)

Mr. MEEKER. These rules and regulations, coupled with self-discipline by Commission members and personnel, based on a personal sense of integrity, have operated effectively to assure action based upon strict impartiality and the merits of a particular matter and not as the result of any improper influence. Accordingly the Commission fully concurs in the objectives sought to be achieved by the three bills under consideration. However, to the extent that the separate bills as presently drafted create unnecessary hardships or other problems which in my view are detrimental to the effective functioning of Government agencies, we must respectfully take exception to certain specific provisions, which I will deal with as I go along.

Also, I should add at the outset that since the Commission's rules and regulations have been in our view so effective over a considerable period of time in dealing with our own conflicts of interest problems, we believe that any legislation should make it plain that these regulations are not to be superseded or supplanted by such legislation. And I might add parenthetically, as suggested in footnote 2 on page 2 of my statement, that while the proposed legislation does not state that it is exclusive, we think that it should be made perfectly clear that present rulemaking power of agencies such as ours who have developed a framework of rules with which the bar and the industry are familiar should not be superseded or impaired in that regard.

The CHAIRMAN. If Congress permits each agency to set up its own rules of conduct, there would be no need for any legislation, would there, except, of course, in the criminal field?

Mr. MEEKER. Let me say, Mr. Chairman, that we have as a very important part of our rulemaking a disqualification rule 2(e) under

our rules of practice, and if we find a professional person practicing before us who violates one of our rules of conduct—which, incidentally, are consistent with the present conflict of interest statutes—in other words, some of these rules are right along the line of the present conflict of interest criminal statutes—we need such a set of rules in order to police our area completely without regard to any action the United States may take in a criminal area.

We don't mean to suggest that our rulemaking should in any way impair what the Congress decides ought to be the law in this area—they would be consistent—and it might be that if this Congress were to adopt one or more of these bills, we would have to examine our present rules and consider changes in them.

Mr. ROGERS. Mr. Meeker, you said you had left with us a copy of your rules and canons?

Mr. MEEKER. Yes, sir.

Mr. ROGERS. Are those rules adopted as a result of the legislative authority given the Commission?

Mr. MEEKER. Yes, sir, they are consistent with the general rulemaking powers and are promulgated under the rulemaking powers of the Commission under the 1934 act.

Mr. ROGERS. That is, under the Securities and Exchange Commission Act, authorization is given the Commission to provide rules and canons of ethics of its employees, together with the right to describe who shall or shall not practice before the Securities and Exchange Commission?

Mr. MEEKER. We construe the general rulemaking power, Congressman Rogers, given to us, as you have suggested, under the Securities and Exchange Act, to empower us to set up rules of practice which determine who may appear and who may not appear, and rules of conduct for our employees. And as I say, the foundation of these rules of conduct dealing with conflict of interest is the existing pattern of conflict-of-interest statutes.

Mr. ROGERS. The extent of the punishment of one who is not employed by the Commission is to bar him from practice?

Mr. MEEKER. Exactly, after a hearing.

Mr. ROGERS. And he who may be an employee, he may be discharged, that is the extent of the punishment that can arise under these rules?

Mr. MEEKER. Exactly, sir.

Let me say this, sir: I don't wish to mislead the subcommittee. We don't merely stop when we find a very bad conflict-of-interest situation with whatever administrative action we can take. We also are directed by the Attorney General to refer to that Department any situations which may involve a violation of the conflict-of-interest statutes, and we have done that in the past as well as taken action ourselves.

Mr. ROGERS. Has there been any prosecution under the conflict-of-interest statutes, or anything that has been referred from the Securities and Exchange Commission to the Department of Justice?

Mr. MEEKER. Well, I have been here 6 years now, and there has not been a prosecution, to the best of my recollection, of any matters which we have referred. There haven't been many, I might say. We refer these, because actually we consider the Attorney General the one to interpret the Federal criminal laws, and he does.

Mr. Pollack, you don't remember any that have been prosecuted, do you?

Mr. POLLACK. No, sir.

Mr. ROGERS. Has there been any suspension of practitioners who are registered to practice before the Securities and Exchange Commission?

Mr. MEEKER. Yes, there have.

Mr. ROGERS. How many?

Mr. MEEKER. And I want to make it clear that when I say that they may not have been specifically for conflict-of-interest violations, but for other reasons as well.

May I submit for the record a statement as to the number of proceedings in which we have disqualified? I just don't remember.

The CHAIRMAN. Yes.

(Subsequently, Mr. Meeker supplied the information which appears at p. 259.)

Mr. ROGERS. Thank you, Mr. Meeker.

Mr. McCULLOCH. I would like to ask what redress a person has who has been suspended for the alleged violation of one of your rules.

Mr. MEEKER. Sir, I am very happy to answer that. The Commission does not always permanently disqualify. In some situations it suspends for a period of time, and if there is a violation, our rules of practice provide that where the Commission has suspended for a period of time or permanently disqualified a person for unethical or illegal conduct, that person may apply for rehearing, as a man may in court.

And of course, there is always the protection from any one of our actions of an appeal to the court of appeals.

Mr. McCULLOCH. Is that under the Administrative Procedure Act?

Mr. MEEKER. No, that is under the specific provisions in each of the six acts which we administer and which provide for appeals to the court of appeals.

And I might say—because you have raised an interesting question—we have been taken into court during the last 3 years all the way up to the Supreme Court in a case challenging our right to conduct such an administrative proceeding, and the courts have sustained the right of the Commission to proceed in such matters against a practitioner before it, without getting to the merits of whether the person ought to be disqualified. And the respondent tried to enjoin our private proceedings—and all of these proceedings for the protection of the reputation of the person against whom charges have been made are in private, which I think is only fair, because all we have when we start one of these proceedings is charges, and they ought to be proved before being made public.

Mr. McCULLOCH. And may we conclude that it is your opinion that there is an adequate remedy which may be used by any person who has been suspended and who can prove that the suspension is not in accordance with law or fact?

Mr. MEEKER. Yes, sir; I believe so.

Mr. ROGERS. May I ask this: Mr. Meeker, as demonstrated in your agency, in order to appear a man must be passed upon and qualified in order to represent a client, so to speak, before the Securities and Exchange Commission?

Mr. MEEKER. May I suggest, sir, that I don't want to be misconstrued there, because we have no bar such as some agencies have, and

there are no special qualifications. The lawyer must be admitted to the bar if he is going to appear as a lawyer.

Mr. ROGERS. But you do have a requirement that he be admitted to appear?

Mr. MEEKER. If he is going to practice as a lawyer.

Mr. ROGERS. Yes. And the Treasury Department has the same, and the Internal Revenue. The Interior Department has certain standards that require that they are qualified before they appear.

Now, my question is: Would you see any objection to a general statute which says that if he qualifies as an attorney or as a CPA, he would be permitted to appear before all of these boards and bureaus and departments without making specific application and securing a separate permit to appear before each one of them? What is your thought?

Mr. MEEKER. We have no such requirements. We think our system works well. My answer would be, under those circumstances, I see no objection. I think if I were to leave the Government and go out in private practice, that—I like to think of myself as an appellate and trial lawyer—I ought to be able to argue a case before one Commission as well as the other.

Mr. ROGERS. Yes. But as I understand it, the way you act now, if a man has conducted himself unethically, then you take the action after he has carried out the unethical act to bar him?

Mr. MEEKER. That is right.

Mr. ROGERS. Thank you.

The CHAIRMAN. Mr. Commsel.

Mr. MALETZ. Mr. Meeker, H.R. 2156 is intended to revise the present conflict-of-interest statutes; is that correct?

Mr. MEEKER. Yes.

Mr. MALETZ. Now, I take it that the adoption of H.R. 2156 would in nowise foreclose the Securities and Exchange Commission from issuing its own rules or standards of conduct?

Mr. MEEKER. Exactly.

Mr. MALETZ. H.R. 2157, on the other hand, would prescribe a code of ethics which would be controlling on all the agencies of Government; is that right?

Mr. MEEKER. Yes. But I don't think that there is anything in 2157 in the ethical area that would raise a problem for us, as far as our rules are concerned, except insofar as, as I point out in my statement, our rules are different today. In other words, we would probably have to change our rules, for example, if there were a 2-year absolute ban.

Mr. MALETZ. You are concerned, as I understand it, that H.R. 2157 does not specifically authorize each agency to prescribe in addition its own code of ethics?

Mr. MEEKER. Exactly. Let me say, if I may, at this point, let me point out to the subcommittee, Mr. Maletz, that we have some problems that are a little different from Defense or some other agency.

We have the problem of who on our staff, for example, may engage in securities transactions, and under what circumstances. And we have developed over the years a very definite set of rules that limits our staff, but doesn't prevent some clerk in the Government from once in a while investing a little of his money in American industry. But all of this is done under very carefully framed, restrictive rules which

make it possible for the public, first, to get new issues that are registered through our Commission in the market, and holds up the Government employee until the public has had a chance to buy.

Then once the employee buys, he must hold for investment; we suggest under our rule 1 year.

Mr. MALETZ. May I ask you this final question: Could the President under present law prescribe a code of ethics which would be controlling on all agencies of Government, independent as well as executive?

Mr. MEEKER. Well, that is a nice question. As to whether he could under existing law, I guess I would have to hit the books a little more than I have to answer that specifically.

I would say this, however, that if the Constitution gives the President the power to enforce existing law, as it does, and the code of ethics is consistent with existing law, I don't know of any independent agency or any other agency of the Government that wouldn't pay very close heed to the President's Code of Ethics.

I can't say to you that an independent agency is absolutely bound by what the President directs, in its deliberations; in determining its own rules under its rulemaking power, each Commissioner is independent and with equal rank as he votes, and while when he votes on a rule for this Commission, I am sure he would pay heed to what the President has said, I am sure the President can't direct the vote of any of these gentlemen, if you see the problem.

Mr. MALETZ. Yet there would be no question of the President's power to issue a code of ethics for everybody in the executive agencies?

Mr. MEEKER. No question. I haven't recently examined the civil service laws, but I think under the civil service laws, the President may be able to issue a code of ethics to all Government employees, no matter where they are employed.

Mr. HARKINS. Mr. Meeker, the staff, when it prepared the conflict-of-interest report that you have referred to, made an investigation of the various statutes and the regulations of the agencies. We found that there was quite a wide variation among the various agencies in the amount of information or warning that was given to employees about the contents of the conflict-of-interest statutes.

Do you believe that as a general rule the agency regulations should advise, by citation or paraphrase, the employees of the agency of the contents of the various conflict-of-interest statutes?

Mr. MEEKER. I think so and—may I interrupt, Mr. Harkins, to say that when each employee in our agency comes on duty, he is required to read and sign a receipt for our rules of conduct. This he is given and advised to read carefully, and he signs a receipt for it.

From time to time we issue directions to employees indicating that any possible conflict of interest should be reported to the head of the agency immediately. In that way we refresh their recollections on these problems.

Mr. HARKINS. Do you have a copy of our staff report at your desk there?

Mr. MEEKER. Parts III, IV, and V.

Mr. HARKINS. Parts III, IV, and V, page 34; table 1, on that page indicates that the regulations of the Securities and Exchange Com-

mission only paraphrase for the employees the provisions of 18 U.S.C. 281 and 283.

Has there been a change in your regulations since the submission of the committee?

Mr. MEEKER. Well, there was a change in 1958, and frankly I don't remember whether or not that change would have added any. My recollection is that this table is right, and that those are the two principal conflict-of-interest statutes we referred to.

I would be happy on behalf of the Commission to reconsider whether we ought to refer to others, and we will examine this promptly.

(Subsequently, Mr. Meeker supplied the information, which appears at p. 259.)

The CHAIRMAN. You may proceed with your statement.

Mr. MEEKER. Thank you, Mr. Chairman.

With these thoughts in mind I would now like to turn my attention to some of the specific provisions of each of the bills which are the subject of this hearing today.

Perhaps the most troublesome provision so far as our Commission is concerned is the one which would prohibit for a 2-year period any person from appearing or practicing before any agency by which he was formerly employed. This provision is found in both section 104 of H.R. 2157 and section 207 of H.R. 2156. H.R. 7556 would prohibit any person from being employed by any person or concern with whom he has transacted business on behalf of the Government for a 2-year period after his separation from Government employment.

The Securities and Exchange Commission is specifically exempted from this last bill. However, my comments apply to it as well as to the other bills because of its impact on other agencies.

While I can fully understand the desire of those who propose the 2-year absolute ban against practice by a former employee before the agency which he served, nevertheless I feel that as a practical matter the rigor of such a requirement goes far beyond the practical needs of the Government to assure the integrity of its process. I say this because I am certain that one of the objectives of those who have appeared before this subcommittee in support of this 2-year ban is to insulate completely both the former employee and those who continue to serve from not only the possibility of a violation but also from the creation of any appearance of violation of either the letter or spirit of existing statutes prohibiting conduct of this character.

These are worthy objectives and to be commended, but I have no doubt that people who otherwise might be willing to enter public service would be very reluctant to do so if they were subject to this type of prohibition and such provision would be far too restrictive on the future employment or opportunities for practice of persons presently in Federal service.

Moreover, the prohibition of section 104 of H.R. 2157 would bar an employee in many cases in which the matters involved had not been even remotely connected with the official duties of the employee, and about which he had gained no information while an employee of the Government.

Mr. McCULLOCH. Mr. Chairman, I would like to ask two questions at that point. I note from your statement on page 2, Mr. Meeker, that

you are of the opinion that your rules and regulations, in dealing with conflict-of-interest problems, are adequate to the public need. Is that conclusion correct?

Mr. MEEKER. To the needs of the public in connection with our agency. I can't speak for others.

Mr. McCULLOCH. I certainly would accept that amendment. I am not trying to stretch your authority.

Mr. MEEKER. If I have any expertise at all, it is only limited to SEC.

Mr. McCULLOCH. My second question, then, is, Mr. Meeker, do you believe that your rules and regulations in dealing with the problem of conflict of interest, insofar as activities are concerned with in your Commission, discourage able persons from accepting appointment to positions by reasons of those rules and regulations?

Mr. MEEKER. Generally, no. I would say this, however—and very seldom does it happen—a man who retires from a business with a tremendous portfolio of securities which is the estate that he is going to leave to his family, well he may be a wonderful securities analyst, and we would like to have him, but he faces a problem as to whether he can trade in that portfolio he brings with him under our rules restricting trading by employees. And therefore I know one situation where a very capable man decided on his own not to come with us because of these restrictions. But that is the only situation that I know where somebody has been discouraged from seeking employment by our agency. Generally I think they work well. And I would say for myself that while I could purchase securities and sell them under the rules, I just decided as a personal matter it is much better not to trade in securities at all, and then I don't have to worry whether I make a mistake.

Mr. McCULLOCH. Have you considered the advisability of amending your rules and regulations to take care of the situation which you have just mentioned, if you think it should be taken care of?

Mr. MEEKER. Mr. McCulloch, the Commission has discretion in that matter. And the Commission could by action of its own permit a man a certain leeway. This particular case was never presented to the Commission, because the applicant decided he just didn't want to tie himself in any way, so he didn't file his form 57. But I say the Commission has power to consider special situations under its rules and engage in some flexibility by interpreting the rules.

Mr. McCULLOCH. Do you think that that power and that flexibility may result in some hardship in some cases and no hardship in others, and the changing trends in the Commission would result in one rule for a Smith and another rule for a Brown—which we have some evidence for in other agencies of the Government?

Mr. MEEKER. Well, certainly human beings are not infallible. All I can say is that while I have been General Counsel for over 4 years, there has been one rule for everybody. These things come through my office on their way to the Commission, and I haven't observed myself any hardship. If there has been anyone who has been imposed upon he has never complained to me.

Mr. McCULLOCH. But you have an inflexible rule, as I understand it. I was referring to other departments where there have not been inflexible rules, and where some people have been caught with one

order and people similarly situated have been caught with another. I was asking your general opinion about this.

Mr. MEEKER. Yes. Let me say this. I don't see how you can operate in this very difficult area without specific, carefully stated, clear rules. And I think ours are. If anyone wants to suggest that one ought to be changed, our Commission is ready at any time to reconsider them.

We in the Commission have dealt with this problem previously and I believe that our treatment of the subject is both effective and fair to all concerned. Under the Commission's Rules of Conduct—and I refer at this point to rule 6—any person leaving the Commission is permanently barred from participating in any matter in which he has gained some knowledge or information during his Government employment. For a 2-year period after leaving the agency every such former employee is required to file a report with the Commission in any matter in which he is appearing before it within 10 days after he is retained or employed.

And I might say parenthetically that we construe the word "appear" very broadly in rule 6(e) as constituting a personal appearance before or personal communication with the Commission or any member or employee thereof.

Mr. MEADER. Mr. Chairman, might I interrupt to ask a question of Mr. Meeker at this point?

I want to go back to the previous sentence where you say "Any person leaving the Commission is permanently barred from participating in any matter in which he has gained some knowledge or information during his Government employment."

Mr. MEEKER. Yes, sir.

Mr. MEADER. I would like to know just how you construe that phrase "any matter in which he has gained some knowledge." It is my impression—and I am speaking now of the legal profession specifically—that one of the inducements for young lawyers to apply for Government employment in the legal field is to gain some special knowledge—and I would say that would be particularly true with your agency, the Securities and Exchange Commission—a kind of internship, if you please, where, after a general legal education, a lawyer desires to specialize in some field. Now, he might, under this rule you referred to which I have quoted, have become familiar with one particular aspect of the regulatory activities of the Securities and Exchange Commission, possibly with respect to one application or one company or one flotation of securities. He would gain some knowledge of the proper presentation of the matter to the Commission, he would gain an acquaintance, perhaps, with the personnel in the Commission who were responsible for the Commission's action on an application of that kind. Now, would your rule prevent him from dealing only with that company or that flotation of securities; or whatever the matter might be, in the specific cases that he was concerned with as an employee of the Commission, or would it apply to similar situations with other companies who might have a similar problem?

Mr. MEEKER. No, sir. And this is a question which I would like to direct myself to further, because it goes to the heart of the issue with which we are concerned. It seems to me that the absolute ban

as proposed by some of these bills would do the very thing which I have suggested is undesirable, that is, of leaving the young lawyer who—and I had a 35 percent turnover last year in young lawyers in my staff of 18, they are in there for internship, I guess—but that young lawyer, under our rule, is not permitted to use the knowledge that he has gained—

Mr. MEADER. Is not permitted?

Mr. MEEKER. Is permitted. Thank you, Congressman. That young lawyer is permitted to use the knowledge generally that he has gained. He can come in generally if he gets a client that wants to go to the public market with an issue of securities, such as the Jones Co., then he can use the knowledge he gained at the Commission in examining the registration of the Smith Co., in his representation of the Jones Co. But he cannot, if he worked on the Smith Co., registration statement, come in and file an amendment to the Smith Co., registration statement 3 months after he leaves.

Furthermore, we don't consider that a person ought to be absolutely barred for some 2 years merely because he gets to know that Meeker is the General Counsel and Pollack is the Assistant General Counsel, or Woodside is the Director of the Division of Corporation Finance. It is easier for the public to do business with us if some of our people get out and into private practice.

Furthermore, people who are trained in our area are going to help us in our enforcement job, because they are going to try to comply with our rules and regulations and conduct themselves in the spirit which we hope they have learned while they were with us.

So we say that we think our rule is a good one, if someone worked on a particular registration statement for Smith & Co., then he oughtn't to be able to go out and represent Smith & Co. the minute he leaves. But if he comes in for Jones & Co. and uses the techniques he has acquired, he ought to be permitted to practice when he leaves.

Mr. ROGERS. What you are really stating is a restatement of the canons 36 and 37 of the Canons of Professional Ethics of the American Bar Association, isn't it? That is about all this amounts to. You mean that when a man comes down there and gets an education on how to file and process a prospectus through the SEC, he can use what he learns just so long as he doesn't represent anyone in a matter that he himself has passed on, is that right?

Mr. MEEKER. Exactly.

Mr. ROGERS. You made the statement that if he worked on the Smith Co. and left, and within 3 months he came and filed an amendment to the Smith Co. application you would consider that unethical, and a violation of the rules, as I understood your testimony.

Mr. MEEKER. May I just clarify that, Mr. Rogers, by saying that I consider in that circumstance the registration was a particular matter, and the amendment to that registration statement was the same particular matter. I don't mean to say that a year later or 2 years later if Smith & Co. should hire this man for something completely different, that he would necessarily be barred.

Mr. ROGERS. But if his employment involved the registration statement that he had passed on he would be permanently barred?

Mr. MEEKER. Yes, sir.

Mr. ROGERS. Thank you.

Mr. MEADER. Mr. Meeker, while I have the floor, if I might go back just a little bit to the employment matter, I notice on the last page of your statement—no, on page 12, the first paragraph—in referring to section 207 of H.R. 2157 you seem content to let your comments with respect to that section rest upon the comments you made with respect to a similar provision in H.R. 2157.

Mr. MEEKER. Yes, sir.

Mr. MEADER. Now, I would just like to ask your opinion as a lawyer. In a specific hypothetical case under section 207 the other day I used the illustration of the well-known space expert, Wernher von Braun, who is now employed, I believe, or shortly will be employed by a civilian agency, the Space Administration, but who previously was employed in the Department of the Army. Now, either the Defense Department or the Space Agency, probably deal with the great bulk of the type of thing which Mr. von Braun has acquired some special competence in. Is it your opinion that under section 207, which is not limited to any 2-year period, that Mr. von Braun, if this section becomes law, would be forever prohibited from engaging in his field of special competence for the private business world, since practically all the products of the private business world have some relationship to the Space Agency or the Defense Department, in both of which Mr. von Braun has been employed?

Mr. MEEKER. As I read it—maybe I missed something in section 207 of H.R. 2156—but I would say under our rules it might be. Are you talking about the first paragraph of 207?

Mr. MEADER. 207 of H.R. 2156, "disqualification of former officers and employees in matters connected with former duties or involving former agency."

Mr. MEEKER. Your comment is directed, then, I think, to the first paragraph.

Mr. MEADER. That is right.

Mr. MEEKER. Let me say, sir, that Mr. von Braun's lawyer might argue interpretations of the words "proceeding," "contract," "claim," "controversy," "charge," "accusation," or "arrest," and say that his work had not involved those particular aspects, and therefore it wouldn't be a bar to him.

Mr. MEADER. "Assist in the contract to which the United States is a party"—I don't know the name of some of these private rocket concerns, but pick any one of them. If he were employed by that concern to employ his special knowledge in the field of missiles and rockets to assist that company in its contract with the U.S. Government, either the Defense Department or the Space Agency, wouldn't it be clear that his services were being employed for precisely the purpose of assisting that company in connection with its contract?

Mr. MEEKER. Yes; I think it might be. And I think Mr. von Braun would have a very real problem under the first paragraph.

Mr. MEADER. In other words, this language in its present phraseology would prohibit Mr. von Braun from pursuing his career and in a sense deprive him of property without due process of law, because it would deny him the right to make his living and to pursue his interest as he might choose, and at the same time, it might very well deprive the United States, both for defense purposes and for the civilian uses of rocketry, from employing Mr. von Braun's talents in the business community to further the art of rocketry.

Mr. MEEKER. I think, sir, that the Congressman has raised a point. It seems to me—and I want to be clear with respect to my views here, looking at this particular paragraph, I would say that in fairness to someone like Mr. von Braun or Mr. Jones, who may be an expert elsewhere, that this restriction ought to deal in terms of particular matters with which he has dealt himself as an employee of the Government. In other words, the former Government man ought not to be able to profit immediately from knowledge or information that he gained in handling a particular case by coming into that same case or matter again the minute he leaves. And that is the gravamen or the vice, it seems to me, in this situation. I think if you use, as you have suggested by your question, such broad language as is included in 207, the first paragraph, the Congress then imposes a very severe restriction on anybody who works for the Government, and somewhat unfairly.

Mr. PEET. Mr. Chairman, may I inquire? Mr. Meeker, pursuing Mr. Meader's line of inquiry, when an individual has worked not on a negotiating basis on a contract, but simply in a scientific or technological way, do you think he should be barred from working on the same type of project on the outside?

Mr. MEEKER. Let me say, I have to answer that in terms of my own experience. We work in many areas as teams. I would say in answer to your question that the geologists that worked on the Smith Co. registration statement are just as much a part of the work of our Commission on that statement as are the accountants or the financial analysts, and that if you are dealing with this area, you ought to have clear and very well-defined prophylactic rules which would not be defeated by an interpretation as to the degree that one man or another participated.

I don't think, on the other hand, that a fellow who sits as a division head and never has had a particular matter come before him, although he has ultimate responsibility for that matter, ought to be barred because of the fact that two of his people down the line worked on it, especially when they never discussed the matter with him—he never had anything to do with it. All they did was to report to him administratively. But the man who works as a scientist in your contract situation, if in effect what he does leads to the signing of the contract, how are we going to determine a year later the extent of his knowledge, go into his bedroom and study and determine what his state of mind is?

This problem reminds me of the prophylactic rule under the Bankruptcy Act, section 249, which says in effect that a trustee cannot trade in the securities of the debtor during the reorganization. It is just as clear as that.

Now, if his wife effects the trade, that trade disqualifies him, there is no doubt about it. I would be very hesitant to make it broad enough to include just anybody who worked on the team in any one of these contract situations.

Mr. PEET. Am I correct in interpreting that you predicated your answer on the basis of the individual involved in a possible conflict of interest who would be working in a negotiating sense to secure the contract. Suppose you simply had a situation where a man was working purely in a scientific or a technological area on a project, such as a systems expert of some sort; he has an exotic skill that the Govern-

ment wants. Then he goes out to an industry which also wants him for work in the national defense effort, not in a policymaking sense however, but simply as a worker who has a specialty in an exotic scientific area.

Mr. MEEKER. I would suppose that you would have to treat that problem this way. Sometimes, you know, the Government, in reviewing alleged conflict-of-interest cases that are within the statute, may decide they haven't got a prosecutable case for one reason or another. Now, I think this problem is one that you would have to consider in terms of whether he gained any inside information in the course of the scientific work in the area of this contract which would in effect benefit him and be unfair to the Government in his subsequent employment.

Mr. PEET. Do you think an individual who was subject to such a bar would come in the Government in the first place—subject to such possible prosecution?

Mr. MEEKER. Gentlemen, I don't know—all of us have considered the risks of public service, including possible prosecution. We considered that when we signed that form 57. I will agree with you that if the language of the first paragraph of 207 is enacted in the law, that you probably will have great difficulty in getting some people to come in the Government service. But your case is a difficult one, sir—I would say to you that if there was any unfair advantage to be gained by that scientist as a result of his ancillary activity to the contract, that his participation after terminating his Government employment ought to be prohibited.

The CHAIRMAN. Mr. Meeker, let me ask you this: Taking H.R. 2156, page 10, lines 19 and 20, suppose we strike out lines 19 and 20, and add the words "with which he was directly connected," if we did that, wouldn't that obviate your difficulties?

Mr. MEEKER. Yes, sir; considerably. And I am just doing this off the cuff, Mr. Chairman. But I might say that it might improve it also to say in line 18 "any particular matter with which he has a direct connection or of which he had knowledge," instead of just "subject matter."

For example, we don't feel that if there is a proceeding going on 20 years in an agency—and sometimes under these difficult corporate reorganizations they continue for a long time—

The CHAIRMAN. I think the point is well taken. A number of officials of the departments who have testified before us have made the same suggestion.

Mr. MEEKER. I will try to make my statement somewhat briefer, in view of the chairman's suggestion. If the chairman will permit, I can summarize my statement if the rest of my statement can go into the record.

The CHAIRMAN. Very well.

(Mr. Meeker's statement appears at p. 250.)

Mr. MEADER. Might I suggest, Mr. Chairman, that we ask Mr. Meeker to give a little more study and attention to the phraseology of that section, and if he finds language that would get at what we all seek to prohibit, but at the same time not depriving people of their livelihoods or depriving the Nation in general of the benefits of special talents in the business world, that he make the suggestion to the committee.

Mr. MEEKER. I would be very happy to do so.

The CHAIRMAN. We would be very glad to receive your suggestion. (Subsequently, Mr. Meeker supplied the information which appears at p. 259.)

Mr. MEEKER. Thank you.

I had said that under our rule a former employee is required to file a report with the Commission in any matter in which he is appearing before it within 10 days after he is retained or employed.

In the report the former employee must state why he believes his employment is consistent with the rules of conduct and as a matter of practice such reports are circulated among the Commission offices to determine whether there appears to be any violation in the contemplated employment or representation.

It seems to me on balance that this disclosure technique employed by this Commission which alerts it and its officers and employees to the intention of a former employee to appear before the Commission in any matter, serves both the agency and the public interest by careful review of practice by former employees within the framework of our rules prior to any appearance by such employee before the agency for the 2-year period following his departure from the agency. When viewed together with the absolute prohibition in rule 6 of the Commission's conduct regulation against an appearance by a former employee or anyone associated with him in a particular matter if the former employee personally considered it or gained personal knowledge of the facts thereof while a member or employee of the Commission, I believe the Commission's considered solution to this problem merits careful evaluation by this subcommittee.

I might also emphasize that the Commission's approach to this problem is in keeping with the stringent rule which the courts apply in dealing with the question of a disqualification of an attorney by reason of prior connection with an opposing party. Thus, Judge Weinfeld pointed out in *T. C. Theater Corp. v. Warner Bros. Pictures, Inc.*, 113 F. Supp. 265 at 268 (1953), that—

A lawyer's duty of absolute loyalty to his client's interests does not end with his retainer. He is enjoined for all time, except as he may be released by law, from disclosing matters revealed to him by reason of the confidential relationship. Related to the principle is the rule that where any substantial relationship can be shown between the subject matter of a former representation and that of a subsequent adverse representation, the latter will be prohibited.

And that was quoted with approval in the landmark case of *U.S. v. Standard Oil*, Judge Kaufman's opinion at 136 F. Supp. 345, 358.

Now, the Securities and Exchange Commission has itself in the past taken action to enjoin the practice by a former employee when it felt that his participation in a matter was barred by this type of conflict of interest. And I refer to footnote 6 in my statement to the *Mahaney* case.

If the Congress concludes that as a matter of policy the 2-year absolute ban is desirable, it would seem to me that such restriction ought to be considered in light of any similar activity by those who have served either the legislative or judicial branches of the Government. If the concern is that a former official or employee of an agency may be able by his very appearance or contact with the agency to consciously or unconsciously influence it or its officials or employees, then I think that such absolute ban should be applicable also to former of-

ficials of the legislative and judicial branches of our Government in the same manner as H.R. 2156 would restrict the activities of an Assistant Attorney General of the Department of Justice or a General Counsel of a Commission, for example.

Addressing myself now to H.R. 2157, you will note that section 102 of this bill closely parallels certain of the rules of conduct which the Commission has prescribed for its employees, with the exception of the subdivision (f) thereof as to which I will have more to say in a moment. With respect to the other provisions of this section I only wish to note that in our own rules of conduct we have referred to a "valuable" gift, favor, or service in order to make plain that a de minimis gratuity is not included. I would assume that section 102 (a) (1) of H.R. 2157 would be similarly interpreted, although it is worded "any gift." Also with respect to the language in section 102 (a) (2) which reads "to discuss or consider his future employment with," I think that perhaps the language of the Commission's rules, which is "to discuss or entertain a proposal for," is perhaps preferable. I say this because of the difficulty of proving that a Government employee "considered" future employment as against proving that he "entertained a proposal for" such employment.

And I would request, Mr. Chairman, that footnote 7, which is a comparative table of provisions of H.R. 2156 and 2157 and Commission's conduct regulation and canon of ethics, be printed in the record at this point as an indication of the similarity of those provisions.

The CHAIRMAN. It may appear.
(The table referred to follows:)

Comparative table of provisions of H.R. 2156 and 2157 and Commission's conduct regulation and canons of ethics

H.R. 2157	Regulations—Canons
§ 102 (a) (1).	Rule 1B; Canon 6.
(2).	Rule 1C, 5.
(3).	Rule 1E, Canon 6.
(b).	Rule 1A.
(c).	Rule 1D.
(d).	Rule 1G, 2, 3; Canon 17, 18.
(e).	Rule 4; Canon 7.
(f).	Canon 8.
§ 103, 104 [and H.R. 7556].	
H.R. 2156	
§ 201(e).	Rule 1B.
§ 203.	Rule 1A, 1B, 1F; Canon 6.
§ 205.	Rule 2B, 2C, 2D.
§ 207.	Rule 6, Canon 7.
§ 208.	Rule 1F, 1G, 2B, 2C, 3, 4; Canon 17, 18.

The CHAIRMAN. I just want to point out with respect to your comment on page 7, concerning section 207 of the bill, which revises without change in this respect, present section 284, that this section did not cover certain judicial or legislative officials, because their peculiar status raises a spate of problems that are extremely difficult to handle. The staff and members of the committee are studying these matters. If you have any suggestions to remedy the present situation, we will be glad to receive them, but I don't want

the impression to be created that we didn't take into consideration the judicial or legislative officials.

Mr. MEEKER. Mr. Chairman, I might say that, as the Chair knows, in reading my statement I amended it slightly, because after I read it I thought there might be some feeling on the part of the subcommittee that I was making an absolute recommendation, and I am not. The only reason that I pointed it up was my concern for the fact that we would be overwhelmingly concerned, in considering the Federal employee, with the fact that the mere return of an assistant general counsel or a general counsel or of a financial analyst to the agency would involve a risk during a 2-year period of the breakdown of the integrity of the process. And I just merely want to point out here that we are not, as former employees, sometimes as influential on human beings as former judges may be or former distinguished Members of the Congress. I am not making any suggestion in that area, I am just pointing out this point in order to emphasize that I don't think, as some of my colleagues at the bar feel, that there ought to be a 2-year bar, just because of the fact that a man contacts an agency for whom he worked. If he didn't contact on a particular matter with which he worked, I think he ought to be able to practice before that agency.

The CHAIRMAN. Section 284 has been considered in Congress for many, many years, and Congress has always ended by not making the rules which are applicable to the executive branch apply to Members of Congress or the members of the judiciary.

Mr. MEEKER. It is full of difficulties, Mr. Chairman, I recognize that. But I was just trying to get across the point that a former general counsel of the SEC may not be as influential just by walking in the door of the Commission as a former judge of the Federal bench. I am quite sure of that fact.

Mr. HOLTZMAN. Mr. Meeker, going back to your statement on page 7, the last two lines, you say:

I say this because of the difficulty of proving that a Government employee "considered" future employment as against proving that he "entertained a proposal for" such employment.

Now, I frankly don't see any difference. Can you tell us what the difference is, and how you would be in a better position with respect to proof if your language was adopted?

Mr. MEEKER. Yes, sir, I will tell you my view of it. And that is that the word "considered" is again one of those bedroom or living room or home study situations, in the privacy of a man's office, crawling under his bed to hear what he is saying to his wife, trying to get his intent, what did he consider. How can you prove that? If you can tell that there was a proposal made to him and they met at a restaurant and discussed that proposal, then you have got it, it is much easier to prove. But if you get into whether a man considered it or not—

Mr. HOLTZMAN. Of course, we are in the field of semantics here. It seems to me that entertaining a proposal presupposes a state of mind too.

Mr. MEEKER. Well, if you limit it to entertaining, I would say "Yes," but if you put the proposal in there, isn't that, sir, an overt act as to which proof is easier to obtain?

Mr. HOLTZMAN. I doubt it, but you are entitled to your opinion.

Mr. MEEKER. Well, I am primarily a civil lawyer.

Maybe Mr. Pollack, who is a lawyer with much experience in the criminal area, would like to comment on that.

Mr. POLLACK. I think the language "entertained a proposal," as Mr. Meeker points out, is directed to some overt act that you can point to. A fellow can say, "I listened to a proposal, but I never considered the proposal, I just listened to it."

And I think the "entertained a proposal" is easier established than "considered," at least that is the way we felt when we compared the two provisions.

Mr. HOLTZMAN. If you were defending someone in a criminal matter I am sure the "entertaining a proposal" phase of it would give you little if any difficulty in moving to dismiss, just as the word "considered" would. I frankly don't see much difference. Perhaps there is, on the basis that there was an actual proposal, let's say, in writing, but it is a very close field.

Mr. POLLACK. Apparently what is troubling you, sir, and which also troubled us, is that the word "considered" is so vague and indefinite that it would present a problem of proof. We felt that since in our own regulations we used the term "entertaining a proposal," which at least to us seemed to be something more concrete and definite that it was preferable; and that "considered" by the individual might be interpreted to require a showing that he actually thought about taking the employment and that it was not sufficient that he listened to and entertained the proposal that was made by somebody else. Now, we may be wrong, but if we are wrong, then some consideration has to be given to some other provision which would eliminate this very point that you are raising.

Mr. HOLTZMAN. Have you thought of some other language that might cope with the situation?

Mr. MEEKER. I am not entirely satisfied with "entertained", because I think that has an unfair connotation from the start, I think we ought to look for another word.

But I do say, sir, that 102(a)(2), which says to discuss or consider his future employment, is a little vague and perhaps a little unfair to the employee who might be looking forward to getting out of the Government. That is pretty broad.

Mr. ROGERS. In other words, you are fearful that if he wakes up in the middle of the night and has a dream that perhaps he would like to move in and be the head man of a company, that that has its application there, that that is entertaining the idea, and hence he is subject to criminal prosecution?

Mr. HOLTZMAN. That wouldn't be considering?

Mr. MEEKER. That would be considering it. The luncheon would be where he entertained it, I guess.

Mr. MEADER. Mr. Meeker, do you see any distinction between the case of an employee who has voluntarily retired from the Government and who has been involuntarily separated, perhaps by a reduction in force, or if you apply the principle to a member of Congress, who has been retired by his constituents?

Mr. MEEKER. No, sir.

Mr. MEADER. You don't think this prohibition against former employees should make any distinction between the man who has lost his job either because he has been fired for some misconduct or because simply of a reduction in force?

Mr. MEEKER. No, sir, I can't see any distinction.

The CHAIRMAN. I want to state to the members of the committee that we have the veto message of the President on water pollution at 12 o'clock sharp. I am going to ask you if you can condense your statement, because we have another witness here.

Mr. MEEKER. Mr. Chairman, may I then conclude by asking that the remaining part of my statement from page 8 be included in the record, and pointing out specifically that we have made some language changes which we think would be helpful in the legislation, and that also the committee has received the thrust of our view by our own testimony on the 2-year provision.

For the most part, the rest of it is sort of henpecking, legislative language changes, and if the committee would accept that as a basis for my retreat, I will retreat with one last word.

The CHAIRMAN. You have that permission. And we are also going to get some additional information and data from you, and suggestions.

Mr. MEEKER. Yes, sir.

I would just like to have the record include a proposal for dealing with this overall problem of influence in connection with the quasi-judicial proceedings of administrative agencies, a short bill which we in the Commission have testified to before in the Congress, and which I think will interest this subcommittee. It is very concise, it doesn't deal with having to record letters or statements or phone calls, it just makes it a crime to try to influence the decisional process on the merits of any quasi-judicial agency. It is the type of broad, prophylactic code that we have in the Bankruptcy Act in some areas. And I would like to submit it for the record at this time for this committee's consideration. It is referred to in my statement.

The CHAIRMAN. We will be glad to receive it.

(The material referred to follows:)

Whoever, directly or indirectly, endeavors to or privately communicates, in the absence of the parties or without notice to them, with any member of any agency of the United States, a hearing officer or examiner of such agency, or member of its staff on the merits of any matter in which such persons are exercising quasi-judicial functions; or

Whoever corruptly, or by threats or force, endeavors to influence or bring pressure upon such persons in the exercise of their functions in any matter

Shall be fined not more than \$ _____, or imprisoned not more than _____ years, or both.

Mr. ROGERS. Would that include Members of Congress, or the legislative branch?

Mr. MEEKER. Yes. I would have to say that if the Congress tried to influence the decision of a Commissioner, it would include the Congressman—in a quasi-judicial proceeding, excuse me.

Mr. ROGERS. Suppose you have a prospectus filed there to sell stock.

Mr. MEEKER. That is not quasi-judicial. You may call up and say, "Why has it taken 25 days to get this statement out, Mr. Director? I would like to know, my constituent wants to know."

You have a perfect right to do that. There is no problem if you call him up and ask him that question. And he ought to tell you why.

Mr. ROGERS. If we went ahead and said, "Now, look, the grapevine has told us—you know that you have arrived at the wrong decision, and we know you are wrong, and you had better get right," if he told you that, that would be violating the statute?

Mr. MEEKER. Well, I don't like to advise Congressmen, but if I were a lawyer, sir, or your administrative assistant, I would say that the way to do that is to bring that particular ease up before the committee, because there would be a danger in the second paragraph of that bill in that latter situation.

But this bill is not intended to shut off the arteries of communication for Congressmen with the agency in the great bulk of its business. The only thing it is intended to do is establish a prophylactic rule that just makes it perfectly apparent to everybody that the quasi-judicial Commissioner sitting as a judge ought to be treated like a judge on the court and not called on his phone about his decision in the matter.

Mr. McCULLOCH. Mr. Chairman, I am a little concerned, and I hope I have misunderstood what the witness meant to say when he mentioned the advisability of the committee making some inquiry where a matter is pending.

Mr. MEEKER. I didn't mean that, sir. Let me straighten that out.

Mr. McCULLOCH. I am glad you didn't, because I think that is subject to abuse which is immeasurably greater than any mere call by telephone or in person or any other approach that an individual Congressman can make.

Mr. MEEKER. I agree wholeheartedly. And what I was directing my remark to was a comment by Congressman Rogers in a case which had been decided. And then I say that this bill would not preclude the committee that has parent responsibility under the Legislative Reorganization Act, so far as the activity of that agency is concerned, from considering with that agency whether, because of its concern over the ultimate decision which is supported by the courts, whether there ought to be legislative changes in the legislation itself.

Mr. McCULLOCH. Again, I now understand your statement to be that this hearing was to take place after the quasi-judicial decision had been made and had become final, and there could be no possible effect on an individual.

Mr. MEEKER. Yes.

Mr. McCULLOCH. Thank you.

The CHAIRMAN. Thank you very much.

Mr. MEEKER. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Mr. Ross Newmann, associate general counsel in charge of rules and legislation of the Civil Aeronautics Board.

Mr. ROGERS. Mr. Chairman, I want to say that he is one of my constituents, and I am very happy to have him here.

The CHAIRMAN. We are very happy to have anybody that comes from Denver or Colorado, the home of Mr. Rogers.

Mr. NEWMANN. Thank you, sir.

The CHAIRMAN. You may proceed.

**STATEMENT OF ROSS I. NEWMANN, ASSOCIATE GENERAL COUNSEL,
RULES AND LEGISLATION, OF THE CIVIL AERONAUTICS BOARD**

Mr. NEWMANN. Mr. Chairman and members of the committee, I am Ross I. Newmann, associate general counsel, rules and legislation, of the Civil Aeronautics Board.

The Chairman, Mr. Durfee, has asked me to express his regrets at not being able to be here. He has been very much interested in these and similar bills, and he has testified on numerous occasions before various committees of the Congress.

The Board appreciates this opportunity to present its views on H.R. 1900, H.R. 2156, H.R. 2157 and H.R. 7556, and supports the objective which these bills are designed to accomplish.

Because of its position as an independent regulatory agency dealing with quasi-legislative and quasi-judicial functions, the Board has been particularly concerned with the various provisions of the law relating to ethical standards in Government service. During the past several years the Board has appeared before numerous committees of the House and Senate and has supported various bills which would strengthen our laws dealing with ex parte influence, conflicts of interest, leaks and pressures, administrative procedure and other matters related to the general problem of ethical standards.

The Board's own code of ethics, which is applicable to the Board, its staff, and other persons appearing before the Board, has been in effect for approximately 9 years. In many respects the functions of the Board are similar to those of a court and parties to cases before it are expected to conduct themselves with honor and dignity. By the same token the Board and its staff are expected to conduct themselves with the same fidelity to standards of propriety that characterize a court and its staff.

Section 300.2 of the Board's code of ethics is designed to safeguard cases which are decided by the Board after notice and hearing and upon a formal record. In such cases it is improper that there be any private communication on the merits of the case to a member of the Board or its staff. It is likewise improper that there be any private communication on the merits of the case to a member of the Board or to the examiner by any members of the Board's staff who participated in the hearing as witness or as counsel.

Moreover, it is improper that there be any effort by any person interested in the case to sway the judgment of the Board by attempting to bring pressure or influence to bear upon the members of the Board or its staff.

Section 300.4 states that it is particularly improper that persons interested in the business of the Board provide unusual hospitality to the Board or its staff or that such hospitality be accepted. Section 300.5 deals with proper attorney-client relationships and stresses the need for practitioners to use their best efforts to restrain their clients from improprieties in dealing with the Board or its staff.

Section 300.6 provides for the temporary or permanent disqualification and denial of the privilege of appearing before the Board of any person who is found to have engaged in unethical or improper professional conduct.

In addition to the Principles of Practice which were adopted to preserve the quasi-judicial character of the Board's actions and to definitely prescribe in written form the rules of conduct by which all persons having business with the Board are governed, the Board has also adopted rules governing the conduct of its own officials and employees which require strict adherence to the highest standard of conduct. These rules have been developed over a period of years and have been revised and brought up to date through a continuous process.

The Board's rules of employee conduct provide, in essence, that:

(1) No employee may receive unusual gifts or entertainment which might be interpreted as tending to influence the performance of his official duties.

(2) No employee may hold or acquire a pecuniary interest in any air carrier, foreign air carrier or any other enterprise primarily aeronautical in nature.

(3) The unauthorized disclosure of information may result in disciplinary action against any employee including suspension or removal.

(4) No employee may engage in any outside employment or activity which in any way tends to interfere with the proper performance of his official duties or involves a conflict of interest.

(5) A former employee of the Board is barred forever from appearing before the Board in connection with any matter which he handled or passed upon while associated with the Board. In matters which he did not handle or pass upon but which were pending at the time of his employment with the Board, he is not permitted to appear before the Board for a period of 6 months after leaving the Board.

(6) No person will be employed or retained by the Board who has a member of his immediate family working for an air carrier or an aviation trade association.

The Board's rules of employee conduct also make specific reference to the statutory provisions of the criminal code and other pertinent laws of the United States which restrict the conduct of officers and employees of the Board and other Government agencies. These laws have been very excellently summarized and evaluated by the staff of this subcommittee in its report of March 1, 1958, on Federal conflict-of-interest legislation.

While the Board believes that its rules and regulations constitute a reasonably adequate code of ethics, we recognize a deficiency in these rules which could be remedied by appropriate legislation. Under the present law, our only remedy against an employee who violates our rules of conduct is to dismiss him. In the case of a Board member, the Federal Aviation Act provides that a member may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

The only remedy the Board has against outsiders who violate the principles of practice by improper communication or pressure is to disqualify and deny them the privilege of practicing before the Board. If they are not practitioners, however, the Board has no recourse against them at all.

H.R. 2156 and H.R. 1900 propose the revision and reenactment of chapter 11 of title 18 of the United States Code and would include

revisions of the conflict-of-interest provisions presently contained in other chapters of title 18.

Section 201 would for the first time define "bribery," "public official," and "official act," and would provide a uniform maximum penalty for giving or receiving a bribe. The term "bribe" is defined to include money or a thing of value or promise thereof. Thing of value would also include such things as a loan, honorarium, advantage, position, employment, and present and future opportunities.

"Public official" has been defined to include Members of Congress, jurors, and all officers, agents, and employees of the United States in the executive, legislative, and judicial branches of the Government.

The term "official act" includes not only a public official's affirmative action, but also his omission or neglect of matters.

Section 201 of the bill prohibits all payments and receipts "for or because of an official act." This means that the payment or receipt of anything of value would be outlawed irrespective of any intent to influence or induce, or to be influenced thereby.

The difficulties posed by this language undoubtedly were of concern to the staff of this subcommittee which recognized in its report that it may seem harsh to impose a severe penalty for making or receiving a gift for which no corrupt consideration has been given. Section 201 outlaws express as well as tacit arrangements for influencing future official conduct by rewards, but it also encompasses situations where the official act was done in the past.

The words "for or because of an official act" do not require that the recipient of the benefit must have expected it or must know why he gets it—in fact they do not require any proof of the state of mind of the recipient at any time, or of the state of the giver's mind at the time the official act was performed. Section 201 does not require that the official act "for or because of" which the thing of value is given, must have benefited the giver or that at the time of the official act the giver and the public official knew of each other's existence.

While the Board supports the general objective of section 201 to consolidate, clarify, and strengthen the existing bribery laws, we believe it is too broad in its present form and should be revised.

Section 202 would combine, broaden and provide uniformity of existing laws dealing with bribery of witnesses and would extend the applicability of such laws to the bribery of witnesses before congressional committees and Federal agencies. The Board favors this provision.

Section 203 relates to extra-governmental compensation for the performance of official duty. This section revises the present law, which prohibits Members of Congress and Federal employees from accepting compensation for services rendered in relation to matters before Federal agencies, by broadening the scope of the violation to include the payment as well as the receipt of prohibited compensation. It also covers persons making agreements to receive such compensation before entry into public office or receiving such payment after leaving it.

In other words, violation is made to turn on the recipient's status at the time of actual or purported rendition of the services rather than his status at the time of receipt. The Board favors the enactment of this section.

Section 204 relates to practice in the Court of Claims by Members of Congress and section 206 applies to retired officers of the Armed Forces. The Board has no comments on these sections.

Section 205 would continue the present prohibition of Government employees from prosecuting claims against the United States and would extend the existing law to prohibit services in matters in which the United States is interested where performed before executive and independent agencies. The Board has no objection to this section.

Section 207 relates to the disqualification of former officers and employees in matters connected with their former duties or involving the employee's agency.

The present law, section 284, chapter 15, title 18, United States Code, prohibits a former Federal employee, within 2 years after termination of his services, from prosecuting claims against the United States involving a subject matter directly connected with his employment or duties. Section 99 of title 5 of the code bars an employee of an executive department, for a period of 2 years after leaving such department, from prosecuting "any claim against the United States which was pending in either of said Departments" during his employment. The Board is not deemed to be a department within the meaning of this section.

Section 207 broadens the existing law to impose (1) a lifetime disqualification with respect to all matters in which the United States is interested and with respect to which the employee exercised responsibility, and (2) a 2-year disqualification with respect to other matters in which the United States is interested and which involve the employee's agency.

Section 207 would thus eliminate the present 2-year limitation and substitute the phrase "any responsibility" for the existing law which applies only where the person's employment or duty was "directly connected" with a particular claim.

It is the Board's position that section 207 is too restrictive and should be revised. In our opinion the test of permanent disqualification should be dependent upon whether the person "handled or passed upon" a matter during his employment with the Government. The Board's regulations apply this test and go further than section 284 of the existing law by barring forever a former employee who "handled or passed upon" a matter while employed by the Board. If a matter was pending before the Board during the time of his employment and he did not "handle or pass upon" it, our regulations would prohibit him for a period of 6 months from appearing before the Board in connection with that matter.

While the Board would have no objection to a permanent bar where a person has "handled or passed upon" a matter, we cannot endorse the amendment proposed in section 207. As presently drafted the words "any responsibility" would permanently bar former employees who may have had an insignificant or nonsubstantive interest in a matter and where there is no danger of a conflict of interest.

This, in our opinion, would severely handicap the Government in securing the services of competent personnel and would unduly restrict Government employees, particularly those with specialized experience, from earning a livelihood outside the Government.

Section 208 prohibits business dealings by a Government employee with a private business entity in which he has a pecuniary interest. With some modification, it continues the existing provisions of section 434 of title 18, United States Code. This provision is similar to the Board's code of ethics which prohibits an employee from holding or acquiring a pecuniary interest in any air carrier, foreign air carrier or any other aeronautical enterprise. The Board has no objection to the enactment of section 208.

Section 209 incorporates with relatively minor change the provisions of existing section 1914, title 18, United States Code, which prohibit a Government employee from receiving any salary in connection with his Government services from any source other than the Government of the United States. The new section brings the receipt provision in conformity with the payment provision and is made to apply to any contribution or supplement of salary. The new section is also made to apply to legislative and judicial personnel. The Board has no objection to these changes.

Section 218 is based in part on section 216, chapter 11, title 18, United States Code, which authorizes the President to declare void any contract or agreement with the United States where payment has been made to an officer, employee, or agent of the United States for procuring such contract or agreement. Section 218 would expand the power of the President to extend to Government licenses, permits, grants, certificates, decisions, opinions, subsidies, and similar benefits conferred in violation of any of the provisions of chapter 11 of title 18 as revised by H.R. 2156. The United States would be authorized in any such case to recover, in addition to prescribed penalties, whatever has been given or transferred.

While the Board sees no objection to continuing the provisions of section 216 giving the President authority to rescind a contract or agreement, we cannot subscribe to the amendment proposed in section 218 to expand the President's power to rescind opinions and decisions of the Civil Aeronautics Board.

With the exception of matters involving oversea or foreign air transportation, the Board's functions are performed independently of the executive branch. By requiring the President, under section 218, to review the merits of the case in order to determine whether the decision should be rescinded would, in our judgment, be inconsistent with the Board's statutory responsibilities as an independent agency.

In addition, the proposed amendment of section 218 could have an adverse effect on a large number of people who had nothing to do with the transaction. For example, the rescission of a route award or of a Board opinion authorizing the payment of subsidy, could have the effect of depriving the traveling public of needed air service. The Board is opposed to section 218 (e) of the bill.

H.R. 2157

H.R. 2157 would amend the Administrative Procedure Act by adding as title II an overall code of ethical conduct to cover employees of all executive agencies as well as former employees and members of the public who deal with the agencies. The bill would provide administrative penalties including discharge for employees who engage

in unethical conduct, suspension or disbarment of representatives who violate rules governing the activities of former employees, and disqualification for contracts and grants of private parties who engage in unethical practices in dealing with the Government.

It is noted that new title II to the Administrative Procedure Act is to be cited as the "Code of Official Conduct for the Executive Branch," and that H.R. 2157 makes numerous references to the executive branch of the Government. If this bill is intended to cover independent regulatory agencies like the Board, it should so state.

Section 102 establishes six categories of improper conduct for officers and employees of the Government. Section 102(a) declares it improper for a Government employee to (1) accept gifts from, (2) discuss future employment with, or (3) become unduly involved socially with persons outside the Government or whose business may be substantially affected by their performances of official duty.

The prohibitions contained in section 102(a), in our opinion, are too restrictive. The phrase "whose interest may be substantially affected by his performance of official duty" puts the employee in a difficult situation for he may have no way of knowing whether a particular person's interests will be substantially affected by his performance of official duty. The holder of a large amount of stock in an airline presumably would be substantially affected by a rate increase granted to the airline by the Board. An employee who recommended such an increase might become well acquainted with such a person, even to the extent of exchanging gifts, without ever knowing that the person was a stockholder in the airline.

If this provision is retained we recommend that it be qualified so as to apply only to cases where the employee knows that the person's interests may be substantially affected by his performance of duty.

We are also concerned with the phrase "to discuss or consider his future employment." The Board realizes that there are circumstances in which the offer or acceptance of employment might constitute an attempt to influence or present a conflict of interest.

This might be true in a pending matter where the individual has the power to decide or to influence the decision. The Board, however, has experienced no problems in this area. The practical situation facing the Board and its employees is quite different from that in some of the other branches of Government. The Board's work is rather narrowly confined to the single industry of air transportation. A flat prohibition against discussing future employment would in all probability take Board employees out of the market insofar as the prospect of employment with the air transportation industry is concerned.

If, through a policy of prohibiting discussions of future employment, the opportunities for self-advancement in private industry are seriously curtailed, there is no doubt that in the absence of compensating circumstances employment with the Board will become less attractive, and the problem of recruiting capable personnel will become more difficult.

The bill goes further than to outlaw discussion of future employment. It also makes it improper to "consider" future employment. Under this provision, if an employee receives an offer from industry, there having been on previous discussion on the subject, he may not

consider the offer but must reject it out of hand for if he weighs the matter he must have given it some consideration which is prohibited.

Sections 102 (b), (c), and (d) declare it improper to use confidential Government information for private gain, to divulge confidential information to unauthorized persons, or to acquire financial interests or engage in employment which conflict with the proper performance of duty. These sections are similar to the Board's code of ethics and the Board favors their enactment.

Section 102(e) would make it improper for an employee of the Government to participate on behalf of the United States in any transaction which chiefly affects a person (1) by whom he has been employed or with whom he has had any economic interest within the preceding 2 years, or (2) with whom he has any economic interest or any pending negotiations concerning a prospective economic interest.

The Board favors section 102(e) (2) but feels that the prohibition contained in section 102(e) (1) may be too restrictive.

The Board endorses section 102(f) which declares it improper for an employee of the Government to fail to conduct his affairs so as to avoid any reasonable suspicion or appearance of the violation of any of the provisions of section 102. The Board concurs in the general objective of this provision which is similar to the Board's own regulations.

Section 103 makes it improper for a former officer or employee in the executive branch of the Government to ever participate in any matter in which the United States is interested and which involves a subject matter concerning which he had any official responsibility, or officially acquired confidential information during his Government employment.

Section 104 bars a former officer or employee, within 2 years after termination of employment, from having anything to do with any matter involving his former agency.

Sections 103 and 104 cover generally the same ground covered by the criminal provisions of section 207 of H.R. 2156. The Board is opposed to sections 103 and 104 for the reasons stated in our discussion of H.R. 2156.

Section 105 is addressed to members of the public who deal with Government employees. It makes it improper conduct for such a person—

(a) to give gifts to, to discuss future employment with, or become unduly involved socially with a Government employee who transacts Government business with him or whose performance of duty may substantially affect his interests;

(b) to persuade Government employees to divulge or prematurely release confidential Government information; and

(c) to knowingly employ a former Government employee under circumstances which would constitute improper conduct within the meaning of sections 103 or 104.

While the Board has no objection to section 105(b) which is similar to our own code of ethics, we feel that sections 105 (a) and (c) are too restrictive and should be modified.

Section 106 declares it to be improper conduct for any party to a contested agency proceeding which has been designated for hearing

to make ex parte representations to agency members or employees concerning any question of law or fact involved in the proceeding. The Board has no objection to this provision which is in line with the Board's code of ethics.

We believe it would be desirable, however, to follow more closely the language of the Administrative Procedure Act so that section 106 would be applicable to cases which are decided by the agency after notice and hearing and upon a formal record.

Section 107 provides sanctions for violations of the foregoing provisions of the bill. For violations of section 102 the head of the agency may dismiss the employee; for violations of section 103 or 104 he may bar the appearance before the agency of the former employee. He may require any person who is represented by another person to certify that the representative will not violate section 103 or 104; for violations of section 105 or 106 he may bar any person from negotiating or competing for any business with his agency, for such period of time as he deems proper.

In addition, the head of the agency may, under regulations prescribed by the President, cancel any contract, loan, subsidy, rate, permit, or certificate which he finds to have been procured as a result of improper conduct within the meaning of title 18.

We question the advisability of requiring any person who is represented by another person to certify that the representative will not violate section 103 or 104. The client, who is required to make the certification, is hardly in a position to know whether the case involves subject matter concerning which the former employee had an official responsibility and much less in a position to know whether he officially acquired confidential information. Perhaps a requirement of joint certification would resolve this question.

H.R. 7556

H.R. 7556 would amend section 284, chapter 15, title 18, United States Code, to subject to criminal penalties (1) any person or concern who, within 2 years after a Federal civilian employee has terminated his employment, knowingly employs or offers or promises to employ, any such employee who at any time in a 2-year period prior to termination of his Federal employment, has dealt with the claim or business of such person or concern, minor ministerial dealings and regulations or orders of general application to business excepted; and (2) any Federal civilian employee who, within 2 years after he has terminated his Federal employment, accepts or promises to accept employment with a person, concern, or foreign government whose claim or business he dealt with at any time during the 2-year period prior to termination of his employment.

For the reasons stated in connection with H.R. 2156 and H.R. 2157, the Board is opposed to the enactment of H.R. 7556. We recognize that there are circumstances in which a former Government employee should be limited or prohibited from appearing before the agency and the Board's regulations are designed to provide such protection. H.R. 7556, however, goes much further and would have the effect of precluding substantial number of Board employees from obtaining

employment for a period of 2 years in the one area in which they are best qualified to work.

We believe the restrictions proposed by H.R. 7556 are unnecessary and undesirable. The Board is opposed to this bill.

In conclusion, Mr. Chairman, may I express the appreciation of the Civil Aeronautics Board for the work done by this subcommittee and its staff in connection with this important problem of ethics in Government and for this opportunity to appear before you today and present our views in connection with H.R. 2156, H.R. 1900, H.R. 2157, and H.R. 7556.

(Mr. Newmann's statement appears at p. 254.)

The CHAIRMAN. Thank you very much.

Mr. MEADER. Do we have time for a question or two?

The CHAIRMAN. Very well.

Mr. MEADER. Mr. Newmann, I was interested in your comments—relating to accepting compensation outside of a Government salary. Can you refer back to that? I think it applied both to Members of Congress and to others. It is on page 9 of your statement, the last paragraph, relating to section 209 of H.R. 2156.

Do you believe that that would be broad enough to prohibit the receipt of honorariums for making lectures on the part of members of the Civil Aeronautics Board or Members of Congress?

Mr. NEWMANN. I don't think it is clear, Congressman Meader, from the language of the bill as to whether it could be construed that broadly or not. I think it certainly raises the question, and I just couldn't give you a definite answer.

I think that if it is the intention of the committee to so apply this bill, I think that it might be well to let the legislative history reflect this point.

Mr. MEADER. Say the Air Transport Association is having an annual meeting in San Francisco, and they have asked the Chairman of the Civil Aeronautics Board to come out and address them on future developments in aviation, or the regulation of carriers, and they give him a fee of \$1,000 for making his lecture, would that be prohibited by the terms of section 209?

Mr. NEWMANN. I would say that it probably would, and in any event, our own code of ethics would be so construed that it would be prohibited.

I might also add that insofar as the Civil Aeronautics Board is concerned, I think that no Board member or staff member has ever accepted an honorarium.

Mr. MEADER. Let me ask you, with reference to section 218, which you oppose, as I recall your statement. Let me call your attention to the phrase on line 11 of page 13, "in violation of this chapter." Would it be your understanding that there must have been a finding by a court in a criminal proceeding of a violation of this chapter before the President could cancel a contract? Or if, in the President's opinion, a violation had occurred which had not been established by a court proceeding, would he be required to, or could he in his discretion, void the contract?

Mr. NEWMANN. I would assume that the person who might be found guilty under this statute would have an opportunity to have his day

in court and, to present his position and have an opportunity to present his side of the case and to defend himself. And I would say, in answer to your question, that it would come about after a decision.

Mr. MEADER. Under this language you would construe it to mean that only where there had been a conviction for a violation of this chapter would the President be empowered to cancel a contract?

Mr. NEWMANN. That would be my understanding; yes, sir.

Mr. MEADER. He could not do it without such a conviction?

Mr. NEWMANN. That is my understanding.

Mr. MALETZ. Mr. Newmann, section 209 of H.R. 2156 revises, does it not, section 1914 of title 18, United States Code?

Mr. NEWMANN. Sir?

Mr. MALETZ. Is it not correct that section 209 of H.R. 2156 revises section 1914 of title 18, United States Code?

Mr. NEWMANN. Yes, sir. As I understand it, there is little change, but there is some change in the existing law.

Mr. MALETZ. I didn't quite understand your answer to Congressman Meader's question. Is it your view that section 209 would prohibit a member of the Civil Aeronautics Board from accepting an honorarium for making a speech before a trade association?

Mr. NEWMANN. Well, my answer was that the language of this particular section might very well be construed that way, because it might be a contribution to compensation from a trade association.

Mr. MALETZ. It might be construed that way. Well, is it not correct that the substantive language of section 209 is precisely the same as section 1914, of title 18 United States Code?

Mr. NEWMANN. Yes, sir.

Mr. MEADER. Will counsel tell me where that is?

Mr. MALETZ. On page 87 of the Staff Report, Parts I and II.

Is it your view, then, that it would be a violation of section 1914, title 18, United States Code, for a Commissioner of the Civil Aeronautics Board to accept an honorarium for making a speech before a trade association?

Mr. NEWMANN. I would say—I couldn't give you a flat answer, but I would say that the wording in lines 23 and 24—

Mr. MALETZ. I am not talking about the bill, I am talking about—

Mr. NEWMANN. This is the same language of section 1914 that I am referring to which says "In connection with" his services as a member. Now, I don't know how far "in connection with" would go.

Mr. MALETZ. In other words, the language "in connection with" which appears in section 209 of the bill is precisely the same as the language in the present section 1914?

Mr. NEWMANN. Yes, that is correct.

Mr. MALETZ. Have you had occasion to examine the case law construing section 1914?

Mr. NEWMANN. No, sir; I have not.

Mr. MALETZ. Do you know of any decision that has held that such a situation would be in violation of section 1914?

Mr. NEWMANN. No, sir; I do not.

Mr. MALETZ. Have you had occasion to examine the legislative history of section 1914?

Mr. NEWMANN. No, sir.

Mr. MALETZ. So, therefore, your answer to Congressman Meader's question is predicated on your first-blush reaction to the term "in connection with"; is that right?

Mr. NEWMANN. That is correct, sir.

Mr. MEADER. The main difference is addition of "a contribution or supplementation of salary"?

Mr. NEWMANN. It is also expanded in scope to make it applicable to legislative and judicial personnel, I believe.

Mr. MEADER. Well, under the present section 1914 the definition is being a Government official or employee, and I believe that phrase does not include Members of the Congress or the staff of the committees of Congress.

Mr. NEWMANN. I think it makes the change, as I see it, "or any contribution or supplementation," and to extend the applicability.

Mr. MEADER. In other words, you think that since it expands the type of compensation from the word "salary" to "a contribution or supplementation of salary," it would be construed by the courts to mean something in addition to a salary or other kind of compensation, possibly an honorarium for a lecture made in his official capacity?

Mr. NEWMANN. Congressman, I don't think I can give you a flat answer to your question, but I would put it this way, that if I were a member of the Civil Aeronautics Board, I certainly would be very hesitant, and I would not take an honorarium under the conditions which you mention here with the presence of this language.

Mr. MEADER. That might apply to, say, counsel for this committee, who might become expert in the field of antitrust law, and might appear before a bar association somewhere—and they probably wouldn't be invited except for their official position with the committee and the prestige and expertness which they developed—and if they received any honorarium for such appearance, it might be a violation of the terms of such statutes; do you think so?

Mr. NEWMANN. I think I should also point out—and I want to stress the fact—that irrespective of the particular language of this section, that this would be prohibited by the Board's own code of ethics. Insofar as the Civil Aeronautics Board is concerned, we would not get into the question which is raised here.

Mr. ROGERS (now presiding). Thank you, Mr. Newmann. We appreciate your coming. And that will be all.

The report from the Federal Power Commission will be placed in the record.

(The report referred to follows:)

FEDERAL POWER COMMISSION,
Washington, February 24, 1960.

Re H.R. 7556, 86th Congress, employment of former Government personnel.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your letter of January 25, 1960, with respect to the hearings before Subcommittee No. 5 on H.R. 2156, H.R. 2157, and H.R. 7556. The Commission's views on H.R. 2156 and H.R. 2157 are contained in a joint report on those two bills which is being submitted under separate cover.

H.R. 7556 would prohibit, under certain conditions, for 2 years, the employment of former employees of the Federal Government in connection with claims or business with which the employee dealt while employed by the Government.

Certain provisions of H.R. 2156 and H.R. 2157 are concerned with this problem and the views and recommendations of the Federal Power Commission on the general subject of conflicts of interest and Government employee ethics are expressed in its report on those bills.

Sincerely yours,

JEROME K. KUYKENDALL,
Chairman.

Mr. ROGERS (presiding). Tomorrow the committee witnesses are Mr. John L. Fitzgerald, General Counsel of the Federal Communications Commission; Mr. Jerome J. Kuykendall, Chairman of the Federal Power Commission; and Mr. B. Otis Beasley, Administrative Assistant to the Secretary of Interior.

The committee will stand adjourned.

(Whereupon, at 11:55 a.m., the subcommittee recessed, to reconvene at 10 a.m., Friday, February 26, 1960.)

(The statement referred to at p. 232 follows:)

STATEMENT OF THOMAS G. MEEKER, GENERAL COUNSEL, SECURITIES AND EXCHANGE COMMISSION, BEFORE SUBCOMMITTEE NO. 5 OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES

Mr. Chairman and members of the subcommittee, I am Thomas G. Meeker, General Counsel of the Securities and Exchange Commission. I am pleased to appear here today to offer my comments on three bills now under consideration by you: H.R. 2156, which amends chapter 11 of title 18 U.S.C.; H.R. 2157, which would create a title II of the Administrative Procedure Act; and H.R. 7556, which would amend section 284 of title 18 U.S.C., all of which generally deal with conflicts of interest of Government employees. In preparing my comments on these bills, I have been greatly aided by having access to the detailed staff report submitted to this subcommittee when similar legislation was under consideration in 1958.¹

The Securities and Exchange Commission was one of the first governmental agencies to recognize the importance of establishing the highest standards of integrity and impartiality of administrative agencies. In 1953 it codified and promulgated a comprehensive set of "Rules of Conduct for Members and Employees and Former Members and Employees," and in 1958 further promulgated "Canons of Ethics for Members of the Commission." For the convenience of the subcommittee I offer for the record a copy of these rules and canons. These rules and regulations, coupled with self-discipline by Commission members and personnel, based on a personal sense of integrity, have operated effectively to assure action based upon strict impartiality and the merits of a particular matter and not as the result of any improper influence. Accordingly the Commission fully concurs in the objectives sought to be achieved by the three bills under consideration. However, to the extent that the separate bills as presently drafted create unnecessary hardships or other problems which in my view are detrimental to the effective functioning of Government agencies, we must respectfully take exception to certain specific provisions. Also, I should add at the outset that since the Commission's rules and regulations have been in our view so effective over a considerable period of time in dealing with our own conflicts-of-interests problems, we believe that any legislation should make it plain that these regulations are not to be superseded or supplanted by such legislation.² With these thoughts in mind I would now like to turn my attention to some of the specific provisions of each of the bills which are the subject of this hearing today.

Perhaps the most troublesome provision so far as our Commission is concerned is the one which would prohibit for a 2-year period any person from appearing or practicing before any agency by which he was formerly employed. This provision is found in both section 104 of H.R. 2157 and section 207 of H.R. 2156. H.R. 7556 would prohibit any person from being employed by any person or

¹ Staff report to Subcommittee No. 5, Committee on the Judiciary, House of Representatives, 85th Cong., 2d sess., on Federal Conflicts of Interest Legislation, pts. I and II, dated Mar. 1, 1958, and pts. III, IV, and V, dated Dec. 30, 1958.

² While the proposed legislation does not state that it is exclusive, it should be made perfectly clear that present rulemaking power of agencies such as ours is not impaired in this regard.

concern with whom he has transacted business on behalf of the Government for a 2-year period after his separation from Government employment. The Securities and Exchange Commission is specifically exempted from this last bill. However, my comments apply to it as well as to the other bills because of its impact on other agencies.

While I can fully understand the desire of those who propose the 2-year absolute ban against practice by a former employee before the agency which he served, nevertheless I feel that as a practical matter the rigor of such a requirement goes far beyond the practical needs of the Government to assure the integrity of its process. I say this because I am certain that one of the objectives of those who have appeared before this subcommittee in support of this 2-year ban is to insulate completely both the former employee and those who continue to serve from not only the possibility of a violation but also from the creation of any appearance of violation of either the letter or spirit of existing statutes prohibiting conduct of this character. These are worthy objectives and to be commended, but I have no doubt that people who otherwise might be willing to enter public service would be very reluctant to do so if they were subject to this type of prohibition and such provision would be far too restrictive on the future employment or opportunities for practice of persons presently in Federal service. Moreover, the prohibition of section 104 of H.R. 2157 would bar an employee in many cases in which the matters involved had not been even remotely connected with the official duties of the employee, and about which he had gained no information while an employee of the Government.

We in the Commission have dealt with this problem previously and I believe that our treatment of the subject is both effective and fair to all concerned. Under the Commission's rules of conduct any person leaving the Commission is permanently barred from participating in any matter in which he has gained some knowledge or information during his Government employment.³ For a 2-year period after leaving the agency every such former employee is required to file a report with the Commission in any matter in which he is appearing before it within 10 days after he is retained or employed.⁴ In the report the former employee must state why he believes his employment is consistent with the rules of conduct and, as a matter of practice, such reports are circulated among the Commission offices to determine whether there appears to be any violation in the contemplated employment or representation.

It seems to me on balance that this disclosure technique employed by this Commission, which alerts it and its officers and employees to the intention of a former employee to appear before the Commission in any matter, serves both the agency and the public interest by careful review of practice by former employees within the framework of our rules prior to any appearance by such employee before the agency for the 2-year period following his departure from the agency. When viewed together with the absolute prohibition in rule 6 of the Commission's conduct regulation against an appearance by a former employee or anyone associated with him in a particular matter if the former employee personally considered it or gained personal knowledge of the facts thereof while a member or employee of the Commission, I believe the Commission's considered solution to this problem merits careful evaluation by this subcommittee.

I might also emphasize that the Commission's approach to this problem is in keeping with the stringent rule which the courts apply in dealing with the question of a disqualification of an attorney by reason of prior connection with an opposing party. Thus, Judge Weinfeld pointed out in *T.C. Theater Corp. v. Warner Bros. Pictures, Inc.* (113 F. Supp. 265 at 268 (1953)), that:

"A lawyer's duty of absolute loyalty to his client's interests does not end with his retainer. He is enjoined for all time, except as he may be released by law, from disclosing matters revealed to him by reason of the confidential relationship. Related to the principle is the rule that where any substantial relation can be shown between the subject matter of a former representation and that of a subsequent adverse representation, the latter will be prohibited."⁵

³ Rule 6, SEC conduct regulation, submitted herewith.

⁴ Rule 6(c) of the conduct regulation defines appearance broadly as any "personal appearance before or personal communication with the Commission or any member or employee thereof."

⁵ (Cited with approval in *United States v. Standard Oil Company (N.J.)* (136 F. Supp. 345, 358 (1955)).

This Commission has itself in the past taken action to enjoin the practice by a former employee when it felt that his participation in a matter was barred by this type of conflict of interest.⁶

If the Congress concludes that as a matter of policy the 2-year absolute ban is desirable, it would seem to me that such restriction ought to be considered in light of any similar activity by those who have served either the legislative or judicial branches of the Government. If the concern is that a former official or employee of an agency may be able by his very appearance or contact with the agency to consciously or unconsciously influence it or its officials or employees, then I think that such absolute ban should be applicable also to former officials of the legislative and judicial branches of our Government in the same manner as H.R. 2156 would restrict the activities of an Assistant Attorney General of the Department of Justice or a General Counsel of a Commission, for example.

Addressing myself now to H.R. 2157, you will note that section 102 of this bill closely parallels certain of the rules of conduct which the Commission has prescribed for its employees, with the exception of the subdivision (f) thereof as to which I will have more to say in a moment. With respect to the other provisions of this section I only wish to note that in our own rules of conduct we have referred to a "valuable" gift, favor, or service in order to make plain that a de minimis gratuity is not included. I would assume that section 102(a) (1) would be similarly interpreted, although it is worded "any gift." Also with respect to the language in section 102(a) (2) which reads "to discuss or consider his future employment with," I think that perhaps the language of the Commission's rules, which is "to discuss or entertain a proposal for," is perhaps preferable. I say this because of the difficulty of proving that a Government employee "considered" future employment as against proving that he "entertained a proposal for" such employment.⁷

We appreciate the objective of subparagraph (f) of section 102 and are in sympathy with the idea that all Government employees should so conduct themselves as to be above all "reasonable suspicion." I nevertheless foresee a danger that this subparagraph could be abused by malicious persons bent upon suggesting improper conduct when in fact none actually exists. I think we pride ourselves on not applying this type of suspicion standard, which has caused so much travail elsewhere in the world, and I believe that the standards set forth in the other portions of section 102 are sufficiently broad and proscriptive.

Section 105 of H.R. 2157 is merely the counterpart of section 102, and except for the comments I have made above with respect to the corresponding provisions in 102 I have no comment to add as to this section.

I agree with the purpose and objective of section 106, and the Commission has always jealously guarded against any improper ex parte communications in its quasi-judicial proceedings. Indeed, Canon 9 of the Commission's Canons of Ethics cover this very subject matter, and provides:

"Matters of a quasi-judicial nature should be determined by a member solely upon the record made in the proceeding and the arguments of the parties or their counsel properly made in the regular course of such proceeding. All communications by parties or their counsel to a member in a quasi-judicial proceeding which are intended or calculated to influence action by the member should at once be made known by him to all parties concerned. A member should not at any time

⁶ *U.S. and S.E.C. v. Mahaney* (27 F. Supp. 463, 1 SEC Jud. Dec., p. 638).

⁷ Comparative table of provisions of H.R. 2156 and 2157 and Commission's conduct regulation and canons of ethics:

H.R. 2157	Regulation—Canons
§ 102 (a) (1).	Rule 1B; canon 6.
(2).	Rule 1C, 5.
(3).	Rule 1E; canon 6.
(b).	Rule 1A.
(c).	Rule 1D.
(d).	Rules 1G, 2, 3; canons 17, 18.
(e).	Rule 4; canon 7.
(f).	Canon 8.
§§ 103, 104 (and H.R. 7556).	
H.R. 2156	
§ 201 (c).	Rule 1B.
203.	Rule 1A, 1B, 1F; canon 6.
205.	Rules 2B, 2C, 2D.
207.	Rule 6; canon 7.
208.	Rules 1F, 1G, 2B, 2C, 3, 4; canons 17, 18.

permit ex parte interviews, arguments, or communications designed to influence his action in such a matter."⁴

However, section 106 as presently worded would interfere with the proper conduct of such proceedings in that it would apparently prohibit employees or members not concerned with the decisional function from communicating with each other. I do not believe that it was intended to proscribe this type of conduct and accordingly I suggest that language be added which would make it plain that the restriction on communications applies only to agency members or employees having some responsibility in the decisional processes. Also, an exception should be made for those cases in which the parties voluntarily waive any objection to participation by the staff in preparing the agency decision. In the case of the SEC this is frequently done by the parties to expedite the completion of a proceeding.

I have a number of suggestions to make concerning the penalty section of H.R. 2157, namely, section 107. First, I would suggest that it be made clear that the penalties provided are "in addition to any others prescribed by law." Second, the opening phrase, "The head of any agency," may be ambiguous as applied to an agency, which is governed by a commission or board rather than by a single official. It could either mean the commission or board, or mean the chairman thereof. It should be made clear that the commission or board, not the chairman, is intended except in areas in which existing statutes vest authority specifically in the chairman.⁵ Third, I believe that a power to suspend should be added since there may be cases which are not sufficiently heinous to require dismissal. Fourth, I would add a provision making it plain that there may be a permanent bar in addition to a bar for a period of time under subparagraph (4). Finally, the penalties under subparagraphs (4) and (5) are not set forth in language which is pertinent to the normal operations of this particular Commission. To make such provisions effective in our area appropriate amendments would have to be added to these subparagraphs to cover the types of activities with which we deal such as applications for registrations or exemptions, and appearing and representing parties in proceedings and investigations conducted by this agency and other similar matters.

Finally, I would like to turn to H.R. 2156. I have previously commented on the portion of section 207 which would constitute an absolute 2-year bar. I have only a few comments with respect to other sections of this bill.

Generally, to insure that all types of improper giving or receiving of bribes are covered in the particular sections involved, I would suggest a general provision covering any "corrupt giving, promising or receiving of any bribe."⁶ The word "corrupt" which is used in other sections of the Criminal Code (see e.g., secs. 1503, 1504, title 18, U.S.C.) has been broadly defined by the courts to cover any endeavor which is not consonant with honest and bona fide conduct. The value of this type of language is self-evident, since from time to time specific conduct escapes punishment because a defendant is able to demonstrate that his particular misconduct is not covered by any specific bribery provision.

In section 201 I would move the phrase "either before or after he has qualified" to the end of the paragraph defining "public official," so as to make it plain that this phrase covers all of the types of officials referred to in that section, not just congressional personnel. This suggestion also applies to the first paragraph of section 203.

Section 201(b)(2) covers any person "about to become a public official," while subdivision (c)(3) of this same section fails to include such a person. I believe it would be consistent with the purpose of this latter subdivision to

⁴ During the 85th Congress, this Commission submitted a proposed bill similar to this canon, both to the Senate Judiciary Committee, in connection with S. 2462, and to the House Interstate and Foreign Commerce Committee, in connection with H.R. 11022, as follows:

"Whoever, directly or indirectly, endeavors to communicate or communicate, in the absence of the parties or without notice to them, with any member of any agency of the United States, a hearing officer or examiner of such agency, or member of its staff on the merits of any matter in which such persons are exercising quasi-judicial functions; or

"Whoever corruptly, or by threats or force, endeavors to influence or bring pressure upon such persons in the exercise of their functions in any matter—

"Shall be fined not more than \$ _____, or imprisoned not more than _____ years, or both."

⁵ For example, see Reorganization Plan No. 10 of 1950, 5 U.S.C. 133z (Cum. Supp.), 64 Stat. 1265.

⁶ See footnote 8, supra.

add the phrase "or about to become" a public official, as is done in subparagraph (b) (2).

In the penultimate paragraph of section 202 I believe provision should be made for a reasonable fee for expert witnesses, not only for preparation to testify but also for testifying, and this could be accomplished by adding at the end of that paragraph the phrase "and in appearing and testifying."

In section 203, to cover a situation where a payment might be made in advance of a person assuming his governmental position, it would seem that the second paragraph should be amended not only to cover persons who are or were Government employees but are "about to become" such.

In the last section of the bill (sec. 218) I would suggest that the language "in addition to any other remedies provided by law" be added to make clear that the penalties provided by that section are additional and not exclusive.

I wish to thank you for the opportunity to offer our comments, and I shall be happy to answer any questions the subcommittee may have.

(The statement referred to at p. 247 follows:)

STATEMENT OF ROSS I. NEWMANN, ASSOCIATE GENERAL COUNSEL, RULES AND LEGISLATION, OF THE CIVIL AERONAUTICS BOARD

Mr. Chairman and members of the committee, I am Ross I. Newman, associate general counsel, rules and legislation, of the Civil Aeronautics Board. The Board appreciates this opportunity to present its views on H. R. 1900, H. R. 2156, H. R. 2157 and H. R. 7556, and supports the objective which these bills are designed to accomplish.

Because of its position as an independent regulatory agency dealing with quasi-legislative and quasi-judicial functions, the Board has been particularly concerned with the various provisions of the law relating to ethical standards in Government service. During the past several years the Board has appeared before numerous committees of the House and Senate and has supported various bills which would strengthen our laws dealing with ex parte influence, conflicts of interest, leaks and pressures, administrative procedure and other matters related to the general problem of ethical standards.

The Board's own code of ethics, which is applicable to the Board, its staff, and other persons appearing before the Board, has been in effect for approximately 9 years. In many respects the functions of the Board are similar to those of a court and parties to cases before it are expected to conduct themselves with honor and dignity. By the same token the Board and its staff are expected to conduct themselves with the same fidelity to standards of propriety that characterize a court and its staff.

Section 300.2 of the Board's code of ethics is designed to safeguard cases which are decided by the Board after notice and hearing and upon a formal record. In such cases it is improper that there be any private communication on the merits of the case to a member of the Board or its staff. It is likewise improper that there be any private communication on the merits of the case to a member of the Board or to the examiner by any members of the Board's staff who participated in the hearing as witness or as counsel. Moreover, it is improper that there be any effort by any person interested in the case to sway the judgment of the Board by attempting to bring pressure or influence to bear upon the members of the Board or its staff.

Section 300.4 states that it is particularly improper that persons interested in the business of the Board provide unusual hospitality to the Board or its staff or that such hospitality be accepted. Section 300.5 deals with proper attorney-client relationships and stresses the need for practitioners to use their best efforts to restrain their clients from improprieties in dealing with the Board or its staff. Section 300.6 provides for the temporary or permanent disqualification and denial of the privilege of appearing before the Board of any person who is found to have engaged in unethical or improper professional conduct.

In addition to the principles of practice which were adopted to preserve the quasi-judicial character of the Board's actions and to definitely prescribe in written form the rules of conduct by which all persons having business with the Board are governed, the Board has also adopted rules governing the conduct of its own officials and employees which require strict adherence to the highest standard of conduct. These rules have been developed over a period of years and have been revised and brought up to date through a continuous process.

The Board's rules of employee conduct provide, in essence, that—

(1) No employee may receive unusual gifts or entertainment which might be interpreted as tending to influence the performance of his official duties.

(2) No employee may hold or acquire a pecuniary interest in any air carrier, foreign air carrier or any other enterprise primarily aeronautical in nature.

(3) The unauthorized disclosure of information may result in disciplinary action against any employee including suspension or removal.

(4) No employee may engage in any outside employment or activity which in any way tends to interfere with the proper performance of his official duties or involves a conflict of interest.

(5) A former employee of the Board is barred forever from appearing before the Board in connection with any matter which he handled or passed upon while associated with the Board. In matters which he did not handle or pass upon but which were pending at the time of his employment with the Board, he is not permitted to appear before the Board for a period of 6 months after leaving the Board.

(6) No person will be employed or retained by the Board who has a member of his immediate family working for an air carrier or an aviation trade association.

The Board's rules of employee conduct also make specific reference to the statutory provisions of the criminal code and other pertinent laws of the United States which restrict the conduct of officers and employees of the Board and other Government agencies. These laws have been summarized and evaluated by the staff of this subcommittee in its report of March 1, 1958, on Federal conflict-of-interest legislation.

While the Board believes that its rules and regulations constitute a reasonably adequate code of ethics, we recognize a deficiency in these rules which could be remedied by appropriate legislation. Under the present law, our only remedy against an employee who violates our rules of conduct is to dismiss him. In the case of a Board member, the Federal Aviation Act provides that a member may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. The only remedy the Board has against outsiders who violate the principles of practice by improper communication or pressure is to disqualify and deny them the privilege of practicing before the Board. If they are not practitioners, however, the Board has no recourse against them at all.

H.R. 2156 and H.R. 1900 propose the revision and reenactment of chapter 11 of title 18 of the United States Code and would include revisions of the conflict-of-interest provisions presently contained in other chapters of title 18.

Section 201 would for the first time define "bribery," "public official," and "official act" and would provide a uniform maximum penalty for giving or receiving a bribe. The term "bribe" is defined to include money or a thing of value or promise thereof. Thing of value would also include such things as a loan, honorarium, advantage, position, employment, and present and future opportunities.

"Public official" has been defined to include Members of Congress, jurors, and all officers, agents, and employees of the United States in the executive, legislative, and judicial branches of the Government.

The term "official act" includes not only a public official's affirmative action, but also his omission or neglect of matters.

Section 201 of the bill prohibits all payments and receipts "for or because of an official act." This means that the payment or receipt of anything of value would be outlawed irrespective of any intent to influence or induce, or to be influenced thereby.

The difficulties posed by this language undoubtedly were of concern to the staff of this subcommittee which recognized in its report that it may seem harsh to impose a severe penalty for making or receiving a gift for which no corrupt consideration has been given. Section 201 outlaws express as well as tacit arrangements for influencing future official conduct by rewards, but it also encompasses situations where the official act was done in the past. The words "for or because of an official act" do not require that the recipient of the benefit must have expected it or must know why he gets it—in fact they do not require any proof of the state of mind of the recipient at any time, or of the state of the giver's mind at the time the official act was performed. Section 201 does not require that the official act "for or because of" which the thing of value is given,

must have benefited the giver or that at the time of the official act the giver and the public official knew of each other's existence.

While the Board supports the general objective of section 201 to consolidate, clarify, and strengthen the existing bribery laws, we believe it is too broad in its present form and should be revised.

Section 202 would combine, broaden, and provide uniformity of existing laws dealing with bribery of witnesses and would extend the applicability of such laws to the bribery of witnesses before congressional committees and Federal agencies. The Board favors this provision.

Section 203 relates to extra-governmental compensation for the performance of official duty. This section revises the present law, which prohibits Members of Congress and Federal employees from accepting compensation for services rendered in relation to matters before Federal agencies, by broadening the scope of the violation to include the payment as well as the receipt of prohibited compensation. It also covers persons making agreements to receive such compensation before entry into public office or receiving such payment after leaving it. In other words, violation is made to turn on the recipient's status at the time of actual or purported rendition of the services rather than his status at the time of receipt. The Board favors the enactment of this section.

Section 204 relates to practice in the Court of Claims by Members of Congress and section 206 applies to retired officers of the Armed Forces. The Board has no comments on these sections.

Section 205 would continue the present prohibition of Government employees from prosecuting claims against the United States and would extend the existing law to prohibit services in matters in which the United States is interested where performed before executive and independent agencies. The Board has no objection to this section.

Section 207 relates to the disqualification of former officers and employees in matters connected with their former duties or involving the employee's agency.

The present law, section 284, chapter 15, title 18, United States Code, prohibits a former Federal employee, within 2 years after termination of his services, from prosecuting claims against the United States involving a subject matter directly connected with his employment or duties. Section 99 of title 5 of the code bars an employee of an executive department, for a period of 2 years after leaving such department, from prosecuting "any claim against the United States which was pending in either of said Departments" during his employment. The Board is not deemed to be a department within the meaning of this section.

Section 207 broadens the existing law to impose (1) a lifetime disqualification with respect to all matters in which the United States is interested and with respect to which the employee exercised responsibility, and (2) a 2-year disqualification with respect to other matters in which the United States is interested and which involve the employee's agency. Section 207 would thus eliminate the present 2-year limitation and substitute the phrase "any responsibility" for the existing law which applies only where the person's employment or duty was "directly connected" with a particular claim.

It is the Board's position that section 207 is too restrictive and should be revised. In our opinion the test of permanent disqualification should be dependent upon whether the person "handled or passed upon" a matter during his employment with the Government. The Board's regulations apply this test and go further than section 284 of the existing law by barring forever a former employee who "handled or passed upon" a matter while employed by the Board. If a matter was pending before the Board during the time of his employment and he did not "handle or pass upon" it, our regulations would prohibit him for a period of 6 months from appearing before the Board in connection with that matter.

While the Board would have no objection to a permanent bar where a person has "handled or passed upon" a matter, we cannot endorse the amendment proposed in section 207. As presently drafted the words "any responsibility" would permanently bar former employees who may have had an insignificant or non-substantive interest in a matter and where there is no danger of a conflict of interest. This, in our opinion, would severely handicap the Government in securing the services of competent personnel and would unduly restrict Government employees, particularly those with specialized experience, from earning a livelihood outside the Government.

Section 208 prohibits business dealings by a Government employee with a private business entity in which he has a pecuniary interest. With some modification, it continues the existing provisions of section 434 of title 18, United States Code. This provision is similar to the Board's code of ethics which prohibits an employee from holding or acquiring a pecuniary interest in any air carrier, foreign air carrier or any other aeronautical enterprise. The Board has no objection to the enactment of section 208.

Section 209 incorporates with relatively minor change the provisions of existing section 1914, title 18, United States Code, which prohibit a Government employee from receiving any salary in connection with his Government services from any source other than the Government of the United States. The new section brings the receipt provision in conformity with the payment provision and is made to apply to any contribution or supplement of salary. The new section is also made to apply to legislative and judicial personnel. The Board has no objection to these changes.

Section 218 is based in part on section 216, chapter 11, title 18, United States Code, which authorizes the President to declare void any contract or agreement with the United States where payment has been made to an officer, employee, or agent of the United States for procuring such contract or agreement. Section 218 would expand the power of the President to extend to Government licenses, permits, grants, certificates, decisions, opinions, subsidies, and similar benefits conferred in violation of any of the provisions of chapter 11 of title 18 as revised by H.R. 2156. The United States would be authorized in any such case to recover, in addition to prescribed penalties, whatever has been given or transferred.

While the Board sees no objection to continuing the provisions of section 216 giving the President authority to rescind a contract or agreement, we cannot subscribe to the amendment proposed in section 218 to expand the President's power to rescind opinions and decisions of the Board. With the exception of matters involving oversea or foreign air transportation, the Board's functions are performed independently of the executive branch. By requiring the President, under section 218, to review the merits of the case in order to determine whether the decision should be rescinded would, in our judgment, be inconsistent with the Board's statutory responsibilities as an independent agency.

In addition, the proposed amendment of section 218 could have an adverse effect on a large number of people who had nothing to do with the transaction. For example, the rescission of a route award or of a Board opinion authorizing the payment of subsidy, could have the effect of depriving the traveling public of needed air service. The Board is opposed to section 218(e) of the bill.

H.R. 2157

H.R. 2157 would amend the Administrative Procedure Act by adding as title II an overall code of ethical conduct to cover employees of all executive agencies as well as former employees and members of the public who deal with the agencies. The bill would provide administrative penalties including discharge for employees who engage in unethical conduct, suspension or disbarment of representatives who violate rules governing the activities of former employees, and disqualification for contracts and grants of private parties who engage in unethical practices in dealing with the Government.

It is noted that new title II to the Administrative Procedure Act is to be cited as the "Code of Official Conduct for the Executive Branch," and that H.R. 2157 makes numerous references to the "executive branch of the Government." If this bill is intended to cover independent regulatory agencies like the Board, it should so state.

Section 102 establishes six categories of improper conduct for officers and employees of the Government. Section 102(a) declares it improper for a Government employee to (1) accept gifts from, (2) discuss future employment with, or (3) become unduly involved socially with persons outside the Government or whose business may be substantially affected by their performance of official duty.

The prohibitions contained in section 102(a), in our opinion, are too restrictive. The phrase "whose interests may be substantially affected by his performance of official duty" puts the employee in a difficult situation for he may have no way of knowing whether a particular person's interests will be substantially affected by his performance of official duty. The holder of a large amount of stock in an airline presumably would be substantially affected by a rate increase granted to the airline by the Board. An employee who recom-

mended such an increase might become well acquainted with such a person, even to the extent of exchanging gifts, without ever knowing that the person was a stockholder in the airline. If this provision is retained we recommend that it be qualified so as to apply only to cases where the employee knows that the person's interests may be substantially affected by his performance of duty.

We are also concerned with the phrase "to discuss or consider his future employment." The Board realizes that there are circumstances in which the offer or acceptance of employment might constitute an attempt to influence or present a conflict of interest. This might be true in a pending matter where the individual has the power to decide or to influence the decision. The Board, however, has experienced no problems in this area. The practical situation facing the Board and its employees is quite different from that in some of the other branches of government. The Board's work is rather narrowly confined to the single industry of air transportation. A flat prohibition against discussing future employment would in all probability take Board employees out of the market insofar as the prospect of employment with the air transportation industry is concerned.

If, through a policy of prohibiting discussions of future employment, the opportunities for self-advancement in private industry are seriously curtailed, there is no doubt that in the absence of compensating circumstances employment with the Board will become less attractive, and the problem of recruiting capable personnel will become more difficult. The bill goes further than to outlaw discussion of future employment. It also makes it improper to "consider" future employment. Under this provision, if an employee receives an offer from industry, there having been no previous discussions on the subject, he may not consider the offer but must reject it out of hand for if he weighs the matter he must have given it some consideration which is prohibited.

Sections 102 (b), (c), and (d) declare it improper to use confidential Government information for private gain, to divulge confidential information to unauthorized persons, or to acquire financial interests or engage in employment which conflict with the proper performance of duty. These sections are similar to the Board's code of ethics and the Board favors their enactment.

Section 102(e) would make it improper for an employee of the Government to participate on behalf of the United States in any transaction which chiefly affects a person (1) by whom he has been employed or with whom he has had any economic interest within the preceding 2 years, or (2) with whom he has any economic interest or any pending negotiations concerning a prospective economic interest. The Board favors section 102(e)(2) but feels that the prohibition contained in section 102(e)(1) may be too restrictive.

The Board endorses section 102(f) which declares it improper for an employee of the Government to fail to conduct his affairs so as to avoid any reasonable suspicion or appearance of the violation of any of the provisions of section 102. The Board concurs in the general objective of this provision which is similar to the Board's own regulations.

Section 103 makes it improper for a former officer or employee in the executive branch of the Government to ever participate in any matter in which the United States is interested and which involves a subject matter concerning which he had any official responsibility, or officially acquired confidential information during his Government employment.

Section 104 bars a former officer or employee, within 2 years after termination of employment, from having anything to do with any matter involving his former agency.

Sections 103 and 104 cover generally the same ground covered by the criminal provisions of section 207 of H.R. 2156. The Board is opposed to sections 103 and 104 for the reasons stated in our discussion of H.R. 2156.

Section 106 declares it to be improper conduct for any party to a contested agency proceeding which has been designated for hearing to make ex parte representations to agency members or employees concerning any question of law or fact involved in the proceeding. The Board has no objection to this provision which is in line with the Board's code of ethics. We believe it would be desirable, however, to follow more closely the language of the Administrative Procedure Act so that section 106 would be applicable to cases which are decided by the agency after notice and hearing and upon a formal record.

Section 107 provides sanctions for violations of the foregoing provisions of the bill. For violations of section 102 the head of the agency may dismiss the employee; for violations of section 103 or 104 he may bar the appearance before

the agency of the former employee. He may require any person who is represented by another person to certify that the representative will not violate section 103 or 104; for violations of section 105 or 106 he may bar any person from negotiating or competing for any business with his agency, for such period of time as he deems proper. In addition, the head of the agency may, under regulations prescribed by the President, cancel any contract, loan, subsidy, rate, permit, or certificate which he finds to have been procured as a result of improper conduct within the meaning of title 18.

We seriously question the advisability of requiring any person who is represented by another person to certify that the representative will not violate section 103 or 104. The client, who is required to make the certification, is hardly in a position to know whether the case involves subject matter concerning which the former employee had any official responsibility and much less in a position to know whether he officially acquired confidential information. Perhaps, a requirement of joint certification would resolve this question.

H.R. 7556

H.R. 7556 would amend section 284, chapter 15, title 18, United States Code, to subject to criminal penalties (1) any person or concern who, within 2 years after a Federal civilian employee has terminated his employment, knowingly employs or offers or promises to employ, any such employee who at any time in a 2-year period prior to termination of his Federal employment, has dealt with the claim or business of such person or concern, minor ministerial dealings and regulations or orders of general application to business excepted; and (2) any Federal civilian employee who, within 2 years after he has terminated his Federal employment, accepts or promises to accept employment with a person, concern, or foreign government whose claim or business he dealt with at any time during the 2-year period prior to termination of his employment.

For the reasons stated in connection with H.R. 2156 and H.R. 2157, the Board is opposed to the enactment of H.R. 7556. We recognize that there are circumstances in which a former Government employee should be limited or prohibited from appearing before the agency and the Board's regulations are designed to provide such protection. H.R. 7556, however, goes much further and would have the effect of precluding substantial numbers of Board employees from obtaining employment for a period of 2 years in the one area in which they are best qualified to work. We believe the restrictions proposed by H.R. 7556 are unnecessary and undesirable. The Board is opposed to this bill.

In conclusion, Mr. Chairman, may I express the appreciation of the Civil Aeronautics Board for the work done by this subcommittee and its staff in connection with this important problem of ethics in Government and for this opportunity to appear before you today and present our views in connection with H.R. 2156, H.R. 1900, H.R. 2157, and H.R. 7556.

(The information referred to at pp. 223, 226, 233 follows:)

SECURITIES AND EXCHANGE COMMISSION,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., March 18, 1960.

HON. EMANUEL CELLER,
Chairman, Subcommittee No. 5 of the House Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: When I appeared before your subcommittee on February 25 to present comments on behalf of the Securities and Exchange Commission in connection with your consideration of H.R. 2156, H.R. 2157, and H.R. 7556, three requests were made for further information which I agreed to furnish, namely:

1. The number of proceedings which this Commission has conducted in the past few years under rule 1e of its rules of conduct against attorneys and accountants who were charged with misconduct in their practice before this Commission.

2. Consideration as to whether or not this Commission's rules of conduct should contain references to existing conflict of interest and bribery statutes, other than 18 United States Code, section 281 and section 283, both of which sections are cited and paraphrased in this Commission's present rules.

3. A suggested draft for the rewording of section 207 of H.R. 2156 to make it conform to my comments as expressed before your subcommittee.

As to item 1, our records indicate that between July 1, 1954, and now the Commission ordered five proceedings under rule IIe—four against attorneys and one against an accountant. Three of the five proceedings, including the one against an accountant, resulted in findings and an order disqualifying the respondent from further practice before the Commission. One is still pending with proposed findings to be filed yet this month, and one was discontinued pursuant to an undertaking made by the respondent that he will no longer practice before the Commission. One of the three who were disqualified later petitioned to have the disqualification lifted and he was thereafter readmitted by order of the Commission.

As to item 2 above, my office has reviewed the pertinent existing conflict of interest and bribery statutes as set forth in the table on page 34 of part IV of the staff report submitted to your subcommittee under date of December 30, 1958. As stated above, this Commission's rules of conduct already contain references to 18 United States Code, sections 281, 283. I find that two of the remaining statutes set forth in the above table are by their own terms inapplicable to the Securities and Exchange Commission, namely, 18 United States Code, section 284 which applies only to agencies which handle claims against the United States, and 5 United States Code, section 99, which does not apply to any independent agencies. This leaves 18 United States Code section 202, section 216, section 434, and section 1914, all of which appear to me to be applicable to our agency.

Although I note from reviewing these four that our present rules of conduct are equally and to a considerable extent even more stringent than these four existing statutes in respect to the standards of conduct which are exacted of this Commission's members and employees, I nevertheless am of the view that reference to these four statutes could well be incorporated into our rules of conduct, especially since the criminal sanctions which they impose are different and additional to the consequences which flow from violations of our own rules. The brief period since February 25 has not permitted any formal action by way of amendment to our rules, but I shall call this matter to the attention of the Commission for its consideration.

As to item 3 above, I transmit herewith suggested rewording of section 207 of H.R. 2156, which is self-explanatory. I would like to state again as I did in appearing before your subcommittee, that it is the view of this agency that a provision such as is suggested in the attached redraft of section 207 adequately covers the evil to which legislation of this type is directed, without imposing bars which are so broad as to deter well-qualified persons from entering Government service, and without unnecessarily limiting the use of their talents when they return to private pursuits where it is equally important that their skills and experiences be put to work as fully as is consistent with the purposes of such legislation.

It has been a pleasure to have the opportunity to present the views of this Commission and I will gladly and promptly do anything more that you may suggest in connection with your consideration of these bills. For the convenience of your subcommittee I am transmitting extra copies of this letter and of the suggested rewording of section 207 of H.R. 2156.

Sincerely yours,

THOMAS G. MEEKER, *General Counsel.*

SECURITIES AND EXCHANGE COMMISSION

SUGGESTED REWORDING OF SECTION 207 OF H.R. 2156

“§ 207. Disqualification of former officers and employees in matters connected with former duties. (Delete “or involving former agency”).)

“Whoever, having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, after the time when such employment or service has ceased, knowingly acts as agent or attorney for, or aids or assists anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested *involving a particular matter which he personally considered or concerning which he gained personal knowledge of the facts thereof while he was so employed*, shall be fined not more than \$10,000, or imprisoned not more than one year, or both.”

(Italicized portion is suggested substitution for line 18, page 10, starting with “any subject matter” and continuing to end of line 3, page 11.)

FEDERAL CONFLICT OF INTEREST LEGISLATION

FRIDAY, FEBRUARY 26, 1960

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 346, Old House Office Building, Hon. Byron G. Rogers presiding.

Present: Representatives Rogers, McCulloch, and Meader.

Also present: Herbert N. Maletz, chief counsel, Kenneth R. Harkins, cocounsel, and Richard C. Peet, associate counsel.

Mr. ROGERS. The committee will come to order.

Our first witness is Mr. Kuykendall, Chairman of the Federal Power Commission. You may proceed, Mr. Kuykendall.

STATEMENT OF JEROME K. KUYKENDALL, CHAIRMAN, FEDERAL POWER COMMISSION; ACCOMPANIED BY WILLARD W. GATCHELL, GENERAL COUNSEL

Mr. KUYKENDALL. Mr. Chairman, I know of no way to present the views of the Federal Power Commission more concisely than by what we have in the report which we have given to the committee. That would be my statement.

I am prepared to read it to you if that would be useful.

Mr. ROGERS. You go right ahead, sir.

Mr. KUYKENDALL. I am referring to H.R. 2156 and H.R. 2157.

These bills appear to be drawn to resolve the problem of Government employment ethics which has been under constant legislative, executive, and administrative consideration for many years. If approved in substantially their present form, the bills should, we believe, accomplish much in the difficult area of legislating morals, although we recommend the amendment of section 207 of H.R. 2156 in an important particular, with similar changes in corresponding sections of H.R. 2157.

In its reports on several of the bills pending during the 85th Congress, the Federal Power Commission suggested the desirability of a congressional expression of broad principles for administrative guidance on the subject while, at the same time, questioning the practicality of statutory criteria containing detailed specifications of all kinds of unethical conduct. The more proper place for effective standards, it seems to us, is in the criminal statutes where specific, clearly defined action or nonaction can be proscribed and penalized, while any statement of principles may, and rather should, be hortatory in nature. These bills properly recognize this separable but coordinate

approach to the problem and, for this reason, the Commission favors them in principle. Our views with respect to each of the bills follow:

H.R. 2156

This bill is, apparently, a reenactment of existing bribery and conflict-of-interest laws for simplification and coordination in order to clarify the obligations of Government employees. It goes without saying that the Commission is in complete accord with the purposes of the bill which, although we have no expertise in the drafting of criminal statutes, appears as a whole to be workable.

We would, however, draw the committee's particular attention to section 207 of the bill relating to the activities of former Government employees. This section would replace present sections 284 of title 18, and section 99 of title 5 of the United States Code, substantially broadening the disqualification of former Federal personnel in matters connected with their former duties or involving their former agency.

The section prohibits (without time limitation) former employees from acting as agent or attorney or assisting in connection with any proceeding, and so forth, in which the United States is a party or directly or indirectly interested "involving any subject matter concerning which he had any responsibility" while in the Government service, or, within 2 years, in any proceeding "which involves any agency in which he was employed."

This section apparently would prohibit any former Federal Power Commission member or employee from appearing in any Commission proceeding or court review of a Commission proceeding within 2 years after his employment terminated or from ever so appearing where he had any responsibility in connection with the subject matter involved. If our interpretation of the section is correct, this would prohibit a Commission member or a supervisory employee (who, of course, is responsible for the actions taken by his subordinates) from appearing in connection with a particular proceeding of which he had no knowledge but for which, by virtue of his superior position, he did have a responsibility.

We are in full agreement with the philosophy of this particular section, that is, that breaches of confidence are not only improper but should be made illegal, but the stringency of the proposed section seems unnecessarily severe. While it is true that persons who have had Government responsibility for a particular matter should be permanently disqualified from handling the same matter for the Government's antagonist, the "directly connected" provision, now contained in section 284 of title 18 seems entirely adequate and would not penalize the use of skills and experience acquired by an employee over years of service and which not only belong to him but often constitute his sole and primary stock in trade.

The Commission's own regulation relating to appearances, 18 C.F.R. 1.4(c), prohibits, without time limitation, any appearance by a former employee—

in connection with any proceeding or matter before the Commission which such person has handled, investigated, advised, or participated in the consideration thereof while in the service of the Commission unless he be expressly authorized

by the Commission on a verified showing that such participation would not be contrary to the public interest and would not be unethical or prejudicial to the interests of the Commission.

The Commission has found this provision entirely adequate to protect the public interest in situations involving a possible conflict of interest and yet not so stringent as to unduly hinder the practice of its former employees in their chosen professions.

Accordingly, we recommend that the "directly connected" provision of the existing section 284 of title 18 be substituted for the "responsibility test," if we may call it that, which appears in section 207, page 10, line 19, and elsewhere in the bill. Unless an employee of the Government has "handled, investigated, advised, or participated in the consideration of a proceeding," he should not be prohibited from assisting in it after he has left the Government service.

The bill also includes in section 207, page 10, line 17; page 11, line 1, and elsewhere the phrase "or other matter in which the United States is a party or directly or indirectly interested." This, in our opinion, lacks the clarity and specificity required of a criminal statute, particularly as it might be applied to the proceedings of a regulatory agency like the Federal Power Commission. The existing prohibition against participating in connection with "claims against the United States" may be regarded as too narrow but "directly or indirectly interested" is, we believe, too broad.

The degree of interest of the United States might vary considerably depending upon the subject matter and the type of agency having it under consideration. The United States is directly or indirectly interested in practically all actions of the Federal Power Commission under the Federal Power Act and the Natural Gas Act which it administers. We therefore recommend that the "other matter" be more precisely defined with respect to the interest of the United States that is to be protected from any abuse of confidence arising from participation therein by a former employee.

For these reasons we do not recommend enactment of H.R. 2156 in its present form, though, as stated above, we approve it in principle.

Mr. MEADER. Mr. Chairman, might I interrupt at that point and ask a question of Mr. Kuykendall?

Mr. KUYKENDALL. Yes.

Mr. MEADER. I notice that you regard the phrase "other matter in which the United States is directly or indirectly interested" as being too broad, but I do not see that you have suggested any alternative language which you think might be acceptable.

Mr. KUYKENDALL. No; we have not suggested any alternative language, and I think we could suggest language that would cover, be satisfactory for application to an agency like the Federal Power Commission but it might not be suitable for other agencies, who are operating agencies rather than regulatory agencies.

As we point out, it would seem the United States has an interest in any matter that is pending before the Federal Power Commission because we must issue an order or make a determination of some kind, in all those matters, and the United States is interested in the public interest which we represent.

Mr. MEADER. Well, I might say, Mr. Kuykendall, that I believe that exact phrase is in existing law, is it not, Counsel?

Mr. MALETZ. Yes.

Mr. MEADER. What page is that?

Mr. HARKINS. Section 281.

Mr. MEADER. It has always concerned me somewhat.

Mr. HARKINS. It is the top of page—

Mr. MEADER. I might say that, being a lawyer, I had occasion myself, after I had been elected to Congress but had not qualified, to be concerned about the application of that section, and it always impressed me that the phrase "or other matter in which the United States is a party or is directly or indirectly interested" was extremely broad, because in one interpretation, there is practically no activity in which the United States is not directly or indirectly interested even if it only affected the amount of income taxes that the Federal Government might collect.

So if you have any phraseology or your legal talent can come up with some phraseology which would limit that broad phrase but yet get at the purpose of it, I think you would make a real contribution to the deliberations of this committee.

Mr. KUYKENDALL. I believe our counsel would like to respond to you, Mr. Meader, if he may. Mr. Gatchell.

Mr. GATCHELL. Congressman, I am Willard W. Gatchell, General Counsel to the Federal Power Commission. The language in section 281, of course, is identical in this respect with the language in the bill. We were asked to comment on the bill, and therefore suggested that consideration be given to this as applied particularly to the members and employees of the Federal Power Commission for, in our judgment, practically everything that the Federal Power Commission handles is a matter in which the Federal Government, the United States, is directly or indirectly interested.

Now, in this new bill which has just been proposed by Senator Javits for Senator Keating and Mr. Proxmire, as well, S. 3080, does say, on page 23, in section 8, that no former Government employee shall at any time subsequent to his Government employment assist any other person, whether or not for compensation, in any transaction involving the Government, which is slightly different language from what now appears in section 281.

AND I would think that that language might more precisely reach the point that is involved in H.R. 2156 in this respect, the correlative respect to it as mentioned by Mr. Kuykendall as to whether the employee has responsibility for or has participated in. We recommend the participation rather than the responsibility clause.

Mr. KUYKENDALL. I would imagine that when the Congress used the language "directly or indirectly interested in," that is, the United States being directly or indirectly interested, it probably had in mind a proprietary interest, that is a property interest or a financial interest, but I do not think it necessarily need be construed that way.

Mr. ROGERS. That brings up a question. As I understand it, it is against the law for anyone to construct a dam on an interstate stream without permission of the Federal Power Commission.

Well now, in that situation is an interest of the Federal Government directly or indirectly affected?

Mr. KUYKENDALL. I think that is a good illustration of the problem. I think it could very well be said to be an interest, but I do not

know that Congress intended that, but it is a criminal statute and I think it ought to be as clear as possible.

Mr. GATCHELL. If I may say, Congressman, in the *Appalachian* case, *U.S. v. Appalachian Electric Power Company*, 311 U.S. 377, that question was directly dealt with and the Supreme Court there said that the United States does have an interest in the licensing of these hydroelectric projects, and I think the language of the Court which it used in that decision would bring it directly under section 281 in this respect.

Mr. ROGERS. And hence a Government employee who appears on behalf of an applicant may be in violation of section 281?

Mr. GATCHELL. Yes, sir, exactly.

Mr. MALETZ. Mr. Kuykendall, a number of commentators have pointed out that the present conflict of interest statutes are inadequate, overlapping, inconsistent, and incomplete, referring specifically to sections 281, 283, 284, 434, 1914 of title 18, United States Code, as well as section 99 of title 5, United States Code.

I wonder whether you agree or disagree with that comment with respect to the conflict of interest statutes?

Mr. KUYKENDALL. I think generally I would. They are conflicting, I believe, and unclear. Maybe all of them added together, if we could forget the conflicts, might be reasonably adequate. I am not sure, but I certainly think that it is not clear.

Mr. MALETZ. Do you think that Congress should effectuate a comprehensive revision of those statutes?

Mr. KUYKENDALL. Yes; we have indicated in this report we think this is a worthwhile task that this committee is now working on.

Mr. MALETZ. Do you believe, sir, that H.R. 2156, with the changes you have recommended, would be an appropriate mechanism for effectuating such a revision?

Mr. KUYKENDALL. Yes, we do.

Mr. HARKINS. Mr. Kuykendall, I would like to ask you a question about the implications of your observation on page 2 of your statement concerning the superior position of employees of Commission level and the director level in the Federal Power Commission.

Now, H.R. 2156 in section 207 would ban anybody for 2 years from appearing in any proceeding before the agency in which he was employed.

Is there any reason—first of all let me ask this question: Is it not true that the, particularly the commissioners in these regulatory bodies do have an influential position in the agency while they are so employed?

Mr. KUYKENDALL. Well, naturally, they are the leaders of the agency.

Mr. HARKINS. They are the leaders in the agency.

Now, the question is: Is this leadership or is this superior position such that they should not be permitted to appear in that agency in any capacity for 2 years following their termination of their services?

Mr. KUYKENDALL. I do not believe the 2-year provision is necessary or proper. Although I see the theory, which probably is behind the 2-year provision.

We have had, since I have been a member of the Commission, a situation of two Commissioners whose terms expired and both of whom now have some employment or practice before the Commission.

I have not found, first, that they have ever attempted to presume on their personal acquaintance with the members of the Commission in any improper way; and, secondly, in my opinion, the reaction of the remaining members is to lean backward, and not to do them any particular favors that someone else might not get.

Mr. HARKINS. But what about their relationship to the staff of the agency? Would there not be members of the staff who owe their promotions to this gentleman?

Mr. KUYKENDALL. No. In our agency, I do not think there ever could be said that any employee was promoted or owed his promotion to a particular Commission member.

We are governed by the Civil Service regulations. We have a personnel officer and we have an executive director, and Commission members just cannot individually bring about promotions.

Mr. HARKINS. Do you think that the appearance of any Commissioner or former Commissioner during the immediate succeeding 2-year period would be advantageous to his client over any other type of representation a client could have?

Mr. KUYKENDALL. That in itself would not be an advantage, in my opinion. In fact, I suspect that if it were a close question, extremely close, it might be a disadvantage. The Commissioners might be inclined, although they would not realize it, to lean backward, not to favor somebody they knew.

Mr. HARKINS. Yes, sir.

Mr. ROGERS. Proceed. Go ahead with your statement, Mr. Kuykendall.

Mr. KUYKENDALL. All right.

I may add, parenthetically, without mentioning names, that I know one of these two people I mentioned feels he has had quite a hard time a few times from the Commission. Now, he has not complained bitterly to me but, after things have been all over, he in a jocular way, has mentioned that, and I certainly think it is true that he has not gotten any unduly favorable breaks.

Mr. HARKINS. Is it your position that it would be proper for a Commissioner to appear the day after or the month after his termination of his service with the Government, appear before that agency and represent a client? I mean no time period is needed at all.

Mr. KUYKENDALL. I think it would be proper if he is in a proper matter. If he is in a new matter or some matter that he has had nothing to do with; I mean he certainly cannot get on both sides of the same case.

Mr. HARKINS. But are not all matters that are before the Commission at the time he leaves, things of concern to him? He has responsibility—

Mr. KUYKENDALL. He has responsibilities; I think the Commissioner has responsibilities for any matter there.

All right, Mr. Gatchell.

Mr. GATCHELL. May I approach that from the staff standpoint?

Mr. ROGERS. Yes, sir.

Mr. GATCHELL. I went with the Federal Power Commission in 1931 after they were reorganized and became a 5-man independent agency. Since that time, of course, in the intervening years, there have been many Commissioners leave the Commission and some few of them have come back to practice before the agency.

I think you will find that as far as the staff is concerned, and that, of course, is the only group for which I would presume to speak, the Commissioners will have to take care of themselves so far as the staff is concerned, it works the other way. We are very careful when a former Commissioner comes around, not only not to give him anything, but to make sure that he shows beyond all reasonable doubt that everything is on the up and up. And if he would presume to come around to see us on a matter which had been pending when he was there, I think the staff would be the first one to report it to the Commissioners, because we just do not want to get caught in any box on this thing. It is a matter of wide public concern and the matters with which we deal are of tremendous economic importance, and the staff really works the other way.

Instead of finding favor by reason of his former membership as a Commissioner, he might find that he was working uphill.

Mr. ROGERS. The former Commissioner might not have made such a favorable impression upon the staff, and this might be an opportunity to get even with him; is that right?

Mr. GATCHELL. Well, I want to say that that has actually happened in a case that I could mention, but I do not think it would be appropriate to mention names. It has happened. He just incurred some displeasure of some of the men and they just really bore down on him.

Mr. ROGERS. Thank you, sir. Proceed.

Mr. KUYKENDALL. I would like to just add this thought: If the purpose of the 2-year limitation is to prevent people who have been influential in the Commission, for example, a Commissioner, from exerting undue influence on the Commissioners by allowing a lapse of time between the time they last had any intimate association with him until the time he appears before the Commission, I think that if that is necessary, it is a sad commentary on the integrity of members of these Commissions, and I cannot believe that members of these Commissions, as a group, are the type that would favor somebody who had been a colleague of theirs simply because of that fact.

Mr. HARKINS. Mr. Kuykendall, the present language of section 207 would prohibit for life the former official in matters for which he was directly responsible. If that language was changed to not be matters for which he was responsible or with which he was directly concerned, would the Federal Power Commission have objection to the lifetime ban?

Mr. KUYKENDALL. No, I do not think there is any question about that. A Government employee who has been directly concerned and active in working on a particular matter should never leave the Government and then take up employment on the other side of the matter, no matter whether 1, 2, or 15 years expires between the time that he changes sides.

Mr. HARKINS. Yes.

Mr. ROGERS. All right, sir.

Mr. KUYKENDALL. Continuing with this report:

H.R. 2157

This bill would enact a code of official conduct for the executive branch. This, as pointed out above, would be in accord with suggestions which we have heretofore made, and its enactment, in view of the present climate of public concern with the question of ethics in Government, would have a very salutary effect.

We note with approval that the proposed code makes certain conduct improper rather than illegal and imposes no criminal penalties but imposes upon the various Government agencies, in effect, the responsibility of enforcing and implementing its provisions in response to the particular needs of each.

We would, however, refer to our views with respect to certain language appearing in section 207 of H.R. 2156 which was discussed in the first part of this report. Identical language is found in sections 103 and 104 of the proposed code (p. 4) and is subject to the same criticism. We recommend that it be revised as suggested in our report on H.R. 2156.

The fact that no criminal penalties are prescribed answers criticisms which would otherwise be pertinent, although the agency enforcement provisions of section 107 permit decisive disciplinary action against violators, even to the point of dismissal from service.

Procedures to be followed in connection with enforced separation from the Government service are now provided for in the civil service laws (5 U.S.C. 652) and the Veterans' Preference Act (5 U.S.C. 851). The provisions of section 107 of the proposed code are either in addition or parallel to those acts and it is recommended that the dismissal provisions of the code be clarified vis-a-vis existing laws.

One other matter that deserves mention is the present existence of a code of ethics which was promulgated by House Concurrent Resolution 175, 85th Congress. While the code proposed by H.R. 2157 does not appear to conflict with the existing one, it would be unfortunate if confusion should arise as to whether the present purpose in adopting H.R. 2157 is to repeal or supersede the existing code. It is recommended that H.R. 2157 include language showing the explicit intent of Congress in this regard.

For the information of the committee we are enclosing a copy of Administrative Order No. 66 which lays down ethical standards governing the conduct of Commissioners and the staff.

(The report of the Federal Power Commission appears at p. 310.)

Mr. KUYKENDALL. And I might add that that administrative order is molded after House Concurrent Resolution No. 175 of the 85th Congress.

Mr. ROGERS. Thank you. You have made reference to certain rules and regulations which your Commission has promulgated. Does your act authorize you to prescribe rules and regulations for the conduct of the employees as well as those who may appear before the department?

Mr. KUYKENDALL. Yes, it does.

Mr. ROGERS. That may be inserted in the record.

(Administrative Order No. 66 of the Federal Power Commission follows:)

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

(Before Commissioners: Jerome K. Kuykendall, Chairman; William R. Connole, Arthur Kilne, and John B. Hussey)

(Administrative Order No. 66)

CANONS OF CONDUCT: COMMISSIONERS, OFFICERS, AND EMPLOYEES

(July 23, 1958)

PREAMBLE

The Federal Power Commission, being mindful of the importance of ethical standards of conduct to be adhered to by all Government employees, and being in complete agreement with the sense of the Congress recently expressed in its concurrent resolution (H. Con. Res. 175, 85th Cong.) adopts the following canons, within the framework of which the Commissioners and members of the staff should measure their own actions in carrying out those duties which have devolved upon them by reason of their employment by the Federal Government.

The Commission has, heretofore, adopted administrative orders relating to the conduct of its officers and employees,¹ many of the provisions of which are grounded on the principles set forth in House Concurrent Resolution 175. The same principles, of course, are applicable to each member of the Commission for they, though appointed officeholders, are also servants of the public no less than the members of the Commission's staff.

CANONS OF CONDUCT

Each Commissioner and staff member should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department. They should conduct their duties in the spirit of public service and avoid any action in their work or in their personal affairs which could serve as a possible basis for suspicion of unethical practice. It is entirely inconsistent with one's duties as a public servant to permit any partisan political consideration or personal attachment to be a factor in his reasoning, decision, or action on any matter of Commission business.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never to a party to their evasion. In particular, they should support the Federal Power Act and the Natural Gas Act, as interpreted by the Commission and the courts, to carry out the intent of Congress so far as such intent may be ascertained.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought. This requires, among other things, industry and application commensurate with the responsibilities and duties of the position held. It requires, too, promptness in the performance of one's duties, for lack of punctuality not only involves monetary considerations but justifies public dissatisfaction with the administration of the Commission's business.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished, for any job worth doing is worth doing well, and material results therefrom are often outweighed by personal satisfaction and pride of performance which inevitably improves the service performed.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties. Nor should such favors or benefits be solicited either directly or indirectly. Ex parte applications or communications, except where provided for by law, should be carefully scrutinized to determine that the interests of other parties are not adversely affected thereby.
6. Make no private promises of any kind binding upon the duties of his office, since a Government employee has no private word which can be binding on

¹Administrative Order No. 34 prescribing regulations concerning conduct of employees of the Commission, issued September 17, 1954, and Administrative Order No. 56, official staff contracts outside the Commission, issued July 11, 1956.

public duty. Actions of the Commission are controlled by what is determined to be the public interest and it can only be bound by its decisions or orders made in meeting assembled or through duly made delegations of authority.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties. This does not foreclose all outside interests of or employment by a member or employee of the Commission, not otherwise prohibited by law, but would prevent, for example, any employment by or related to a licensee, public utility, or natural gas company subject to Commission jurisdiction or to a person or firm whose status under the Federal Power Act or Natural Gas Act is before the Commission for determination.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit. Thus, for example, Commissioners and staff members should abstain from making personal investments, not otherwise prohibited by law or Commission regulations, in enterprises which could reasonably be expected to have a bearing on the objective performance of official duties.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

By the Commission.

JOSEPH H. GUTRIDE, *Secretary*.

Mr. ROGERS. Do you have a limitation upon those who may appear and present cases to the Department?

Mr. KUYKENDALL. Yes, we have a limitation concerning former employees. Is that what you mean?

Mr. ROGERS. Not necessarily.

Mr. KUYKENDALL. Do you mean, do we have a bar that they must get admitted to?

Mr. ROGERS. Yes.

Mr. KUYKENDALL. No, we do not. We have not found it necessary. Invariably, the representatives of parties who appear in our hearings are lawyers, and we have not found it necessary to establish a bar to which they must obtain admission.

Mr. ROGERS. But you have enacted rules and regulations which prohibit former employees from appearing?

Mr. KUYKENDALL. It limits them. It does not completely prohibit them. It prescribes the conditions under which they may not.

Mr. GACHELL. Mr. Chairman, in the Commission's regulations, section 1.4 deals with appearances and practice before the Commission, and that relates to anybody.

Anybody who does appear must conform to the standards of ethical conduct required of practitioners before the courts of the United States and, where applicable, to the requirements of section 12(i) of the Public Utility Holding Company Act of 1935. So, in addition to dealing with former employees, members and employees, it deals also with anybody else who may appear.

Mr. ROGERS. Thank you. Are there any questions?

Mr. McCULLOCH. Yes. I would like to ask the Chairman a question.

On February 22 of this year, Representative John Lindsay of New York introduced H.R. 10575, which is entitled "To supplement and revise the criminal laws prescribing restrictions against conflicts of interest applicable to employees of the executive branch of the Government of the United States, and for other purposes."

This matter, this bill, was referred to the Committee on Post Office and Civil Service. I understand it was rereferred to this committee

in the last day or two. Have you had an opportunity to look at that bill at all?

Mr. KUYKENDALL. I have not had an opportunity to look at the bill. I received in advance, as I think all agencies did, a copy of the report of the Committee of the Bar Association of the City of New York, which I understand forms the basis for this bill. That has been passed on to our General Counsel and I have read newspaper accounts of that report, and of this bill, and of the corresponding Senate bill.

Our General Counsel, Mr. Gatchell, I think, may have had an opportunity to scan this. Of course, he could not have had time to study it.

Mr. McCULLOCH. I understand that, Mr. Chairman, and I asked that question leading up to this one: Later on, if and when this particular bill is up for discussion before this committee, you and the responsible members of your Commission will be in a position to testify on this bill as well as the other bills on which you have testified this morning.

Mr. KUYKENDALL. Yes, we will.

Mr. McCULLOCH. All right.

Mr. ROGERS. Mr. Meader.

Mr. MEADER. I have no questions.

Mr. ROGERS. Mr. Maletz.

Mr. MALETZ. Chairman Kuykendall, is it not correct that the President is authorized by existing law to issue rules and orders relating to Federal personnel policies including the application and enforcement of conflict of interest laws?

Mr. KUYKENDALL. Well, offhand, I could not say for sure, but I gather from the way you phrased the question that it is true, and if you have investigated, I will accept for the record the fact that he is.

Mr. MALETZ. Would you prefer that I address that question to Mr. Gatchell?

Mr. Gatchell?

Mr. GATCHELL. Yes, I believe so, but I want to call attention to the fact that the President does not have jurisdiction over the Federal Power Commission. We are an arm of Congress, and not in the executive department, so I have some question as to just how far the President can go.

In the Commission's report they call attention on page 4, to procedures to be followed in connection with enforced separation from the Government service, for example, which ought to have the consideration of this committee in connection with section 207 of H.R. 2156. Those sections that are referred to in here, section 652 of title 5, United States Code, and section 851 of title 5, United States Code, are sections which the President has relied upon in issuing other instructions.

Mr. MALETZ. Well, does the President not have responsibility for all civil service employees regardless of the agency where they may serve?

Mr. GATCHELL. The President has no jurisdiction over the Federal Power Commission. He does have over the civil service to a limited extent. I would think that any regulation that the President might want to issue, for example, with respect to the civil service employees

would be applicable as well to the employees, civil service employees, of the Federal Power Commission.

Mr. MALETZ. It is my understanding that under title 5, United States Code, section 631, which was derived from an act of 1871 and the Civil Service Act of 1883, the President was specifically given authority to issue rules and orders relating to Federal personnel policies.

Mr. GATCHELL. Well, he does control the civil service policies, but I was trying to suggest that there is a difference between the civil service policies and what the civil service employees may do, and what the Federal Power Commission may do as a separate agency, in my opinion.

Mr. MALETZ. If the President issued an order implementing, in accordance with title 5, United States Code, section 631, which order related to the conflict of interest laws, would such an order not be controlling on all the civil service employees employed by the Federal Power Commission?

Mr. GATCHELL. I would think so.

Mr. MALETZ. Some witnesses have testified before this committee that they thought it inappropriate for the Congress to prescribe a code of ethics controlling on all the agencies, but rather the President could himself issue such an order. I wonder whether we might have your comments, Chairman Kuykendall?

Mr. KUYKENDALL. Well, I would not say it is inappropriate for Congress to do it.

Mr. MALETZ. Undesirable?

Mr. KUYKENDALL. I would say that I do not know that it is undesirable. I question, I have a little doubt as to the efficacy of such action. But it probably has a little force, a little value. All could see in writing the express intent of Congress.

Of course, I think we are all agreed we cannot really legislate morals and ethics successfully.

Mr. MALETZ. In other words, I take it that you feel that H.R. 2156 is far more important than H.R. 2157, which involves enactment by Congress of a code of ethics controlling on the agencies; is that a correct statement of your position?

Mr. KUYKENDALL. Yes, that is a correct statement, particularly in view of the fact that the prior Congress enacted a code of ethics.

Mr. MALETZ. That is a statement of principles, was it not, without sanctions?

Mr. KUYKENDALL. Just another name for a code of ethics as I understand it.

Mr. MALETZ. Thank you.

Mr. ROGERS. Are there any further questions?

Thank you, Mr. Kuykendall.

Mr. KUYKENDALL. Thank you, sir.

Mr. ROGERS. I appreciate your coming and giving us the benefit of your views.

Our next witness is Mr. John L. FitzGerald, General Counsel, Federal Communications Commission. Will you come forward, Mr. FitzGerald.

Proceed in your own manner.

STATEMENT OF JOHN L. FITZGERALD, GENERAL COUNSEL,
FEDERAL COMMUNICATIONS COMMISSION

Mr. FITZGERALD. Thank you, sir.

My name is John L. FitzGerald. I am General Counsel of the Federal Communications Commission. The Commission appreciates the invitation to appear before your committee to give its views with respect to the above bills, H.R. 2156, 2157, and 7556.

The following observations are directed to certain provisions of the respective measures now before you to which we believe some comment should be made or as to which we have a constructive suggestion for clarification or amendment to offer.

Proposed section 205 of H.R. 2156 would revise section 283 of title 18, United States Code. This latter section presently prohibits Federal personnel from acting as agents or attorneys, or aiding or assisting, in the prosecution of claims against the United States, or receiving gratuities, or shares of interest in such claims, in consideration of assistance in their prosecution.

As this section is revised by proposed section 205 of H.R. 2156, the principal amendment is in the broadening of the term "prosecuting any claim against the United States," so as to include aiding or assisting "anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party."

The Commission is not opposed to this proposed revision which it understands is designed to clarify the meaning of the term in present section 283 of title 18, "claim against the United States," and the effect of certain court decisions, such as the somewhat recent case of *United States v. Bergson* (1954), 119 F. Supp. 459, which held that a "claim against the United States" is limited to a demand against the United States for money or property.

However, the Commission would suggest the insertion of the words "otherwise than in the proper discharge of his official duties," after the clause "or aids or assists" in line 11 on page 8, in order that the new language which is added to former section 283 and continues down through "interested" on line 16, page 8, will conform with respect to the protection that is afforded in lines 7-8, page 8, to an officer or employee of the United States when acting in the proper discharge of his official duties.

Proposed section 207 of H.R. 2156 would cover matter now contained in section 284 of title 18, United States Code, and in section 99 of title 5, United States Code (section 190 of the Revised Statutes).

Section 284 of title 18 presently prohibits former Federal personnel, within 2 years after cessation of their employment, from prosecuting claims against the United States involving any subject matter directly connected with their employment or duties.

Section 99 of title 5, United States Code (for which no criminal penalty is provided), states that it shall not be lawful for former employees of Federal departments, within 2 years after cessation of their employment, to prosecute claims against the United States which were pending in any such department during the period of their employment.

As these two sections of title 18 and title 5, respectively, are proposed to be revised by the first paragraph of the section, the 2-year limitation is removed. The Commission is in accord with the removal of this 2-year time limitation only to the extent that it would not be proper for a person, regardless of the length of time that has elapsed, who has participated in prosecuting or defending a claim or other matter as a representative of the Government, later to "change sides" and appear against the Government on that same matter, including matters which are adjudicatory in nature—generally those involving named parties, past events, or particular factual situations.

The Commission suggests that the problem of former commissioners and other personnel handling matters before a Government agency, such as the FCC, would appear to resolve itself into a matter of balance. On the one hand, the integrity of the administrative processes should be preserved. At the same time qualified persons should be attracted to work for the Government. No one should be unreasonably deprived of making a living in his profession.

On the other hand, "confidential" information obtained while in the employ of the Government should not be used to the disadvantage of the Government. As a corollary (and as enunciated in the Canons of Professional Ethics of the American Bar Association) private employment should not be accepted after retirement from public service in connection with any matter which the former employee has investigated or passed upon while in public employment.

Without attempting to draw the line precisely, it would appear appropriate to provide that former officials and employees should not be privileged to use confidential information acquired on particular matters while in Government service on the same matters after leaving Government service.

Also, for the present responsibility test in section 284 of title 18 "involving any subject matter directly connected with which such person was so employed or performed duty," there is substituted in proposed section 207 of H.R. 2156 a more extensive responsibility test "involving any subject matter concerning which he had any responsibility while so employed or assigned to duty."

Thus, under this proposed new test, former commissioners, officers, and employees of the Commission would be permanently disqualified from ever participating, or aiding or assisting anyone in prosecuting a claim, contract, controversy or other matter in which the United States is a party or in which it is directly or indirectly interested concerning which matter they had any responsibility during their Federal employment.

This far-reaching change in section 284 of title 18, United States Code, would bring within its coverage former officers and employees who, while properly responsible for matters with which they were directly concerned, would in addition be responsible, under the proposal in section 207 of H.R. 2156, for matters with which they had no concern other than a technical responsibility through chains of authority with subordinates. In many cases delegations of authority would be such that an official or supervisor would have no knowledge of the matter involved.

It is suggested that in proposals for extension of the criminal statutes the relationship of the former officer or employee to the proceed-

ing or matter during his official tenure should be sufficiently direct and clear of record so that he may reasonably be charged with knowledge of the matter involving conflict of interest.

The Commission, therefore, recommends that the present test in section 284 be retained, to wit, "involving any subject matter directly connected with which such person was so employed or performed duty."

The second paragraph of proposed section 207 would impose a 2-year prohibition upon the handling by a former Federal employee of matters as an agent or attorney in any proceeding, contract, claim, controversy, and so forth, in which the United States is a party and which involves the agency in which he was formerly employed or assigned to duty. This provision would directly concern Commissioners appointed pursuant to the provisions of the Communications Act of 1934, as amended.

Section 4(b) of that act now provides that any commissioners shall not, for a period of 1 year following the termination of his service as a Commissioner, represent any person before the Commission in a professional capacity. However, it is further provided that this restriction shall not apply to any Commissioner who has served the full term for which he was appointed.

If section 207 of H.R. 2156 is adopted as proposed in this respect, a conflict would exist with the provisions of section 4(b) of the Communications Act. In the Commission's view, the specific provisions in section 4(b) of the Communications Act regarding Commissioners go as far as any legislative pronouncement of the Congress in this area should go.

It must be remembered that Commissioners and employees of the Commission may have devoted most of the years of their professional experience to this specialized governmental regulatory agency. To prohibit them, after long years of service in the public interest in a highly specialized field, from using that competence for a period of 2 years after leaving such employment, appears to us to be inequitable.

One of the other bills now before your committee at this time is H.R. 7556. It proposes to amend section 284 of title 18 by adding thereto new provisions to make it unlawful for any person or concern to employ or offer employment to any person who, as an employee of the Federal Government at any time in a 2-year period prior to termination of his Government employment has "dealt with the claim against the Federal Government or business of such first-mentioned person or concern."

The bill would also make it unlawful for any employee of the Federal Government to accept employment from any such person or business concern with whom he has "dealt" as above described.

The comments previously expressed as to circumscribing competent persons from entering Government service for fear of jeopardizing their future personal opportunities, and the inequities implicit with respect to existing Government personnel, are also applicable to H.R. 7556. In a criminal statute, such as section 284 of title 18, the word "dealt" in reference to processing of claims or transaction of business is both vague and indefinite. The Commission is therefore opposed to H.R. 7556 in its present form.

The Commission also desires to mention that it presently has pending before the Bureau of the Budget a legislative proposal that would provide for exemption from the conflict-of-interest statutes of members of the FCC unit of the National Defense Executive Reserve. The Commission would, therefore, urge upon the Congress that in any general legislation to amend the conflict-of-interest statutes, such as is proposed in H.R. 2156, appropriate authority be granted to permit exemption therefrom of persons recruited for the purpose of receiving training for employment in the National Defense Executive Reserve.

Mr. MEADER. Mr. Chairman, I wonder if Mr. FitzGerald would give us a little expansion on just what this National Defense Executive Reserve is?

Mr. FITZGERALD. Yes. This National Defense Executive Reserve is an outgrowth and a unit that develops from the Defense Production Act of 1955, which authorized the President to group together a nucleus for emergency purposes related to the emergency efforts, and this is a group which, in the event of impending catastrophe, something of that kind, and I, of course, am relating that to defense matters, is trained so that in the event of mortalities, and so on, there would be trained personnel with specialized experience who could step in and assist in appropriate ways in the course of an emergency for a brief time. It is the training aspect we are concerned with here.

I might mention, we have a proposal, a legislative proposal, which we have forwarded to the Bureau of the Budget in the light of our own rather restrictive section 4(b) of the Communications Act, to amend out any technical problems that might exist with respect to conflict of interest in terms of interest in companies and that sort of thing that might be an outgrowth of people developing from that training reserve.

Mr. MEADER. Do you have a draft of that proposed legislation?

Mr. FITZGERALD. Yes. I have—

Mr. MEADER. I do not know that it should go into our record, but perhaps the committee would like to have a copy of the proposed draft for its files.

Mr. FITZGERALD. Sir, I just want to mention, it is at this time over in the Bureau of the Budget.

Mr. MEADER. Yes. But the Federal Communications Commission is an independent agency and you are not isolated from the Congress, are you, Mr. FitzGerald?

Mr. FITZGERALD. We are not isolated from the Congress. I want to say this. On the other hand, we, as other agencies, submit our legislative proposals to the Bureau of the Budget for purposes of Government-wide coordination prior to their submission to Congress, and I will await your pleasure on it.

I would assume that it would not be long before we will obtain some word from the Bureau of the Budget, however.

Mr. MEADER. Mr. Chairman, if I might proceed for a moment, I would like to ask Mr. FitzGerald if he is familiar with testimony given us the other day by the attorney for the Office of Civil Defense and Mobilization, or whatever it is called, was it Mr. Kendall?

Mr. FITZGERALD. No, I am not, sir.

Mr. MEADER. He recommended that any legislation on this subject include authority in the President to exempt from its operation in time of war or national emergency the temporary employee drafted from the business world to assist the Government in regulations during wartime or time of national emergency.

Are you familiar with that testimony?

Mr. FITZGERALD. I am not familiar with that testimony, no; but I am gathering it from what you now mention.

Mr. MEADER. I understand your proposal to relate to something that is permanent, this National Defense Executive Reserve. These are people who are now appointed and acting, am I correct?

Mr. FITZGERALD. It is in process of formulation; yes, sir. We have various aspects of the problem, we have such things as Conelrad, radio alerts, and that sort of thing.

Mr. MEADER. Are those people regarded as employees of the Government so that they would be subject to the conflict of interest statutes?

Mr. FITZGERALD. We think, no, sir. We do not regard them as such. But we do believe that—we get these questions as to whether there are possibilities of conflict, that sort of thing, and we would like it as clear as can be, so that the necessary power that needs to be exercised can go forward without these types of questions.

Mr. MEADER. Is this National Defense Executive Reserve created by statute?

Mr. FITZGERALD. Yes.

Mr. MEADER. And there is no exemption written into the statute?

Mr. FITZGERALD. There is an exemption, sir, from the criminal laws, from title 18, certain of those sections.

The problem that confronts us is rather that provision, I think it is section 4(b) of our act, which provides that no employee and no commissioner may have ownerships or interests in companies which have a direct, and, in some instances, indirect relationship with communications, and that forefronts the problem to us, rather than the criminal provisions.

I alluded to it only in this statement because it does relate to the matter before you.

Mr. MEADER. Then the exemption suggested by Mr. Kendall of authorizing the President in time of war or national emergency to exempt certain classes of temporary officials who are employed in the Government would not meet your problem at all, would it?

Mr. FITZGERALD. I have not seen his proposal. I would take it from what you say it is closely related. Ours is also couched in terms of authorization to the President, I want you to know that.

Mr. MEADER. But you want it on a permanent basis, not only in times of war and national emergency but in normal peacetime?

Mr. FITZGERALD. No. The proposal we have at this time is the preliminary training type of activity so that these people will be equipped should these emergencies arise, to serve.

Mr. MEADER. So that in order to train them you need to do it before?

Mr. FITZGERALD. Yes.

Mr. MEADER. As I understand Mr. Kendall's proposal there has to be a war or national emergency so that authority of the President

to exempt only in times of war or national emergency would not cover the situation which concerns you?

Mr. FITZGERALD. That is right, sir, yes, sir.

Mr. MALETZ. Mr. FitzGerald, if I may ask you a question, how long have you been with the Federal Communications Commission?

Mr. FITZGERALD. Since November of 1954.

Mr. MALETZ. I take it that before becoming General Counsel of the Commission, you were Chief of the Broadcast Bureau of the Commission?

Mr. FITZGERALD. No, sir. I was Chief of the Office of Opinions and Review.

Mr. MALETZ. I beg your pardon, sir.

Mr. FITZGERALD. Yes, sir.

Mr. MALETZ. Have you had occasion to read the report of this subcommittee dated March 13, 1957, on the television broadcasting industry?

Mr. FITZGERALD. I am generally familiar with it. It is a fair time since I was able to.

Mr. MALETZ. I take it you are familiar with the fact that this report was a unanimous report, with the exception of additional views on option time and music.

Mr. FITZGERALD. Yes, sir.

Mr. MALETZ. In the course of this report, this subcommittee stated as follows: I quote three paragraphs from page 145:

In testimony before the committee on this NBC-Westinghouse matter as well as in testimony and documentary evidence submitted on other subjects, references were made to informal private conferences and discussions between FCC Commissioners and representatives of industry, some of whom were directly interested in problems pending before the Commission. The evidence demonstrates that for at least the past 10 years an air of informality has surrounded cases pending before the Commission. This has permeated the Commission's administrative process to a point where various members of the Commission without reluctance have, during the past decade, repeatedly discussed with one or more interested parties the merits of pending cases—even going so far as to indicate how particular Commissioners would vote.

This practice, insofar as it relates to pending adjudications, is repugnant to fundamental principles of quasi-judicial procedure. The committee recognizes the need for some informality in certain phases of the Commission's work, but where conflicting rights or claims of parties are being adjudicated, informal ex parte discussion between a commissioner and a litigant or his representative treads dangerously close to, if it does not transgress, the outer limits of due process of law.

Accordingly, the committee believes it imperative that the Commission adopt without delay a code of ethics that would proscribe conduct of this kind by Commissioners and their staff and by attorneys and other representatives of industry alike. Such a code, like one already adopted by the Civil Aeronautics Board, should make clear and definite the line separating permissible from non-permissible informal contacts between Commission personnel and parties. It should remove any doubt that now may exist concerning the impropriety of private communications with members of the agency concerning adjudicatory matters.

My question is this: Has the Federal Communications Commission acted upon this recommendation of the subcommittee and adopted a code of ethics similar to one adopted by the Civil Aeronautics Board which would prohibit ex parte communications in situations such as were enumerated in the subcommittee's report?

Mr. FITZGERALD. Sir, we already have in section 409(c) of our act a provision relative to this subject you are now mentioning which proscribes parties or their representatives from making ex parte contacts with reference to the merits of a case while that case is pending in adjudication.

Our Commission also has subscribed to the "Canon of Judicial Ethics" of the American Bar Association. Our Commission has, as my statement later shows, since September 1954, had a statement of policy and procedures with respect to the conduct of its employees and this matter goes into other matters of conduct.

Our Commission also believes fully in and subscribes to the advisory provisions of House Concurrent Resolution 175 which sets out certain standards of conduct.

May I also say this, and these are the measures we have, sir. We have already in our statute at various places—409(c), I have mentioned—we have provisions in section 4(b) that I have mentioned, too, as to pecuniary interest in any outside concern having a relationship to communications—I am paraphrasing so I refer you really to the section itself. And we have the substance of this section 409(c).

Now, we were disturbed that section 409(c) itself did not go far enough, and so approximately a year or more ago, I think, we submitted a bill, proposed bill, to the Congress which would go further and say that it would not be proper for any person, any person whatsoever, to make ex parte contacts with the Commission. That is a pending bill.

May I say one other thing: I noted your reference to the page in your report. We have at our Commission in pending status several adjudicatory matters which we are reexamining, and I would just like to say a few words about those. I can only say it in most general terms because they are pending cases, but may I just mention what this Commission did.

When testimony developed before the Legislative Oversight Committee, the Commission moved on its own to the court of appeals in one case, to have that case returned to it for reexamination. The court permitted it, the remand of that case, moved by the Commission, and the Commission then by its own order appointed as a special hearing examiner someone completely outside its own hearing examiner list, appointed a former chief judge of the Supreme Court of Pennsylvania to hear this case. That case is a pending case.

There are one or two other cases now pending. I cannot say more about them except that the facts are being fully explored in the hearing that is going on before an examiner or still pending on exceptions after the records are closed.

Mr. MALETZ. Mr. FitzGerald, you mentioned section 409. Is it not correct that section 409 applies not to Commission personnel but to outside parties?

Mr. FITZGERALD. No; it is not correct.

Mr. MALETZ. Does section 409 not prohibit parties to litigation pending before the Commission from making ex parte communications?

Mr. FITZGERALD. It does prohibit that, certainly.

Mr. MALETZ. Is there any rule in the Commission itself, a rule similar to one adopted by the Civil Aeronautics Board, which would

prohibit Commissioners or employees of the Commission from engaging in ex parte discussions with outside litigants in adjudicatory matters?

Mr. FITZGERALD. I understand—

Mr. MALETZ. I am talking about a specific rule of the Commission which would prohibit members of the Commission or employees of the Commission from engaging in ex parte communications?

Mr. FITZGERALD. We have no specific rule. I mentioned 409(c). I also mentioned the standard of "Canons of Judicial Ethics" which the Commission itself—

Mr. MALETZ. Yes. You will recall, and I refer you again to the recommendation of this subcommittee in 1958 that the Commission adopt such a rule, adopt a code of ethics which would prohibit members of the Commission and employees of the Commission from engaging in ex parte communications.

Mr. FITZGERALD. I understand. I mean you pointed that out before.

Mr. MALETZ. Yes.

Mr. FITZGERALD. But I would also suggest for your consideration—may I finish my answer?

Mr. MALETZ. Is it your testimony that the Commission did not follow that recommendation of the subcommittee?

Mr. FITZGERALD. I will put both those questions together, because I think they are related.

Mr. MALETZ. All right.

Mr. FITZGERALD. We obviously did not set out a rule with all these things in it. But what I am trying to say to you is that we have adopted, we prepared and sent to the Congress a proposed bill which would do the very thing; any person, which would include anyone.

Now, our position is this: Congress itself, as a matter of its own legislative policy, enacted 409(c). We believe the appropriate course for us is to come back and place before the Congress our suggestion so that 409(c) itself, as a statutory legislative matter, may be completely clear.

Mr. MALETZ. Of course, the Congress has ultimate responsibility, but could not the Commission itself, without waiting for Congress to act, have adopted a rule or a code of ethics which would outlaw, insofar as the Commission and its employees are concerned, ex parte communications?

Mr. FITZGERALD. As I say, part of your question is already answered by the statute.

Mr. MALETZ. Could the Commission have issued such a rule?

Mr. FITZGERALD. I think they could issue such a rule, but in their judgment, the appropriate way was to suggest to Congress an amendment so that the legislative history of this act which was not complete, I mean the statute itself was not complete, the Congress could have the Commission's views and its proposed amendment.

Mr. MALETZ. Was it not the Commission's judgment that until the Congress should act, the Commission itself would take no action with respect to issuing such a rule?

Mr. FITZGERALD. No. The Commission's practice is with the kind of rule you are talking about.

Mr. MALETZ. The Commission's practice?

Mr. FITZGERALD. Yes.

Mr. MALETZ. But it has not been embodied in terms of an actual written standard; is that right?

Mr. FITZGERALD. That is so.

Mr. MALETZ. Well now, are you familiar with the Civil Aeronautics Board principles of practice?

Mr. FITZGERALD. Just very generally.

Mr. MALETZ. Are you familiar with the fact that under the Civil Aeronautics Board principles of practice, it is provided, and I quote:

It is essential in cases to be determined after notice and hearing and upon a record that the Board's judicial character be recognized and protected. In such cases:

(a) It is improper that there be any private communication on the merits of the case to a member of the Board or its staff or to the examiner in the case by any person, either in private or public life, unless provided for by law.

(b) It is likewise improper that there be any private communication on the merits of the case to a member of the Board or to the examiner in the case by any member of the Board's staff who participate in the hearing as witnesses, or as counsel.

(c) It is improper that there be any effort by any person interested in the case to sway the judgment of the Board by attempting to bring pressure or influence to bear upon the members of the Board or its staff, or that such person or any member of the Board's staff, directly or indirectly, give statements to the press or radio, by paid advertisements or otherwise, designed to influence the Board's judgment in the case.

In other words, the Civil Aeronautics Board did not wait, did it, for Congress to legislate in this particular area?

Mr. FITZGERALD. Let me, if you please, read from our section 409(c), the first paragraph, 409(c) (1):

In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no examiner conducting or participating in the conduct of such hearing shall, except to the extent required for the disposition of ex parte matters as authorized by law, consult any person (except another examiner participating in the conduct of such hearing) on any fact or question of law in issue, unless upon notice and opportunity for all parties to participate. In the performance of his duties, no such examiner shall be responsible to or subject to the supervision or direction of any person engaged in the performance of investigative, prosecutory, or other functions for the Commission or any other agency of the Government. No examiner conducting or participating in the conduct of any such hearing shall advise or consult with the Commission or any member or employee of the Commission (except another examiner participating in the conduct of such hearing) with respect to the initial decision in the case or with respect to exceptions taken to the findings, rulings, or recommendations made in such case.

This goes to the examining process.

Paragraph 2:

In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no person who has participated in the presentation or preparation for presentation of such case before an examiner or examiners or the Commission, and no member of the Office of the General Counsel, the Office of the Chief Engineer, or the Office of the Chief Accountant, shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case, unless upon notice and opportunity for all parties to participate.

Then paragraph 3:

No person or persons engaged in the performance of investigative or prosecutive functions for the Commission, or in any litigation before any court in any

case arising under this Act, shall advise, consult, or participate in any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, except as a witness or counsel in public proceedings.

And the final one, to the extent that these provisions are in conflict with the provisions of the Administrative Procedure Act, these provisions control.

This does not merely deal with the ex parte problem we are talking about; it goes so far as to exclude my office, the Office of Chief Engineer, any staff person, except the one Office of Opinions and Review, which is separated out from all of the rest of the Commission, from talking with and assisting in any manner the Commission in the disposition of a case, and, of course, you are familiar with the same proscriptions in the examining process.

Mr. MALETZ. Is there any provision in this statute or in any rule promulgated by the Board which specifically would prohibit a member of the Federal Communications Commission from having ex parte discussions with a private litigant?

Mr. FITZGERALD. Yes. Now, I must, to be entirely accurate, say I am talking about the consensus, the understanding of the Commission itself, that is, the "Canons of Judicial Ethics" which they follow in connection with these adjudicatory matters.

Mr. MALETZ. Yes, I understand that, but I am talking about the statute which you just cited and I am also referring to specific regulations of the Federal Communications Commission. Is there anything in the statute or anything in the Communications Commission's regulations which would prohibit a member of the Federal Communications Commission from having ex parte discussions with a private litigant?

Mr. FITZGERALD. We have no published rule, I want to answer that directly for you. We have no published rule. We do follow, and I say, when I say "we," I am speaking for the Commission, the Commission follows, does follow the "Canons of Judicial Ethics" of the American Bar Association which so provide, which take care of this matter.

Now, the other thing is this: That in the consideration of the amendments to the Communications Act in 1952, there is a mixed legislative history as to what is now section 409(c) (2) of the Communications Act. It is in part because of that the Commission itself has come back with a proposal to Congress because the two versions of the bill that went to the conference committee in 1952, provided, with minor variations, that no Commissioner shall consult with any person on any question of fact or law in issue, or receive any recommendations from any other person, unless upon notice and opportunity for all parties to participate. The conference committee modified that provision and substituted therefor the present language in section 409(c) (2) of the act. Thus, the present loophole in the law came about and as a result section 409(c) (2) does not now contain an explicit statutory prohibition directed to any other person, not a party to an adjudicatory proceeding before the Commission, against his making a presentation to an examiner or a commissioner after such adjudicatory case has been designated for hearing.

Mr. MEADER. Do you have the number of that bill?

Mr. FITZGERALD. Sir, I do not.

Mr. MEADER. Is it pending now before the Interstate and Foreign Commerce Committee?

Mr. FITZGERALD. Excuse me. Yes. It is S. 1734.

Mr. MEADER. Mr. Chairman, if I might proceed for a moment on this same line. I just wanted to ask a question of Mr. FitzGerald. You have referred a couple of times to the following of the—I think the first time you said the “Canon of Ethics” and then the “Canon of Judicial Ethics.”

Mr. FITZGERALD. Yes, judicial ethics.

Mr. MEADER. “Canon of Judicial Ethics.” Do you mean to leave the impression with this committee that the Commission, by formal action, has adopted the “Canons of Judicial Ethics” to guide their own conduct?

Mr. FITZGERALD. Sir, I tell you the Commission has authorized me to say that they have agreed with themselves and are following and I do not mean to imply this is recent, that they have not always mentally done so, but they have agreed among themselves that the following of the “Canons of Judicial Ethics” of the American Bar Association is sufficient unto these kinds of matters.

Mr. MEADER. Well, you mean that they have done so by an informal conversation with each other or perhaps by a mental process of each individual Commissioner saying, “I am going to follow the ‘Canons of Judicial Ethics,’” but that no recorded written action, recorded in the minutes of the Commission or otherwise, has ever occurred?

Mr. FITZGERALD. I think that is probably true. They consider themselves so bound. They have not found it necessary to record a minute or to publish something. They feel they are doing something they should do anyway, but this is their policy, to follow the “Canons of Judicial Ethics.”

Mr. MEADER. You referred to the legislative history. How were the Commission members exempted from these provisions that relate to trial examiners? Was that done on the floor or done in committee?

Mr. FITZGERALD. I think, sir, it was a conference of the Houses with respect to conflicting provisions of bills.

Mr. MEADER. That is all.

Mr. MALETZ. Just two more questions on this point, Mr. FitzGerald. Could you explain why the Commission has not formally incorporated the “Canons of Judicial Ethics” into the rules of the Commission?

Mr. FITZGERALD. I think I just answered that question as directed to me by the Congressman.

Mr. MEADER. You said they had not. But you did not say why they had not; that is what he is asking.

Mr. FITZGERALD. I thought I had said that they just felt it was unnecessary, and that they felt it bound them in their conscience and their duties and they did not feel it necessary to reiterate the matter.

Mr. MALETZ. The reason for this line of questions, Mr. FitzGerald, is that this very subcommittee unanimously found, and I quote: “that for at least the past 10 years an air of informality has surrounded cases pending before the Commission,” and the subcommittee also found that there were numerous instances of ex parte discussions and

it was for that very reason that this subcommittee recommended the issuance by the Commission of specific rules proscribing this kind of conflict.

Mr. FITZGERALD. Now you have stated to me a reason. I am not familiar with any record on which you base a statement that there are numerous informalities surrounding the Commission in its exercise of its adjudicatory function. I am not aware of that.

Mr. ROGERS. Then I would refer the Commission to the hearings.

Do you intend to tell this committee as Chief Counsel of the Federal Communications Commission that you have never looked at those hearings and have never looked at the subcommittee's report?

Mr. FITZGERALD. Sir, I do not say that I have not looked at your report.

Mr. ROGERS. You indicate that you have no knowledge of the basis of this report. Have you examined the testimony that was presented to this subcommittee?

Mr. FITZGERALD. I am talking, sir, about adjudicatory matters.

Mr. ROGERS. No. I am asking you a question about your responsibility.

Mr. FITZGERALD. Excuse me.

Mr. ROGERS. About your responsibility as counsel for the Federal Communications Commission, where a congressional report was issued directing criticism at the department that you were Chief Counsel for, and suggesting that certain rules and regulations be enacted by the Commission.

My question to you is: As Chief Counsel of that Commission, did you ever examine the testimony that was given to this committee, as the basis for that report?

Mr. FITZGERALD. Sir, not with the intention of avoiding an answer, believe me; I have been the General Counsel for the Commission about 15 months. That time has been a very busy one, and we have had quite a number of rather difficult matters before us. I have not read in its entirety the record of that committee. I want to say that right for the record, I have not. I have not had the time for it.

Mr. ROGERS. Do you not think that it would be well to have someone take a look at it in face of the statement that for a period of 10 years this had taken place?

Mr. FITZGERALD. I want to add, I have a tendency to be literal, I want to add that that is not to say that no member of my office has done that, has read that testimony.

Mr. ROGERS. Let us pass on to the other question. You stated that the Commission now is making an investigation of so-called improper acts as it may relate to various applications where licensees had been granted, which you testified about a judge from Pennsylvania was hearing.

Mr. FITZGERALD. Yes.

Mr. ROGERS. To what extent has the Commission invited complaints or information about impropriety of former commissioners as well as former employees or their discussion with those who may have passed upon the application? How extensive is that investigation?

Mr. FITZGERALD. Sir, you, I am sure, will fully appreciate that that question in a way has to be answered with some care.

Mr. ROGERS. Surely.

Mr. FITZGERALD. Because these several cases are in hearing status at this time. I cannot speak to them. We, however, have reviewed in detail and with care the complete record made before the Legislative Oversight Committee. This has been analyzed. In every case in which the Commission finds as a result of analysis a problem is there, the Commission is looking further into it. I hesitate to say more because of the nature of these proceedings.

Mr. ROGERS. Well, I do not want to inquire further into what you may say is your business of proper regulation, but I am trying to ascertain the extent of your investigation. I am a little curious to ascertain what procedure you have, if there is any guideline. For example, if Drew Pearson says that Commissioner "X" did thus and so while he was here, and that after he got out he went to work for so and so and had done thus and so; do you take such things into consideration?

Mr. FITZGERALD. No, sir. The primary method has been, and it was one that needed to be done more immediately, was to take that complete record, and also to take any complaints made to the Commission through petitions or otherwise. We further asked the court in another situation to return a case in which we felt that further investigation should be made.

Mr. MALETZ. Mr. Chairman, one final question. Mr. FitzGerald, do you think it possible that in the event the Commission had issued a code of ethics dealing specifically with ex parte discussions, many of the problems to which you have adverted might not have occurred?

Mr. FITZGERALD. In my opinion, Mr. Chairman, certain of these instances have arisen as to which we are now holding hearings to develop the true facts. It would be a matter of conjecture otherwise. After all, so far as attorneys are concerned, the canons of ethics under which they practice have relevant provisions.

The Commission itself has section 409. I do not see or believe that necessarily any such code would have changed the situation.

Mr. MALETZ. Do you think that if the Commission had had such a code of ethics this air of informality to which this committee referred in its report might not have been present?

Mr. FITZGERALD. This air of informality question, sir, I have been talking to adjudicatory matters. It has long been recognized—

Mr. MALETZ. That is what the committee was talking about.

Mr. FITZGERALD. The reason I raise that is, while it is again before my time as General Counsel and I was in an isolated office prior to that time, the Office of Opinions and Review, I am not familiar with the fact that the RCA-Westinghouse matter was an adjudicatory matter, and I have been in the Government for a good long time, I have been in the Government for 23 years, and it has always been my understanding and belief that in expediting the administrative process some informality in assisting people in a proper way to know what it is they need to put in applications, to know what it is they should know under the regulations, has been appropriate in order to keep the Government's business moving.

I carefully exclude matters which are adjudicatory or where for some reason of propriety, that would not be proper.

Mr. MALETZ. The report was referring, and I will quote :

The evidence demonstrates that for at least the past 10 years an air of informality has surrounded cases pending before the Commission.

And I take it that you would not sanction a so-called air of informality with respect to adjudicatory matters?

Mr. FITZGERALD. But your statement that you quoted does not say adjudicatory matters. It says cases pending. Now, we both know, as lawyers, that the Administrative Procedure Act will call everything adjudicatory for its purposes, except that which is rulemaking, but when I have been talking here to adjudication, I am talking about cases designated for hearing before an examiner, by the Commission, as to which the quasi-judicial function controls.

Mr. MALETZ. Then I think it is necessary to read the next sentence of the report:

The evidence demonstrates that for at least the past 10 years an air of informality has surrounded cases pending before the Commission. This has permeated the Commission's administrative processes to a point where various members of the Commission without reluctance have during the past decade repeatedly discussed with one or more interested parties the merits of pending cases, even going so far as to indicate how particular Commissioners would vote.

Mr. FITZGERALD. Then, sir, I have on that part attempted here to comment, I have told you, I can only go so far because of the present status in hearing.

Mr. PEET. Mr. Chairman, Mr. FitzGerald, you have indicated that the Commissioners, at least informally, subscribe to the "Canons of Judicial Ethics"?

Mr. FITZGERALD. Yes.

Mr. PEET. I take it if they informally subscribe to those canons, you have no fears that they could not formally do so by Commission action?

Mr. FITZGERALD. I think that is true.

Mr. PEET. In view of the questioning and the information that has been brought out by this line of questioning, do you think it would be useful, could you render this subcommittee an opinion, as to whether you think it would be useful, for the Commission to formalize their subscription to the "Canons of Judicial Ethics"?

Mr. FITZGERALD. Sir, I think that that would be a matter for the Commissioners themselves to determine. I do not think I should comment on it.

Mr. PEET. But, as their chief lawyer, can you render an opinion on it?

Mr. FITZGERALD. That they can do so?

Mr. PEET. Yes.

Mr. FITZGERALD. Yes.

Mr. PEET. That they should do so?

Mr. FITZGERALD. I do not think that is a question of law.

Mr. PEET. Will you report back to the subcommittee, on developments arising out of this line of questioning?

Mr. FITZGERALD. I do not quite understand you. Do you mean this: that if the Commission itself by minute or by any other action formalizes to a greater extent provisions along this line, you would wish to be so advised?

Mr. PEET. Yes.

Mr. FITZGERALD. I will be glad to do that.

Mr. ROGERS. Mr. FitzGerald, we have taken up a lot of your time. If you like, we can put the rest of your statement in the record.

Mr. FITZGERALD. Yes, sir. I think in the statement there is offered an exhibit, and I will supply to the committee and the exhibits that are offered at various points in the statement, and then the statement can be of record.

Mr. ROGERS. Thank you, sir. We appreciate your coming up here. We are sorry to have taken up so much of your time.

Mr. FITZGERALD. Thank you.

(The prepared statement submitted by Mr. FitzGerald is as follows:)

STATEMENT OF JOHN L. FITZGERALD, GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION

My name is John L. FitzGerald. I am General Counsel of the Federal Communications Commission. The Commission appreciates the invitation to appear before your committee to give its views with respect to the above bills.

The following observations are directed to certain provisions of the respective measures now before you to which we believe some comment should be made or as to which we have a constructive suggestion for clarification or amendment to offer.

Proposed section 205 of H.R. 2156 would revise section 283 of title 18, U.S.C. This latter section presently prohibits Federal personnel from acting as agents or attorneys, or aiding or assisting, in the prosecution of claims against the United States, or receiving gratuities, or shares of interest in such claims, in consideration of assistance in their prosecution. As this section is revised by proposed section 205 of H.R. 2156, the principal amendment is in the broadening of the term "prosecuting any claim against the United States" so as to include aiding or assisting "anyone in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party." The Commission is not opposed to this proposed revision which it understands is designed to clarify the meaning of the term in present section 283 of title 18, "claim against the United States," and the effect of certain court decisions, such as the somewhat recent case of *United States v. Bergson* (1954) 119 F. Supp. 459, which held that a "claim against the United States" is limited to a demand against the United States for money or property. However, the Commission would suggest the insertion of the words, "otherwise that in the proper discharge of his official duties," after the clause "or aids or assists" in line 11 on page 8, in order that the new language which is added to former section 283 and continues down through "interested" on line 16, page 8, will conform with respect to the protection that is afforded in lines 7-8, page 8, to an officer or employee of the United States when acting in the proper discharge of his official duties.

Proposed section 207 of H.R. 2156 would cover matter now contained in section 284 of title 18, U.S.C., and in section 99 of title 5, U.S.C. (section 190 of the Revised Statutes). Section 284 of title 18 presently prohibits former Federal personnel, within 2 years after cessation of their employment, from prosecuting claims against the United States involving any subject matter directly connected with their employment or duties. Section 99 of title 5, U.S.C. (for which no criminal penalty is provided), states that it shall not be lawful for former employees of Federal departments, within 2 years after cessation of their employment, to prosecute claims against the United States which were pending in any such department during the period of their employment.

As these two sections of title 18 and title 5, respectively, are proposed to be revised, the 2-year limitation is removed. The Commission is in accord with the removal of this 2-year time limitation only to the extent that it would not be proper for a person, regardless of the length of time that has elapsed, who has participated in prosecuting or defending a claim or other matter as a representative of the Government, later to "change sides" and appear against the Government on that same matter, including matters which are adjudicatory in nature—generally those involving named parties, past events, or particular factual situations.

The Commission suggests that the problem of former Commissioners and other personnel handling matters before a Government agency, such as the FCC, would appear to resolve itself into a matter of balance. On the one hand,

the integrity of the administrative processes should be preserved. At the same time qualified persons should be attracted to work for the Government. No one should be unreasonably deprived of making a living in his profession. On the other hand, "confidential" information obtained while in the employ of the Government should not be used to the disadvantage of the Government; as a corollary (and as enunciated in the "Canons of Professional Ethics" of the American Bar Association) private employment should not be accepted after retirement from public service in connection with any matter which the former employee has investigated or passed upon while in public employment. Without attempting to draw the line precisely, it would appear appropriate to provide that former officials and employees should not be privileged to use confidential information acquired on particular matters while in Government service on the same matters after leaving Government service.

Also, for the present responsibility test in section 284 of title 18 "involving any subject matter directly connected with which such person was so employed or performed duty," there is substituted in proposed section 207 of H.R. 2156 a more extensive responsibility test "involving any subject matter concerning which he had any responsibility while so employed or assigned to duty." Thus, under this proposed new test, former commissioners, officers, and employees of the Commission would be permanently disqualified from ever participating, or aiding or assisting anyone in prosecuting a claim, contract, controversy, or other matter in which the United States is a party or in which it is directly or indirectly interested concerning which matter they had any responsibility during their Federal employment.

This far-reaching change in section 284 of title 18, United States Code, would bring within its coverage former officers and employees who, while properly responsible for matters with which they were directly concerned, would in addition be responsible, under the proposal in section 207 of H.R. 2156, for matters with which they had no concern other than a technical responsibility through chains of authority with subordinates. In many cases delegations of authority would be such that an official or supervisor would have no knowledge of the matter involved. It is suggested that in proposals for extension of the criminal statutes the relationship of the former officer or employee to the proceeding or matter during his official tenure should be sufficiently direct and clear of record so that he may reasonably be charged with knowledge of the matter involving the conflict of interest.

The Commission, therefore, recommends that the present test in section 284 be retained to wit, "involving any subject matter directly connected with which such person was so employed or performed duty."

The second paragraph of proposed section 207 would impose a 2-year prohibition upon the handling by a former Federal employee of matters as an agent or attorney in any proceeding, contract, claim, controversy, etc., in which the United States is a party and which involves the agency in which he was formerly employed or assigned to duty. This provision would directly concern Commissioners appointed pursuant to the provisions of the Communications Act of 1934, as amended. Section 4(b) of that act now provides that any Commissioners shall not, for a period of 1 year following the termination of his service as a Commissioner, represent any person before the Commission in a professional capacity. However, it is further provided that this restriction shall not apply to any Commissioner who has served the full term for which he was appointed. If section 207 of H.R. 2156 is adopted as proposed in this respect, a conflict would exist with the provisions of section 4(b) of the Communications Act. In the Commission's view the specific provisions in section 4(b) of the Communications Act regarding Commissioners go as far as any legislative pronouncement of the Congress in this area should go.

It must be remembered that Commissioners and employees of the Commission may have devoted most of the years of their professional experience to this specialized governmental regulatory agency. To prohibit them, after long years of service in the public interest in a highly specialized field, from using that competence for a period of 2 years after leaving such employment, appears to us to be inequitable.

One of the other bills now before your committee at this time is H.R. 7556. It proposes to amend section 284 of title 18 by adding thereto new provisions to make it unlawful for any person or concern to employ or offer employment to any person who, as an employee of the Federal Government at any time in a 2-year period prior to termination of his Government employment has "dealt with

the claim against the Federal Government or business of such first-mentioned person or concern." The bill would also make it unlawful for any employee of the Federal Government to accept employment from any such person or business concern with whom he has "dealt" as above described. The comments previously expressed as to circumscribing competent persons from entering Government service for fear of jeopardizing their future personal opportunities, and the inequities implicit with respect to existing Government personnel, are also applicable to H.R. 7556. In a criminal statute, such as section 284 of title 18, the word "dealt" in reference to processing of claims or transactions of business is both vague and indefinite. The Commission is therefore opposed to H.R. 7556 in its present form.

The Commission also desires to mention that it presently has pending before the Bureau of the Budget a legislative proposal that would provide for exemption from the conflict-of-interest statutes of members of the FCC unit of the National Defense Executive Reserve. The Commission would, therefore, urge upon the Congress that in any general legislation to amend the conflict-of-interest statutes, such as is proposed in H.R. 2156, appropriate authority be granted to permit exemption therefrom of persons recruited for the purpose of receiving training for employment in the National Defense Executive Reserve.

Proposed section 218 of H.R. 2156 is taken in part from present section 216 of title 18, United States Code. This latter section authorizes the President to declare void any contract or agreement with the United States where payment has been made to an officer, employee, or agent of the United States for procuring such contract or agreement. Proposed section 218 broadens the scope of present section 216 and provides that:

"The President or, under regulations prescribed by him, the head of the agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by, or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed in this title, the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof."

Delegation of this authority to the President to void and rescind the licenses and other privileges enumerated would, insofar as the FCC is concerned, be inconsistent with the principle that the Commission is an independent regulatory agency pursuant to the Communications Act of 1934. The Commission is therefore opposed to this section in its present form. Moreover, the provision for recovery of amounts expended apparently is drawn with privileges in mind quite different from those which the Commission grants.

The following comments are directed to H.R. 2157, the proposed Government Ethics Act.

This bill would amend the Administrative Procedure Act by adding thereto a new title II that would provide for the establishment of a code of official conduct for the executive branch.

Proposed section 102 sets forth in detail six areas where particular acts or practices by an officer or employee in the executive branch would be proscribed. These areas cover such matters as the acceptance of gifts and other social amenities, engaging in personal business transactions based upon knowledge gained from official position, divulging confidential commercial or economic information to an unauthorized person; acquiring or retaining financial interests or engaging in private activities or employment which conflict with the performance of official duties; participating in any manner on behalf of the United States in the negotiation of contracts, the fixing of rates or the issuance of permits or certificates which affect chiefly a person by whom the Government official has been employed or with whom he had any economic interest within the 2 preceding years or with whom he has any pending negotiations concerning a prospective economic interest; or failing to conduct his personal and official affairs so that there would be no reasonable suspicion or appearance of the violation of any of the foregoing proscribed matters.

While some of the matters or things proscribed by section 102 may be considered unduly restrictive, they nevertheless coincide in many areas with what the Commission itself has already proscribed in its policy statement adopted on

September 17, 1954,¹ which is offered as an exhibit, and from which the following excerpts are taken for the information of this committee:

"The effectiveness of the Commission in serving the public interest depends upon the extent to which the Commission holds the confidence and esteem of the Nation's citizens. To hold the public confidence, the officers and employees of the Commission must not only obey the literal requirements of the Federal laws and orders governing official conduct, but also must show by their conduct that they support the ethical principles which underlie these laws and regulations. This means that each of us must do his part in maintaining the reputation of the Commission by conducting himself at all times in such a manner that his actions will bring credit upon the Commission and the Federal service."

IMPROPER CONDUCT

For the guidance of employees and supervisors at all levels, some examples of areas of action coming within the scope of this policy are listed below:

1. *Outside employment*

"Regular full-time employees of the Commission may not engage in outside business or professional activities or accept employment in private enterprise, if such activities or employment (a) will be in conflict with the interests of the Commission or of the Government, (b) will interfere with the performance of official duties, (c) will use, or appear to use, information obtained in connection with official duties which is not generally available to the public, (d) reasonably might be regarded as official actions, or (e) is of a type to cast discredit on the Commission."

2. *Articles for publication*

"The preparation of articles and other material by employees on their own time for outside publication is not prohibited, but such articles must not make use of data obtained through employment and not generally available to the public, nor shall they identify the author with the Commission or the Federal Government unless prior approval has been obtained from the Commission. Material prepared in the course of official duties may not be used for private gain by any Commission employee."

3. *Acceptance of gratuities*

"No employee may accept or agree to accept, directly or indirectly, any favor, gift, loan, free service, or other item of value from any outside organization or person if it may be reasonably inferred that it is intended to reward or influence the employee's official actions. This rule will not prevent an officer or employee from accepting an award publicly bestowed for outstanding achievement in Government service. Nor is this rule meant to unduly restrict an employee's social activities. Each employee must judge for himself whether his social activities may or may not compromise or appear to compromise his position as a public servant."

4. *Financial interests*

"No employee of the Commission shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio communication; in communication by wire or radio or in radio transmission of energy; in any company furnishing services or such apparatus to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio; or in any company owning stocks, bonds, or other securities of any such company; nor be in the employ of or hold any official relation to any person subject to any of the provisions of the Communications Act of 1934, as amended, or own stocks, bonds, or other securities of any corporation subject to any of the provisions of the Communications Act of 1934, as amended" (sec. 4(b) of Federal Communications Act).

5. *Disclosure of information*

"Except as specifically authorized to do so, employees may not disclose any official information of which they have knowledge or which comes into their possession as a result of their employment in the Commission which is of a confidential nature, or which was revealed to them as a matter of trust, or any

¹ Released as FCC-354-1176 and now a permanent part of FCC Administrative Manual, December 1955, pt. IV, "Personnel," sec. 15.30.

other information of such character that its disclosure would be contrary to the best interest of the Government, the Commission, or persons served by it. Examples of this kind of conduct include disclosing staff papers to persons outside the Commission or disclosing actions or decisions by the Commission prior to authorized public release of such information, or disclosing to persons outside the Commission information given the Commission in trust."

It should be of interest to your committee to know that early in the 86th Congress, the FCC recommended to the Congress the repeal of what is commonly known as the honorarium provision in section 4(b) of the Communications Act of 1934. A bill to this effect, S. 1735, was passed by the Senate on August 21, 1959. H.R. 4800 of the 86th Congress also contains a provision that would repeal the honorarium provision in section 4(b) of the Communications Act. Both of these measures are pending before the House Committee on Interstate and Foreign Commerce.

Regarding section 103 of H.R. 2157, for the reasons previously stated in our comments in this statement with respect to proposed section 207 of H.R. 2156, the Commission is not opposed to the deletion, to the extent stated herein, of the limiting 2-year period which is now contained in section 284 of title 18, United States Code.

The Commission is much concerned, however, (and likewise for the reasons stated in our comments in this statement to proposed sec. 207 of H.R. 2156) with the extent of the restriction imposed upon former officials or employees and which is embraced within the language "which involves a subject matter concerning which he had any official responsibility. * * *" This proposed section would be in conflict with section 4(b) of the Communications Act with respect to its effect on former Commissioners.

Proposed section 104 of H.R. 2157 prohibits a former officer or employee in the executive branch of the Government, within 2 years after his Government employment has ceased, from representing any person or from participating in the preparation of any proceeding, contract, claim, or controversy in which the United States is party and "which involves the agency in which he was employed." Again, and for the reasons stated in our comments in this statement with respect to proposed section 207 of H.R. 2156, the Commission is of the view that this proposal is unduly restrictive and conflicts with section 4(b) of the Communications Act insofar as it would apply to former commissioners.

Proposed section 105 applies to persons outside of Government and generally prohibits acts and practices which are dealt with in sections 102, 103, and 104 of the bill. Our previous comments in this statement to these sections are likewise applicable here.

Proposed section 106 would declare it to be improper conduct for any party to a contested agency proceeding which has been designated for hearing, or his representative, or any person on his behalf to consult with, advise, or make any oral or written presentation to any agency member or employee concerning any question of law or fact involved in the proceeding, except upon notice and opportunity for all parties to participate. The Commission is in complete accord with this proposal. In this connection, the attention of your committee is invited to the Commission's own legislative proposal to accomplish the same purpose, which was made to the House and Senate in the 86th Congress. This legislative proposal of the FCC was not introduced in the House in the 1st session of the 86th Congress. It was, however, introduced in the Senate on April 20, 1960, as S. 1734. A hearing on S. 1734 was held by the Senate Committee on Interstate and Foreign Commerce on June 9, 1959; it was favorably reported to the Senate on August 12, 1959 (S. Rept. 687, 86th Cong.), and is now pending on the Senate Calendar. This FCC proposal would amend section 409(c)(2) of the Communications Act of 1934 so as to provide that in any case of adjudication, as defined in the Administrative Procedure Act, no member of the Office of the General Counsel, or the Office of the Chief Engineer, or any other person, shall (except to the extent required for the disposition of ex parte matters as authorized by law), directly or indirectly, make any presentation respecting such case to the Commission or any member thereof, any hearing examiner, any assistant to a commissioner, or any member of the Commission's review staff, unless upon notice and opportunity for all parties to participate. It also provides that its terms shall not prevent consultations among the Commissioners, their assistants, and the review staff.

The objective of this FCC legislative proposal is to clarify the present section 409(c)(2) of the Communications Act which does not now contain an explicit statutory prohibition against any other person, not a party to an adjudicator"

proceeding before the Commission, making a presentation to an examiner or a commissioner in such a case after it has been designated for a hearing; nor is there a specific statutory requirement that any such other person shall give notice of his presentation so as to afford an opportunity for all parties in the case to participate. Its enactment would provide a needed improvement in the Communications Act and would, so far as this Commission is concerned, be an effective deterrent to ex parte communications in cases of adjudication under the Communications Act. Its enactment would not be in conflict with the purposes of H.R. 2157 but would be complementary thereto.

Proposed section 107 of H.R. 2157 also states the steps which may be taken by the head of any agency in the executive branch of the Government when the provisions of sections 102-106 of this bill are violated. Section 107(a) (1) provides that the head of the agency "may, after notice and hearing, dismiss any officer or employee in his agency upon finding that such officer or employee has violated section 102 of this title." The Commission has heretofore adopted procedures for handling such matters which are set forth in the policy statement referred to previously.

The Commission questions whether the provisions of section 107(a) (3) are realistic and capable of being enforced insofar as they provide that the head of any agency "may require any person who is represented by another person in an appearance before such agency in connection with any proceeding or other matter to certify under penalty of perjury that such representative will not, by such appearance, violate section 103 or 104 of this title." If Congress as a matter of policy believes that a provision for certification should be enacted, it would appear that section 107(a) (3) should be amended by the insertion of qualifying language at an appropriate place therein that such certification is to that person's best knowledge.

The Commission's comments in this statement that were previously made to proposed section 218 of H.R. 2156 are also applicable to section 107(a) (5) of H.R. 2157.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

SEPTEMBER 21, 1954.

INTEROFFICE MEMORANDUM

To: All employees.

From: The chairman.

Subject: Review and inspection program for employee conduct.

The Commission has delegated to me authority to administer a review and inspection program for improper conduct. A copy of the delegation order and policy statement are attached for your information.

The program has been established, not because of any past misconduct on the part of the Commission's employees, but to insure that the reputations of the employees, the Commission and the Federal service will not be damaged by any possible misconduct or ill-considered acts by individuals in the future.

The Commissioners and I have the highest regard for the character of the members of the staff and ask only that you conduct yourself in the future with the same regard for the public welfare that has characterized your conduct in the past.

ROSEL H. HYDE, *Chairman.*

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

ADMINISTRATIVE ORDER No. 10

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 17th day of September 1954:

It is ordered, under the authority of the Communications Act, as amended, that:

(A) Subject to the provisions of paragraphs B, C, and D, of this order, there is hereby delegated to the Chairman responsibility for the administration of the Commission's review and inspection program concerning the conduct of all Commission employees with respect to acts of impropriety, unethical conduct,

and acts short of criminal violation which could bring discredit upon the Commission and the Federal service, or which could appear to benefit the employee personally to the detriment of the public good, as prescribed by the Bureau of the Budget letter to the heads of executive departments and establishments, dated June 14, 1954, subject: Review of agency inspection programs.

(B) In carrying out the responsibilities and functions delegated by this order the Chairman shall be governed by the attached statement of general policies and by such additional policies and procedures as may from time to time be adopted by the Commission.

(C) Personnel employed regularly and full time in the immediate offices of Commissioners, while subject to the same standards of conduct, shall not be subject to the procedural provisions of this order. Each Commissioner shall be responsible for the conduct of the employees in his immediate office and shall take whatever disciplinary action he deems appropriate in individual cases of misconduct by said employees. He may, if he so desires, refer any cases arising among his immediate staff to the Chairman to be administered in accordance with this order and any policies or procedures adopted pursuant thereto.

(D) There is hereby reserved to the Commission authority to take formal disciplinary action against any employee under this order. Any instance of misconduct on the part of a Commission employee which, in the Chairman's opinion, requires formal disciplinary action shall be referred to the Commission for action.

(E) The Chairman is authorized to designate an official or employee of the Commission to assist him in the administration of the Commission's review and inspection program.

(F) The Chairman is also authorized, when in his opinion circumstances warrant, to establish a special review board to investigate the facts in a case and to make a full report thereon, including recommended action.

MARY JANE MORRIS, *Secretary.*

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

POLICY STATEMENT RELATING TO THE REVIEW AND INSPECTION PROGRAM FOR DETECTION AND PREVENTION OF IMPROPER CONDUCT OF EMPLOYEES OF THE FEDERAL COMMUNICATIONS COMMISSION

The effectiveness of the Commission in serving the public interest depends upon the extent to which the Commission holds the confidence and esteem of the Nation's citizens. To hold the public confidence, the officers and employees of the Commission must not only obey the literal requirements of the Federal laws and orders governing official conduct, but also must show by their conduct that they support the ethical principles which underlie these laws and regulations. This means that each of us must do his part in maintaining the reputation of the Commission by conducting himself at all times in such a manner that his actions will bring credit upon the Commission and the Federal service.

With this end in mind, and pursuant to a specific directive from the Bureau of the Budget, the Commission has delegated to the Chairman responsibility for the detection and prevention of acts, short of criminal violations, which could bring discredit upon the Commission and the Federal service or which could appear to benefit the employee personally to the detriment of the public good.

In carrying out the program, the Chairman will designate an officer or employee of the Commission who will promptly investigate all incidents or situations in which it appears that employees may have engaged in improper conduct. Such investigation will be initiated in all cases where complaints are brought to the attention of the Commission, including: Adverse comment appearing in publications; complaints from Members of Congress, private citizens, organizations, other Government employees or agencies; and formal complaints referred to the chairman by an employee's superior.

PROCEDURE

Cases investigated under this program will result in one of the following actions being taken:

1. In cases where investigation reveals that charges are groundless and the person designated by the chairman to assist in administration of the program

feels that harm may have been done to the employee concerned a letter of clearance may be given to the employee. The case will not be recorded in the employee's personnel file.

2. If after investigation he deems the act to be merely a minor indiscretion, he may resolve the situation by discussing it with the employee. The case will not be recorded in the employee's personnel file.

3. If he considers the problem to be of sufficient importance he may call it to the attention of the chairman, who in turn may notify the employee of the seriousness of his act and warn him of the consequences of a repetition. The case will not be recorded in the employee's personnel file.

4. The Chairman may, when in his opinion circumstances warrant, establish a special review board to investigate the facts in a case and to make a full report thereon, including recommended action.

5. If the Chairman decides that formal disciplinary action should be taken, he may prepare a statement of charges to the Commission recommending one of the following:

- (a) Written reprimand—formal letter containing a complete statement of the offense and official censure;
- (b) Suspension—a temporary nonpay status absence from duty;
- (c) Removal for cause—complete separation for cause in case of a serious offense.

Only after a majority of the Commission approves formal disciplinary action will any record resulting from the administration of this program be placed in the employee's official personnel file. Where no such action is taken no such record will be made. No action will be taken under this paragraph which violates an employee's rights under the Veterans' Preference Act; section 9.102 (a) (1), Federal Personnel Manual; part 2, Civil Service Commission Regulations; or FCC Personnel Policy Memorandum No. 16, Statement of Policy for Adjustment of Grievances.

IMPROPER CONDUCT

For the guidance of employees and supervisors at all levels, some examples of areas of action coming within the scope of this policy are listed below:

1. *Outside employment*

Regular full-time employees of the Commission may not engage in outside business or professional activities or accept employment in private enterprise, if such activities or employment (a) will be in conflict with the interests of the Commission or of the Government, (b) will interfere with the performance of official duties, (c) will use, or appear to use, information obtained in connection with official duties which is not generally available to the public, (d) reasonably might be regarded as official actions, or (e) is of a type to cast discredit on the Commission.

2. *Articles for publication*

The preparation of articles and other material by employees on their own time for outside publication is not prohibited, but such articles must not make use of data obtained through employment and not generally available to the public, nor shall they identify the author with the Commission or the Federal Government unless prior approval has been obtained from the Commission. Material prepared in the course of official duties may not be used for private gain by any Commission employees.

3. *Acceptance of gratuities*

No employee may accept or agree to accept, directly or indirectly, any favor, gift, loan, free service, or other item of value from any outside organization or person if it may be reasonably inferred that it is intended to reward or influence the employee's official actions. This rule will not prevent an officer or employee from accepting an award publicly bestowed for outstanding achievement in Government service. Nor is this rule meant to unduly restrict an employee's social activities. Each employee must judge for himself whether his social activities may or may not compromise or appear to compromise his position as a public servant.

4. *Financial interests*

"No employee of the Commission shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio communica-

tion; in communication by wire or radio or in radio transmission of energy; in any company furnishing services or such apparatus to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio; or in any company owning stocks, bonds or other securities of any such company; nor be in the employ of or hold any official relation to any person subject to any of the provisions of the Communications Act of 1934, as amended, or own stocks, bonds, or other securities of any corporation subject to any of the provisions of the Communications Act of 1934, as amended" (Sec. 4(b) of Federal Communications Act).

5. Disclosure of information

Except as specifically authorized to do so, employees may not disclose any official information of which they have knowledge or which comes into their possession as a result of their employment in the Commission which is of a confidential nature, or which was revealed to them as a matter of trust, or any other information of such character that its disclosure would be contrary to the best interest of the Government, the Commission, or persons served by it. Examples of this kind of conduct include disclosing staff papers to persons outside the Commission or disclosing actions or decisions by the Commission prior to authorized public release of such information, or disclosing to persons outside the Commission information given the Commission in trust.

6. Scandalous conduct

Employees may not engage in social or other activities which might result in unfavorable personal notoriety or scandal which would reflect unfavorably upon the Commission or the Federal service because of his FCC employment. Activities which might result in this type of unfavorable publicity include brawling, being drunk, or using abusive language in public; attending loud or disorderly parties; or engaging publicly in any conduct which, although not necessarily illegal, is not condoned by society.

The above examples of improper conduct illustrate the type of action coming within the scope of this policy and is not to be interpreted as a complete list.

If an employee is in doubt about any matter covered by these orders and statements or if he has question as to the propriety of a past or contemplated line of conduct, he should discuss his problem with his supervisor or the official or employee designated by the Chairman to handle such matters.

Supplementary statements of procedures or examples of improper conduct will be issued as need arises.

Mr. ROGERS. The next witness we have is Mr. B. Otis Beasley, Administrative Assistant Secretary of the Interior.

STATEMENT OF GEORGE W. ABBOTT, SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. ABBOTT. Mr. Chairman, Secretary Beasley was not able to appear this morning and I am appearing in his place.

My name is George W. Abbott. I am the Solicitor of the Department of the Interior. In that capacity, I am the chief legal adviser to the Secretary of the Interior.

Mr. ROGERS. Formerly counsel of the Committee on Interior and Insular Affairs of the House, is that right?

Mr. ABBOTT. And also the chief legal officer of the Department in an office with about 200 lawyers. Congressman Rogers is correct. During the 83d, 84th, and one-half of the 85th Congress, I served as chief counsel of the House Committee on Interior and Insular Affairs.

We do not have a prepared statement, Mr. Chairman, but if I may, I would like to read from the report submitted unless that is contrary to your wishes.

Mr. ROGERS. We have letter here, is that it?

Mr. ABBOTT. Yes, sir.

Mr. ROGERS. That is not a prepared statement but just a report?

Mr. ABBOTT. Yes, sir.

Mr. ROGERS. Proceed, Mr. Abbott.

Mr. ABBOTT. The comments which follow are addressed to the three pending bills—H.R. 2156, H.R. 2157, and H.R. 7556—upon which you requested comment.

Addressing myself first to H.R. 2156, I think these comments should particularly be called to the attention of the committee: As set forth in the bill, section 203, title 18, United States Code, would prohibit the receipt of compensation in connection with services before executive and independent agencies and section 205, title 18, United States Code, would prohibit the performance of such services regardless of whether or not compensation is received. Such activities would be subject to criminal punishment.

In general, the provisions of the proposed section 203 of title 18, United States Code, are similar to the current provisions of 18 U.S.C. 281, which section 203 would supplant. That is, both prohibit Federal personnel from receiving compensation for services "in relation to any processing, contract, claim, controversy, charge, accusations, arrest, or other matter in which the United States is a party or directly or indirectly interested." However, section 203 would proscribe certain activities not now covered by 18 U.S.C. 281. For example, solicitation or extortion of compensation in connection with services and services purportedly rendered or to be rendered.

As section 203 deals with the performance of services (other than in the discharge of official duties) for compensation, we do not see why the present limitation to services before departments and agencies should be retained and why services before the courts and congressional committees should not be included.

Proposed section 205 of title 18, United States Code, in contrast to its current counterpart, 18 United States Code 283, is much broader in the kinds of activities it would prohibit. Title 18, United States Code, section 283, prohibits Federal personnel from acting as agents or attorneys in the prosecution of claims against the United States. The proposed section 205 of title 18 would continue that prohibition and also it would prohibit such personnel from aiding or assisting "anyone before any department, agency, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, contract, claim controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested * * *." Violators would be subject to criminal penalties.

The prohibition in proposed section 205 respecting matters other than claims appears to us to have too broad a reach and would make activities in which there was no real conflict of interest a criminal offense. If, and this is certainly a homely example, if an employee of the Post Office Department is an ardent conservationist and a member of the Izaak Walton League, we would see no impropriety in his assisting gratis in the presentation of the league's views on a matter under the jurisdiction of the Fish and Wildlife Service.

Nor would we think it wrong if that employee helped a relative to fill out an application with respect to a drawing of qualified entrymen on lands opened in a reclamation project. Perhaps the scope of prohibition should be limited to those matters which involve the department or agency in which the officer or employee serves.

While we assume that the proposed section 205 of title 18, United States Code, is not intended to apply to any actions of a Federal officer or employee in the proper discharge of his official duties, the exception as written appears to be limited to those claims referred to in the first part of that section. It is suggested that on page 8 of H.R. 2156, line 11, before the word "aids" there be added the words "otherwise than in the proper discharge of his official duties."

With respect to former officers and employees, we feel that there is justification for the change which the first paragraph of proposed section 207 of title 18 would make by replacing the present 2-year bar against the prosecution of claims (18 U.S.C., section 284) with a permanent disqualification which applies to aid or assistance in any matter in which the United States is a party or is interested. However, in terms of the prevention of true conflict of interest, it appears to us that it would be unrealistic and unfair to disqualify former officers and employees with respect to matters as to which they had, in the language of the proposed bill, "responsibility" during their service.

Such a test could forever bar officers and employees whose official responsibility extends over a broad area from acting with respect to matters which they personally did not consider or gain knowledge of during their service. For example, the Secretary of the Interior is responsible for all functions of the Department but he has delegated authority to various officials to take action on numerous functions. However, he is responsible for the actions taken by his subordinates and under the provisions of the bill he would be forever barred from assisting anyone on any subject matter which arose in the Department of the Interior during his term of office of Secretary.

And where used here, of course, "Secretary" applies to any of the other secretarial officers. It would apply to all assistant secretaries since they are constitutional officers, whose appointments must be confirmed by the Senate. It would apply equally to the position I hold, which is a Presidential appointment, requiring confirmation by the Senate.

The second paragraph of the proposed section 207 of title 18, United States Code, would set a 2-year limitation on former Federal officers and employees in the handling of any matter which involves the employee's former agency. This limitation would be without regard to the responsibilities or duties of the former officer or employee. The limitation would operate whether or not he had gained any knowledge of a matter, and it would apply to matters arising after the departure of the officer or employee from the service.

Insofar as this Department is concerned, this prohibition appears to be unduly restrictive. In an agency such as the Department of the Interior with approximately 50,000 employees and various bureaus, and there are some 17 agencies, offices and bureaus in the Department, with diversified functions, many proceedings, contracts, controversies, and "matters" arise as to which thousands of employees gain no knowledge. Former officers and employees could not, of course, have any official connection with respect to matters arising after their departure from the service. It appears to us that the proposed limitation is far more sweeping than would be justified in preventing true conflict of interest.

We believe that the prohibition in section 207 should be limited to matters to which the former officer or employee gave personal consideration or about which he acquired information during his service. This Department has taken that approach; its regulations provide in part:

(b) No individual may practice before the Department with respect to any matter to which he personally gave consideration or as to which he personally gained knowledge while serving as an officer or employee of the United States, or of a corporation in which the United States has a proprietary interest, or of the District of Columbia.

(c) No individual shall knowingly assist or accept assistance from, or share fees with, any person with respect to any matter before the Department to which the latter person gave consideration personally or as to the fact of which the latter person gained knowledge personally while serving as an officer or employee of the United States, or of a corporation in which the United States has proprietary interest, or of the District of Columbia.

Thus, under our present regulations, former officers and employees of this Department are barred from appearing or assisting in connection with matters which they personally considered or gained information about during their service. Even if this bar does not apply, under other provisions of the regulations all former officers or employees who wish to practice before this Department or render any assistance to persons other than personnel of the Department with respect to any matter which was pending before the Department during the period of their employment must first obtain the permission of the Solicitor. Permission is not given if it appears that the proposed representation or assistance would be unlawful, unethical, or contrary to the public interest.

Although only one statutory exemption (sec. 113 of the Renegotiation Act of 1951) would be expressly repealed by H.R. 2156, the enactment of the bill in its present form might be held to repeal all of the existing statutory exemptions from the conflict-of-interest statutes. We recommend that, as a minimum, there we included in the bill a provision saving the exemptions contained in the Defense Production Act of 1950, pending a careful consideration of the question whether the exemptions provided by that act should be changed.

We are fearful that any repeal of these exemptions would impair the performance of defense functions which this Department has under that act. For example, there has been established in the Department of the Interior the Defense Electric Power Administration on a standby basis to carry out the defense responsibilities in respect of electric power with which the Secretary of the Interior has been charged by the President and the Director of the Office of Civil and Defense Mobilization.

Area directors of this Administration have been appointed as w.o.c.'s under the Defense Production Act. Their present functions are to plan the steps to be taken in their respective areas in an emergency and to develop a skeleton organization. In the discharge of these duties an area director is of necessity required to deal with a utility, or cooperative, or governmental agency of which he is in fact an officer or employee. Unless such persons can be assured that such dealings do not constitute the transaction of business which would be proscribed by proposed section 208, title 18, United States Code, we obviously would be in no position to ask them to continue to serve, nor would we expect them to want to serve.

Mr. MEADER. Mr. Chairman, might I interrupt at that point to ask counsel whether there has been a compilation of existing provisions of law exempting specific classes of people from the operation of the conflict of interest statutes?

Mr. MALETZ. There is an appendix, Congressman Meader, to the staff report.

Mr. MEADER. Which report is that?

Mr. MALETZ. Staff report, parts 1 and 2.

Mr. MEADER. Do you have a page reference to it?

Mr. MALETZ. Page 87.

Mr. MEADER. Mr. Abbott, is it your opinion that the enactment of H.R. 2156 would repeal all existing exemptions from the conflict-of-interest statutes except those specifically referred to; namely section 113 of the Renegotiation Act of 1951?

Mr. ABBOTT. Well, rather than a firm opinion, Congressman, I think it is our concern that possibly one literally reading the act would invoke the argument that by silence with respect to the saving of particular existing statutory exemptions, such exempting statutes had been repealed.

Mr. MEADER. That would be particularly true if one exemption were specifically mentioned as not being repealed, and then the inference would be very strong that it was the congressional intent that all other existing exemptions would be repealed, is that your reasoning?

Mr. ABBOTT. Yes, sir, and where you are dealing with sanctions, of course, I think any court construing it would be inclined to impose a rather harsh rule of construction.

Apart from considerations of defense, it would seem undesirable to repeal such an exception to title 18, United States Code, section 1914, as is found in paragraph (a) of section 23 of the Government Employee Training Act (5 U.S.C. 2318), a statute recently passed by the Congress. It might, therefore, be desirable to include in the bill a general saving clause in regard to existing exemptions.

It would appear desirable to have a general statutory provision on bribery, such as the proposed section 201 of title 18, United States Code. However, the definition of this crime is a technical matter of criminal law and one peculiarly within the province of the Attorney General and, therefore, we have no comment upon it or upon section 202, "Bribery of witnesses."

The proposed sections 204 "Practice in Court of Claims by Members of Congress" and 206 "Exemptions; retired officers of the Armed Forces" deal with matters not within the province of this Department.

The proposed section 218 "Voiding transactions in violation of chapter; recovery by the United States" would appear to be a desirable complement to the laws of bribery and conflict of interest.

Commenting briefly on H.R. 7556, this bill, of course, would make it a crime under certain circumstances to give, promise or offer employment to a former employee of the Federal Government during a 2-year period immediately after termination of his Federal employment. The bill would also make it a crime for the employee to accept or promise to accept such employment.

While we think that expansion of section 284 of title 18 is desirable, we feel that H.R. 7556 goes to far. As indicated in our comments above on H.R. 2516, we feel that a former officer or employee should

be barred from giving aid or assistance in connection with a matter in which the United States is interested and to which he gave personal consideration or about which he gained information while in the Government service.

However, it seems to us that to prohibit all employment with persons or concerns with whom he dealt during the last 2 years of his employment is too restrictive. This would very much limit future employment possibilities of Government employees, some of whom, by virtue of their Government service, have acquired a specialty in a particular field. In fact, after attaining a high degree of specialization from several years service within the Government in a specialized field, opportunity for employment outside Government may be limited to such persons or concerns.

H.R. 7556, if enacted, probably would have the effect of discouraging employees from leaving Government, which presumably is a desirable result, under certain circumstances, but at the same time it would have the effect of discouraging capable people from accepting employment with the Government.

And I might say here, expanding briefly on that point, as members know, the Department of the Interior operates in a very highly specialized field of law related to public land resources, utilization, and so on. And in our administrative agencies, as is true with our top supervisory personnel, and certainly in the attorney positions we have, there has developed a knowledge among some hundred plus public land laws, which is indeed highly specialized. In the case of the Office of the Solicitor, we have a great deal of difficulty in certain areas geographically retaining within the present civil service ceilings qualified legal personnel. They are inclined to depart with salary increases, or perhaps greater and broader challenges, at some point after what otherwise would have been a Government career, has begun. I personally feel that under proper application of administrative procedural safeguards the Government not only does not lose—but gains—by having these people subsequently representing citizens, making application or operating under the Federal laws, in matters, of course, with which they did not previously deal.

I have long felt that our Republic would be in better shape if every citizen had something akin to mandatory civil service at some level of government. If citizens could serve a tour of duty, the life of you gentlemen would be somewhat more comfortable, and I suspect that those who labor in the executive departments would also be more comfortable.

I see no reason why there should be established a different set of ethical standards for the legislative and judicial branches than applies to the executive. In the area with which I am most familiar, the legal function, the "Canons of Ethics" of the American Bar Association permit lawyers to go from one side of the judicial bench to the other, certainly not in the same matter but using the same skills and judgments on one side of the bench as they would on the other. Also, as a person on the Washington scene the past several years, I have noted that a number of former members of the legislative branch wind up making appearances before their old committees or other legislative committees. I presume this is because they have acquired a skill in leg-

islative procedure. They have an understanding of the functioning of those committees. Thus, to have a flat prohibition, limited—as it appears to me here—to the executive branch, could be no more readily justified and would find no more logic or even fairness than would be the case if applied only to the judicial and legislative branches.

With respect to technical aspects of the bill, H.R. 7756, it is not clear whether the term “promise to accept employment” as used in subsection (c) is applicable only to a 2-year period after Federal employment has terminated or is also applicable to a period prior to termination of such employment. In other words, would a Federal employee violate this subsection by promising while still employed by the Federal Government to accept another position outside Government within 2 years after his Federal employment ceases? Subsection (b) appears to penalize an “offeror” only with respect to offers made after the termination of the “offeree’s” Federal employment. Presumably the “minor ministerial” exception contained in subsection (b) should also be made applicable to subsection (c).

Turning particularly to H.R. 2157, we strongly endorse the stated objective of the bill, which is—

to strengthen the faith and confidence of the American people in their Government by promoting high moral standards in the conduct of that Government.

These words appear to us to be particularly well chosen because we believe that the American people presently have a high degree of faith and confidence in their Government and that Federal officers and employees as a whole are possessed of exceptionally high ethical standards.

Again parenthetically I am sure that no Member supporting this legislation would want to leave the impression in the public that there is a presumption of corruptibility of Federal employees in the executive branch and the independent agencies. And I am not arguing that that presumption has been raised. But in approaching the problem I think it very likely we raised a presumption that corruptibility is there.

While we are conscious of the necessity to exert constant effort in order to continually maintain the faith and confidence which we believe the people presently have in their Government, we have some question whether the formal enactment of a number of rules of conduct as proposed by this bill would most effectively serve the end sought. We believe that the better approach is through the regulations of the departments and agencies. Regulations of this type can respond more directly to the program operations of the individual agency and may be more promptly amended to keep pace with or give needed emphasis to problems of conduct as they relate to particular agencies.

Also, agency regulations can be more comprehensive. H.R. 2157 would prescribe rules with respect to certain types of conduct only. It seems to us that there may be a danger that other types of conduct not selected for legislative treatment would be considered of less consequence than those embraced by the legislation.

Mr. MEADER. Mr. Chairman, might I interrupt at that point to ask a question.

Mr. ROGERS. Yes.

Mr. MEADER Do you think that the failure to name certain types of misconduct in H.R. 2157 might, by inference, give legislative sanction to such types of misconduct?

Mr. ABBOTT. Well, Congressman, there is always the danger in referring to any particular action proscribed within a class of possible actions, that the rule, I believe rule of construction described, I believe as *exclusio unius* would be brought into play, and I do not think our Department—and I trust my associates in other departments—would want to be left in the position of saying “either name them all or name none.” So we merely make that suggestion, and I think the comments, the few remaining comments which follow tie into our position on this point.

Mr. MEADER. Mr. Chairman, while I have interrupted Mr. Abbott, I had another question or two prompted by it, I guess the middle paragraph on page 6 of his statement. I looked at the declaration of policy of H.R. 2157 and note it is the purpose of this act to implement the criminal laws relating to bribery, graft and conflict of interest in Government departments, and I emphasize the following:

To strengthen the faith and confidence of the American people in their Government by promoting high moral standards in the conduct of that Government.

Now, if I got your point correctly, a legislative declaration of that kind would necessarily infer that since the faith and confidence of the American people needed strengthening, that it was tantamount to a legislative finding that the faith and confidence of the American people at the moment were weak; is that your point?

Mr. ABBOTT. I would move forward answering your question very gently, sir. I would suggest that the language perhaps says that it could be even stronger than it is now. It is my hope that this was the intention.

Mr. ROGERS. Proceed, Mr. Abbott.

Mr. ABBOTT. It is understood that one purpose which H.R. 2157 seeks to serve is to enable heads of departments and agencies to penalize questionable behavior without dependency upon the susceptibility of the employee to criminal prosecution. Department heads already have such authority. In this Department the authority has been exercised. We have never felt circumscribed in our efforts to punish behavior reflecting adversely upon the Federal service or repugnant to public policy.

Insofar as the provisions of the bill are concerned, we assume that any ethical standards laid down would in fact be equally applicable to the three branches of the Government. We feel that some of the language used will prove troublesome because it will furnish no very precise guide either to administrators or to employees.

We have in mind, for example, such words as any “favor or service,” “unduly involved, through frequent or expensive social engagements,” “may be substantially affected,” “confidential commercial or economic information,” “reasonable suspicion or appearance of the violation.”

We might say parenthetically in this connection that the same sort of problems have existed with respect to the conflict of interest statutes now on the books—for example, such words as “indirectly interested,” and “transaction of business.” We are quite aware that it is difficult to be precise in this area but it is our feeling that when the weight of a statute is put behind a rule of conduct, clarity and

precision are especially desirable both from the standpoint of administration and—certainly not of less importance—in fairness to those who will be governed by it.

The comments we have made above in connection with H.R. 2156 on the use of the phrase "official responsibility" are equally applicable to the use of that phrase in proposed section 103. The prohibitions in proposed section 104 should, in our opinion, apply only to matters to which a former officer or employee had given personal consideration or about which he had acquired information during his service and should not apply to all matters before the agency or agencies which had employed him. The comments we made above about section 207 of H.R. 2156 are also applicable here.

Section 106, likewise, appears to be too broad when it prohibits consultation with any agency employee. Such a prohibition should be limited, we believe, to those agency employees who have the duty of adjudicating private rights and privileges, such as hearing examiners and other adjudicatory officials. We do not believe, for instance, that it would be desirable to prohibit Government counsel and private counsel for one party in a multiparty adjudication from discussing settlement or stipulation of facts.

Finally, we wish to suggest that the effective enforcement of proposed section 107 in respect to persons outside the Government, particularly with respect to the cancellation of contracts and related matters, would require that the agencies be authorized to issue subpoenas. In the absence of such authority it seems to us that an agency would be at a very great disadvantage in determining whether improper conduct actually had occurred.

That completes the reading of our report, Mr. Chairman.

MR. MEADER. Mr. Chairman, I was interested in the last section of the paragraph ending at the top of page 7, "We have never been circumscribed in our efforts to punish behavior reflecting adversely upon the Federal service or repugnant to public policy."

I believe when the chairman of the Civil Service Commission was before us, Mr. Jones, as I recall it, we asked him whether or not veterans' preference laws or, I believe it is called, the Lloyd-La Follette Act, inhibited disciplinary action against subordinates, and I assume from your statement that it is the experience of the Department of the Interior that you have not felt that disciplinary action against subordinates for improper conduct is in any way inhibited by the Veterans Preference Act or other acts designed to protect classified employees under Civil Service.

MR. ABBOTT. Well, on this particular point, Congressman, in discussions with the Administrative Assistant Secretary and his people, they volunteered a comment that while veterans' preference seems to be mentioned frequently by critics, if the conduct were improper, it would make no difference whether the employee were a veteran or nonveteran. The Veterans Preference Act operates, of course, on the other end of the employees' history, and I have had no instances called to my attention, and upon inquiry, none commented upon which could be cited to support that proposition.

MR. MEADER. Your reference to section 107 suggests to me that possibly 107 might be held either to repeal or modify existing laws such as the Veterans Preference Act and other laws designed to protect

employees in the classified service. Do you have any comment on whether or not section 107 might be construed to affect existing laws of that kind?

Mr. ABBOTT. The relationship or the fact of whether these laws should be read together, perhaps, should be made clear, Congressman, if language along these lines is ultimately to be adopted.

Section 107 is not intended, apparently, to affect or repeal existing laws in this area, but perhaps some clarification of its applicability to other laws would be desirable.

Mr. MEADER. That is all.

Mr. MALETZ. Mr. Abbott, you have recommended a number of amendments to H.R. 2156. Is it the position of the Department of the Interior that assuming these amendments are incorporated in the bill, that H.R. 2156 should be enacted?

Mr. ABBOTT. Indeed.

Mr. MALETZ. In other words, you recommend favorable consideration of H.R. 2156 with amendments?

Mr. ABBOTT. We do, and it is with mixed emotions, from my personal standpoint. The existing conflict of interest laws create a situation where, it seems to me, you must either say "no" in all instances, because of the breadth of the language; or put the employee in a happy position by saying to him: "Now, you can do this if you wish, but you had better reread the conflict of interest statute." There is a denial of application of judicial expertise, I think, in areas where there is clearly no conflict of interest, where you must say "no" in all instances. The committee objectives—and I think as set out in your staff reports—reflect pursuit, in this respect, of many of the processes through which our executive department, and no doubt others must have had to travel.

The existing laws deserve some clarification and amplification. There are exceptions in existing law, to which we have not addressed our comments, which might strike the citizen passerby as unusual, and I think this committee and other committees have addressed themselves to those exceptions.

I want to make one observation that occurred to me in our appearance before the Senate Judiciary Committee in connection with proposed amendments to the Administrative Procedure Act.

In my own case and in the case of quite a number of presidential appointees, the President, in the commission which established those appointments, recites something along these lines: "Reposing special confidence in the integrity, ability, and discretion," and so on, of the appointee, the appointment is made—subject, of course, to the consent of the Senate.

With the Cabinet officers, with subcabinet officers, and the secretariat in any department, just as is the case with Members of Congress and with members of the judiciary, there is involved an oath binding the taker in conscience, certainly, to uphold the Constitution and laws.

It seems to me, in our responsibility, as in yours, to meet and deal with the public, there must be some presumption that we intend to do the right thing in the public interest.

There are hundreds or thousands of citizens a day who, if they are to go about their business, must deal with the employees of our De-

partment. Many of these citizens, including many Members of Congress, have business with the secretariat every day.

There must be some built-in presumption of intent on the part of executive branch employees to do right, just as I know there is in the case of members of the legislative branch. In attempting to build into a statute, particularly a penal statute, certain prohibitions, it perhaps would be easier for the members to accomplish the desired result if they would remember that presumption or assumption which I hope exists here.

We are not saying that what is proposed for the executive department goose certainly ought to be fully applied to the legislative branch gander. But I suspect the citizens would say that, and if the presumption—which I say applies to Members of Congress, and I plead with you ought to be applied to the officials of the executive and independent agencies—is borne in mind, I hope all of us can see emerge that which would be fully applicable throughout “Government.” And “Government” certainly comprehends articles 1, 2, and 3 of the Constitution; then, that which would be fair to the individuals affected would also be susceptible of uniform application and interpretation.

Mr. MALETZ. I take it that you have some reservations, more serious reservations, with respect to H.R. 2157 than you have with respect to H.R. 2156; is my impression correct?

Mr. ABBOTT. Yes, it is; and again, it is not a question of agreement or disagreement with the objective. We agree with the objective. The experience in the Department of the Interior, as I am informed and as I have observed during a limited tour of duty, has been such that with new public laws applying to our Department being written on the books every day, we, of course, soon gain experience there as we do and have from administering the laws that are presently on the books. It requires alertness on the part of the responsible administrative people and in a 12-month period, perhaps in a given area, they may make several amendments to then existing regulations. As to the matter to which Congressman Meader referred; there is a real danger in listing items “A” through “J” let us say, as proscribed, and someone wondering if “K” through “Z” should not also be included. When we talk in terms of one of these bills, prohibiting for example, “frequent or expensive social engagements,” one would presume that a one-shot expenses-paid trip to Paris and return was certainly not “frequent,” and that may be the only contact ever had. It would probably be memorable. It might or might not influence the beneficiary. It would be “expensive,” and we take it that that disqualifies it. But the language is difficult to grasp and would be difficult to apply.

Mr. ROGERS. Thank you, Mr. Abbott. The report from the Department of the Interior will be placed in the record.

(The report referred to follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 25, 1960.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CELLER: Your committee has requested reports on H.R. 2156, a bill to strengthen the criminal laws relating to bribery, graft, and conflicts of inter-

est, and for other purposes; H.R. 2157, a bill to implement the criminal laws relating to bribery, graft, and conflict of interest in Government employment, and to promote ethics in Government, and H.R. 7556, a bill to prohibit, under certain conditions, for 2 years, the employment of a former employee of the Federal Government by any person, concern, or foreign government with which certain transactions were handled.

While we are sympathetic to the clarification and amplification of legislation on conflict of interest which will serve to promote the integrity of the Government service, we would not recommend the passage of H.R. 2156 or H.R. 2157 without amendment and we would not recommend the enactment of H.R. 7556.

H.R. 2156 relates to the criminal aspects of conflict of interests. While it would codify and clarify the present conflict-of-interest statutes by amending title 18 of the United States Code, it would also expand the scope of such statutes.

As set forth in the bill, section 203, title 18, United States Code, would prohibit the receipt of compensation in connection with services before executive and independent agencies and section 205, title 18, United States Code, would prohibit the performance of such services regardless of whether or not compensation is received. Such activities would be subject to criminal punishment. In general, the provisions of the proposed section 203 of title 18, United States Code, are similar to the current provisions of 18 U.S.C. 281, which section 203 would supplant. That is, both prohibit Federal personnel from receiving compensation for services "in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested." However, section 203 would proscribe certain activities not now covered by 18 U.S.C. 281—for example, solicitation or extortion of compensation in connection with services and services purportedly rendered or to be rendered.

As section 203 deals with the performance of services (other than in the discharge of official duties) for compensation, we do not see why the present limitation to services before departments and agencies should be retained and why services before the courts and congressional committees should not be included.

Proposed section 205 of title 18, United States Code, in contrast to its current counterpart, 18 U.S.C. 283, is much broader in the kinds of activities it would prohibit. Title 18, United States Code, section 283 prohibits Federal personnel from acting as agents or attorneys in the prosecution of claims against the United States. The proposed section 205 of title 18 would continue that prohibition and also it would prohibit such personnel from aiding or assisting "anyone before any department, agency, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested * * *." Violators would be subject to criminal penalties.

The prohibition in proposed section 205 respecting matters other than claims appears to us to have too broad a reach and would make activities in which there was no real conflict of interest a criminal offense. If an employee of the Post Office Department is an ardent conservationist and a member of the Izaak Walton League, we would see no impropriety in his assisting gratis in the presentation of the league's views on a matter under the jurisdiction of the Fish and Wildlife Service. Nor would we think it wrong if that employee helped a relative to fill out an application with respect to a drawing of qualified entrymen on lands opened in a reclamation project. Perhaps the scope of prohibition should be limited to those matters which involve the department or agency in which the officer or employee serves.

While we assume that the proposed section 205 of title 18, United States Code, is not intended to apply to any actions of a Federal officer or employee in the proper discharge of his official duties, the exception as written appears to be limited to those claims referred to in the first part of that section. It is suggested that on page 8 of H.R. 2156, line 11, before the word "aids" there be added the words "otherwise than in the proper discharge of his official duties."

With respect to former officers and employees, we feel that there is justification for the change which the first paragraph of proposed section 207 of title 18 would make by replacing the present 2-year bar against the prosecution of claims (18 U.S.C., sec. 284) with a permanent disqualification which applies to aid or assistance in any matter in which the United States is a party or is interested. However, in terms of the prevention of true conflict of interest, it appears to us that

it would be unrealistic and unfair to disqualify former officers and employees with respect to matters as to which they had "responsibility" during their service. Such a test could forever bar officers and employees whose official responsibility extends over a broad area from acting with respect to matters which they personally did not consider or gain knowledge of during their service. For example, the Secretary of the Interior is responsible for all functions of the Department but he has delegated authority to various officials to take action on numerous functions. However, he is responsible for the actions taken by his subordinates and under the provisions of the bill he would be forever barred from assisting anyone on any subject matter which arose in the Department of the Interior during his term of office as Secretary.

The second paragraph of the proposed section 207 of title 18, United States Code would set a 2-year limitation on former Federal officers and employees in the handling of any matter which involves the employee's former agency. This limitation would be without regard to the responsibilities or duties of the former officer or employee. The limitation would operate whether or not he had gained any knowledge of a matter, and it would apply to matters arising after the departure of the officer or employee from the service. Insofar as this Department is concerned this prohibition appears to be unduly restrictive. In an agency such as the Department of the Interior with approximately 50,000 employees and various bureaus with diversified functions, many proceedings, contracts, controversies, and "matters" arise as to which thousands of employees gain no knowledge. Former officers and employees could not, of course, have had any official connection with respect to matters arising after their departure from the service. It appears to us that the proposed limitation is far more sweeping than would be justified in preventing true conflict of interest.

We believe that the prohibition in section 207 should be limited to matters to which the former officer or employee gave personal consideration or about which he acquired information during his service. This Department has taken that approach; its regulations provide in part:

"(b) No individual may practice before the Department with respect to any matter to which he personally gave consideration or as to which he personally gained knowledge while serving as an officer or employee of the United States, or of a corporation in which the United States has a proprietary interest, or of the District of Columbia.

"(c) No individual shall knowingly assist or accept assistance from, or share fees with, any person with respect to any matter before the Department to which the latter person gave consideration personally or as to the fact of which the latter person gained knowledge personally, while serving as an officer or employee of the United States, or of a corporation in which the United States has proprietary interest, or of the District of Columbia."

Thus, former officers and employees of this Department are barred from appearing or assisting in connection with matters which they personally considered or gained information about during their service. Even if this bar does not apply, under other provisions of the regulations all former officers or employees who wish to practice before this Department or render any assistance to persons other than personnel of the Department with respect to any matter which was pending before the Department during the period of employment must first obtain the permission of the Solicitor. Permission is not given if it appears that the proposed representation or assistance would be unlawful, unethical, or contrary to the public interest.

Although only one statutory exemption (sec. 113 of the Renegotiation Act of 1951) would be expressly repealed by H.R. 2156, the enactment of the bill in its present form might be held to repeal all of the existing statutory exemptions from the conflict of interest statutes. We recommend that, as a minimum, there be included in the bill a provision saving the exemptions contained in the Defense Production Act of 1950, pending a careful consideration of the question whether the exemptions provided by that act should be changed. We are fearful that any repeal of these exemptions would impair the performance of defense functions which this Department has under that act. For example, there has been established in the Department of the Interior the Defense Electric Power Administration on a standby basis to carry out the defense responsibilities in respect of electric power with which the Secretary of the Interior has been charged by the President and the Director of the Office of Civil and Defense Mobilization. Area Directors of this Administration have been appointed as "WOC's" under the Defense Production Act. Their present functions are to

plan the steps to be taken in their respective areas in an emergency and to develop a skeleton organization. In the discharge of these duties an area director is of necessity required to deal with a utility, or cooperative, or governmental agency of which he is an officer or employee. Unless such persons can be assured that such dealings do not constitute the transaction of business which would be proscribed by proposed section 208, 18 United States Code, we obviously would be in no position to ask them to continue to serve.

Apart from considerations of defense, it would seem undesirable to repeal such an exception to 18 United States Code, section 1914 as is found in paragraph (a) of section 23 of the Government Employee Training Act (5 U.S.C., sec. 2318), a statute recently passed by the Congress. It might, therefore, be desirable to include in the bill a general saving clause in regard to existing exemptions.

It would appear desirable to have a general statutory provision on bribery, such as the proposed section 201 of title 18 United States Code. However, the definition of this crime is a technical matter of criminal law and one peculiarly within the province of the Attorney General and, therefore, we have no comment upon it or upon section 202, "Bribery of Witnesses." The proposed section 204 "Practice in Court of Claims by Members of Congress" and 206 "exemptions; retired officers of the Armed Forces" deal with matters not within the province of this Department. The proposed section 218 "Voiding transactions in violation of chapter; Recovery by the United States" would appear to be a desirable complement to the laws on bribery and conflict of interest.

H.R. 7556, if enacted, would add four paragraphs to title 18, section 284, United States Code, and would make it a crime under certain circumstances to give, promise or offer employment to a former employee of the Federal Government during a 2-year period immediately after termination of his Federal employment. The bill would also make it a crime for the employee to accept or promise to accept such employment.

While we think that expansion of section 284 of title 18 is desirable, we feel that H.R. 7556 goes too far. As indicated in our comments above on H.R. 2516, we feel that a former officer or employee should be barred from giving aid or assistance in connection with a matter in which the United States is interested and to which he gave personal consideration or about which he gained information while in the Government service. However, it seems to us that to prohibit all employment with persons or concerns with whom he dealt during the last 2 years of his employment is too restrictive. This would very much limit future employment possibilities of Government employees, some of whom, by virtue of their Government service, have acquired a specialty in a particular field. In fact, after attaining a high degree of specialization from several years' service with the Government in a specialized field, opportunity for employment outside Government may be limited to such persons or concerns. H.R. 7556, if enacted, probably would have the effect of discouraging employees from leaving Government, which presumably is a desirable result, but at the same time it would have the effect of discouraging capable people from accepting employment with the Government.

With respect to technical aspects of the bill, it is not clear whether the term "promise to accept employment" as used in subsection (c) is applicable only to a 2-year period after Federal employment has terminated or is also applicable to a period prior to termination of such employment. In other words, would a Federal employee violate this subsection by promising while still employed by the Federal Government to accept another position outside Government within 2 years after his Federal employment ceases? Subsection (b) appears to penalize an "offeror" only with respect to offers made after the termination of the "offeree's" Federal employment. Presumably the "minor ministerial" exception contained in subsection (b) should also be made applicable to subsection (c).

H.R. 2157 would provide a "Code of Official Conduct for the Executive Branch." We strongly endorse the stated objective of the bill, which is "to strengthen the faith and confidence of the American people in their Government by promoting high moral standards in the conduct of that Government * * *." These words appear to us to be particularly well chosen because we believe that the American people presently have a high degree of faith and confidence in their Government and that Federal officers and employees as a whole are possessed of exceptionally high ethical standards.

While we are conscious of the necessity to exert constant effort in order to maintain that faith and confidence, we have some question whether the formal enactment of a number of rules of conduct as proposed by this bill would most

effectively serve the end sought. We believe that the better approach is through the regulations of the departments and agencies. Regulations of this type can respond more directly to the program operations of the individual agency and may be more promptly amended to keep pace with or give needed emphasis to problems of conduct as they relate to particular agencies. Also, agency regulations can be more comprehensive. H.R. 2157 would prescribe rules with respect to certain types of conduct only. It seems to us that there may be a danger that other types of conduct not selected for legislative treatment would be considered of less consequence than those embraced by the legislation.

It is understood that one purpose which H.R. 2157 seeks to serve is to enable heads of departments and agencies to penalize questionable behavior without dependency upon the susceptibility of the employee to criminal prosecution. Department heads already have such authority. In this Department the authority has been exercised. We have never been circumscribed in our efforts to punish behavior reflecting adversely upon the Federal service or repugnant to public policy.

Insofar as the provisions of the bill are concerned, we assume that any ethical standards laid down would in fact be equally applicable to the three branches of the Government. We feel that some of the language used will prove troublesome because it will furnish no very precise guide either to administrators or to employees. We have in mind, for example, such words as any "favor or service," "unduly involved, through frequent or expensive social engagements," "may be substantially affected," "confidential commercial or economic information," "reasonable suspicion or appearance of the violation." We might say parenthetically in this connection that the same sort of problems have existed with respect to the conflict-of-interest statutes now on the books—for example, such words as "indirectly interested," and "transaction of business." We are quite aware that it is difficult to be precise in this area but it is our feeling that when the weight of a statute is put behind a rule of conduct, clarity and precision are especially desirable both from the standpoint of administration and in fairness to those who will be governed by it.

The comments we made above in connection with H.R. 2156 on the use of the phrase "official responsibility" are equally applicable to the use of that phrase in proposed section 103. The prohibitions in proposed section 104 should, in our opinion, apply only to matters to which a former officer or employee had given personal consideration or about which he had acquired information during his service and should not apply to all matters before the agency or agencies which had employed him. The comments we made above about section 207 of H.R. 2156 are also applicable here.

Section 106, likewise, appears to be too broad when it prohibits consultation with any agency employee. Such a prohibition should be limited to those agency employees who have the duty of adjudicating private rights and privileges, such as hearing examiners and other adjudicatory officials. We do not believe, for instance, that it would be desirable to prohibit Government counsel and private counsel for one party in a multiparty adjudication from discussing settlement or stipulation of facts.

Finally, we wish to suggest that the effective enforcement of proposed section 107 in respect of persons outside the Government, particularly with respect to the cancellation of contracts and related matters, would require that the agencies be authorized to issue subpoenas. In the absence of such authority it seems to us that an agency would be at a very great disadvantage in determining whether improper conduct actually had occurred.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

D. OTIS BEASLEY,

Administrative Assistant, Secretary of the Interior.

Mr. ROGERS. The committee now stands adjourned until Wednesday, March 2, at 10 o'clock; and the witnesses will be Don Beelar and Valentine Deale, of the American Bar Association; Frederick A. Ballard, of the District of Columbia Bar Association; and Trowbridge vom Baur, Federal Bar Association.

(Whereupon, at 12:20 p.m., the hearing was adjourned, to reconvene at 10 a.m., Wednesday, March 2, 1960.)

(The report of the Federal Power Commission referred to at p. 268 follows:)

FEDERAL POWER COMMISSION REPORT ON H.R. 2156, 86TH CONGRESS, A BILL TO STRENGTHEN THE CRIMINAL LAWS RELATING TO BRIBERY, GRAFT, AND CONFLICTS OF INTEREST, AND FOR OTHER PURPOSES, AND H.R. 2157, 86TH CONGRESS, A BILL TO IMPLEMENT THE CRIMINAL LAWS RELATING TO BRIBERY, GRAFT, AND CONFLICT OF INTEREST IN GOVERNMENT EMPLOYMENT AND TO PROMOTE ETHICS IN GOVERNMENT

These bills appear to be drawn to resolve the problem of Government employment ethics which has been under constant legislative, executive, and administrative consideration for many years. If approved in substantially their present form the bills should, we believe, accomplish much in the difficult area of legislating morals, although we recommend the amendment of section 207 of H.R. 2156 in an important particular, with similar changes in corresponding sections of H.R. 2157.

In its reports on several of the bills pending during the 85th Congress the Federal Power Commission suggested the desirability of a congressional expression of broad principles for administrative guidance on the subject while, at the same time, questioning the practicality of statutory criteria containing detailed specifications of all kinds of unethical conduct. The more proper place for effective standards, it seems to us, is in the criminal statutes where specific, clearly defined action or nonaction can be proscribed and penalized, while any statement of principles may, and rather should, be hortatory in nature. These bills properly recognize this separable but coordinate approach to the problem and, for this reason, the Commission favors them in principle. Our views with respect to each of the bills follow:

H.R. 2156

This bill is, apparently, a reenactment of existing bribery and conflict-of-interest laws for simplification and coordination in order to clarify the obligations of Government employees. It goes without saying that the Commission is in complete accord with the purposes of the bill which, although we have no expertise in the drafting of criminal statutes, appears as a whole to be workable.

We would, however, draw the committee's particular attention to section 207 of the bill relating to the activities of former Government employees. This section would replace present sections 284 of titles 18 and 99 of title 5 of the United States Code, substantially broadening the disqualification of former Federal personnel in matters connected with their former duties or involving their former agency.

The section prohibits (without time limitation) former employees from acting as agent or attorney or assisting in connection with any proceeding, etc. in which the United States is a party or directly or indirectly interested "involving any subject matter concerning which he had any responsibility" while in the Government service, or, with 2 years, in any proceeding "which involves any agency in which he was employed."

This section apparently would prohibit any former Federal Power Commission member or employee from appearing in any Commission proceeding or court review of a Commission proceeding within 2 years after his employment terminated or from ever so appearing where he had any responsibility in connection with the subject matter involved. If our interpretation of the section is correct, this would prohibit a Commission member or a supervisory employee (who, of course, is responsible for the actions taken by his subordinates) from appearing in connection with a particular proceeding of which he had no knowledge but for which, by virtue of his superior position, he did have a responsibility.

We are in full agreement with the philosophy of this particular section, i.e., that breaches of confidence are not only improper but should be made illegal, but the stringency of the proposed section seems unnecessarily severe. While it is true that persons who have had Government responsibility for a particular matter should be permanently disqualified from handling the same matter for the Government's antagonist, the "directly connected" provision, now contained in section 284 of title 18 seems entirely adequate and would not penalize the use of skills and experience acquired by an employee over years of service and which not only belong to him but often constitute his sole or primary stock in trade.

The Commission's own regulation relating to appearances (18 CFR 1.4(c)) prohibits, without time limitation, any appearance by a former employee "in connection with any proceeding or matter before the Commission which such person has handled, investigated, advised or participated in the consideration

thereof while in the service of the Commission unless he be expressly authorized by the Commission on a verified showing that such participation would not be contrary to the public interest and would not be unethical or prejudicial to the interests of the Commission."

The Commission has found this provision entirely adequate to protect the public interest in situations involving a possible conflict of interest and yet not so stringent as to unduly hinder the practice of its former employees in their chosen professions. Accordingly, we recommend that the "directly connected" provision of the existing section 284 of title 18 be substituted for the "responsibility test," if we may call it that, which appears in section 207 (p. 10, line 19) and elsewhere in the bill. Unless an employee of the Government has "handled, investigated, advised, or participated in the consideration of a proceeding," he should not be prohibited from assisting in it after he has left the Government service.

The bill also includes in section 207 (p. 10, line 17; p. 11, line 1) and elsewhere the phrase "or other matter in which the United States is a party or directly or indirectly interested." This, in our opinion, lacks the clarity and specificity required of a criminal statute, particularly as it might be applied to the proceedings of a regulatory agency like the Federal Power Commission. The existing prohibition against participating in connection with "claims against the United States" may be regarded as too narrow but "directly or indirectly interested" is, we believe, too broad. The degree of interest of the United States might vary considerably depending upon the subject matter and the type of agency having it under consideration. The United States is directly or indirectly interested in practically all actions of the Federal Power Commission under the Federal Power Act and the Natural Gas Act which it administers. We therefore recommend that the "other matter" be more precisely defined with respect to the interest of the United States that is to be protected from any abuse of confidence arising from participation therein by a former employee.

For these reasons we do not recommend enactment of H.R. 2156 in its present form, though, as stated above, we approve it in principle.

H.R. 2157

This bill would enact a Code of Official Conduct for the Executive Branch. This, as pointed out above, would be in accord with suggestions which we have heretofore made, and its enactment, in view of the present climate of public concern with the question of ethics in Government, would have a very salutary effect.

We note with approval that the proposed code makes certain conduct improper rather than illegal and imposes no criminal penalties but imposes upon the various Government agencies, in effect, the responsibility of enforcing and implementing its provisions in response to the particular needs of each.

We would, however, refer to our views with respect to certain language appearing in section 207 of H.R. 2156 which was discussed in the first part of this report. Identical language is found in sections 103 and 104 of the proposed code (p. 4) and is subject to the same criticism. We recommend that it be revised as suggested in our report on H.R. 2156.

The fact that no criminal penalties are prescribed answers criticisms which would otherwise be pertinent, although the agency enforcement provisions of section 107 permit decisive disciplinary action against violators, even to the point of dismissal from service.

Procedures to be followed in connection with enforced separation from the Government service are now provided for in the civil service laws (5 U.S.C. 652) and the Veterans Preference Act (5 U.S.C. 851). The provisions of section 107 of the proposed code are either in addition or parallel to those acts and it is recommended that the dismissal provisions of the code be clarified vis-a-vis existing laws.

One other matter that deserves mention is the present existence of a code of ethics which was promulgated by H. Con. Res. 175, 85th Congress. While the code proposed by H.R. 2157 does not appear to conflict with the existing one, it would be unfortunate if confusion should arise as to whether the present purpose in adopting H.R. 2157 is to repeal or supersede the existing code. It is recommended that H.R. 2157 include language showing the explicit intent of Congress in this regard.

For the information of the committee we are enclosing a copy of Administrative Order No. 66 which lays down ethical standards governing the conduct of Commissioners and the staff.

FEDERAL CONFLICT OF INTEREST LEGISLATION

WEDNESDAY, MARCH 2, 1960

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m. in room 346, Old House Office Building, Hon. Emanuel Celler (chairman) presiding.

Present: Representatives Celler, Rodino, Rogers, Holtzman, and McCulloch.

Also present: Herbert N. Maletz, chief counsel; Kenneth R. Har-kins, cocounsel; and Richard C. Peet, associate counsel.

The CHAIRMAN. The meeting will come to order.

We have a distinguished line of witnesses this morning: Mr. Donald Beelar, Mr. Valentine Deale, Mr. Bryce Rea, Jr., all three of the American Bar Association. I am very happy to have you gentlemen, and I want to point out that Mr. Raoul E. Desvernine is in the room, an old, old friend of mine and Mr. Deale. That makes your presence here, Mr. Deale, even more felicitous so far as I am concerned. The other gentlemen I am sure will be equally effective in their testimony.

We will now hear from any or all of you three gentlemen. Who will be the spokesman of the three of you?

STATEMENTS OF DONALD BEELAR, VALENTINE DEALE, AND BRYCE REA, JR., AMERICAN BAR ASSOCIATION

Mr. BEELAR. I will, Mr. Chairman.

The CHAIRMAN. All right.

Mr. BEELAR. Mr. Chairman, thank you very much for the opportunity to be here this morning. I am chairman of the American Bar Association's Committee on the Federal Administrative Practice Act, which in bill form is H.R. 7092 and S. 600. My committee also has a joint responsibility with the administrative law section of the American Bar Association, on the Agency Hearing Standards of Conduct Act which deals with the ex parte communications problem, which in bill form is H.R. 10657 and S. 2374.

The conflict-of-interest bills which are before this committee are broader in scope than those matters as to which the American Bar Association has formulated definitive views. Certain sections of H.R. 2157 are relevant to some of the subjects on which the ABA has taken a position, and we trust that the presentation of these views may be useful or informative to the committee.

Our presentation this morning will be divided among three of us. Following me will be Mr. Deale, as you have indicated, and Mr. Bryce Rea is here as chairman of the National Committee of the Administrative Law Section.

Mr. Rea has a conflict this morning. He has to be in court at 11 o'clock, and I was wondering if I might interrupt my statement so that Mr. Rea can make a few remarks at this time.

The CHAIRMAN. We will be glad to hear from you, Mr. Rea.

Mr. REA. Thank you, Mr. Chairman.

I regret that I do have an oral argument in our court of appeals here on review of an order of an administrative agency, and for that reason I will have to ask to be excused.

But I just want to say that I have read Mr. Beelar's statement and Mr. Deale's statement, and can say without hesitation or reservation that they fully embrace and reflect the views of the American Bar Association.

The resolutions of the association and the bill relating to this specific problem which they will discuss were both very carefully studied.

I was present and participated in the meetings in which those resolutions and bill were formulated, and I know that they reflect the unanimous feelings of the association, and particularly of the administrative law section, which is primarily charged within the association, as you know, with matters of this kind.

But certainly the members of the administrative law section were unanimous in their view that this was a serious problem, and that this that will be discussed by Mr. Beelar and Mr. Deale is the appropriate way to remedy it.

I would just add one thing. I think that prompt action in accord with the resolution and the position of the American Bar Association, or action not inconsistent with it, is imperative.

I think that the maintenance of public confidence in the integrity of our governmental processes and in the integrity of the professions that are representing parties before governmental agencies would require that this matter not be dillydallied along, and I don't mean to imply that this committee is doing that or that any other person is interested in doing that. But I think this is one situation in which the public has a vital interest and an immediate interest, and will react very adversely to our profession, unless it feels that we are really moving to be sure that the integrity of the processes by which valuable rights and the public interest are determined are insured.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Rea.

You may proceed, Mr. Beelar.

Mr. BEELAR. Yes. Briefly by way of identification, I am a member of the bar of the District of Columbia, and a partner in the firm of Kirkland, Ellis, Hodson, Chaffetz & Masters. I have been active in bar association work in the field of administrative law since 1934, except for 4 years during World War II, when I was in the Air Force. I am past chairman of the section of administrative law of the District of Columbia Bar Association. I am past chairman and presently a council member of the administrative law section of the American Bar Association. I appear here solely as a representative

of the American Bar Association and my presentation is limited to the authorized views of that association.

The CHAIRMAN. When you say you represent the association, your presentation is limited to the authorized views of the association. That means primarily the section on administrative law, doesn't it, of the American Bar Association?

Mr. BEELAR. No, this means the American Bar Association.

The CHAIRMAN. You speak for the American Bar Association?

Mr. BEELAR. Yes.

The CHAIRMAN. It doesn't mean that your views were presented to the entire membership at large?

Mr. BEELAR. The legislative body of the association is the House of Delegates, and the views that I am representing this morning have been adopted by the House of Delegates.

The CHAIRMAN. When was that?

Mr. BEELAR. In 1956, and in one respect in 1959.

The CHAIRMAN. In 1956 we didn't have this bill that you are speaking of then.

Mr. BEELAR. That is right, but we did formulate views on certain areas of conflict of interest problems.

The CHAIRMAN. I see.

Mr. BEELAR. And this will be developed in our statements.

Our authority to sponsor the Federal Administrative Practice Act, H.R. 7092 and S. 600, is contained in a series of resolutions adopted by the House of Delegates on February 20, 1956, 81 ABA Rep. 371, et. seq.; 82 ABA Rep. 182, 346. Sec. 404 of title IV of H.R. 7092 is relevant to certain provisions of H.R. 2157.

This relationship and the views of the American Bar Association as to conflict of interests for those who represent others before Federal agencies will be presented by my colleague, Mr. Deale.

My subject is ex parte communications in agency adjudications, which is relevant to sec. 106 and portions of sec. 107 of H.R. 2157. Our authority on this subject is contained in the following resolution adopted by the House of Delegates on February 23, 1959—

The CHAIRMAN. Will you identify H.R. 7092, that is the bill offered by Representative Fascell of Florida?

Mr. BEELAR. Yes, sir.

The CHAIRMAN. And who offered S. 600?

Mr. BEELAR. Senator Hennings.

The CHAIRMAN. Thank you.

Mr. BEELAR. Our authority on the subject of ex parte communications is contained in three resolutions which are here in my statement, and if it is agreeable with the chairman, I will not read these if they can just be included in the record.

The CHAIRMAN. That is perfectly all right.

(The resolutions referred to are at pp. 349, 350.)

Mr. BEELAR. So much by way of background and authority.

The American Bar Association has a general interest in all facets of the conflict of interest problem.

For example, Canon No. 36 on Professional Ethics states:

A lawyer, having once held a public office or having been in the public employ, should not, after his retirement, accept employment in connection with any matter which he has investigated or passed upon while in such office or employ.

I might also cite certain provisions of the "Canons of Judicial Ethics."

The CHAIRMAN. May I just make this comment, Mr. Beelar? That bill offered by Mr. Fascell, H.R. 7092, was referred to a different subcommittee than this one, because it involves administrative procedures and practices in government.

That went to what we call subcommittee No. 1 presided over by our distinguished colleague from Pennsylvania, Mr. Walter. That bill is not before this particular subcommittee, but I take it that the general principles you are enunciating will be applicable.

Mr. BEELAR. That is correct, sir. I was pointing out that our Canons of Professional Ethics deal with one aspect of conflict of interest.

Then I would also like to invite the committee's attention to the fact that the ABA has approved Canons of Judicial Ethics which, in a number of ways, deals with the conflict of interest problems from the standpoint of the judge, and I will merely read some of the titles of these Canons of Judicial Ethics, namely "Kinship" or "Influence"—

The CHAIRMAN. Where are you reading from now?

Mr. BEELAR. I am reading from "Canons of Judicial Ethics," not in my statement.

But to indicate interest of the American Bar Association in the subject that you are inquiring into. Our Canons of Judicial Ethics deal with problems such as this: No. 13, kinship or influence; No. 17, ex parte communications; No. 25, business promotions and solicitations for charity; No. 26, professional and business investments and relations; No. 28, partisan politics; No. 29, self-interest; No. 31, private law practice; No. 32, gifts and favors; No. 33, social relations; and No. 34, a summary of judicial obligations.

Now these are well devised canons of judicial ethics, which attempt to treat and which do treat with the problems of conflict of interest from the standpoint of the judge.

The CHAIRMAN. I think it might be well at that point to put those canons into the record. In revision of your remarks you might insert them into the record.

Mr. BEELAR. I would welcome that, yes, sir.

(The canons referred to follow:)

CANONS OF JUDICIAL ETHICS ADOPTED BY THE AMERICAN BAR ASSOCIATION

13. KINSHIP OR INFLUENCE

A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.

17. EX PARTE COMMUNICATIONS

A judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for ex parte application.

While the conditions under which briefs of argument are to be received are largely matters of local rule or practice, he should not permit the contents of such brief presented to him to be concealed from opposing counsel. Ordinarily all communications of counsel to the judge intended or calculated to influence action should be made known to opposing counsel.

25. BUSINESS PROMOTIONS AND SOLICITATIONS FOR CHARITY

A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others: he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.

26. PERSONAL INVESTMENTS AND RELATIONS

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

28. PARTISAN POLITICS

While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

He should neither accept nor retain a place on any party committee nor act as party leader, nor engage generally in partisan activities. Where, however, it is necessary for judges to be nominated and elected as candidates of a political party, nothing herein contained shall prevent the judge from attending or speaking at political gatherings, or from making contributions to the campaign funds of the party that has nominated him and seeks his election or reelection.

29. SELF-INTEREST

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court in which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

31. PRIVATE LAW PRACTICE

In many States the practice of law by one holding judicial position is forbidden. In superior courts of general jurisdiction, it should never be permitted. In inferior courts in some States, it is permitted because the county or municipality is not able to pay adequate living compensation for a competent judge. In such cases one who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success.

32. GIFTS AND FAVORS

A judge should not accept any presents or favors from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.

33. SOCIAL RELATIONS

It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable

attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.

34. A SUMMARY OF JUDICIAL OBLIGATION

In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

Mr. BEELAR. More specifically we have indicated an interest in the conflict-of-interests problem. In 1956 when a special committee of the American Bar Association under the chairmanship of Ashley Sellers made a comprehensive report to the association, and one of the recommendations of that committee was that there should be a general overhaul of the conflict-of-interests laws.

And while this resolution was not presented to the association for action simply because there were a number of resolutions that were not presented, it nevertheless provides a background to those resolutions which were adopted by the House of Delegates.

Now we also have a specific interest in the application of the conflict-of-interests problem as applied to persons who represent others before agencies. In other words, the practice of law. And this is the subject that Mr. Deale will discuss.

The third aspect of this problem is one in which we have a unique and very specific interest; namely, in prohibiting improper ex parte communications in those agency proceedings which are courtlike in character and which are supposed to be decided exclusively on the evidence of the record.

My statement will deal with this problem, and more particularly the relationships of H.R. 2157, which is the bill by the chairman, Mr. Celler, and the recently introduced bill, H.R. 10657, Mr. Fascell's bill.

I propose to compare these two bills insofar as they relate to matters in which we have authorized views.

First with respect to H.R. 2157, section 106 would prohibit any ex parte written or oral communication with any agency member or employee concerning any question of law or fact involved in any pending contested proceeding. The American Bar Association very definitely supports that objective.

The CHAIRMAN. Are you reading from your statement now?

Mr. BEELAR. Page 7, yes.

The CHAIRMAN. Thank you.

Mr. BEELAR. If a person indulges in prohibited ex parte communications the head of the agency, after notice and hearing, may blacklist him for an indeterminate period from seeking or doing business with that agency (sec. 107(a)(4)).

Also, a person indulging in prohibited ex parte communications may have his contract, loan, subsidy, rate, permit, or certificate canceled

under regulations prescribed by the President. Sec. 107(a)(5). Such blacklisting or cancellation action is required by section 107(b) to be supported by a written statement of findings and delivered to the offending person, and may be published in the Federal Register.

Thus, improper ex parte communications are made an offense in section 106 of H.R. 2157, and the sanctions imposed on the offending party are contained in two of the six subparagraphs of section 107.

EX PARTE COMMUNICATIONS AND CONFLICT OF INTEREST

Perhaps the first question we should consider is whether the ex parte communications problem is a part of the conflict-of-interest problem or a separate problem. I believe we are inclined to the view that the ex parte communications problem is separate and distinct from the conflict-of-interest problem. It would not be illogical for legislation to embrace both problems, but I believe in the more practical and preferred course would be to deal with them separately. Our reasons for this would include the following:

A conflict-of-interest situation need not involve any ex parte communication, or vice versa, for example, in the making of gifts.

The problem of ex parte communications is one related only to courtlike functions, hearings which should be determined exclusively on the evidence of the record, whereas conflict-of-interest problems apply in manifold situations not limited to agency adjudications.

The CHAIRMAN. You realize, of course, that this matter of ex parte communications is fraught with a great deal of difficulty, from a congressional standpoint.

Shall a Member of Congress be precluded from communicating with the head of an agency on a matter that concerns his district?

Must the White House be precluded? Must a man like Sherman Adams be excluded?

And if a man like Sherman Adams breaches such a prohibition, what should be the sanctions invoked against him?

Mr. BEELAR. This is a very difficult problem, and it is one in which we have tried to be very explicit in the bill we have drawn.

We are concerned as I believe you are that we don't freeze out proper sources of information, I mean to the public at large, to Members of Congress and everybody else.

But since these agencies are given judicial functions, and some of these judicial agency proceedings are supposed to be decided exclusively on the evidence of record, our bill would exclude consideration of representations outside of the record.

The CHAIRMAN. I think as an initial premise for all this, we must make sure that a man who is appointed to high office shall be very much like a judge, that is, he must have the qualifications that a judge has. Until these appointments are free from politics and partisan considerations, I think we are going to have great difficulty enforcing any kind of a prohibition against ex parte communications, because if the appointee is a political henchman, it is to be expected that he is going to respond politically, and it also follows that he will be prone to harken unto ex parte communications. Do you agree with me on that?

Mr. BEELAR. That is the problem that we are concerned about, and you have stated the problem very well, and we are deeply concerned.

We don't think that a man's litigation should be made the subject of political manipulations, because this defeats the right to a fair hearing, because he is supposed to have an opportunity to be confronted with the evidence and contentions that are considered in deciding his case, and the only way this can be done is to have everything on the record.

Our bill at least requires disclosure of anything that happens to occur that is outside the record.

The CHAIRMAN. I am deeply in sympathy with your point of view.

But judging from the appointees to these commissions, not solely in this administration but in all administrations, the question was whether those men would steel themselves against listening to ex parte communications.

They haven't in the past, and this committee has unearthed a mass of evidence clearly indicating the guilt of some Commissioners, who have listened very attentively to the pleas successfully made by those who had interests in cases before them.

Mr. BEELAR. We are aware of the difficulty, but we think that one thing that could be done would be for Congress, by legislation, to state the guideline on these courtlike proceedings, and at least make it clear that these agencies, agency members, are not to disregard this guideline, and if they do, that there is a disclosure or sanction involved.

The CHAIRMAN. Those rules of ethics, those canons that you mention have been promulgated by a number of these agencies, but they are just about as useless as water going over Niagara Falls if they don't harken unto them.

Mr. BEELAR. I am afraid this is substantially true, that the agency rules do not have that acceptance and respect that I think a law of Congress would have.

And most of these agency rules attempt to reach persons who are having matters before the agency, but do not impose any self-restraint or restrictions on the agency members.

The CHAIRMAN. You may proceed.

Mr. BEELAR. Continuing with the reasons why we think the ex parte communications problem is somewhat of a separate problem, I would add:

(c) The report of the New York City Bar Association advocates one comprehensive statute dealing with all aspects of conflict of interests but the scope of this, I believe, does not include the problem of ex parte communications.

(d) We believe that the ex parte communications problem is ripe for legislative action and that it can and should be dealt with as a matter of first importance without having to wait until studies on the more complex problem of conflict of interest are concluded.

For the concluding part of my statement I should like to compare the provisions of H.R. 10657 with those provisions of H.R. 2157 having to do with ex parte communications. (The following observations would also apply to H.R. 6774, which is an earlier revision than H.R. 10657 and would apply only to six agencies.)

(a) *In what kind of agency proceedings should ex parte communications be prohibited?*

H.R. 2157 uses the term "contested agency proceeding." This term is not defined. It implies correctly that there are other kinds of agency proceedings to which the bill would not apply. How do we draw the line, and how can a person know whether any particular agency proceeding is one which is subject to this bill? Another question is, what is the beginning or ending of a proceeding covered by the bill?

In H.R. 10657 we deal with these questions by limiting the bill to those proceedings which by law are subject to notice and opportunity for hearing, and to the specific exclusion of certain other functions and proceedings which are named in the bill. To resolve any doubt or ambiguity on this we also require that notice of hearing in each agency proceeding state expressly whether that proceeding is or is it not subject to the bill prohibiting ex parte communications. By this means anybody can tell at the inception of a proceeding what ground rules will apply. In H.R. 10657 it is made clear that the prohibition against ex parte communications applies during the period a proceeding is pending, which is marked by the initial notice of hearing and the final agency action. Our bill also gives the agency some discretion in determining whether any proceeding otherwise exempt is so adversary in character that it should be made subject to the bill. We believe these additional provisions by way of delineation and clarification are advisable and necessary to deal effectively and fairly with the ex parte communications problem.

(b) *What persons should be prohibited from making ex parte communications?*

H.R. 2157 enjoins a party to a proceeding from making oral or written communications to "any agency member or employee." This puts all officials and all employees of an agency out of bounds to a party in a proceeding or those acting on his behalf. We believe this is too sweeping in one respect and inadequate in another. We believe there is no reason for putting those employees of any agency who have nothing to do with the decision of a particular case out of bounds to a citizen. The business of the agencies and of party litigants is facilitated by discussions with nondecisional personnel, for example, docket clerks, witnesses, trial attorneys, et cetera.

The practice of discussing pending cases with the clerk of a court or a United States attorney is not improper, and this freedom should apply to nondecisional staff personnel. H.R. 2157 misses half the target, in our view, by prohibiting only communications from a party litigant to a Government official, whereas we believe the prohibition should apply equally to improper communications from Government decisional personnel to the party litigant.

The CHAIRMAN. What do you mean by the latter? Give us an illustration.

Mr. BEELAR. Well, we think that the prohibition should also be addressed to the agency member, to prohibit him from making ex parte communications to a party litigant. Deal with both sides of the coin.

For example, in canon 13 on "Influence", a judicial canon, it says that a judge should not suffer his conduct to justify the impression

that any person can probably influence him or unduly enjoy his favor, or that he is affected by kinship, rank, position, influence of any party or other person.

We want to be sure that legislation on this subject does prohibit an agency member from initiating *ex parte* communications with respect to pending matters.

Mr. ROGERS. You mean by that, if a man in an agency says, "Look, you talk to Joe Blow. I think Joe may be able to give you some information," you would have that included in this law so that it would be a violation of it; is that what you have in mind?

Mr. BEELAR. Yes. Not simply referring matters to somebody who can provide the information, but attempting for an agency member to seek out a litigant before him and discuss the case with him.

Mr. ROGERS. If a discussion with the litigant before him would amount to reference to somebody else, that would be included, would it not?

Mr. BEELAR. Yes.

In H.R. 10657 the prohibition against *ex parte* communications is limited to those agency officials who are involved in the trial or decision of the particular proceedings in question. By this means we focus complete responsibility for any *ex parte* misconduct directly on the agency member or hearing officer who is responsible for the trial or decision of the case in question. Also, we would enjoin both the party litigant and the decisional official of the agency from making or entertaining prohibited *ex parte* communications. We believe that legislation must deal with both sides of the *ex parte* transaction. If we can make it clear that agency decisional personnel are not to entertain or initiate any improper *ex parte* communication about proceedings pending before them, we will strike effectively at the heart of the problem, and this notorious influence mess in which the guilty few contaminate the numerous conscientious and honest officials will be cleaned up.

While the bill states this in terms of a prohibition, we believe "protection" is a better word since it would protect those agency members and hearing officers who desire to improve the integrity and fairness of agency litigation, and protect the rights of litigants to a decision on the merits of the case, based solely on the evidence in the hearing.

The CHAIRMAN. So that if a member of the Commission violates this canon and engages in *ex parte* communication with an applicant before the Commission, the sanction in the bill as I understand it, is that the award or the decision can be revoked or modified by the President, but there is no sanction against the Commissioner himself, except that the President probably wouldn't reappoint him; is that it?

Mr. BEELAR. In our bill we would require disclosure, and we would impose a sanction on failure to disclose. This would be ground for suspension, removal, or disciplinary action, or possible a criminal offense.

(c) *What types of ex parte communications should be prohibited?*

H.R. 2157 prohibits communications concerning "questions of law or fact involved in the proceeding." This implies that any secret communications which avoid questions of law or fact in a proceeding are not improper under this bill. While at first this may appear logical, it seems to us impractical to draw a line between propriety and

impropriety based on the content of *ex parte* communications concerning a pending proceeding. If this bill became law it could be used to condone secret communications attempting to influence the decision of contested proceedings, and this could be done without any discussion of the questions of law or fact at issue.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt the witness right there.

Would it be your opinion that, as a matter of fact, the influence might be far greater on an approach which did not necessarily discuss law or fact than if it were on law and fact alone?

Mr. BEELAR. I believe it could be; yes, sir.

We believe the only effective way to deal with this problem is to prohibit all secret communications about pending proceedings. The propriety or impropriety of *ex parte* communications, insofar as it may turn on content, can only be determined by disclosure. If the content is improper it should not remain secret; if the content is innocent its disclosure should not offend anyone.

(d) Disclosure of ex parte communications and confrontation

It is quite deeply ingrained in what we call fair play in litigation that a party litigant be confronted with the evidence and contentions to be considered in the decision of his case. This principle of confrontation is a fundamental right, but this right is violated if agency decisional personnel entertain secret communications pertaining to a pending case. This principle is recognized in section 7(d) of the Administrative Procedure Act, which provides in part:

The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision.

This principle is violated whenever a decisional officer permits the secret submission of information, contentions, or any other persuasions attempting to make him more favorably disposed toward one of the litigants.

We believe that the prohibition must be coextensive with the principle of confrontation. This requires proscribing all *ex parte* communications, coupled with the requirement that such communications, if made, be promptly disclosed and made known to all parties concerned. Publication is the antidote for secrecy, and public disclosure is the keystone to any solution of the *ex parte* communication problem in agency litigation.

(e) What sanctions should be imposed for prohibited ex parte communications?

H.R. 2157 and H.R. 10657 both contain sanctions, but the treatment is completely dissimilar. H.R. 2157 subjects the offending party to possible blacklisting or cancellation of this authorization. No sanction is imposed on the offending Government official, even though he may have been a willing party to the prohibited communication or may even have initiated the secret discussions.

While our bill does contain criminal and other sanctions, we emphasize the positive in compelling public disclosure, which we believe will prove sufficient to cope with all but the most flagrant and culpable wrongdoing. We do impose a course of conduct on Government officials, namely, that of disclosure. If the Government decisional officer makes the required disclosure he is immune from any sanction. It is

only if he fails to make the disclosure that he is subject to disciplinary action or possible criminal proceeding.

The offending party litigant would be subjected to a criminal sanction for willful misconduct and to possible loss of the privilege or authorization sought or obtained, depending upon the decision reached in a show cause proceeding. These sanctions on the party litigant are believed to be essentially a restatement of the case law dealing with misconduct in agency litigation. We believe that a statute which within reasonable limits imposes a duty on a party litigant to avoid any ex parte manipulations or influence activity at the risk of losing the rights sought, would go a long way toward protecting the rights of other litigants and assuring clean hearings in agency litigation.

So much for a comparison of the key provisions of H.R. 2157 and H.R. 10657. Before leaving this, I might make two additional observations.

First, H.R. 2157 is limited to agencies in the executive branch. According to one school, it might be contended that this would exclude application to independent agencies. It is our view that a person's right to a fair hearing should be protected wherever hearings are held. H.R. 10657 is intended to apply across the board in all agency hearings, whether conducted before executive departments or independent agencies.

Second, H.R. 2157 would delegate to the President certain rule-making authority for the cancellation of contracts or other authorizations. It is our view that authorization for the imposition of forfeitures should be handled by legislation rather than by delegation. Also, the imposition of such a forfeiture in any particular situation should be subject to notice and opportunity for hearing.

In conclusion, it is the view of the American Bar Association that the enactment of legislation as set forth in H.R. 10657 is necessary and advisable to deal effectively and fairly with the ex parte communication problem. Such legislation will do much to restore confidence in agency proceedings and protect the rights of the parties and the public alike. This is an objective within the scope of this committee's hearings, as we understand it, and we do appreciate the opportunity given us for the presentation of our views on this important question.

I would like to make one observation in conclusion, namely that we believe the key features of legislation on this subject are disclosure of ex parte communications if made and, two, that the hearing notice specify whether it is a proceeding which is subject to this bill or not, so that the parties and the public can know at the outset of a proceeding what rules are going to apply.

Now, during the years that I have been in practice, which is over a quarter of a century, we have seen a continuing increase of judicial functions exercised by administrative agencies.

Practically all new fields of law have been given to the agencies for the trial of cases and we haven't, however, given enough attention to agency organization and machinery to be sure that it is adequate to assure judicial environment.

As the chairman very properly observed, we cannot have fair litigation in a political environment. We have got to do something to assure a judicial environment if we are going to continue to rely upon agencies to handle the bulk of litigation in the United States.

Mr. Deale will follow me.

(The prepared statement, in its entirety, submitted by Mr. Beelar, appears at p. 349.)

The CHAIRMAN. Thank you very much, Mr. Beelar. There are one or two questions.

Mr. MALETZ. Mr. Beelar, you are familiar, I take it, with section 284 of 18 United States Code?

Mr. BEELAR. Just generally.

Mr. MALETZ. As I understand it, that section would prohibit a former Government employee for a period of 2 years after termination of his service from prosecuting any claim against the United States involving any subject matter directly connected with which such person was employed or performed duty. Is that your general understanding?

Mr. BEELAR. That is my impression of it.

Mr. MALETZ. Now, your bill, as I understand it, would repeal section 284, would it not?

Mr. BEELAR. Insofar as representatives are concerned.

Mr. MALETZ. Under your bill, employees who quit the Federal service would be wholly immune, would they not, from criminal prosecution for subsequent unethical representation of the kind specified in the present section 284?

Mr. BEELAR. Not with respect to matters which they had been associated with when they were in the agency, but otherwise, yes.

Mr. MALETZ. Wouldn't section 284 be repealed by your bill?

Mr. BEELAR. I believe it would.

Mr. MALETZ. So therefore a former Government employee could within this 2-year period handle a claim for a private employer, which he had previously handled for the Government?

Mr. BEELAR. I think he could handle claims against the Government, but not as to matters with which he was connected during his Government employment.

Mr. MALETZ. There wouldn't be any criminal sanction under your bill for this kind of switching of sides, isn't that correct?

Mr. BEELAR. As to criminal sanction, I think that is correct, but there would be disciplinary action.

Mr. MALETZ. The disciplinary action would consist of prohibiting this former Government employee from appearing before any agency, isn't that right?

Mr. BEELAR. Or possible disbarment proceeding.

Mr. MALETZ. But suppose the person who switched sides was not a lawyer. The only sanction available as against him would be a prohibition against his appearing before the agency in the future; is that right?

Mr. BEELAR. I think that is correct.

Mr. MALETZ. In other words, you feel that the criminal sanction should be repealed and that is the provision of your bill?

Mr. BEELAR. I think our more complete intentions were that there should be conflict-of-interest legislation that would deal more comprehensively with the matter than just limited to money claims.

Mr. MALETZ. The reason I raise the question is that under section 412 of your bill, it is provided among other things—

section 284 of title 18 of the United States Code is hereby repealed.

Mr. BEELAR. I think literally you are exactly correct, and that this is probably a gap in our proposal.

Mr. MALETZ. You see the Justice Department in the past has recommended that section 284 be expanded, that the word "claim" be extended to include any matter in which the Government has an interest. That is the Justice Department's position, on the one hand.

On the other, the American Bar Association's position is that instead of extending the provision, that the provision be repealed in toto.

Mr. BEELAR. I am sure that the intention that you read out of our bill is a defect, rather than a deliberate intention, and that we certainly did anticipate an extension of the conflict of interest statutes, and that we were trying to deal specifically with the representative aspect of the problem only.

I think the observation you made indicates a defect in our proposal in that respect.

The CHAIRMAN. Then your recommendation is not repeal that particular section of the code.

Mr. BEELAR. It is, insofar as representatives are concerned. In other words, our bill would replace that provision of the Criminal Code and deal with the problem differently, but with the same purpose, and I think Mr. Maletz has very correctly pointed out that we have a gap in what we would want covered, I am sure.

The CHAIRMAN. Thank you very much, Mr. Beelar.

We will now hear from Mr. Valentine B. Deale on behalf of the American Bar Association.

Mr. DEALE. Thank you, Mr. Chairman.

My name is Valentine B. Deale. I am an attorney in private practice with offices here in Washington, D.C. I am testifying at these hearings today solely as a representative of the American Bar Association. I am vice chairman of the association's special committee on the Federal Administrative Practice Act, and a member of the council of the association's administrative law section.

As Mr. Beelar has already noted, the four bills presently being considered by your subcommittee cover much material beyond policy positions which have to date been adopted by the American Bar Association. As with Mr. Beelar's testimony, mine too will be confined to association policy as it pertains to your subcommittee's interests.

More specifically, the subject matter of my discussion will be standards of conduct, which include conflict of interest matters, pertaining to representation in agency proceedings and in this connection my discussion is centered on your chairman's bill H.R. 2157.

At the outset, I refer to the policy resolution of the American Bar Association on representation in Federal agency proceedings. For convenience sake, a copy of this resolution is appended to my written statement and I respectfully request that it be included in the record of these hearings.

The CHAIRMAN. That will be done.

(The document referred to is as follows:)

RESOLUTION ON REPRESENTATION ADOPTED BY THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION AT ITS 1956 MIDYEAR MEETING

Resolved, That the American Bar Association recommends the enactment of more comprehensive and explicit legislation covering rights of persons or organizations to appear and be represented by others before Federal agencies, giving

due regard to appropriate distinction between legal representation and nonlegal representation, such legislation to include the following features:

(a) That an attorney at law should be entitled to appear for and represent other persons, parties, or organizations, including the United States or any agency thereof, before any agency upon filing a statement with the agency, that he is member of the bar in good standing according to the law of any State, territory, Commonwealth, or possession of the United States or of the District of Columbia, and that he is not disbarred or under suspension by any court; except that an agency may further require the filing of a power of attorney as a condition to the settlement of any controversy involving the payment of money.

(b) That a person who is not an attorney at law should be permitted to appear for and represent other persons, parties, or organizations, including the United States or any agency thereof, before any agency only where the agency finds that such representation is appropriate and desirable in the public interest, as well as in the interest of the parties to the agency proceedings, and is not otherwise precluded by law, and the agency provides therefor by general rule; provided that authorization to represent others before an agency shall not authorize a person who is not an attorney at law to practice law.

(c) That, except where otherwise provided by statute, the representation of parties in formal hearings required to be determined on the record, which is subject to judicial review, should be by an attorney at law, provided that any party who is an individual may represent himself.

(d) That every person, party, or organization required or entitled to participate in any matter before an administrative agency should have a statutory right to appear by or with an attorney at law or, at his or its election, by or with another person qualified pursuant to 5(h) and 5(c) above.

(e) That minimum standards of conduct should be established by statute governing all persons permitted by any agency to represent private or public persons, parties, or organization, including the United States and any agency thereof.

(f) That an attorney at law who has the privilege of representation before any Federal agency should be subject to disciplinary control by a Federal Grievance Committee through proceedings in the U.S. district court of the judicial district in which he principally engages in the practice of law.

(g) That a person who is not an attorney at law, but who is, nevertheless, permitted to engage in representation before an agency, should be subject to reasonable disciplinary control by the agency.

Mr. DEALE. In addition, association policy on this subject has been spelled out in legislative language at title IV of H.R. 7092 (S. 600) now pending before your Judiciary Committee. This bill, entitled, "Federal Administrative Practice Act of 1959," is sponsored by the association.

So much for background information and basic authority for my testimony today on H.R. 2157. I now offer comments on the bill itself.

BASIC IDEA OF LEGISLATIVE STANDARDS

The fundamental idea of having a Government Ethics Act or legislative standards of conduct for representatives in Federal agency proceedings is sound. The outworn cliché that you cannot legislate ethics does not mean that you should never proclaim them. Suitable declarations of principle give heart to the weak, add strength to the strong and clarify the confused. It will be a sad day if the Congress ever concludes that it does no good to discuss and declare principles of moral conduct.

For the sake of making sure that everyone understands the scope of the ABA position; namely, that Congress should, by legislation, set up certain standards of conduct for representatives in Federal agency proceedings, it is noted here that the term "representative" means anyone acting in a representative capacity for another party. This means a Federal employee acting on behalf of the U.S. Govern-

ment as well as an attorney in private practice representing a private party.

Mr. McCULLOCH. Mr. Chairman, I would like to ask if this rather all-inclusive definition would also include a Federal official, legislative or otherwise?

Mr. DEALE. Would you give me an example of what you have in mind?

Mr. McCULLOCH. Well, I think there are certain officials in the executive department where the term is well recognized, a cabinet member or an administrative assistant or a deputy clothed with rights, functions, duties and authority, without getting any more specific than that.

And, of course, an elected official, such as a Member of the Congress or a duly delegated employee of the staff, but certainly the elected member.

Mr. DEALE. Mr. McCulloch, to the extent that an individual, whoever he might be, represents a participant in the proceedings, he would be a representative within the concept of this bill. We are talking about representatives of participants in the proceedings.

Thus the attorney in the case representing the Government's interests in a particular proceeding before an agency would be within the scope of the bill.

The idea is not to exclude the Government, the Federal employees from the bill, and apply it only to the private practitioners. It is to include both sides of the table.

Mr. McCULLOCH. Is your phrase broad enough to include every person who would make representations on behalf of an interested party?

Mr. DEALE. Any person who represents an interested party in the proceeding would be covered by the bill.

Mr. McCULLOCH. I don't like to belabor this. I just don't know yet what you mean by one who represents a person in a proceeding.

To be specific, if someone calls a Member of Congress and says, "We have made an application for a certificate" or some such authority. "We would be glad if you could call the agency and say that we are people of repute and character and so on." Would that be making a representation within the terms of the bill which you have helped to draft, and about which you are now testifying?

Mr. DEALE. No. In other words, if I understand the example that you give, a company has a proceeding before one of the Commissions and he asks the Congressman, he asks his Congressman to inquire about the status of the case, or some such thing.

Query: Whether or not the Congressman, when he acts on behalf of this individual, is a representative within the scope of this bill. I think not.

The CHAIRMAN. A Congressman under those circumstances would not be?

Mr. DEALE. He is not a representative of the participant in the proceedings; that is correct.

How the idea of legislative standards of conduct might extend beyond representatives in agency proceedings to other personnel raises a question to which the association has not yet given definite consideration. Being a professional group concerned with representation

as the primary occupation of its members, the association has focused its attention on standards of conduct for representatives.

The CHAIRMAN. The person who intercedes may not under your definition be a representative, meaning anyone acting in a representative capacity for another party; he may be a friend of the applicant before the independent body or the executive agency.

Mr. DEALE. That is right.

The CHAIRMAN. And he may have great potency and power. Why shouldn't the bar association interest itself and give us an opinion as to what shall govern the conduct of such a third party?

He may have more potency than the litigant himself.

Mr. DEALE. I think it would be well, Mr. Chairman, if the ex parte communication legislation which Mr. Beelar has outlined, and this proposal with respect to representation, be considered together. To be sure, the bill which we are presently discussing does not cover everybody who possibly can get involved into an agency proceeding.

What we are doing is directing our attention to the problem as it affects formal representatives.

Now, with respect to these third parties which you are talking about or suggesting, Mr. Chairman, such as friends and so forth who are really not, let us say, formally involved in the proceedings as a representative, it seems to me that we get at those at least to some extent, perhaps to a very great extent, via the route of barring ex parte communications both on the side of the agency members and on the side of the individuals.

The CHAIRMAN. Let's take that phase of it. What would you do in the case before, say, the Civil Aeronautics Board?

An airline operated by a foreign government seeks to have landing privileges where they can also pick up and land passengers in a city in the United States, and there is a proceeding before the CAB for that purpose. The particular foreign government involved importunes the State Department. The State Department intervenes in the proceeding and says, "You should grant that. We are anxious to please this foreign government. Our policy is to please this government, and therefore we feel you should grant this application."

What is the situation there?

Mr. DEALE. To the extent that the CAB matters or any administrative agency matters should be decided on the record, and that is the concept of fairplay which Mr. Beelar has outlined, to the extent that an agency decision should be decided on the record, then the intervention of the State Department and the State Department's representations should be spelled out on the record so that the adverse parties have an opportunity to know what they are up against, and have an opportunity to refute, and so forth.

The CHAIRMAN. In other words, you would have what the previous witness spoke of as confrontation, so that the representative of the State Department might be subject to questioning by somebody interested in the proceeding?

Mr. DEALE. It is the right of confrontation. That is correct, sir. Primarily it is the right of disclosure, so that the individual has the opportunity to meet the objections or argument against him.

The CHAIRMAN. Go ahead.

Mr. DEALE. Very well.

MUTUALITY OF SUBJECT MATTER BETWEEN H.R. 2157 AND ABA POLICY

In one way or another sections 103, 104, 105, 106, and 107 of H.R. 2157 cover subject embraced by ABA policy. As Mr. Beelar has already discussed section 106, no further reference will be made to that section.

SECTIONS 103 AND 104 OF H.R. 2157 AND ABA POLICY

Sections 103 and 104 of H.R. 2157 find their counterpart in ABA policy at sections 404 and 412 of the "Federal Administrative Practice Act," bill H.R. 7092.

Under section 404 of the ABA sponsored bill, the mere fact alone that a representative is or has been employed by the United States would not cause his representation in any Federal agency proceeding to be unlawful or improper and would not cause such representation to suffer any civil, criminal, or other penalty by reason thereof. This principle rejects the concept of requiring some arbitrary waiting period before a former Government employee may act in a representative capacity in connection with a matter before his former agency.

To this extent, the position of the American Bar Association differs from the proposal set forth at section 104 of H.R. 2157.

The CHAIRMAN. Does that mean that a person, a lawyer, say, who has represented the Government in a particular agency and has handled certain matters against Corporation A in that agency, can go out and then be employed by Corporation A immediately after his resignation from the independent agency employment?

Mr. DEALE. He may not represent Corporation A in any proceeding of an agency on matters which he previously handled or gained knowledge thereof in his official capacity while an employee of the agency.

Take for example: A lawyer in a Commission resigns from the Commission and goes to work for X law firm. While the lawyer was in the Commission, he handled certain cases. He could not work for X law firm before that agency with respect to those cases. That is clear, and that part is covered in another section of our bill, Mr. Chairman.

So far as this is concerned, this says that our lawyer could practice before the agency immediately upon departure from the agency, so long as he isn't involved in matters which he handled in the agency. But the mere fact that he left the agency does not prohibit him from practicing before the agency. That is the sense of this thing.

The CHAIRMAN. What you are doing in effect is to nullify the 2-year prohibition that we have?

Mr. DEALE. That is correct, sir, that is part of the picture.

The CHAIRMAN. And we have granted him exemption from that 2-year prohibition in this very committee.

Mr. DEALE. Yes.

The CHAIRMAN. Go ahead.

Mr. DEALE. Section 412 of the ABA bill would further implement the association's position by repealing the existing provisions of law at title 5, United States Code, section 99, and title 18, United States Code, section 284.

And I think, as Mr. Maletz correctly noted, and I am departing from statement here, there is a gap, that is to the extent that there

would be no criminal sanction for a true conflict-of-interest situation, if this title 18, United States Code, section 284 were repealed. I think that is made very clear in part III of the staff report on page 17.

The CHAIRMAN. Mr. Harkins?

Mr. HARKINS. One question on this postemployment bar. Do you see any problem at all in the fact that the former employee of a Government agency will, under your proposal, be permitted to practice before 2 years are up?

For example, in an agency like the Antitrust Division or the Federal Trade Commission or the Civil Aeronautics Board, would not the Chairman of the agency or the head of the division, if he comes back before 2 years are up, or before some time period is up, have a prestige as the head of the agency which would be of considerable benefit to a client that he may have at the time he returns?

Mr. DEALE. Well, sir, to the extent that he has technical knowledge, knowledge of his skills in antitrust matters or tax matters or what have you, that naturally is an advantage which the client would have.

It would be an advantage which the client would get if he retained somebody else who also knew the field of antitrust or taxation or whatever the case might be.

Mr. HARKINS. Yes, but I am not speaking of the expertise, or the know-how. I am speaking of the fact that he was the administrator there.

The personnel he is dealing with would be people who perhaps owe their promotions to him or people who he had moved into particular positions while he was there, and so on. Do you see any kind of a problem in that situation?

Mr. DEALE. Well, I am sure that one can say fabricate a kind of a problem and be suspicious about the thing.

But if the Government employees are well appointed in the first place—this is most important as the chairman has already noted—I don't think that is a problem which would justify an arbitrary waiting period of a 2-year limitation. I would say that that is the position.

Mr. HARKINS. In your experience have you ever run across any situations where this problem may have been presented?

Mr. DEALE. Well, you know sometimes it has reverse action. I think that sometimes, Mr. Counsel, we are talking about a double-edged sword here in a way.

The former Government employee is not necessarily the most accepted individual in his agency after he leaves the agency.

Mr. HARKINS. But then you can have reverse English on that, on coming back often he is quite an influential person in the agency.

Mr. DEALE. As I say, the proof of the matter is what I would be looking for here. I would be more concerned with what actually is the case than try to develop a standard of conduct on what might possibly be so.

Mr. HARKINS. In other words, you see no sufficient danger that in any circumstance should there be bar simply because the person was a former employee?

Mr. RODINO. Mr. Chairman?

Mr. HARKINS. Do you have an answer?

Mr. DEALE. There are always difficulties as long as we are dealing with human beings with human frailties.

But as I say, I don't feel that there is justification for requiring a 2-year bar on the possibility that there might be undue personal influence on the part of a former employee.

Mr. HARKINS. Thank you.

The CHAIRMAN. Mr. Rodino?

Mr. RODINO. Mr. Deale, you said that in your bill you reject the concept of an arbitrary waiting period before a former Government employee may be able to represent certain employers in some matter before the Government.

Mr. DEALE. That is correct, sir.

Mr. RODINO. Or Government agency.

Mr. DEALE. This excludes of course when there is a conflict of interest.

Mr. RODINO. Yes. I assume you do agree, however, that where there is a conflict of interest, as where he has handled previous negotiations of a nature that is directly in conflict with what he is going to be engaging himself in behalf of his present employer, he is going to be precluded?

Mr. DEALE. He is barred forever then.

Mr. RODINO. Let us assume that he is a member of a law firm. What happens in that situation, with relation to the 2-year waiting period and with relation to that particular bar? Could another member of the law firm according to your concept then handle the matter?

Mr. DEALE. Another member in the law firm?

Mr. RODINO. Yes, where he was originally directly involved in the negotiation.

Mr. DEALE. Yes, I understand your question—I understand what you mean. This is a good problem, Mr. Rodino. We are not dealing in a black and white areas unfortunately.

Mr. RODINO. No.

Mr. DEALE. Well it is clear that the individual would be barred from participation in any manner, shape or form.

Mr. RODINO. Yes.

Mr. DEALE. That is clear.

Mr. RODINO. That is right.

Mr. DEALE. On the other side, the law firm itself, it is not clear that the law firm itself, that is the other people in the firm, would be barred. The bar would be on the individual.

Mr. RODINO. Your bill does not in any wise touch this problem, does it?

Mr. DEALE. It is silent on the particular case which you raise with respect to a law firm, although it is clear with respect to the individual.

It would seem in your example that assisting in the representation or helping somebody else in the firm would be unconscionable, and I would guess that the firm itself if it moved into the kind of situation suggested by you, might well be called upon for an accounting by the agency concerned.

To go on with this in any event, apropos to the association's rejection of the waiting period concept the following observations are offered: The talents and know-how of former Government employees

and retired military officers make up a tremendous national resource of able personnel. Full utilization of this resource should be encouraged for the sake of our country's welfare and its national security. Hobbling the utilization of this great national resource on a wholly arbitrary basis is an undesirable, unfair method for striking at an admittedly objectionable practice of dealing with the Government on a purely personal influence basis.

There is a further point deserving of mention. Has the case of wrongdoing of former Government employees over the years really been made out? What is the evidence of wrongdoing—and I underscore the term wrongdoing—to support the proposition that former loyal servants of our Government should be barred from certain normal livelihood opportunities for 2 years in order to safeguard the morality of Government transactions? What a terrible discriminatory stigma to place or leave upon public servants at the end of their tour of duty if the justifying reasons amount to nothing more than an archaic legacy, suspicion, immature fear and a few isolated instances of bad conduct.

The CHAIRMAN. On that, wouldn't you say the title 18, section 284, which has 2-year provision, has had a deterrent effect and probably has prevented some wrongdoing?

If you take that section out, might you not have a different story? Section 284, as you know, prohibits former officers and employees within 2 years after the termination of their employment by the U.S. Government from prosecuting, or from acting as counsel, attorney, or agent for prosecuting any claim against the United States involving any subject matter directly connected with which such person was employed or performed duty.

Mr. DEALE. Mr. Chairman, that law is quite limited in its scope, and so I think it would be fair to question whether it has really been much of a deterrent, because it is limited to money claims, that is, at least by court interpretations.

Now our feeling is that actually it should be expanded in some ways, that is the prohibition should be expanded in scope to include other things than mere money claims, and with respect to the 2-year period, when there is conflict of interests, the ban ought to be forever. There should not be any time limit.

So I think that the usefulness of this law, at least as it has been on the books, well, it might be questioned as to just how useful it is, because of its very limited scope.

The CHAIRMAN. There have been cases under it. I am quoting now from the staff report issued on March 1, 1958, on the subject, page 36:

That question had to be decided in the recent case of *Shaw v. United States* (244 F. 2d 930 (9th Cir. 1957)). In affirming a conviction for violation of section 284, the Court of Appeals for the Ninth Circuit held that the subject matter of a lawsuit against the United States, which arose out of injuries sustained in an accident on a Government-owned railroad and in which the defendant appeared as attorney for the injured party, was "directly connected with" the defendant's employment at the time of the accident, less than 2 years prior to institution of the suit, as assistant chief dispatcher of the railroad. The court also rejected the contention that section 284, which was enacted before the Federal Tort Claims Act, does not contemplate negligence suits as "claims."

I think this section was interpreted also in the *Bergson* case, with which you are probably familiar.

Mr. DEALE. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. DEALE. Thank you, sir. Just to go on a little further on the same point. Lest objection to the arbitrary requirement of a 2-year waiting period is mistaken for softness toward true conflict of interest situations, it is noted that under section 404 of H.R. 7092 it would be improper conduct for anyone after having been an employee of the United States to represent any participant in an agency adjudicatory proceeding or in the judicial review of enforcement thereof if he personally or in his official capacity as such employee learned any facts or took any action concerning such proceeding, review or enforcement, or if such representation would otherwise involve unprofessional conduct. There would be no time limit on the ban against this sort of representation. It would be forever.

The CHAIRMAN. In other words, your position is that the 2-year prohibition is arbitrary and may be unfair, in that you feel that the gist of the matter is changing masters, changing sides rather than the time element.

Mr. DEALE. That is right.

The CHAIRMAN. In other words, even the day after he leaves the Government, he may be privileged to take a case before the agency in which he was employed, but not on a matter on which he took Government action.

Mr. DEALE. That is correct, Mr. Chairman. To the extent that it embraces representatives, section 103 of H.R. 2157 parallels the corresponding ABA provision at section 404 of H.R. 7092. There is harmony in the idea of prohibiting for all times anyone from representing a party other than the Government in a situation where he had in effect represented the Government or gained knowledge thereof as a result of his Government employment.

With respect to the language of the two parallel provisions, it is submitted that the more restrictive reference in the ABA sponsored bill is preferable to the very broad language in H.R. 2157. The phrase in the latter bill a subject matter concerning which he had any official responsibility" covers too much territory.

There is a further part of the conflict of interest portion of the ABA sponsored bill H.R. 7092 which bears noting even though there is no corresponding provision in H.R. 2157. Under section 404 of the former bill it would be improper conduct, with only limited exception, for a Federal employee to represent anybody other than his own employer before a Federal agency or court. The limited exceptions to this rule would permit an attorney reasonable time to wind up his practice after entering the Government service and would also permit him to engage in family legal matters. An attorney specifically employed by the Government on a temporary, ad hoc basis would be outside the scope of this provision except that he could not later on represent another in a matter in which he was involved for the Government.

SECTION 105 OF H.R. 2157 AND ABA POLICY

We move along now to the definitions of improper conduct as provided in H.R. 2157 and H.R. 7092.

The coverage of the definitions in the two bills is different. With respect to H.R. 2157, Mr. Beelar has already observed that the use of the term "the executive branch of the Government" might possibly be construed to exclude the independent agencies from the application of the proposed Code of Ethics. The American Bar Association feels strongly that statutory standards of conduct for representatives in any Federal agency proceeding are in order.

Under section 105(a)(1) and (3) of H.R. 2157, it would be improper conduct for any person to give, directly or indirectly, any gift, favor or service to or to become unduly involved, through frequent or expensive social engagements, with any officer or employee of the executive branch of the Government who transacts business with him on behalf of the United States, or whose performance of official duty may substantially affect his interest.

The corresponding provision at section 403(d) of the ABA sponsored bill provides that it shall be improper conduct for any representative to attempt to sway the judgment of any agency or of any employee or representative or official or presiding officer of any agency by the use of threats, false accusations or duress, by the offer of any special inducement or promise of advantage, or by the bestowing of any gift or favor or other thing of value. The improprieties covered in the ABA sponsored bill are more specifically and extensively enumerated and at the same time are tied into the cardinal feature of improper conduct, namely, the attempt to sway judgment. On this latter point, H.R. 2157 is silent.

With respect to the remainder of the definition of improper conduct at section 105 of H.R. 2157, the association has no formal position on the subject matter of section 105(a)(2) and section 105(b), and its views on section 105(c) are reflected in earlier observations about sections 103 and 104 on which section 105(c) is based.

As a closing comment on the subject of standards of conduct for representatives in any agency proceeding, reference is made to additional considerations proposed by the American Bar Association. Under section 403 of H.R. 7092, it would also be improper conduct for any representative to solicit representation, advertise his attainments or services, have ex parte communications concerning the merits or disposition of any contested adjudicatory proceeding, engage in improper or indecorous conduct in the presence of a presiding officer in any agency proceeding, commit any act contrary to honesty, justice, or good morals in the course of representation, fail to account for money, and willfully promote the overthrow of government by force or violence.

Furthermore, representatives in agency proceedings who are attorneys would be subject to special canons of ethics to be prescribed by the U.S. Court of Appeals for the District of Columbia. And non-lawyer representatives would be subject to special standards of conduct which any agency may prescribe for their representation before it.

SECTION 107 AND ABA POLICY

Coming to the subject of enforcement of the proposed code of ethics, we give attention to section 107 of H.R. 2157. So far as the provisions there affect representatives in agency proceedings, they

vary from the American Bar Association proposal in the following ways:

1. It is the association's policy, as provided for in section 408 of H.R. 7092, that disbarment of attorneys from representing others in agency proceedings should ultimately rest with a court of law only and not with any executive or administrative official. :

The CHAIRMAN. Apparently you don't agree in that respect with the recommendations of the Association of the Bar of the City of New York.

Mr. DEALE. I see.

The CHAIRMAN. The Association of the Bar of the City of New York in a bill which it endorses, namely, H.R. 10575, has the following to say:

Administrative enforcement as to former Government employees and others—this is on page 32 of that bill—

One, remedies and civil penalties:

The head of an agency, upon finding that any former employee of such agency or any other person has violated any provision of this act may, in addition to other powers as the head of such agency may have, bar or impose reasonable conditions—

and so forth.

Mr. DEALE. Mr. Chairman, we have not had an opportunity to study the City of New York Bar Association's bill, but we certainly would not agree with the proposition that an agency official be empowered to bar an attorney from practice.

The CHAIRMAN. It only bars from the agency.

Mr. DEALE. I mean from the agency.

The CHAIRMAN. From the agency.

Mr. DEALE. That is right.

The CHAIRMAN. And you say on page 10 of your statement—I am anticipating—in the fourth paragraph:

There should be no delegation of power to the executive branch to disbar lawyers from agency practice.

Mr. DEALE. That is correct.

The CHAIRMAN. That is directly opposite to what the Association of the Bar of the City of New York says.

Mr. DEALE. This is our position, Mr. Chairman.

Mr. HOLTZMAN. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Mr. HOLTZMAN. Mr. Deale, suppose there is an instance of direct conflict. Would your recommendation No. 1 be the same; namely, that the head of an agency should not be permitted to bar an attorney from practice before it?

Mr. DEALE. There would be a procedure to him to handle the situation. But our position is that the ultimate decision and authority should not be from within the agency itself.

Mr. HOLTZMAN. How would he know then until there was some determination whether he had a right to go there in the first place? Would he ignore the agency head's mandate or direction?

Mr. DEALE. I think, sir, we are probably getting into the mechanics of the thing.

Mr. HOLTZMAN. I want to talk about the philosophy of the thing, which is more important.

Mr. DEALE. All right. It certainly would not be our idea to allow the agency head to have the final say-so on disbarment on account of some conflict-of-interest question. I stress the word "final" here.

As I understand it you are raising the question of what can the agency head do?

Mr. HOLTZMAN. If your recommendation is followed.

Mr. DEALE. I suggest that he would have opportunities of taking care of the situation without himself disbarring the man. He could, for example, postpone the proceedings and tell the individual: "There is a matter of conflict of interest here that I am going to raise with the Office of Federal Administrative Practice. It is with respect to your eligibility to continue in this case. Now I am not disbarring you from the proceedings here, but I am continuing the proceedings until this matter is cleared."

I see no problem there.

Mr. HOLTZMAN. But suppose you have a matter that requires attention now. Who is going to determine under your recommendation No. 1 as to whether or not this lawyer has the right to go in before that agency, assuming there is a direct conflict of interest?

Mr. DEALE. For example, the agency would certainly advise a lawyer of its position, that is, in this particular matter, and indicate to the lawyer that it believes there is a conflict of interest here, and that it is raising the matter with the grievance committee or with the Office of Federal Administrative Practice, which are in a sense the enforcement agencies of this ethical standards program.

Now, the lawyer, you know, might disagree with the agency and say, "Look, you don't know what you are talking about."

Mr. HOLTZMAN. That is the very thing I am fearful of.

Mr. DEALE. That is right.

Mr. HOLTZMAN. I don't want to leave the lawyer in the position where he has to worry about an ultimate determination.

Mr. DEALE. That is right.

Mr. HOLTZMAN. By some judicial or quasi-judicial tribunal. How does that leave the lawyer?

Mr. DEALE. If it is a disputed matter, it shouldn't be decided finally by the agency on the question of the representation of an individual.

Mr. HOLTZMAN. Even in the instance of a direct conflict?

Mr. DEALE. I think you are begging the question there. If we assume that it is a direct conflict—

Mr. HOLTZMAN. Let me give you a specific situation.

Mr. DEALE. All right.

Mr. HOLTZMAN. A, a lawyer, was with the Department of Justice, and let's make it as poignant and as vivid as we can. He worked on an antitrust matter in which the Government was interested against the Jones Electrical Works.

Then he goes out and represents or wants to represent the Jones Electrical Works before some agency of the Government. What does he do?

Does he follow the mandate of the agency head saying, "No, you are barred because you have a direct conflict of interest"?

Does he go in for a declaratory judgment establishing his position? Does he accept the fee? Does he reject the retainer? And how does this leave the lawyer? This is what I am most interested in.

Mr. DEALE. I would like to defer to Mr. Beelar for the moment on this one.

Mr. BEELAR. Under our bill, a question of that kind which was not resolved between the agency and the lawyer who is handling a matter before the agency could go to the independent office which this bill would set up, which would have charge of administering these matters.

And if it is not resolved at that level, it seems to me if there is a dispute beyond that, that we would have it decided by a court.

We believe a court under the rules which we would provide, which this bill would require the circuit court of this district to establish, which would have application throughout the country, we believe that there would be provision in those rules to handle this type of matter and handle it promptly.

Basically our feeling is that the right to practice law is obtained from the courts, and the right to take this license away should be determined by the courts.

Mr. HOLTZMAN. Oh, well, now, nobody is seeking to disbar him from practicing law, but simply seeking to prevent him from representing an individual on a particular matter because of a conflict of interest, the very thing we are trying to come up with an answer to.

There is a vast difference between disbaring a man or charging him some disciplinary proceedings and saying to him, "In this instance you have a direct conflict, and you cannot practice."

Isn't there a vast difference?

Mr. BEELAR. Yes, there is. Of course, within the association there is machinery for ruling on questions of conflict of interest, I mean the American Bar Association Committee on Ethics will give rulings promptly on a specific situation.

I think if a lawyer had a ruling against him—

Mr. HOLTZMAN. Would that control the final determination?

Mr. BEELAR. No, but I would think a lawyer that had a ruling against him would be a little cautious about putting his rights in jeopardy by going ahead with it.

Mr. HOLTZMAN. I wouldn't want to be that lawyer, I will tell you that, under this situation.

I would much rather know whether I have the right to represent that individual before that agency, or I would want to give the agency head the right to say, "Mister, you have a direct conflict-of-interest here. Do not take this case."

And I think the lawyer would be well advised to take heed of it.

Mr. BEELAR. Yes, we agree. But we want the final authority to be determined in the court, if there is a dispute.

The CHAIRMAN. You see, there is another factor here. I think you are very sympathetic to the idea, and I am too. and I am quite sure the members of the committee are, to set up a real true quasi-judicial agency to make out of these agencies something in the nature of a court to dignify their standing and the standing of the presiding chairman of these agencies.

Now, if you are making them sort of a quasi-judicial body, shouldn't they be clothed with the power that a judge usually has with reference to those who appear before him, and in the sense that you give them the power to invoke sanctions against the lawyer or the representative of the party that is interested in the proceeding, you do support that quasi-judicial function of this quasi-judicial body.

Isn't there something to that?

Mr. DEALE. There is quite a bit of merit to that, Mr. Chairman. The details of the concept here have probably not been filled in as well as they should have been.

The CHAIRMAN. In a certain sense, you deprive the agency of its right to control its rules of practice?

Mr. BEELAR. May I respond? I think this is one area—an agency can certainly maintain order of a proceeding, and it has quite a bit of rulemaking authority with regard to practice and procedure.

But when we get into citing a lawyer for contempt, I don't believe they have that authority. I think this is a judicial function.

The CHAIRMAN. It isn't a question of citing him for contempt. It is a question of whether or not you should grant the agency the right to say to a lawyer, "We feel that because of your misconduct, you shouldn't represent this individual."

Mr. HOLTZMAN. Because of your previous employment?

The CHAIRMAN. Stand aside; that is all.

Mr. BEELAR. I think our bill does provide for temporary suspension.

Mr. DEALE. That is right.

Mr. BEELAR. In particular situations in the agency, and of course we also have a proposal to actually make some of these agencies into courts, such as we have a Federal Trade Court bill, a National Labor Relations Court bill, and we would put the Tax Court into the Judiciary.

And to that extent we would convert these proceedings to those which are more judicial in character, in which case those courts would have authority to disbar, censure or hold in contempt.

Mr. HOLTZMAN. Mr. Chairman.

The CHAIRMAN. Excuse me.

Then I don't understand your declaration on page 10—I am anticipating your reading—No. 4:

There should be no delegation of power to the executive branch to disbar lawyers from agency practice.

Mr. DEALE. In Mr. Beelar's expression, he assumed that the American Bar proposals, that some parts of these agencies would be made into courts, and to the extent that they would be made into courts, of course, this would have no application.

But going back to this other point, Mr. Holtzman, that you raised, I would suggest this: That perhaps there isn't quite as much conflict as would appear here on the surface. The fundamental proposition that we are putting forth is that the ultimate authority with respect to the disbarment matters be in a court. Now, that is the ultimate authority. We are talking about ultimate.

Mr. HOLTZMAN. Are you talking disbarment, final disbarment?

Mr. DEALE. From an agency.

Mr. HOLTZMAN. Or in a particular instance?

Mr. DEALE. No. Our consideration here was disbarment across the board, because if a lawyer is disbarred under our proposal generally from one agency, he is disbarred from all.

But on a temporary basis to meet an ad hoc kind of situation, and this is where I think there can be a meeting here of the minds, this conflict of views is more apparent than real. It is not our concept that the agency should be stripped of all disciplinary control over representatives before it, including lawyers.

Our uncompromising emphasis on the proposition that disbarment of lawyers should be handled by courts has perhaps resulted in some misunderstanding. We do not mean to say that agencies should have no disciplinary control over representatives before it, whether lawyers or otherwise.

Mr. HOLTZMAN. Isn't it your understanding, Mr. Deale, that ultimate disbarment of a lawyer would necessarily have to be handled by a court?

Mr. DEALE. We want to make sure that that is so, and we do not want disbarment of a lawyer from agency practice handled by an agency.

Now, you are raising a specific question, a specific instance. The agency isn't attempting to disbar the lawyer forever or isn't attempting to suspend his right of practice before that agency, say for a year, or something like that. That is not your question.

You are saying, can the agency handle this immediate situation in some manner, shape, or form? This is probably a detail which we haven't filled in as well as we should have.

Mr. HOLTZMAN. Would you agree that philosophically the agency head should have the right to say, "As of now we feel there has been a direct conflict, and therefore we strongly suggest to you that you not represent the client in this instance"?

And then let the final determination take place?

Mr. DEALE. Sure, that is all right.

The CHAIRMAN. You may proceed.

Mr. DEALE. Thank you.

The CHAIRMAN. We have two other witnesses, and we would like to conclude this morning.

Mr. DEALE. Mr. Chairman, I will continue at the top of page 9 of my prepared statement.

2. It is the association's position that an attorney once admitted to practice before the agencies should not require any further certification such as might be required by section 107(a) (3).

On the other hand, the association is in accord with the proposal that individual agencies be allowed to discipline nonlawyer representatives for improper conduct so long as any order to revoke or suspend the privilege of representation to a nonlawyer be subject to judicial review in a trial of facts and of law de novo.

By and large under the association's sponsored legislation the necessary administrative activity for assuring proper qualifications of representatives in agency proceedings would be one of several important across-the-board duties of a proposed new independent Office of Federal Administrative Practice described in title I of H.R. 7092. The Office would supervise and direct administration of admission to and control of practice before Federal agencies.

CONCLUSION

In summary, the American Bar Association recommends the following points for your subcommittee's consideration:

1. The basic idea of statutory standards of conduct for representation in Federal agency proceedings is sound, and in defining offenses and their corresponding sanctions, the standards should be as specific as practical.

2. In areas where improper conduct cannot be defined in specific terms and where administrative discretion must come into play to determine what is and is not ethical, the agency exercising such discretion should be an independent office apart from any individual regulatory agency or executive office or department.

3. To the extent that standards of conduct for representation are embraced in your subcommittee's consideration of the overall conflict-of-interests problem, the approach set forth in H.R. 7092 is strongly advocated.

4. There should be no delegation of power to the executive branch to disbar lawyers from agency practice.

5. While any arbitrary requirement of a waiting period for a former government employee to deal with his former agency is opposed, an absolute ban with no time limit is supported with respect to a former Government employee's involvement in any true conflict of interest situation.

Mr. Chairman, on behalf of the American Bar Association, I thank you for this opportunity to present its views on very important matters which your subcommittee is considering.

The CHAIRMAN. Are there any questions?

Thank you very much, sir. We are appreciative of the statement of the three gentlemen representing the American Bar Association, Messrs. Beelar, Deale and Rae.

Mr. BEELAR. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Mr. HOLTZMAN. I might say, Mr. Chairman, I am glad I paid my dues. I see the boys are on the job.

Mr. BEELAR. Mr. Chairman, may I give Mr. Maletz a one-page legislative bibliography that he may or may not have?

The CHAIRMAN. Yes. The record will be held open for any changes or additions that you may want to make.

(The prepared statement submitted by Mr. Deale and the bibliography submitted by Mr. Beelar appear at pp. 353, 357.)

The CHAIRMAN. Our next witness is Mr. Percy H. Russell, of the District of Columbia Bar Association.

Mr. Russell.

STATEMENT OF PERCY H. RUSSELL, DISTRICT OF COLUMBIA BAR ASSOCIATION

Mr. RUSSELL. Mr. Chairman and members of the committee, it is my intention to be brief this morning.

I would like to say first that Mr. Frederick A. Ballard, the president of the Bar Association of the District of Columbia, is here this morning and is seated behind me in the first row.

I appear as the official representative of the Bar Association of the District of Columbia. I am presently the chairman of the association's Committee on Federal Administrative Practice Reorganization, insofar as the administrative law section is concerned.

I was formerly the chairman of the administrative law section of the District of Columbia Bar Association, and also former member of the House of Delegates of the American Bar Association.

In essence, the District of Columbia Bar Association through its board of governors, takes the same position respecting the matters before us this morning that has been taken by the American Bar Association.

Indeed, on May 4, 1956, the board of governors of the Bar Association of the District of Columbia approved resolutions identical to the resolutions which were passed by the American Bar Association and which have been incorporated as part of Mr. Deale's prepared statement.

I should say, to make clear the position of the local bar association, that I am authorized to speak and they have taken a position only on the legislation insofar as it pertains to representatives of parties, not the parties themselves or persons other than representatives.

I might say I have discussed with Mr. Beelar and Mr. Deale their statements, read their statements, and I have heard the testimony this morning, and generally I believe that their views do portray the views of the Bar Association of the District of Columbia, with possibly two exceptions.

There was a question asked regarding the situation where a lawyer had been employed by a particular agency, left the agency and then became the head partner in a law firm, and that law firm represented a party before the agency on a matter that was pending before the agency when this partner was there.

I, of course, cannot express the official view of the bar association on that point, because it has not specifically been considered. I can only give you my personal view.

In my personal view, that would be an improper act, and an obvious instance of conflict of interest, because the head partner of this law firm previously employed by the U.S. Government and now in private practice is going to have his remuneration, his compensation, his pocketbook directly affected by the outcome of litigation, which is being handled by one of the law partners, concerning which this head partner has personal knowledge when employed by the Government.

Therefore it seems to me that that type of case, whether handled directly by the head partner or not, presents obviously a conflict of interest. Again, that is my personal view.

Secondly, with respect to the questions that were asked on the disciplining of members of the bar who practice before administrative agencies, I agree with the gentlemen who were here, Mr. Beelar and Mr. Deale, to the effect that it is better to have the disbarment, the ultimate disbarment of lawyers practicing before agencies or courts, determined ultimately by a court.

I think it is desirable legislation to have machinery set up, call it a Federal grievance committee or anything that you desire, to pass upon the ultimate disbarment of lawyers, rather than have the agencies themselves determine such a fundamental question.

But you raised very interesting problems which relate to the actual processing of cases pending before the commission or commissions.

Take, for example, a case of questionable conflict of interest in an adjudicatory proceeding.

The lawyer who appears as the representative of a particular party in that proceeding under this cloud of questionable conflict of interest might nullify the entire proceeding before that agency, if the agency did not have the right to say to him in that particular case; "Sir, we are an administrative body. We have the right to govern our own proceedings, and we have the right not to have them nullified after the expenditure of time by persons appearing before us who we feel are involved in a direct conflict of interest."

Therefore I would say, and again this is only my personal view, that if you are to establish these agencies as quasi-administrative bodies and to improve their dignity, they must have the power and the right to govern their own proceedings, and to the extent that that might require the prohibition of participation by a particular lawyer in a particular proceeding—or I would go further and say to the extent that it might require the censure of a lawyer or suspension from practice of a lawyer if his actions became so reprehensible from an overall standpoint that an agency must take that action to justify its own existence and dignity—then it is my personal opinion (because the question has not been discussed by the bar association) that the agency should have the right to suspend a lawyer, either in a particular proceeding, or, in the ultimate, perhaps from all practice before the agency, if his actions are too reprehensible.

But then the lawyer has the right of protection by adjudication before a grievance committee, before the courts to determine whether or not the agency was correct. That is what I think the fundamental position of the bar is.

We do not wish to have that absolute right of a lawyer to practice to have his livelihood taken away from him placed in the hands of an administrative agency. That is all that I have, sir.

The CHAIRMAN. Thank you very much, sir.

I note the presence of the President of the Bar Association of the District of Columbia, Mr. Fred Ballard.

We welcome your presence here.

Mr. BALLARD. Thank you very much, Mr. Chairman.

The CHAIRMAN. Our next and final witness this morning is Mr. Trowbridge vom Baur of the Federal Bar Association.

Mr. vom Baur, the bells have rung and we may have to be on the floor. It is almost 12 o'clock.

I wonder if you could condense your statement without reading it all, and give us the gist of it, and then put the entire statement in the record.

**STATEMENT OF TROWBRIDGE VOM BAUR, REPRESENTING THE
FEDERAL BAR ASSOCIATION; ACCOMPANIED BY GEORGE M.
COBURN, GEORGE H. ALDRICH, AND LEE PICKARD, OF THE
OFFICE OF THE GENERAL COUNSEL, NAVY DEPARTMENT**

Mr. vom Baur. How many minutes would you care to have me take, Mr. Chairman? I will try to condense it.

The CHAIRMAN. Not very long, unless you want to come back tomorrow.

Mr. VOM BAUR. Could I submit my statement for the record?

The CHAIRMAN. You have a right to submit your statement for the record.

Mr. VOM BAUR. Could I have, say, 5 to 7 minutes?

The CHAIRMAN. Oh, yes; go ahead.

Mr. VOM BAUR. To try to state my views. I have got some assistants here whom I should like to have join me, Mr. Coburn, Mr. Aldrich, and Mr. Pickard.

I am here, Mr. Chairman, representing the Federal Bar Association. I am General Counsel for the Navy but do not appear here on behalf of the Navy.

The CHAIRMAN. Let me ask you one question. I am a member of the Federal Bar Association, and I think all the members sitting here are members of the Federal Bar.

Are you speaking for the Federal Bar Association, or for yourself?

Mr. VOM BAUR. I am speaking for the Federal Bar Association, with this qualification: I have been requested by the President, Whitney Gilliland, to appear here this morning. He was planning to be here himself, as Mr. Ballard was, but he is a member of the Civil Aeronautics Board, and had a 3-hour hearing this morning.

He said he would be in toward the end of the hearing if he could come. He has requested me to appear and present this statement.

I have cleared my statement with him, but unfortunately the time element has been such that it has been impossible to clear the statement which I am going to submit with all the members of the association, or with the national council, because there has been no meeting.

The CHAIRMAN. May I ask this question, because on the first page you say:

There has been insufficient time in which to submit the statement to the association. It cannot be considered as official. The views expressed, however, are widely held.

How do you know they are widely held?

Mr. VOM BAUR. All I can do is express an opinion, sir.

The CHAIRMAN. I see. This is your opinion, is it?

Mr. VOM BAUR. I may say this language is President Gilliland's language. He and I both believe that the views expressed in the statement are widely held in the Federal Bar Association.

The CHAIRMAN. I haven't heard about it. Have you heard about it, Mr. Holtzman?

Mr. HOLTZMAN. No, I haven't.

The CHAIRMAN. The two counsel haven't heard about it.

Mr. VOM BAUR. About what, sir?

The CHAIRMAN. How did you spread this gospel among the members of the Federal Bar Association? How is it done?

Mr. VOM BAUR. It is not entirely a matter of spreading. It is a matter of receiving as well as of spreading.

Mr. HOLTZMAN. Absorb might have been better.

Mr. VOM BAUR. Yes, sir. This is a subject which is of very great concern to the Federal bar, because of the fact that we are mostly Government lawyers. Problems of conflict of interest affect us di-

rectly both while in the Government and after leaving the Government.

The CHAIRMAN. I don't doubt that. I am just trying to get an opinion from you as to how official this statement is.

Surely this subject matter is of keen interest to members of the Federal bar, because we have members of the Federal bar who are on both sides of the fence. There are lawyers practicing before the Boards. There are lawyers in the Boards and there are commissioners. There are representatives of the various agencies and departments who are members of the Federal Bar Association.

But on a matter as important as this, I had hoped that the Federal bar might have some symposium or some section that would give deep study to this matter, rather than individual members. We have your opinion here expressed, and we could probably get dozens and dozens and dozens of other opinions of individual members. That is why I asked the question, whether it is official.

Mr. VOM BAUR. I was trying to answer you, Mr. Chairman. I was chairman of the administrative law committee of the Federal Bar Association for 5 years, from 1953 to 1958.

The CHAIRMAN. All right.

Mr. VOM BAUR. I was also chairman of the committee on the status of the civilian government lawyer for 2 years, and during the course of these periods, I have personally, I guess, engaged in a great many discussions on this subject.

We have also had symposia bearing on this subject. In fact, last September at the annual convention of the Federal bar, the subject came up at a symposium concerning retired military officers, and I then made a presentation. I have the statement which I presented at that time which I could submit to this committee, if necessary.

As I say, I cannot pretend to speak with the absolute technical official sanction of the Federal bar, and if you would prefer not to hear what I have to say, I should be very happy to pick up my marbles and go home.

The CHAIRMAN. Is it possible that your statement might subsequently be endorsed by the Federal Bar Association?

Mr. VOM BAUR. Yes, sir; it is.

The CHAIRMAN. Would you be willing to have that done, sir?

Mr. VOM BAUR. I should be very happy to try.

The CHAIRMAN. You may proceed.

Mr. VOM BAUR. Mr. Chairman, I will endeavor to summarize this and be very brief in accordance with your wishes. I have several major points.

The first one is that, of course, we need some statutes, and we already have some statutes on this subject, and these should prohibit such things as serving two masters, and such cruelly wrong things as bribery and graft.

The should also prohibit changing sides, that is, working on one side of a case while in the Government and later on the other side as a private citizen.

The second point I would like to make is that most of these existing statutes on conflict of interest were passed around the time of the Civil War, and they were in large part addressed to conditions which no longer exist.

The revision and consolidation of these statutes is highly desirable, and I think a great deal of good work has been done in that direction in connection with the drafting of H.R. 2156.

My third point, gentlemen, is that these criminal statutes have a limited potential.

They have only a limited usefulness, which is that they can prohibit conduct which I have endeavored to describe as conduct which is cruelly wrong, but I don't think it is possible for them to affirmatively provide the factor of inspiration.

The point I want to make is that we need something else besides these criminal statutes, I think, and that something else is what I have endeavored to describe in my statement as a high moral tradition of Government service which would rise above mere negative prohibitions in criminal law, but which would reach the human mind with high aspirations far and above the mere objective of avoiding criminal conduct.

I think in this connection it should be recognized that in the last 100 years we have gone a long way in this direction. The spoils system of the 19th century has now been replaced by a civil service system, and the Hatch Act.

I think merit has become the guiding standard for the work of Government officials, and I think also that honor has become the standard for the conduct of Government officials.

Today, really, I think we have very, very few scandals involving this subject of conflict of interest. Each one that comes out is, of course, pitilessly exposed to the glare of the spotlight, but many of them, really all of them, are either borderline in character or, if they are actual violations of law, they are really few and far between.

As a result, I don't think there is any discernible area of wrongdoing today in the Government related to this subject, and no real factor of wrongful influence.

In all fairness I do think that most Government officials are patriotic and hard working. Many of them at least are in love with their work and they are trying to do a good job.

In this connection, Mr. Chairman, I have in my statement some material about the British Civil Service, which in all fairness I think is perhaps the best in the world, and which relies upon tradition as much as anything, and perhaps more than on criminal statutes.

There are, of course, criminal statutes in England, but they are relatively few in number, and in the last 100 years or so since, I think, 1855 the British have developed a notable tradition in their civil service which consists of a demanding public opinion within the service, which is of such a high nature that misconduct or anything relating to conflict of interest simply is not tolerated.

This is something for which I think we, in this country, should strive more strongly than we have so far. Tradition is the most powerful factor, or one of the most powerful factors that we could have.

With this kind of a tradition in our own service, I think that we would reach the ultimate.

Again I do feel that these criminal statutes, while necessary with regard to fundamentals, only have a limited usefulness, and that we

should try to perhaps recognize the hard work, the patriotic motives, if I may say so, of the very great bulk of Government officials, and that we should recognize also that today there is a pretty good tradition within the Federal Government.

The CHAIRMAN. You say on page 10 you do not believe that a satisfactory tradition of ethics in Government is likely to result from criminal sanctions.

Yet we have had a long list of Government employees in high positions and low positions who suffered criminal penalties, and I would say that the criminal sanctions in those cases were quite effective.

Mr. vom BAUR. I agree with you, sir. I may say the pressure—

The CHAIRMAN. They had a very deterrent effect in preventing people from suffering lapses from grace, and do the thing that these persons were convicted of.

Mr. vom BAUR. I agree with you, sir, entirely.

I may say that due to the press of time and my own duties out of town, this statement was gotten up somewhat hurriedly. I have in my draft of it here inserted the word "solely" in the phrase "is likely to result solely from criminal sanctions."

In short, I certainly agree that criminal sanctions are necessary. They have had a very strong prophylactic effect.

What I am trying to say is that I don't think we ought to go too far with criminal sanctions into these borderline areas such as becoming unduly involved with social engagements. These are things which I would leave to tradition and to agency rule, if necessary.

The CHAIRMAN. Of course, your first sentence on page 10 then must also be changed:

We do not recommend the enactment of this bill to the extent that it would reenact the conflict-of-interest statutes or part of the criminal law.

Mr. vom BAUR. Yes; I have changed that on mine, and since you brought that up, Mr. Chairman, I would like to read what I have. This is the only page where there are any substantial changes. I have, beginning with the comment under H.R. 2156:

I recognize a great deal of excellent work has gone into the drafting of this bill H.R. 2156. However, I do not recommend its enactment to the extent it would reenact the conflict of interest statutes as part of the criminal law without adaptation to modern conditions, such as the need for recruiting WAE and WOC employees, recognition of pensions plans, et cetera.

In short, I think that whatever revision is made should be brought up to date, and above all, the needs of recruiting able people, bringing them into the Government and keeping them there, should be borne strongly in mind as well as these negative prohibitions.

The CHAIRMAN. Can I take it from that statement that you are in favor of H.R. 2156 with the modifications that you have indicated?

Mr. vom BAUR. Yes, sir, that is right.

And may I say, as I have tried to indicate on the last page, that the report of the Association of the Bar of the City of New York on the subject and their companion bill, which as you have pointed out is H.R. 10575, endeavors to do pretty much the same thing, that is, to consolidate these existing statutes in understandable and readable form, which is so very important.

It also seeks to give a better break to the Government servant, that is to try to make it easier to recruit him and not to put any more restrictions than are really necessary on his conduct while in the Government, so as to persuade him to stay there as long as possible.

The CHAIRMAN. On page 12 you are inclined, I take it, to make another change. On the bottom of page 12, last line, you say:

In summary, then, we do not favor enactment of H.R. 2156.

Mr. VOM BAUR. Mr. Chairman, you are really putting me on the spot here this morning because I crossed that out in my statement. You have picked out about the only changes that I think I have made in pencil on my copy.

The CHAIRMAN. But that is modified?

Mr. VOM BAUR. Yes, sir, it certainly is. Those are the only changes of any consequence that I have.

You have certainly put your finger on the very ones that I have changed. In short, if I may conclude, Mr. Chairman, the Association of the Bar of the city of New York places its report and its bill on the balancing of two principles, the first the need for realistically prohibiting conflict of interest, and the second, the need to recruit able people into the Government and to keep them there. This is a very serious problem at the present time.

(The prepared statement of Mr. vom Baur appears at p. 358.)

The CHAIRMAN. Mr. Peet.

Mr. PEET. Mr. Chairman. Mr. vom Baur, as General Counsel of the Navy, are you aware of any situations in which personnel were inhibited from coming into the Government because of conflict of interest laws?

Mr. VOM BAUR. No, sir; I cannot say that I know of any such situations.

My remarks are directed I suppose primarily to H.R. 2157, which would apply to these borderline situations such as discussing employment, becoming "unduly involved socially."

These are restrictions which, if added to the existing laws, would make Government employment just so much more difficult and so much less attractive. It has only limited attractiveness now, as you may know. The colleges do not recommend Government employment, and employment agencies do not recommend it.

This is a fact of life which I think we have to face. If any more of these borderline restrictions are put on, Government employment will become even less attractive I think to the detriment of the public interest.

The CHAIRMAN. We will put your statement into the record then. Thank you very much, and I want to beg your pardon for asking you to be brief, because of the exigencies that we are confronted with on the floor of the House.

Mr. VOM BAUR. I fully understand, sir. You are very gracious. Thank you.

The CHAIRMAN. We will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 12:10 p.m., the committee recessed, to reconvene at 10 a.m., Thursday, March 3, 1960.)

(The statement referred to at p. 325 follows:)

STATEMENT OF DONALD C. BEELAR ON BEHALF OF AMERICAN BAR ASSOCIATION

My name is Donald C. Beelar. I am chairman of the American Bar Association's Special Committee on the Federal Administrative Practice Act, H.R. 7092 and S. 600, and my committee also has responsibility, jointly with the administrative law section of the American Bar Association, over the American Bar Association sponsored agency hearing Standards of Conduct Act, H.R. 10657 and S. 2374.

The conflict of interest bills which are before this committee are broader in scope than those matters as to which the American Bar Association has formulated definitive views. Certain sections of the bills before this committee, in particular H.R. 2157, contain provisions on subjects as to which authorized views of the American Bar Association may be presented; and since these views are relevant to some of the subjects under consideration we trust that presentation of these views may be useful or informative, and we are grateful for the opportunity of appearing before your committee. Our presentation will be divided among the following: Donald C. Beelar, chairman, Special Committee on Federal Administrative Practice Act; Valentine B. Deale, vice chairman, Special Committee on Federal Administrative Practice Act; and Bryce Rea, chairman of the national committee, administrative law section.

Briefly, by way of identification, I am a member of the bar of the District of Columbia and a partner in the firm of Kirkland, Ellis, Hodson, Chafetz & Masters. I have been active in bar association work in the field of administrative law since 1934, except for 4 years during World War II, when I was in the Air Force. I am past chairman of the section of administrative law of the District of Columbia Bar Association. I am past chairman and presently a council member of the administrative law section of the American Bar Association. I appear here solely as a representative of the American Bar Association and my presentation is limited to the authorized views of that association.

Our authority to sponsor the Federal Administrative Practice Act, H.R. 7092 and S. 600, is contained in a series of resolutions adopted by the house of delegates on February 20, 1956, 81 ABA Rcp. 371, et seq.; 82 ABA Rep. 182, 346. Section 404 of title IV of H.R. 7092 is relevant to certain provisions of H.R. 2157.

This relationship and the views of the American Bar Association as to conflict of interests for those who represent others before Federal agencies will be presented by my colleague, Mr. Deale.

My subject is ex parte communications in agency adjudications, which is relevant to section 106 and portions of section 107 of H.R. 2157. Our authority on this subject is contained in the following resolution adopted by the house of delegates on February 23, 1959:

"Be it resolved by the American Bar Association, That the association recommends to Congress the enactment of Agency Tribunal Standards in adjudicatory proceedings by and before Federal administrative agencies consistent with the principles set forth in the following draft of proposed legislation:

"Be it further resolved, That the special committee on legal services and procedure (or, at its election, its committee on the Federal Administrative Practice Act) and the section of administrative law are authorized and directed by the house of delegates to urge the enactment into law of the proposed code of agency tribunal standards of conduct, or its equivalent in purpose and effect, and, in so doing to appear before the proper committees of Congress."

Prior resolutions of the house of delegates on this subject are as follows:

**"AMERICAN BAR ASSOCIATION RESOLUTION ADOPTED BY HOUSE OF DELEGATES,
FEBRUARY 26, 1958—ATLANTA**

"Whereas the American Bar Association has repeatedly urged that the organization and procedure of Federal administrative agencies in the exercise of adjudicatory powers provide (1) that hearing officers be assured independence of judgment and impartiality in the trial of agency cases, (2) that the integrity of the judicial process at all levels in the agency be protected by confining decisions to the public hearing-record in an environment totally free from any ex-parte-off-the-record representations, influences or pressures from any source: Now, therefore, be it

"Resolved, That this association records its opinion that more effective agency and congressional action to those ends would improve and inspire greater public

confidence in agency adjudicatory determinations, and believes it desirable that an appropriate code of agency-tribunal standards of conduct comparable to the canons of judicial ethics be established by statute binding upon all persons engaged, interested, participating in, or seeking to affect the result of the adjudication of agency-tribunal cases."

"AMERICAN BAR ASSOCIATION RESOLUTION ADOPTED BY HOUSE OF DELEGATES, AUGUST 28, 1958—LOS ANGELES

"Resolved, That the president of the association is hereby authorized and directed to designate a special committee of the association, or at his election, to authorize the section of administrative law to draft a code of agency-tribunal standards of conduct and to draft necessary supporting legislation and to report back to the house or the board for approval of the code; to advise and consult with the Congress of the United States, the Executive and independent agencies of Government in furtherance of the objective of eliminating ex parte influences or pressures from the trial and decision of agency cases."

So much by way of background and authority.

The American Bar Association has a general interest in all facets of the conflict-of-interest problem.

Second, we have a specific interest in the application of conflict-of-interest standards to those who represent others before the Federal agencies in all fields of the practice of law.

Third, we have a unique and very specific interest in the related problem of prohibiting improper ex parte communications in those agency proceedings which are court-like in character and are supposed to be decided exclusively on the evidence of the hearing record.

CONFLICT OF INTEREST GENERALLY

With respect to conflict of interest generally, I would first invite the committee's attention to the fact that the American Bar Association's "Canons of Professional Ethics" on the subject of practice by former Government employees states as follows, in Canon No. 36.

"A lawyer, having once held a public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ."

The next observation I might make is that the American Bar Association's Special Committee on Legal Services and Procedure, in its report of 1956, after making some study of the conflict-of-interest problem, published the following conclusion:

"We believe that there is need for a comprehensive revision of all of the conflict-of-interest laws, and that it would be a mistake simply to enact another law dealing with an isolated aspect of the conflict-of-interests problem which would probably merely add to the confusion which already exists in the overlapping provisions of existing statutes."

This committee adopted the following recommended resolution but this resolution, with a number of others, was not presented to the house of delegates for its action.

"II. Conflict of interests: There should be a comprehensive revision of all existing statutes dealing with all aspects of the conflict-of-interests problem, and any such revision should take into consideration, among other things, the principle that no individual should represent, or hold himself out as representing, any person in any matter or proceeding before an agency or a court if that individual, while an employee of the United States, personally and in his official capacity dealt with, passed upon, or gained material information concerning it."

The above resolution, although not an official view of the association, does provide some background to the conflict-of-interest provision which is contained in section 404 of ABA-sponsored H.R. 7092.

Except for the two matters above stated, we do not at this time have any authorized views to present on the conflict-of-interest problem as such. This is not to say that we are not interested in all aspects of the conflict-of-interest subject, because we are keenly interested in the hearings of this committee and in the report of the New York City Bar Association, both of which are being studied by committees and sections of the American Bar Association.

CONFLICT OF INTEREST IN THE PRACTICE OF LAW

Section 404 of H.R. 7092 is entitled "General Rules as to Conflict of Interest for All Representatives," and as previously indicated, a discussion of this section in relation to the provisions of H.R. 2157 will be presented by Mr. Deaie.

EX PARTE COMMUNICATIONS

My statement will be directed to those provisions of H.R. 2157 having to do with improper ex parte communications in agency contested proceedings.

Section 106 would prohibit any ex parte oral or written communication with any agency member or employee concerning any question of law or fact involved in any pending contested proceeding. The American Bar Association very definitely supports that objective.

If a person indulges in prohibited ex parte communications the head of the agency, after notice and hearing, may blacklist him for an indeterminate period from seeking or doing business with that agency. Section 107(a)(4).

Also, a person indulging in prohibited ex parte communications may have his contract, loan, subsidy, rate, permit or certificate canceled under regulations prescribed by the President. Section 107(a)(5). Such blacklisting or cancellation action is required by section 107(b) to be supported by a written statement of findings and delivered to the offending person, and may be published in the Federal Register.

Thus, improper ex parte communications are made an offense in section 106 of H.R. 2157, and the sanctions imposed on the offending party are contained in two of the six subparagraphs of section 107.

EX PARTE COMMUNICATIONS AND CONFLICT OF INTEREST

Perhaps the first question we should consider is whether the ex parte communications problem is a part of the conflict-of-interest problem or a separate problem. I believe we are inclined to the view that the ex parte communications problem is separate and distinct from the conflict-of-interest problem. It would not be illogical for legislation to embrace both problems, but I believe the more practical and preferred course would be to deal with them separately. Our reasons for this would include the following:

(a) A conflict of interest situation need not involve any ex parte communication, or vice versa.

(b) The problem of ex parte communications is one related only to courtlike hearings which should be determined exclusively on the evidence of the record, whereas conflict of interest problems apply in manifold situations not limited to agency adjudications.

(c) The report of the New York City Bar Association advocates one comprehensive statute dealing with all aspects of conflict of interests but the scope of this, I believe, does not include the problem of ex parte communications.

(d) We believe that the ex parte communications problem is ripe for legislative action and that it can and should be dealt with as a matter of first importance without having to wait until studies on the more complex problem of conflict of interest are concerned.

For the concluding part of my statement I should like to compare the provisions of H.R. 10657 with those provisions of H.R. 2157 having to do with ex parte communications. (The following observations would also apply to H.R. 6774, which is an earlier revision than H.R. 10657 and would apply only to six agencies.)

(a) *In what kind of agency proceedings should ex parte communications be prohibited?*

H.R. 2157 uses the term "contested agency proceeding." This term is not defined. It implies correctly that there are other kinds of agency proceedings to which the bill would not apply. How do we draw the line, and how can a person know whether any particular agency proceeding is one which is subject to this bill? Another question is what is the beginning or ending of a proceeding covered by the bill? In H.R. 10657 we deal with these questions by limiting the bill to those proceedings which by law are subject to notice and opportunity for hearing, and to the specific exclusion of certain other functions and proceedings which are named in the bill. To resolve any doubt or ambiguity on this we also require that the notice of hearing in each agency proceeding state expressly

whether that proceeding is or is not subject to the bill prohibiting *ex parte* communications. By this means anybody can tell at the inception of a proceeding what ground rules will apply. In H.R. 10657 it is made clear that the prohibition against *ex parte* communications applies during the period a proceeding is pending, which is marked by the initial notice of hearing and the final agency action. Our bill also gives the agency some discretion in determining whether any proceeding otherwise exempt is so adversary in character that it should be made subject to the bill. We believe these additional provisions by way of delineation and clarification are advisable and necessary to deal effectively and fairly with the *ex parte* communications problem.

(b) What persons should be prohibited from making ex parte communications?

H.R. 2157 enjoins a party to a proceeding from making oral or written communications to "any agency member or employee." This puts all officials and all employees of an agency out of bounds to a party in a proceeding or those acting on his behalf. We believe this is too sweeping in one respect and inadequate in another. We believe there is no reason for putting those employees of an agency who have nothing to do with the decision of a particular case out of bounds to a citizen. The business of the agencies and of party litigants is facilitated by discussions with nondecisional personnel; for example, docket clerks, witnesses, trial attorneys, etc. The practice of discussing pending cases with the clerk of a court or a U.S. attorney is not improper, and this freedom should apply to nondecisional staff personnel. H.R. 2157 misses half the target, in our view, by prohibiting only communications from a party litigant to a Government official, whereas we believe the prohibition should apply equally to improper communications from Government decisional personnel to the party litigant.

In H.R. 10657 the prohibition against *ex parte* communications is limited to those agency officials who are involved in the trial or decision of the particular proceeding in question. By this means we focus complete responsibility for any *ex parte* misconduct directly on the agency member or hearing officer who is responsible for the trial or decision of the case in question. Also, we would enjoin both the party litigant and the decisional official of the agency from making or entertaining prohibited *ex parte* communications. We believe that legislation must deal with both sides of the *ex parte* transaction. If we can make it clear that agency decisional personnel are not to entertain or initiate any improper *ex parte* communication about proceedings pending before them we will strike effectively at the heart of the problem, and this notorious influence mess in which the guilty few contaminate the numerous conscientious and honest officials will be cleaned up.

While the bill states this in terms of a prohibition, we believe "protection" is a better word since it would protect those agency members and hearing officers who desire to improve the integrity and fairness of agency litigation, and protect the rights of litigants to a decision on the merits of the case, based solely on the evidence in the hearing.

(c) What types of ex parte communications should be prohibited?

H.R. 2157 prohibits communications concerning "questions of law or fact involved in the proceeding." This implies that any secret communications which avoid questions of law or fact in a proceeding are not improper under the bill. While at first this may appear logical, it seems to us impractical to draw a line between propriety and impropriety based on the content of *ex parte* communications concerning a pending proceeding. If this bill became law it could be used to condone secret communications attempting to influence the decision of contested proceedings, and this could be done without any discussion of the questions of law or fact at issue. We believe the only effective way to deal with this problem is to prohibit all secret communications about pending proceedings. The propriety or impropriety of *ex parte* communications, insofar as it may turn on content, can only be determined by disclosure. If the content is improper it should not remain secret; if the content is innocent its disclosure should not offend anyone.

(d) Disclosure of ex parte communications and confrontation

It is quite deeply ingrained in what we call "fair play" in litigation that a party litigant be confronted with the evidence and contentions to be considered in the decision of his case. The principle of confrontation is a fundamental right, but this right is violated if agency decisional personnel entertain secret

communications pertaining to a pending case. This principle is recognized in section 7(d) of the Administrative Procedure Act, which provides in part:

"The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision."

This principle is violated whenever a decisional officer permits the secret submission of information, contentions, or any other persuasions attempting to make him more favorably disposed toward one of the litigants.

We believe that the prohibition must be coextensive with the principle of confrontation. This requires proscribing all *ex parte* communications, coupled with the requirement that such communications, if made, be promptly disclosed and made known to all parties concerned. Publication is the antidote for secrecy, and public disclosure is the keystone to any solution of the *ex parte* communication problem in agency litigation.

(e) *What sanctions should be imposed for prohibited ex parte communication?*

H.R. 2157 and H.R. 10657 both contain sanctions, but the treatment is completely dissimilar. H.R. 2157 subjects the offending party to possible blacklisting or cancellation of his authorization. No sanction is imposed on the offending Government official, even though he may have been a willing party to the prohibited communication or may even have initiated the secret discussions.

While our bill does contain criminal and other sanctions, we emphasize the positive in compelling public disclosure, which we believe will prove sufficient to cope with all but the most flagrant and culpable wrongdoing. We do impose a course of conduct on Government officials, namely, that of disclosure. If the Government decisional officer makes the required disclosure he is immune from any sanction. It is only if he fails to make the disclosure that he is subject to disciplinary action or possible criminal proceeding.

The offending party litigant would be subjected to a criminal sanction for willful misconduct and to possible loss of the privilege or authorization sought or obtained, depending upon the decision reached in a show cause proceeding. These sanctions on the party litigant are believed to be essentially a restatement of the case law dealing with misconduct in agency litigation. We believe that a statute which with a reasonable limits imposes a duty on a party litigant to avoid any *ex parte* manipulations or influence activity at the risk of losing the rights sought, would go a long way toward protecting the right of other litigants and assuring clean hearings in agency litigation.

So much for a comparison of the key provisions of H.R. 2157 and H.R. 10657. Before leaving this, I might make two additional observations.

First, H.R. 2157 is limited to agencies in the executive branch. According to one school, it might be contended that this would exclude application to independent agencies. It is our view that a person's right to a fair hearing should be protected wherever hearings are held. H.R. 10657 is intended to apply across the board in all agency hearings, whether conducted before executive departments or independent agencies.

Second, H.R. 2157 would delegate to the President certain rulemaking authority for the cancellation of contracts or other authorizations. It is our view that authorization for the imposition of forfeitures should be handled by legislation rather than by delegation. Also, the imposition of such a forfeiture in any particular situations should be subject to notice and opportunity for hearing.

In conclusion, it is the view of the American Bar Association that the enactment of legislation as set forth in H.R. 10657 is necessary and advisable to deal effectively and fairly with the *ex parte* communication problem. Such legislation will do much to restore confidence in agency proceedings and protect the rights of the parties and the public alike. This is an objective within the scope of this committee's hearings, as we understand it, and we do appreciate the opportunity given us for the presentation of our views on this important question.

(The statement referred to at p. 341 follows:)

STATEMENT OF VALENTINE B. DEALE, ESQ., ON BEHALF OF AMERICAN BAR ASSOCIATION

My name is Valentine B. Deale. I am an attorney in private practice with offices here in Washington, D.C. I am testifying at these hearings today solely as a representative of the American Bar Association. I am vice chairman of the association's special committee on the Federal Administrative Practice Act, and a member of the council of the association's administrative law section.

As Mr. Beclar has already noted, the four bills presently being considered by your subcommittee cover much material beyond policy positions which have to date been adopted by the American Bar Association. As with Mr. Beclar's testimony, mine too will be confined to association policy as it pertains to your subcommittee's interests.

More specifically, the subject matter of my discussion will be standards of conduct, which include conflict-of-interest matters, pertaining to representation in agency proceedings, and in this connection my discussion is centered on your chairman's bill, H.R. 2157.

At the outset, I refer to the policy resolution of the American Bar Association on representation in Federal agency proceedings. For convenience sake, a copy of this resolution is appended to my written statement and I respectfully request that it be included in the record of these hearings. In addition, association policy on this subject has been spelled out in legislative language at title IV of H.R. 7092 (S. 600), now pending before your Judiciary Committee. This bill entitled "Federal Administrative Practice Act of 1959" is sponsored by the association.

So much for background information and basic authority for my testimony today on H. R. 2157. I now offer comments on the bill itself.

BASIS IDEA OF LEGISLATIVE STANDARDS

The fundamental idea of having a Government Ethics Act or legislative standards of conduct for representatives in Federal agency proceedings is sound. The outworn cliché that you cannot legislate ethics does not mean that you should never proclaim them. Suitable denunciations of principle give heart to the weak, add strength to the strong and clarify the confused. It will be a sad day if the Congress ever concludes that it does no good to discuss and declare principles of moral conduct.

For the sake of making sure that everyone understands the scope of the ABA position; namely, that Congress should, by legislation, set up certain standards of conduct for representatives in Federal agency proceedings, it is noted here that the term "representative" means anyone acting in a representative capacity for another party. This means a Federal employee acting on behalf of the U.S. Government as well as an attorney in private practice representing a private party.

How the idea of legislative standards of conduct might extend beyond representatives in agency proceedings to other personnel raises a question to which the association has not given definitive consideration. Being a professional group concerned with representation as the primary occupation of its members, the association has focused its attention on standards of conduct for representatives.

MUTUALITY OF SUBJECT MATTER BETWEEN H.R. 2157 AND ABA POLICY

In one way or another sections 103, 104, 105, 106, and 107 of H.R. 2157 cover subject matter embraced by ABA policy. As Mr. Beclar has already discussed section 106, no further reference will be made to that section.

SECTIONS 103 AND 104 OF H.R. 2157 AND ABA POLICY

Sections 103 and 104 of H.R. 2157 find their counterpart in ABA policy at section 404 and 412 of the "Federal Administrative Practice Act," H.R. 7092.

Under section 404 of the ABA sponsored bill, the mere fact alone that a representative is or has been employed by the United States would not cause his representation in any Federal agency proceeding to be unlawful or improper and would not cause such representation to suffer any civil, criminal, or other penalty by reason thereof. This principle rejects the concept of requiring some arbitrary waiting period before a former Government employee may act in a representative capacity in connection with a matter before his former agency. To this extent, the position of the American Bar Association differs from the proposal set forth at section 104 of H.R. 2157. Section 412 of the ABA bill would further implement the association's position by repealing the existing provisions of law at title 5, United States Code, section 99 and title 18, United States Code, section 234.

Appropos to the association's rejection of the waiting period concept the following observations are offered: The talents and know-how of former Govern-

ment employees and retired military officers make up a tremendous national resource of able personnel. Full utilization of this resource should be encouraged for the sake of our country's welfare and its national security. Hobbling the utilization of this great national resource on a wholly arbitrary basis is an undesirable, unfair method for striking at an admittedly objectionable practice of dealing with the Government on a purely personal influence basis.

There is a further point deserving of mention. Has the case of wrongdoing of former Government employees over the years really been made out? What is the evidence of wrongdoing—and I underscore the term "wrongdoing"—to support the proposition that former loyal servants of our Government should be barred from certain normal livelihood opportunities for 2 years in order to safeguard the morality of Government transactions? What a terrible discriminatory stigma to place or leave upon public servants at the end of their tour of duty if the justifying reasons amount to nothing more than an archaic legacy, suspicion, immature fear, and a few isolated instances of bad conduct.

Least objection to the arbitrary requirement of a 2-year-waiting period is mistaken for softness toward true conflict of interest situations, it is noted that under section 404 of H.R. 7092 it would be improper conduct for anyone after having been an employee of the United States to represent any participant in an agency adjudicatory proceeding or in the judicial review or enforcement thereof if he personally or in his official capacity as such employee learned any facts or took any action concerning such proceeding, review, or enforcement, or if such representative would otherwise involve unprofessional conduct. There would be no time limit on the ban against this sort of representation. It would be forever.

To the extent that it embraces representatives, section 103 H.R. 2157 parallels the corresponding ABA provision at section 404 of H.R. 7092. There is harmony in the idea of prohibiting for all times anyone from representing a party other than the Government in a situation where he had in effect represented the Government or gained knowledge thereof as a result of his Government employment.

With respect to the language of the two parallel provisions, it is submitted that the more restrictive reference in the ABA sponsored bill is preferable to the very broad language in H.R. 2157. The phrase in the latter bill "a subject matter concerning which he had any official responsibility" covers too much territory.

There is a further part of the conflict-of-interest portion of the ABA sponsored bill H.R. 7092 which bears noting even though there is no corresponding provision in H.R. 2157. Under section 404 of the former bill it would be improper conduct, with only limited exception, for a Federal employee to represent anybody other than his own employer before a Federal agency or court. The limited exceptions to this rule would permit an attorney reasonable time to wind up his practice after entering the Government service and would also permit him to engage in family legal matters. An attorney specifically employed by the Government on a temporary, ad hoc basis would be outside the scope of this provision except that he could not later on represent another in a matter in which he was involved for the Government.

SECTION 105 OF H.R. 2157 AND ABA POLICY

We move along now to the definitions of improper conduct as provided in H.R. 2157 and H.R. 7092.

The coverage of the definitions in the two bills is different. With respect to H.R. 2157, Mr. Beelar has already observed that the use of the term "the executive branch of the Government" might possibly be construed to exclude the independent agencies from the application of the proposed Code of Ethics. The American Bar Association feels strongly that statutory standards of conduct for representatives in any Federal agency proceeding are in order.

Under section 105(a) (1) and (3) of H.R. 2157, it would be improper conduct for any person to give, directly or indirectly, any gift, favor or service to or to become unduly involved, through frequent or expensive social engagements, with any officer or employee of the executive branch of the Government who transacts business with him on behalf of the United States, or whose performance of official duty may substantially affect his interest.

The corresponding provision at section 403(d) of the ABA-sponsored bill provides that it shall be improper conduct for any representative to attempt to sway the judgment of any agency or of any employee or representative or official or presiding officer of any agency by the use of threats, false accusations or duress, by the offer of any special inducement or promise of advantage, or by

the bestowing of any gift or favor or other thing of value. The improprieties covered in the ABA-sponsored bill are more specifically and extensively enumerated and at the same time are tied into the cardinal features of improper conduct; namely, the attempt to sway judgment. On this latter point, H.R. 2157 is silent.

With respect to the remainder of the definition of improper conduct at section 105 of H.R. 2157, the association has no formal position on the subject matter of section 105(a)(2) and section 105(b), and its views on section 105(c) are reflected in earlier observations about sections 103 and 104 on which section 105(c) is based.

As a closing comment on the subject of standards of conduct for representatives in any agency proceeding, reference is made to additional considerations proposed by the American Bar Association. Under section 403 of H.R. 7092, it would also be improper conduct for any representative to solicit representation, advertise his attainments or services, have ex parte communications concerning the merits or disposition of any contested adjudicatory proceeding, engage in improper or indecorous conduct in the presence of a presiding officer in any agency proceeding, commit any act contrary to honesty, justice, or good morals in the course of representation, fail to account for money, and willfully promote the overthrow of government by force or violence.

Furthermore, representatives in agency proceedings who are attorneys would be subject to special canons of ethics to be prescribed by the U.S. Court of Appeals for the District of Columbia. And nonlawyer representatives would be subject to special standards of conduct which any agency may prescribe for their representation before it.

SECTION 107 AND ABA POLICY

Coming to the subject of enforcement of the proposed code of ethics, we give attention to section 107 of H.R. 2157. So far as the provisions there affect representatives in agency proceedings, they vary from the American Bar Association proposal in the following ways:

1. It is the association's policy, as provided for in section 403 of H.R. 7092, that disbarment of attorneys from representing others in agency proceedings should ultimately rest with a court of law only and not with any executive or administrative official.

2. It is the association's position that an attorney once admitted to practice before the agencies should not require any further certification such as might be required by section 107(a)(3).

On the other hand, the association is in accord with the proposal that individual agencies be allowed to discipline nonlawyer representatives for improper conduct so long as an order to revoke or suspend the privilege of representation to a nonlawyer be subject to judicial review in a trial of facts and of law de novo.

By and large under the association's sponsored legislation the necessary administrative activity for assuring proper qualifications of representatives in agency proceedings would be one of several important across-the-board duties of a proposed new independent Office of Federal Administrative Practice described in title I of H.R. 7092. The Office would supervise and direct administration of admission to and control of practice before Federal agencies.

CONCLUSION

In summary, the American Bar Association recommends the following points for your subcommittee's consideration:

1. The basic idea of statutory standards of conduct for representation in Federal agency proceedings is sound, and in defining offenses and their corresponding sanctions, the standards should be as specific as practical.

2. In areas where improper conduct cannot be defined in specific terms and where administrative discretion must come into play to determine what is and is not ethical, the agency exercising such discretion should be an independent office apart from any individual regulatory agency or executive office or department.

3. To the extent that standards of conduct for representation are embraced in your subcommittee's consideration of the overall conflict-of-interests problem, the approach set forth in H.R. 7092 is strongly advocated.

4. There should be no delegation of power to the executive branch to disbar lawyers from agency practice.

5. While an arbitrary requirement of a waiting period for a former Government employee to deal with his former agency is opposed, an absolute ban with no time limit is supported with respect to a former Government employee's involvement in any true conflict-of-interest situation.

Mr. Chairman, on behalf of the American Bar Association, I thank you for this opportunity to present its views on very important matters which your subcommittee is considering.

RESOLUTION ON REPRESENTATION ADOPTED BY THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION AT ITS 1956 MIDYEAR MEETING

Resolved, That the American Bar Association recommends the enactment of more comprehensive and explicit legislation covering rights of persons or organizations to appear and be represented by others before Federal agencies, giving due regard to appropriate distinction between legal representation and nonlegal representation, such legislation to include the following features:

(a) That an attorney at law should be entitled to appear for and represent other persons, parties, or organizations, including the United States or any agency thereof, before any agency upon filing a statement with the agency that he is a member of the bar in good standing according to the law of any State, territory, Commonwealth, or possession of the United States or of the District of Columbia, and that he is not disbarred or under suspension by any court; except that an agency may further require the filing of a power of attorney as a condition to the settlement of any controversy involving the payment of money.

(b) That a person who is not an attorney at law should be permitted to appear for and represent other persons, parties, or organizations, including the United States or any agency thereof, before any agency only where the agency finds that such representation is appropriate and desirable in the public interest, as well as in the interest of the parties to the agency proceedings, and is not otherwise precluded by law, and the agency provides therefor by general rule; provided that authorization to represent others before an agency shall not authorize a person who is not an attorney at law to practice law.

(c) That, except where otherwise provided by statute, the representation of parties in formal hearings required to be determined on the record, which is subject to judicial review, should be by an attorney at law; provided that any party who is an individual may represent himself.

(d) That every person, party, or organization required or entitled to participate in any matter before an administrative agency should have a statutory right to appear by or with an attorney at law or, at his or its election, by or with another person qualified pursuant to 5(b) and 5(c) above.

(e) That minimum standards of conduct should be established by statute governing all persons permitted by any agency to represent private or public persons, parties, or organizations, including the United States and any agency thereof.

(f) That an attorney at law who has the privilege of representation before any Federal agency should be subject to disciplinary control by a Federal grievance committee through proceedings in the U.S. district court of the judicial district in which he principally engages in the practice of law.

(g) That a person who is not an attorney at law, but who is, nevertheless, permitted to engage in representation before an agency, should be subject to reasonable disciplinary control by the agency.

(The bibliography referred to at p. 341 follows:)

RECENT BIBLIOGRAPHY

1. House Committee on Government Operations, November 19, 1956, "Questionnaire on Administrative Organization Procedure and Practice."

This was an 11-part, 10-page questionnaire containing 2,060 questions, part VII of which, on "Rules for Admission to Practice and for Avoidance of Conflicts of Interest" contained the following questions:

"VII. Rules for Admission to Practice and for Avoidance of Conflicts of Interest

"1. Describe your rules for admission to practice before your agency and for representation.

"2. Describe your rules for avoidance of conflicts of interest, both for present agency members and employees and for former agency members and employees.

"3. Have you sought to make your agency's procedures in these matters uniform with those of other agencies of the Government?

"4. If so, describe briefly success attained and problems encountered."

The agencies' and departments' responses to these questions are contained in 14 booklets aggregating some 2,000 pages.

2. The Harris Oversight Subcommittee, in May and June of 1958, conducted a panel discussion on four subjects, the first of which had to do with the problem of improper influence in agency proceedings. These discussions were addressed to H.R. 4800 and to H.R. 6774, which to some extent are parallel with matters which are now before this committee, one of the main differences being that the bills before the Harris committee were limited to six agencies rather than dealing with these matters in their universal application to all agencies.

3. Six agencies and departments testified on S. 2374 before the Carroll subcommittee in the Senate on November 21 and 22, 1959.

4. The Senate Judiciary Committee, in the 85th Congress, obtained responses from departments and agencies on S. 932, now S. 600; and a compilation of the reports of 26 agencies and departments on S. 932, including title IV, was published in a 125-page report.

(The statement referred to at p. 348 follows:)

STATEMENT OF F. TROWBRIDGE VOM BAUR, GENERAL COUNSEL, DEPARTMENT OF THE NAVY

Mr. Chairman and members of the subcommittee, my name is F. Trowbridge vom Baur. I am General Counsel of the Navy, but I do not appear before you today on behalf of the Navy. I am here as the representative of the Federal Bar Association at the request of its president. The Federal Bar Association is an organization of some 7,600 present or former Government lawyers and Federal judges. We, of the Federal Bar Association, are greatly interested in the work of your subcommittee concerning conflicts-of-interest legislation, and we appreciate this opportunity to present a statement on this perplexing and difficult subject. As there has been insufficient time within which to submit the statement to the association, it cannot be considered as official. The views expressed, however, are widely held.

Before commenting on specific bills, I should like, with your permission, to state the basic concepts that shape our approach to conflicts-of-interest laws. My starting point is that there must be certain negative rules laid down by statute, prohibiting conduct which is clearly wrong. These should aim at preventing Government employees from serving two masters and should prohibit such clearly wrong things as bribery and graft, and working on one side of a case or matter while in the Government, and later on the other side as a private citizen.

Secondly, most of the existing statutes on conflicts of interest—and here I refer primarily to nine statutes, namely, 5 U.S.C., secs. 59c, 90; 10 U.S.C., sec. 6112; 18 U.S.C., secs. 216, 281, 283, 284, 434, and 1914—were originally passed around the time of the Civil War. They were, in large part, addressed to conditions which no longer exist. For instance, prior to the passage of these statutes, it was a common occurrence for Government employees generally, and even Cabinet officers, to represent people prosecuting claims against the Government. During the Civil War some Congressmen even advertised in the newspapers their availability to represent claimants against the Government, and many enterprising Government employees personally combed Government files in a search for claims against the United States which could then be purchased by the employee and prosecuted on his own.

It is clear, I think, that times have changed substantially since then, and that today the whole moral tone of Government operations is different, so that today's problems are very different from the problems of the mid-19th century. The recent report¹ of the Special Committee on the Federal Conflict of Interest Laws

¹ See chs. III, VII, VIII, and IX of the mimeographed addition (Feb. 22, 1960) of this report.

of the Association of the Bar of the City of New York as well as the comprehensive study by the staff of your subcommittee leave little room for doubt on the point of being outmoded,² and few would deny that, if we are to treat this problem realistically, the existing statutes, or most of them, should be repealed and fresh, integrated legislation provided. In short, some competent draftsman should undertake a comprehensive revision and consolidation of all these statutes in light of modern conditions.

Third, however, these criminal statutes, even when revised and brought up to date in realistic fashion, are of only limited usefulness and have only a limited potential. They can rightly prohibit conduct which is clearly wrong, but I do not think it possible for them to affirmatively provide the factor of inspiration. In short, we need something else besides criminal statutes, and in my opinion that something is a positive approach which looks toward a high moral tradition of Government service. Such a tradition would have its foundation in the criminal law, but would rise far above mere negative prohibition by causing officials to strive affirmatively to render the very highest type of Government service, and to be constantly above suspicion. Such a tradition would reach the human mind with high aspirations which would be far and above the mere objective of avoiding criminal conduct.

At the same time, I think it should be recognized that in the last 100 years we have gone a long way in this connection to start the development of a good tradition of Government service. The spoils system of the 19th century has been replaced by a civil service system and the Hatch Act. Merit has become the guiding standard for the work of Government officials, and in all fairness I think that honor has become the standard for conduct. As a result, our few scandals, though pitilessly exposed to the glare of the spotlight, are usually borderline in character or, if actual violations of law, are few and far between. Indeed, there is no discernible area of wrongdoing today in the Government, and no real factor of wrongful influence. On the contrary, and this I can say from my own knowledge, the Government today is generally comprised of patriotic, hardworking officials. Many, if not most of them, are in love with their work, are trying to further public good and to do a good job.

However, by and large, they, and their work, go unrecognized. Newspaper sales are not enhanced through descriptions of the solid, unspectacular work of Government officials, nor is it of special interest to the General Accounting Office or, may I say, even to this Congress. Unfortunately the horror stories, no matter how isolated they may be or however distorted in presentation, seem to get the headlines; and, when nothing else is said, they tend to picture Government officials as lucret, bungling or indifferent. While there are very few allegations of downright misconduct, the constant negative picture painted by the facilities which provide and give publicity is, in my opinion, conspicuously misleading. It is highly regrettable that there is no organ of public or private life charged with the mission of providing an objective picture of what goes on in the executive branch of the Government. More specifically, it is just not realized by the public that we have now a tradition of Government service which is generally pretty good, which in some quarters is excellent, but which could be a lot better.

The things that could be done to make our tradition of public service better, as I see it, are the following:

First, there should be some effort to make an objective appraisal of the work of the executive branch with some recognition of the good work done and the constructive approach followed by people in it. I think the burden for providing this recognition falls directly on the President, on Members of Congress, and on the press, as well as on leaders in the executive branch generally.

Second, the public, and Congress, should generally expect honorable and competent conduct from officials in our Government. There is no rational basis for a contrary expectation.

Third, salaries should be raised in the middle and upper grades. At the present time salaries compare favorably in the stenographic and clerical levels, but they diminish in comparison with those in private life as responsibility increases, and as the personal demands of a family upon an employee increase. There is no single factor, in my opinion, more responsible for being unable to recruit outstanding people in the first place, and for weeding outstanding people

² "Federal Conflict of Interest Legislation, A Staff Report to Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives," 85th Cong., 2d sess., pts. I and II, pp. 1-6 (1958).

out of the Government, than the disproportionately low salaries in the middle and upper grades. I personally know many Government officials who were in love with their work and devoted to the interests of the Government, but who felt they simply had to go into private life in order to make more money to care for their families.

Finally, the role of tradition, not criminal sanction, would appear to be the principal lesson of the British experience in replacing, more than a hundred years ago, a traditionally corrupt civil service with one which today need acknowledge no peer.

Civil service is a highly respected profession in Great Britain, and large numbers of outstandingly qualified people are attracted to it and remain in it throughout their careers. Those civil servants have created a tradition for fairness, integrity, partisan neutrality, and high purposes which is its single, most notable attribute. As one American scholar expressed it, "Entering the civil service the recruit is exposed to departmental traditions almost as strong as those of the universities. They demand character, integrity, and partisan neutrality of every officer."

Tradition is the keynote of the British civil service system, for the improvements in it have been made with only minimal statutory assistance. Statutes have made criminal the communication of confidential information to unauthorized persons and the payment, solicitation, or receipt of bribes. Administrative regulations and a traditional code of conduct, not criminal statutes, have proscribed much that is proscribed by our conflict of interest criminal statutes, and some of the actions declared improper by the bills now under consideration. I think that we can profit from the British experience. If they can build a career civil service of high quality and integrity, I have no doubt that the United States can do likewise. But the British know that a successful code of ethical conduct is not the result of mere criminal legislation. Tradition, more than anything else, appears to have created the high standards of integrity which characterize the British civil service, just as tradition perhaps, not legislation, has created the esprit de corps of the U.S. Marines. And, if we are to have equal success, we must direct our efforts toward the development of the right type of tradition for the public service of the United States.

In these troubled times, with Soviet threats to "bury" us, with an increasing need to harness the services of scientists, engineers and other leaders in

* Stont, "Public Service in Great Britain," 110 (1933).

For other works on the British civil service and the role of tradition in shaping it, see Mustoe, "The Law and Organization of the British Civil Service," chs. IV and VIII (1932); Bridges, "Portrait of a Profession" (the Rede lecture at Cambridge, 1950; and "The British Civil Service" (pamphlet published by Reference Division, Central Office of Information, London, 1959). This last states at pp. 24 and 25:

"TRADITIONS AND IDEALS OF CONDUCT

"While there are several practical measures for preventing corruption, e.g., the separation of the authorization and payment of accounts and of the assessment and collection of taxes, the traditions of the service are rooted in personal and corporate integrity.

"The ideals of conduct of the civil service have been well expressed in the report of a board of inquiry, published in 1928:

" * * * The civil service, like every other profession, has its unwritten code of ethics and conduct for which the most effective sanction lies in the public opinion of the service itself, and it is upon the maintenance of a sound and healthy public opinion within the service that its value and efficiency chiefly depend * * * .

"The first duty of a civil servant is to give his undivided allegiance to the state at all times and on all occasions when the state has a claim on his services. * * * The service exacts from itself a higher standard than that of the mere subordination of private interest to public duty, because it recognizes that the state is entitled to demand that its servants shall not only be honest in fact, but beyond the suspicion of dishonesty * * * .

"A civil servant is not to subordinate his duty to his private interests; but neither is he to put himself in a position where his duty and interest conflict. He is not to make use of his official position to further those interests, but neither is he so to order his private affairs as to allow the suspicion to arise that a trust has been abused or a confidence betrayed. These obligations are, we do not doubt, universally recognized throughout the whole of the service; if it were otherwise, its public credit would be diminished and its usefulness to the state impaired * * * .

"The surest guide will, we hope, always be found in the nice and jealous honor of civil servants themselves. The public expects from them a standard of integrity and conduct not only inflexible but fastidious, and has not been disappointed in the past. We are confident we are expressing the view of the service when we say that the public have a right to expect that standard, and that it is the duty of the service to see that the expectation is fulfilled."

our society to deal with the bewildering problems and crises of our times, we cannot afford to be doctrinaire and erect artificial barriers to recruiting into the public service persons the Government most needs. All in all, to be realistic, our Government should be as able, and as high minded, as any group in America. The demands upon the Government warrant nothing less.

I come now to the specific bills on which you have been so kind as to request our comments.

H.R. 2156

I recognize that a great deal of excellent work has gone into the drafting of this bill. I do not recommend its enactment to the extent it would reenact the conflict-of-interest statutes as part of the criminal law without adaptation to modern conditions such as the need for recruiting w.a.e. and w.o.c. employees. As I have stated previously, we do not believe that a satisfactory tradition of ethics in Government is likely to result solely from criminal sanctions. Also we feel that the substantive rules of conduct that the bill would impose are in some instances too restrictive and do not take account of the special problems of part-time employees. For example, we see no reason why a part-time Government employee should be barred from representing others in regard to any claim or matter before a Government agency that does not involve something on which the part-time employee, in his official capacity, has worked or for which he has had responsibility; and yet section 205 of this bill, like its antecedent 18 U.S.C. 283, would plainly bar such representation.

Section 206 would forever bar every retired military officer from selling anything to his military service and would also prevent such an officer from ever assisting anyone in connection with "any subject matter concerning which he had any responsibility while in active-duty status * * *." Again, we believe these restrictions go too far. At most, we would recommend a 1- or 2-year "cooling off" period for high ranking retired officers and for other retired officers whose last significant military duty had been in procurement or related fields. As for retired officers being forever barred from assisting another on a claim, etc., concerning which he formerly had "any responsibility," we think "any responsibility" covers too much, and we would suggest that the concept be narrowed to embrace only matters in which the retired officer personally participated while on active duty. Also, in connection with this section 206, we do not believe that a retired officer should, except with regard to selling as noted above, be barred for 2 years from assisting another in the handling of any claim, controversy, etc., solely because it involves the department in which he holds retired status.

Section 207 applies similar disqualifications to former Government employees, both in terms of a lifetime ban on assisting others in connection with claims, etc., involving "any subject matter concerning which he had any responsibility" and of a 2-year ban on assisting others in connection with claims, etc., involving the agency in which he was employed. Here again our position is one of supporting a lifetime ban on the true conflict-of-interest situation, as where the employee had personally worked on the case, but only supporting a temporary ban if in fact the employee had had official responsibility for (but had not personally worked on) the matter in question within a reasonable period of time preceding his departure from the Government.

Section 208 of the bill would continue 18 U.S.C. 434 with certain technical modifications. But it would not cure a major defect in section 434, namely, recognition of the significant difference between the Government employee who owns 10 shares of General Motors and one having the controlling interest in a closely held company. We see no reason of policy why persons holding insignificant interests in business firms should be unable to transact Government business with such firms. At what point the degree of interest should require the disqualification of the Government employee is sufficiently complex and dependent on the circumstances as better to be left to agency regulations under general statutory guidelines, and to a high tradition of impartiality.

Section 209 of the bill, which continues 18 U.S.C. 1914 with certain technical modifications, does not recognize the special situation of part-time Government employees such as w.a.e.'s and w.o.c.'s who should not be forbidden from receiving compensation from private employers, whether or not for services rendered to the private employer.

H.R. 2157

I turn now to H.R. 2157 which would enact as title II of the Administrative Procedure Act a "Code of Official Conduct for the Executive Branch." This proposed code would supplement the existing conflict-of-interest statutes. We do not favor enactment of this bill either in conjunction with H.R. 2156 or independently of it, for the following reasons:

In the main, we feel that this bill does not either alone or in conjunction with H.R. 2156, undertake the comprehensive reform that we believe is so essential to an enlightened approach to the problems of conflict of interest. The bill is obviously contemplated as an adjunct to the criminal law on this subject as revised by H.R. 2156, thus becoming an integrated part of a statutory plan that we regard as unsound for reasons already suggested, the principal one being the overemphasis on criminal sanctions. Beyond this, the bill does not provide for executive leadership and indoctrination of Government employees in the administration of the proposed code, steps we regard as essential to the growth of a tradition of ethics in government. Also, we believe that various provisions of this proposed code are unnecessarily restrictive. For instance, with regard to section 102(a), we think it impractical to make it improper conduct for an employee "to discuss or consider his future employment with * * * any person outside the Government with whom he transacts business * * *." In our view this problem is more realistically faced by requiring the employee to disqualify himself from any matter involving a person or firm with whom he is considering or has arranged future employment. Also we think it unwise to proscribe the acceptance of minor gifts or hospitality from persons the Government employee does business with. There should be room for reasonable judgment and differences in treatment based on the nature of the business transacted, the employee's duties, and other factors. Agency regulations, for which this bill makes no provision, could specify to what extent gifts, hospitality, and social engagements may be accepted with propriety, or it could be left to tradition. Further, the ban on accepting "frequent or expensive social engagements" would appear to be too vague a test and not one susceptible to common understanding or definition. Again, problems arising in this area are better dealt with by agency guidelines and unwritten traditions of what is unacceptable.

The objections we have made above to sections 206 and 207 of H.R. 2156 equally apply to sections 103 and 104 of this bill concerning past employment activities of former Government employees.

As a final example of a questionable provision, we would note that the power vested in agency heads by section 107 to dismiss employees for violation of section 102 would include the power of dismissal for an employee's failure "to conduct his personal affairs so that no reasonable suspicion or appearance of the violation [of certain provisions of the Code] can arise."

H.R. 7556

Finally, a brief comment on H.R. 7556, which we also oppose. We see little justification for the sweeping criminal penalties this bill would impose. Their enactment could only greatly hamper Government recruitment of men of ability who do not wish to make Government service a career. Whatever problems arise as a result of the efforts of Government employees to find private employment with the firms with which they transact Government business, those problems are best met, as suggested above, by a rule or by a tradition requiring disqualification of the Government employee in the situation supposed by the bill.

CONCLUSION

I stated earlier our conclusion of the need for sweeping reform of the conflict-of-interest laws. In our judgment none of the bills under consideration today would do the required job, although both H.R. 2156 and H.R. 2157 have certain desirable features which should be the subject of a separate bill or incorporated in a comprehensive conflict-of-interest reform bill. Thus, for example, we regard as desirable the provisions of H.R. 2156 that consolidate and expand the scope of the bribery statutes and provide for the rescission of governmental action tainted by conflicts of interest; and we regard as desirable features of an administrative code of ethics the provisions of H.R. 2157 dealing with im-

proper use of "inside" or confidential information as well as those concerning administration sanctions for persons violating the Code.

In the past few days we have had a brief opportunity to examine the report of the association of the bar of the city of New York, to which I have previously referred. The draft "Executive Conflict of Interest Act" proposed by that report and introduced on February 22, 1960, as H.R. 10575 appears to carry out the comprehensive reform that we in the Federal Bar Association strongly favor. Therefore, Mr. Chairman, I would hope that this subcommittee will give careful consideration to that bill and its accompanying report. We of the Federal Bar Association would of course welcome at some future time the opportunity to comment in detail on that bill, or otherwise to cooperate with you.

FEDERAL CONFLICT OF INTEREST LEGISLATION

THURSDAY, MARCH 3, 1960

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman) presiding.

Present: Representatives Celler, Rogers, McCulloch, and Meader.
Also present: Herbert N. Maletz, chief counsel, and Richard C. Peet, associate counsel.

The CHAIRMAN. The committee will come to order.

We have with us this morning our distinguished colleague and member of the House Committee on the Judiciary, Representative John V. Lindsay, of New York.

Before he begins, I would like to make this comment. We have invited, orally and in writing, the Department of Justice to testify on these various bills involving conflict of interest. But there seems to be some indisposition or I might even say reluctance on the part of the Department of Justice to present its views on these bills.

This is passing strange and beyond my understanding since the Department of Justice is the one organization that should have the greatest expertise on this subject of conflict of interest.

And I hope that this message may reach the Department of Justice so that they give us the benefit of their advice and counsel on this matter; and if they continue their refusal to testify, it is my hope that we will receive from them some reason therefor.

Now, Congressman Lindsay, we will be very glad to hear you.

Mr. McCULLOCH. At this point, I would like to make a statement.

The CHAIRMAN. Yes.

Mr. McCULLOCH. I certainly join the chairman with respect to his opinions concerning the advisability of having the comments and views of the Department of Justice in this matter. And I want to join you, Mr. Chairman, in your request for their appearance. I am sure that there is going to be no refusal or no continued reluctance on the part of the Attorney General or representatives of the Department of Justice to testify on this important matter—that is my personal opinion. I have no authority to state that from the Attorney General, but I am sure there will be arrangements with the Attorney General or through the authorized representatives of the Department to appear before this subcommittee.

The CHAIRMAN. I hope the gentleman's optimism is justified and proven correct. We have asked them to appear but thus far we have

failed, shall I say, to awaken the Department to a sense of responsibility.

Mr. McCULLOCH. Mr. Chairman, may I inquire, when was the first invitation to the Attorney General?

The CHAIRMAN. Almost 60 days ago we wrote to them and got no response. Since then we have spoken repeatedly to representatives of the Department over the telephone and they said they wanted to wait. To this point they have not appeared.

Now, I will take it upon myself again to make a request of the Department and I hope that this last and final request on our part will bring somebody in from the Department of Justice.

Mr. McCULLOCH. Mr. Chairman, it is entirely possible that the Attorney General's Office was awaiting the report of the Association of the Bar of the City of New York, and I think it should be borne in mind that these bills were not introduced until February 22, 1960.

The CHAIRMAN. I will tell you, also, that we asked the Department over a year ago to report on the various bills that we are considering. There was no need for the Department to wait for Mr. Lindsay's bill which came in after the Bar Association of the City of New York rendered its report.

We will be glad to hear you now, Congressman Lindsay.

STATEMENT OF HON. JOHN V. LINDSAY, A REPRESENTATIVE IN CONGRESS FROM THE 17TH CONGRESSIONAL DISTRICT OF THE STATE OF NEW YORK

Mr. LINDSAY, Mr. Chairman, and members of the committee, I am very grateful to you for permitting me to talk for a few moments this morning by way of introducing the members of the Special Committee on the Federal Conflict of Interest Laws of the Association of the Bar of the City of New York.

Let me say at the outset that there has been published by the Association of the Bar, by this special committee, a report which is voluminous on the subject of the conflict of interest laws in the executive branch of the U.S. Government. This committee has also drafted a bill which I, as a member of the special committee, introduced in the House of Representatives on the 22d of February 1960.

(H.R. 10575 is as follows:)

[H.R. 10575, 86th Cong., 2d sess.]

A BILL To supplement and revise the criminal laws prescribing restrictions against conflicts of interest applicable to employees of the executive branch of the Government of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TABLE OF CONTENTS

TITLE I—PROHIBITED CONDUCT, ADMINISTRATION AND PROCEDURE

Sec. 1.	Preamble: declaration of policy and purpose.
Sec. 2.	Definitions.
Sec. 3.	Acts affecting a personal economic interest.
Sec. 4.	Assisting in transactions involving the Government.
Sec. 5.	Compensation for regular Government employees from non-Government sources.
Sec. 6.	Gifts.
Sec. 7.	Abuse of office.
Sec. 8.	Postemployment.
Sec. 9.	Illegal payments.
Sec. 10.	Administration.
Sec. 11.	Preventive measures.
Sec. 12.	Remedies; civil penalties; procedure.

TITLE II—CRIMINAL PENALTIES

Sec. 21. Acts in violation of Executive Conflict of Interest Act.

TITLE III—AMENDMENT AND REPEAL OF EXISTING LAWS

- Sec. 31. Amendment of title 18, United States Code, sections 216 and 1914.
 Sec. 32. Amendment of title 18, United States Code, sections 281, 283, and 434.
 Sec. 33. Amendment of title 18, United States Code, section 284.
 Sec. 34. Amendment of title 22, United States Code, section 1792.
 Sec. 35. Amendment of title 5, United States Code, section 30r(d).
 Sec. 36. Repeal of particular substantive restraints.
 Sec. 37. Repeal of particular substantive restraints applicable to retired officers.
 Sec. 38. Repeal of exemptions from particular conflict-of-interest statutes.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 41. Short title.
 Sec. 42. Effective date.

TITLE I—PROHIBITED CONDUCT, ADMINISTRATION AND PROCEDURE

§ 1. Preamble; declaration of policy and purpose

(a) The proper operation of a democratic government requires that officials be independent and impartial; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. The attainment of one or more of these ends is impaired whenever there exists, or appears to exist, an actual or potential conflict between the private interests of a government employee and his duties as an official. The public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to employee conduct in situations where actual or potential conflicts exist.

(b) It is also fundamental to the effectiveness of democratic government that, to the maximum extent possible, the most qualified individuals in the society serve its government. Accordingly, legal protections against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the government of those men and women who are most qualified to serve it. An essential principle underlying the staffing of our governmental structure is that its employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public cannot be avoided.

(c) It is the policy and purpose of this Act to promote and balance the dual objectives of protecting Government integrity and of facilitating the recruitment and retention of the personnel needed by Government, by prescribing essential restrictions against conflicts of interest in the executive branch of the Government without creating unnecessary barriers to public service.

§ 2. Definitions

Unless the context of this Act otherwise clearly requires, for purposes of this Act the terms defined in this section shall have the respective meanings hereinafter set forth. The terms defined in this section include: "agency"; "agency head" and "head of an agency"; "assist"; "compensation"; "Government action"; "Government employee"; "intermittent Government employee"; "participate"; "person"; "regular Government employee"; "responsibility"; "State"; "thing of economic value"; and "transaction involving the Government".

(a) "Agency" means—

- (1) the Executive Office of the President;
- (2) an executive department;
- (3) an independent establishment within the executive branch; and
- (4) a Government corporation.

For purposes of this subsection (a)—

(1) the executive departments are the Departments of State; Defense; Treasury; Justice; Post Office; Interior; Agriculture; Commerce; Labor; and Health, Education, and Welfare; and

(ii) "independent establishment within the executive branch" means any establishment, commission, board, committee or other nonincorporated instrumentality of the United States which is not—

- (A) part of an executive department or Government corporation; or
- (B) part of the legislative or judicial branches of the United States.

(iii) "Government corporation" means any corporation which is either defined as a "wholly owned Government corporation" in the Government Corporations Control Act of 1946 or is designated as a Government corporation for purposes of this Act by the President by regulations issued pursuant to section 10.

(b) "Agency head" and "head of an agency" mean the chief executive officer of an agency, who shall be the chairman in the case of an independent establishment which is a commission, board, or committee. The Secretary of Defense may delegate to the Secretaries of the Army, the Navy, and Air Force such of his responsibilities as an agency head as he may deem appropriate.

(c) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to, another person with knowledge that such action is of help, aid, advice, or assistance to such person and with intent so to assist such person.

(d) "Compensation" means any thing of economic value, however designated, which is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person or to the United States.

(e) "Government action" means any action on the part of the executive branch of the United States, including, but not limited to—

(1) any decision, determination, finding, ruling, or order, including the judgment or verdict of a military court or board; and

(2) any grant, payment, award, license, contract, transaction, sanction or approval, or the denial thereof, or failure to act with respect thereto.

(f) "Government employee" means any individual who is—

(1) appointed by one of the following acting in his official capacity—

(A) the President of the United States, or

(B) a person who qualifies as an employee under this definition; and

(2) engaged in the performance of a Federal function under authority of the Constitution, an Act of Congress, or an Executive act; and

(3) under the supervision or authority of one of the persons listed in (A) or (B) under (1).

Notwithstanding the foregoing, the term "Government employee" shall not include any of the following—

(i) officers and employees in the legislative and judicial branches of the United States;

(ii) employees of the District of Columbia;

(iii) employees of corporations other than Government corporations as defined in subsection (a) (iii) of this section; and

(iv) a reserve of the Armed Forces, when he is not on active duty and is not otherwise a Government employee.

An individual shall not be deemed an employee solely by reason of his receipt of a pension, disability payments, or other payments not made for current services, or by reason of his being subject to recall to active service.

Every Government employee shall be deemed either "intermittent" or "regular", as determined by the definitions contained in subsections (g) and (j), respectively, of this section.

(g) "Intermittent Government employee" means any Government employee who has performed services as such employee on not more than fifty-two working days (which shall not include Saturdays, Sundays, and holidays) out of the preceding three hundred and sixty-five calendar days: *Provided, however, That—*

(1) the President may issue an order increasing to not more than one hundred and thirty days the number of working days within a three hundred and sixty-five calendar day period on which a particular Government employee may perform services while still being classified as an intermittent Government employee for purposes of this Act: *Provided, That the President shall make a determination that the national interest requires the retention of such employee's services during a further specified period. A statement of the pertinent facts and of the President's determination of national interest shall be published in the Federal Register:*

(2) a Reserve of the Armed Forces, unless otherwise a regular Government employee, shall be classified as an intermittent Government employee for purposes of this Act while on active duty solely for training, irrespective of the number of working days of such training;

(3) irrespective of the fact he has performed services on less than fifty-two working days, a Government employee shall be deemed a regular Govern-

ment employee, as defined in subsection (j) of this section, and not an intermittent Government employee, if—

(A) he was appointed to a position calling for regular and continuing full-time services, and

(B) his appointment did not evidence an intent that his services would be for a period of less than one hundred and thirty working days in the three hundred and sixty-five calendar day period following such appointment.

The termination of any particular term of employment of an intermittent Government employee shall take effect on the day when the earliest of the following events occurs:

(i) He becomes a regular Government employee, as defined in subsection (j) of this section;

(ii) He resigns, retires, or is dismissed, or the termination of his status is otherwise clearly evidenced; or

(iii) Three hundred and sixty-five calendar days shall have elapsed since the last working day on which he shall have performed service as an intermittent Government employee, unless his appointment was expressly for a longer period.

An intermittent Government employee shall be in such status on days on which he performs no services as well as days on which he performs services.

(h) "Participate," in connection with a transaction involving the Government, means to participate in Government action or a proceeding personally and substantially as a Government employee, through approval, disapproval, recommendation, decision, the rendering of advice, investigation, or otherwise.

(i) "Person" means any—

(1) individual;

(2) partnership, association, corporation, firm, institution, trust, foundation, or other entity (other than the United States or an agency), whether or not operated for profit;

(3) State or municipality of the United States or any subdivision thereof including public districts and authorities; and

(4) foreign country or subdivision thereof.

(j) "Regular Government employee" means any Government employee other than an intermittent Government employee, as defined in subsection (g) of this section. The termination of any particular term of employment of a regular Government employee shall take effect when he resigns, retires, or is dismissed, or the termination of his status is otherwise clearly evidenced.

(k) "Responsibility," in connection with a transaction involving the Government, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, effectively to approve, disapprove, or otherwise direct Government action in respect of such transaction.

(l) "State" means any State of the United States and the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(m) "Thing of economic value" means any money or other thing having economic value, and includes, without limiting the generality of the foregoing—

(1) any loan, property interest, interest in a contract, or other chose in action, and any employment or other arrangement involving a right to compensation;

(2) any option to obtain a thing of economic value, irrespective of the conditions to the exercise of such option; and

(3) any promise or undertaking for the present or future delivery or procurement of a thing of economic value.

In the case of an option, promise, or undertaking, the time of receipt of the thing of economic value shall be deemed to be, respectively, the time the right to the option becomes fixed, irrespective of the conditions to its exercise, and the time the promise or undertaking is made, irrespective of the conditions to its performance.

(n) "Transaction involving the Government" means any proceeding, application, submission, request for a ruling, or other determination, contract, claim, case, or other such particular matter—

(1) which the Government employee or former Government employee in question believes, or has reason to believe, is, or will be, the subject of Government action; or

- (2) in or to which the United States is a party; or
- (3) in which the United States has a direct and substantial proprietary interest.

§ 3. Acts affecting a personal economic interest

(a) **ECONOMIC INTERESTS OF A GOVERNMENT EMPLOYEE.**—No Government employee shall participate in a transaction involving the Government in the consequences of which he has a substantial economic interest of which he may reasonably be expected to know.

(h) **ECONOMIC INTERESTS OF PERSONS IN WHICH A GOVERNMENT EMPLOYEE HAS AN INTEREST.**—No Government employee shall participate in a transaction involving the Government in the consequences of which, to his actual knowledge, any of the following persons has a direct and substantial economic interest:

- (1) His spouse or child; or
- (2) Any person in which he has a substantial economic interest of which he may reasonably be expected to know; or
- (3) Any person of which he is an officer, director, trustee, partner, or employee; or
- (4) Any person with whom he is negotiating or has any arrangement concerning prospective employment; or
- (5) Any person who is a party to an existing contract with such Government employee or an obligee of such Government employee as to a thing of economic value and who, by reason thereof, is in a position to affect directly and substantially such employee's economic interests.

(c) **DISQUALIFICATION.**—Every Government employee shall disqualify himself from participating in a transaction involving the Government when a violation of subsection (a) or (h) would otherwise result. The procedures for such disqualification shall be established by regulations issued pursuant to section 10.

(d) **SUBSTANTIAL ECONOMIC INTEREST.**—The term "substantial economic interest" may be defined by regulations issued by the President pursuant to section 10, but the term shall not include—

- (1) the interest of a Government employee in his grade, salary, or other matters arising solely from his Government employment;
- (2) the interest of a Government employee, or of a person referred to in subsection (b) solely as a member of the general public, or of any significant economic or other segment of the general public.

(e) **PRESIDENTIAL EXEMPTION.**—The President may issue an order suspending the operation of subsections (a) and (h), in whole or in part, as to a particular employee with respect to transactions involving the Government of a particular category or in connection with a particular assignment, provided that the President shall make a determination that under all the circumstances the national interest in such employee's participation exceeds the public interest in his disqualification. A full statement of the pertinent facts and of the President's determination of national interest shall be published in the Federal Register.

§ 4. Assisting in transactions involving the Government

(a) **GENERAL RULE FOR ALL EMPLOYEES.**—Except in the course of his official duties or incident thereto, no Government employee shall assist another person, whether or not for compensation, in any transaction involving the Government—

- (1) in which he has at any time participated; or
- (2) if such transaction involving the Government is or has been under his official responsibility at any time within a period of two years preceding such assistance.

(b) **ADDITIONAL GENERAL RULE FOR REGULAR EMPLOYEES.**—Except in the course of his official duties or incident thereto, no regular Government employees shall—

- (1) assist another person for compensation in any transaction involving the Government;
- (2) assist another person by representing him as his agent or attorney, whether or not for compensation, in any transaction involving the Government.

(c) **NO SHARING IN COMPENSATION.**—No Government employee shall share in any compensation received by another person for assistance which such Government employee is prohibited from rendering pursuant to subsection (a) or (b).

(d) **PARTNERSHIPS.**—No partnership of which a Government employee is a partner, and no partner or employee of such a partnership, shall assist another person in any transaction involving the Government if such Government employee is prohibited from doing so by subsection (a).

(e) **PERMITTED EXCEPTIONS.**—(1) Nothing in this section shall prevent a Government employee, subject to conditions or limitations set forth in regulations issued pursuant to section 10, from assisting, in a transaction involving the Government—

(A) his parent, spouse, or child, or any thereof for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary;

(B) a person other than his parent, spouse, or child for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary;

(C) another Government employee involved in disciplinary, loyalty, or other personnel administration proceedings; or

(D) another person in the performance of work under a contract with or for the benefit of the United States:

Provided, however, That—

(E) in the case of clauses (A) and (B), such Government employee shall not have at any time participated in such transaction, nor, in the case of clause (B), shall such transaction have been under his official responsibility; and

(F) in the case of clauses (A), (B), (C), and (D), the circumstances of the assistance shall have been disclosed to the head of the employee's agency and approved by him in advance of the assistance; and

(G) in the case of clause (D), the head of such employee's agency shall have certified in writing that in his opinion the national interest will be promoted by permitting the special knowledge or skills of such Government employee to be made available to assist such other person in connection with such performance.

(2) Nothing in this section shall prevent a Government employee from giving testimony under oath or from making statements required to be made under penalty of perjury or contempt.

§ 5. Compensation for regular Government employees from non-Government sources

(a) **UNCOMPENSATED EMPLOYEES.**—For purposes of this section the term "regular Government employee" shall not include any Government employee who, in accordance with the terms of his appointment, is serving without compensation from the United States or is receiving from the United States only reimbursement of expenses incurred or a predetermined allowance for such expenses.

(b) **PAYMENTS FOR SERVICES TO THE UNITED STATES.**—No regular Government employee shall receive any thing of economic value, other than his compensation from the United States, for or in consideration of personal services rendered or to be rendered to or for the United States. Any thing of economic value received by a regular Government employee prior to or subsequent to his Government employment shall be presumed, in the absence of a showing to the contrary by a clear preponderance of evidence, not to be for, or in consideration of, personal services rendered or to be rendered to or for the United States.

(c) **COMPENSATION FOR SERVICES TO OTHERS.**—No regular Government employee shall receive any thing of economic value (other than his compensation from the United States) in consideration of personal services rendered, or to be rendered, to or for any person during the term of his Government employment unless such services meet each of the following qualifications:

(1) The services are bona fide and are actually performed by such employee;

(2) The services are not within the course of his official duties;

(3) The services are not prohibited by section 4 or by applicable laws or regulations governing non-Government employment for such employee; and

(4) The services are neither performed for nor compensated by any person from whom such employee would be prohibited by section 6(b) from receiving a gift; or, alternatively, the services and compensation are fully disclosed in writing to the head of the employee's agency and are approved in writing by him.

(d) **PAYMENTS FOR FUTURE SERVICES TO OTHERS.**—No regular Government employee shall receive, directly or indirectly, any thing of economic value during the term of his Government employment in consideration of personal services to be rendered to or for any person subsequent to the term of such employment. Nothing contained in this subsection (d) shall be deemed to prevent a Govern-

ment employee from entering into a contract for prospective employment during the term of his Government employment.

(e) COMPENSATION FROM LOCAL GOVERNMENTS.—Nothing contained in this section shall prevent a Government employee from receiving compensation contributed out of the treasury of any State, county, or municipality if—

(1) the compensation is received pursuant to arrangements entered into between such State, county, or municipality and such employee's agency; or

(2) the compensation and the services for which it is received are fully disclosed in writing to the head of the employee's agency and are approved in writing by him.

(f) CONTINUATION IN CERTAIN PENSION AND OTHER PLANS.—(1) Nothing contained in this section shall prevent a Government employee's continuation in a bona fide pension, retirement, group life, health, or accident insurance, or other employee welfare or benefit plan maintained by a former employer but to which such former employer makes no contributions on behalf of such employee in respect of the period of his Government employment.

(2) Nothing contained in this section shall prevent a Government employee's continuation in a bona fide plan, maintained by a former employer and to which such former employer makes contributions on behalf of such employee, in the case of—

(A) a pension or retirement plan qualified under the provisions of the Internal Revenue Code, or

(B) a group life, health, or accident insurance plan: *Provided*, That the contributions by such employer are not made for a period longer than five consecutive years of Government employment (or an aggregate of five years out of the preceding ten).

(3) Nothing contained in this section shall require the termination of the rights of a Government employee acquired under a bona fide profit-sharing or stock bonus plan maintained by a former employer and qualified under the provisions of the Internal Revenue Code: *Provided*, That no contributions are made by such former employer on behalf of the Government employee based on profits attributable to any portion of the period of his Government employment.

(4) The provisions of this subsection (f) shall be subject to any additional conditions or limitations, including limitations on maximum amounts, set forth in regulations issued pursuant to section 10.

(g) TRAVEL AND RELATED EXPENSES.—Travel and related expenses received other than from the United States shall be deemed to be for or in consideration of personal services rendered to or for a person only to the extent provided in regulations issued pursuant to section 10.

§ 6. Gifts

(a) GENERAL RULE FOR ALL EMPLOYEES.—No Government employee shall receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from any person if such Government employee has reason to believe the donor would not give the gift, gratuity, or favor but for such employee's office or position within the Government.

(b) ADDITIONAL GENERAL RULE FOR REGULAR EMPLOYEES.—No regular Government employee shall receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from any person, or from any officer or director of such person, if such regular Government employee has reason to believe such person—

(1) has or is seeking to obtain contractual or other business or financial relationships with such employee's agency; or

(2) conducts operations or activities which are regulated by such employee's agency; or

(3) has interests which may be substantially affected by such employee's performance or nonperformance of official duty.

(c) PERMITTED EXCEPTIONS.—Exceptions to subsections (a) and (b) may be made by regulations issued pursuant to section 10 in situations where the circumstances do not lead to the inference that the official judgment or action of the Government employee receiving, directly or indirectly, the gift, gratuity, or favor was intended to be influenced thereby.

§ 7. Abuse of office

Except in the course of his official duties or incident thereto, no Government employee shall, in his relationships with any person specified in the succeeding sentence, use the power or authority of his office or position within the Govern-

ment in a manner intended to induce or coerce such other person to provide such Government employee or any other person with any thing of economic value, directly or indirectly. This section shall apply to relationships with any person, or any officer or director of such person, from whom such Government employee, if he were a regular Government employee, would be prohibited by section 6(b) from receiving a gift.

§ 8. Postemployment

(a) GENERAL RULE.—No former Government employee shall at any time subsequent to his Government employment assist another person, whether or not for compensation, in any transaction involving the Government—

(1) in which he at any time participated during his Government employment; or

(2) if such transaction involving the Government was under his official responsibility as a Government employee at any time within a period of two years preceding such assistance.

(b) NO SHARING IN COMPENSATION.—No former Government employee shall share in any compensation received by another person for assistance which such former Government employee is prohibited from rendering by subsection (a).

(c) PARTNERSHIPS.—(1) No partnership of which a former Government employee is a partner, and no partner or employee of such a partnership, shall, for a period of two years following the termination of his Government employment, assist another person in any transaction involving the Government in which such former Government employee at any time participated during his Government employment. For purposes of this subsection (c)(1), the termination of the former Government employee's employment with the agency by which he was employed when he so participated shall be deemed to be the termination of his Government employment.

(2) Whenever subsection (c)(1) would be applicable but for the expiration of the period of two years referred to therein, the circumstances of the former Government employee's participation in the transaction during his Government employment, if the individuals acting for the partnership are aware of such participation, shall be disclosed to the agency principally involved in the transaction involving the Government, and an affidavit of such former employee to the effect that he has not assisted in such transaction involving the Government shall be furnished to such agency.

(d) SPECIAL RULE FOR COMPUTATION OF TWO-YEAR PERIOD FOR CERTAIN FORMER INTERMITTENT EMPLOYEES.—For purposes of this section, a former intermittent Government employee whose employment terminated under clause (iii) of section 2(g) shall be deemed to have terminated such employment on the last working day on which he performed services as an intermittent Government employee.

(e) PERSONS FORMERLY ON ACTIVE DUTY AS COMMISSIONED OFFICERS OF ARMED FORCES.—The President shall, in furtherance of this section 8, issue regulations of the nature herein described applicable to persons who have been commissioned officers on active duty in one of the armed forces of the United States. Such regulations shall have the effect of prohibiting such persons, for the periods therein specified, from personally dealing with personnel of the Department of Defense, or of such units thereof as may be specified in such regulations, with the purpose of assisting in the sale of anything, including services, to the United States through the Department of Defense or such units thereof as may be specified in such regulations. The retirement pay of any retired commissioned officer who violates such regulations shall be terminated pursuant to the regulations issued hereunder for the periods therein specified.

(f) PERMITTED EXCEPTIONS.—The permitted exceptions applicable to Government employees under section 4(e) shall also be applicable to former Government employees under this section 8, subject to conditions or limitations set forth in regulations issued pursuant to section 10. For purposes of this section 8, references in such section 4(c) to the Government employee providing assistance shall be deemed to be to the former Government employee, and references to his agency shall be deemed to be to his former agency.

§ 9. Illegal payments

(a) PAYMENTS AS COMPENSATION, ETC.—No person shall give, pay, loan, transfer, or deliver, directly or indirectly, to any other person any thing of economic value believing or having reason to believe that there exist circumstances making the receipt thereof a violation of section 4, 5, or 8.

(h) GIFTS.—No person shall give, transfer, or deliver, directly or indirectly, to a Government employee any thing of economic value as a gift, gratuity, or favor if either—

(1) such person would not give the gift, gratuity, or favor but for such employee's office or position within the Government; or

(2) such person is in a status specified in clause (1), (2), or (3) of section 6(b).

Exceptions to this subsection (h) may be made by regulations issued pursuant to section 10 in situations referred to in section 6(c).

§10. Administration

(a) RESPONSIBILITY OF THE PRESIDENT.—(1) The President shall be responsible for the establishment of appropriate standards to protect against actual or potential conflicts of interest on the part of Government employees and for the administration and enforcement of this Act and the regulations and orders issued hereunder.

(2) The President may, and shall do so when required by this Act, issue regulations extending, supplementing, implementing, or interpreting the provisions of this Act. Such regulations shall take precedence over any regulations issued by agency heads pursuant to subsection (c).

(3) The President shall have particular responsibility for the enforcement of this Act as applied to employees of the Executive Office of the President and to agency heads, and for this purpose the President shall have all the powers of an agency head.

(4) The President may conduct investigations of facts, condition or conditions, practices, or other matters in carrying out his responsibilities and powers under this subsection (a) and in obtaining information to serve as a basis for recommending further legislation related to the purposes of this Act. In connection with any such investigation the President shall have all the powers with respect to oaths, affirmations, subpoenas, and witnesses as are provided in section 12(h)(2). The President may delegate any or all of his powers under this subsection (a)(4) to the Administrator referred to in subsection (b) or to others, either generally or in particular instances.

(b) EXECUTIVE CONFLICT OF INTEREST ACT ADMINISTRATOR.—(1) The President shall designate an official from within the Executive Office of the President or create an office within the Executive Office of the President (such official or the head of such office being hereinafter referred to as the "Administrator") to perform the following functions:

(A) To assist the President in carrying out his responsibilities under subsection (a);

(B) To receive copies of all regulations issued by agency heads pursuant to subsection (c), to analyze the same and make recommendations to agency heads with respect thereto;

(C) To receive reports from agencies and to collect information with respect to, and conduct studies of, personal conflicts of interest of Government employees within the executive branch;

(D) To consult with the Attorney General, the Chairman of the Civil Service Commission, the Comptroller General and other appropriate officials with respect to conflict-of-interest matters affecting more than one agency;

(E) To consult with agency heads, and with appropriate officers designated by them, as to the administration of this Act within their respective agencies and the regulations issued hereunder applicable to their respective agencies;

(F) To give advice with respect to the application of this Act and regulations issued hereunder, when so requested by the President or agency heads;

(G) To undertake and conduct, in conjunction with agency heads, a study of the extent to which any of the principles of this Act should be made applicable to persons and to the employees of persons having contracts, subcontracts, licenses, or similar relationships with or from the United States; and

(H) To provide reports and information to the President and the Congress concerning the administration of this Act and conflict-of-interest matters generally.

(2) The Administrator is authorized to employ personnel and expend funds for the purposes of this Act, to the extent of any appropriations made for the purposes hereof.

(c) **RESPONSIBILITY OF AGENCY HEADS.**—(1) Each agency head shall be responsible for the establishment of appropriate standards within his agency to protect against actual or potential conflicts of interest on the part of employees of his agency, and for the administration and enforcement within his agency of this Act and the regulations and orders issued hereunder.

(2) Each agency head may, subject to the regulations issued by the President under subsection (a) (2), issue regulations extending, supplementing, implementing, or interpreting the provisions of this Act as applied to his agency. He shall file copies of all such regulations with the Administrator.

(3) Each agency head may conduct investigations of facts, conditions, practices, or other matters in carrying out his responsibilities and powers under this subsection (c). In connection with any such investigation the agency head shall have all the powers with respect to oaths, affirmations, subpoenas, and witnesses as are provided in section 12(b) (2). The agency head may delegate any or all of his powers under this subsection (c) (3) to any officer designated by him, either generally or in particular instances.

§ 11. Preventive measures

The head of an agency may, and shall do so if so provided in regulations issued by the President, require—

(a) individuals entering Government employment with such agency and, periodically, the employees or particular categories of employees of such agency, to sign a statement that they have read an appropriate summary of the rules established by this Act and the regulations issued hereunder;

(b) employees of such agency, or particular categories thereof, to report periodically as to their non-Government employment or self-employment, if any;

(c) representatives of other persons before an agency to certify that, to the best of their knowledge, their representation will not violate section 4 or 8 or the regulations issued thereunder; and

(d) persons who are principals in transactions involving the Government to certify that, to the best of their knowledge, they have not received assistance under circumstances which would violate section 4 or 8 or the regulations issued thereunder.

§ 12. Remedies; civil penalties; procedure

(a) ADMINISTRATIVE ENFORCEMENT AS TO CURRENT GOVERNMENT EMPLOYEES.—

(1) **Remedies and Civil Penalties:** The head of an agency may dismiss, suspend, or take such other action as may be appropriate in the circumstances in respect of any Government employee of his agency upon finding that such employee has violated this Act or regulations promulgated hereunder. Such action may include the imposition of conditions of the nature described in subsection (b) (1).

(2) **Procedure:** The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally, and any such action shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of employees of the same category and grade.

(b) ADMINISTRATIVE ENFORCEMENT AS TO FORMER GOVERNMENT EMPLOYEES AND OTHERS.—

(1) **Remedies and Civil Penalties:** The head of an agency, upon finding that any former employee of such agency or any other person has violated any provision of this Act, may, in addition to any other powers the head of such agency may have, bar or impose reasonable conditions upon—

(A) the appearance before such agency of such former employee or other person, and

(B) the conduct of, or negotiation or competition for, business with such agency by such former employee or other person, for such period of time as may reasonably be necessary or appropriate to effectuate the purposes of this Act.

(2) Procedure:

(A) **Hearings.**—Findings of violations referred to in subsection (b) (1) shall be made on the record after notice and hearing, conducted in accordance with the provisions governing adjudication in title 5, United States Code, secs. 1005, 1006, 1007, 1008, and 1011 (Administrative Procedure Act). For the purposes of such hearing any agency

head, or any officer designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the agency head finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing. Witnesses summoned by the agency head to appear shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(B) **Judicial review.**—(1) Any party to a proceeding under this subsection (b) aggrieved by an order issued by the agency head pursuant hereto, may obtain a review of such order in the court of appeals of the United States for any circuit wherein said party is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court within sixty days after the order of the agency upon a written petition praying that such order be modified or set aside in whole or in part.

(ii) A copy of such petition shall forthwith be transmitted by the clerk of the court to the agency head involved, and thereupon such agency head shall file with the court the record upon which the order complained of was entered. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.

(iii) No objection to the order of the agency head shall be considered by the court unless such objection shall have been urged before the agency or there is reasonable ground for failure to do so.

(iv) The findings of the agency head as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material in that there were reasonable grounds for failure to adduce such evidence in the proceedings before the agency, the court may order such additional evidence to be taken before the agency and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

(v) The agency head may modify his findings as to the facts by reason of the additional evidence so taken and shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside in whole or in part, any such order of the agency head, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of title 28. The commencement of proceedings for review under this subsection shall not, unless specifically ordered by the court, operate as a stay of the agency head's order.

(c) **RESCISSON OF GOVERNMENT ACTION.**—The President or any agency head may cancel or rescind any Government action without contractual liability to the United States where—

(1) he has found that a violation of this Act has substantially influenced such Government action; and

(2) in his judgment the interests of the United States so require under all of the circumstances, including the position of innocent third parties. The finding referred to in clause (1) shall be made in accordance with the procedures set forth in subsection (b) (2) and shall be subject to judicial review in accordance with the provisions of subsection (b) (2) (B): *Provided*, That the President or such agency head may suspend Government action pending the determination, pursuant to this subsection, of the merits of the controversy. The exercise of judgment pursuant to clause (2) of this subsection shall not be subject to judicial review.

(d) **CIVIL REMEDY FOR DAMAGES AGAINST EMPLOYEES AND FORMER EMPLOYEES.**—The Attorney General of the United States may bring a civil action in any district court of the United States against any Government employee or former Government employee who shall, to his economic advantage, have acted in viola-

tion of this Act, and in such action may recover on behalf of the United States in partial reimbursement of the United States for its expenses of administering this Act, damages in an amount equal to three times the amount of such economic advantage.

(e) **CIVIL PENALTIES FOR ILLEGAL PAYMENTS.**—Any person who shall violate section 9 shall pay a civil penalty of not more than \$5,000, in partial reimbursement of the United States for its expenses of administering this Act. The Government employee or former Government employee involved shall not be subject to prosecution under title 18, United States Code, section 2, or title 18, United States Code, section 371, or any other provision of law dealing with criminal conspiracy, by reason of the receipt of any such payment.

(f) **PUBLICATION OF CERTAIN FINDINGS AND DECISIONS.**—Whenever the head of any agency, or the President, exercises the authority conferred by subsections (a), (b), or (c) of this section, copies of the findings and decision therein shall be filed with the President and shall be published at least once each year as part of a volume collecting such findings and opinions. Such volumes shall be made available for public inspection and shall also be made available for distribution or sale to interested persons.

(g) **INTERESTS OF NATIONAL SECURITY.**—When any provision of this Act requires publication of information and the President finds that publication of part or all of such information is inconsistent with national security, he may suspend the requirement of such publication to the extent and for such period of time as he shall deem essential for reasons of national security.

(h) **STATUTE OF LIMITATIONS.**—No administrative or other action under subsections (b), (c), (d), or (e) of this section to enforce any provision of this Act shall be commenced after the expiration of six years following the occurrence of the alleged violation.

TITLE II—CRIMINAL PENALTIES

§ 21. Acts in violation of Executive Conflict of Interest Act

Title 18 of the United States Code is amended by adding a new chapter thereto, to be designated chapter 16 and reading as follows:

“CHAPTER 16—CONFLICTS OF INTEREST

“§ 301. Acts in violation of Executive Conflict of Interest Act

“Any person who shall purposely or knowingly violate any provision of the Executive Conflict of Interest Act shall be fined not more than \$10,000, or imprisoned for not more than one year, or both. For purposes of this section, the terms ‘purposely’ and ‘knowingly’ shall have the respective means set forth in subsections (a) and (b):

“(a) ‘Purposely’: A person acts purposely with respect to a material element of an offense when—

“(1) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

“(2) if the element involves the attendant circumstances, he knows of the existence of such circumstances.

“(b) ‘Knowingly’: A person acts knowingly with respect to a material element of an offense when—

“(1) if the element involves the nature of his conduct or the attendant circumstances, he knows that his conduct is of that nature or he knows of the existence of such circumstances; and

“(2) if the element involves a result of his conduct, he knows that his conduct will necessarily cause such a result.”

TITLE III—AMENDMENT AND REPEAL OF EXISTING LAWS

§ 31. Amendment of title 18, United States Code, sections 216 and 1914

Section 216 of chapter 11 and section 1914 of chapter 93 of title 18 of the United States Code are each amended by adding the following as a new paragraph to precede the present text of each such section:

“From and after the effective date of the Executive Conflict of Interest Act, this section shall not apply to (1) any person who is a Government employee as defined in section 2(f) of that Act, and (2) any act of another person which is directed toward such a Government employee.”

§ 32. Amendment of title 18, United States Code, sections 281, 283, and 434

Sections 281 and 283 of chapter 15 of title 18 of the United States Code are each amended by deleting the second paragraph thereof. Each of such sections is further amended and section 434 of chapter 23 of title 18 of the United States Code is amended by adding the following as a new paragraph to precede the present text of each such section:

"From and after the effective date of the Executive Conflict of Interest Act, this section shall not apply to any person who is a Government employee as defined in section 2(f) of that Act."

§ 33. Amendment of title 18, United States Code, section 284

Section 284 of chapter 15 of title 18 of the United States Code is amended by adding the following as a new paragraph to precede the present text of such section:

"From and after the effective date of the Executive Conflict of Interest Act, this section shall not apply to any person who has been a Government employee as defined in section 2(f) of that Act."

§ 34. Amendment of title 22, United States Code, section 1792(a)

Section 532(a) of the Mutual Security Act of 1954 (68 Stat. 859), as amended by section 10(d) of the Act of July 18, 1956 (70 Stat. 561; 22 U.S.C. 1792 (a)), is amended to read as follows:

"(a) Service of an individual as a member of the Board established pursuant to section 308 of this Act or as an expert or consultant under section 530(a) shall not be considered as employment or holding of office or position bringing such individual within the provisions of section 6 of the Act of May 22, 1920 (5 U.S.C. 715), or section 212 of the Act of June 30, 1932 (5 U.S.C. 59a), or any other Federal law limiting the reemployment of retired officers or employees or governing the simultaneous receipt of compensation and retired pay or annuities. Contracts for the employment of retired military personnel with specialized research and development experience, not to exceed ten in number, as experts or consultants under section 530(a), may be renewed annually, notwithstanding section 15 of the Act of August 2, 1946 (5 U.S.C. 55(a))."

§ 35. Amendment of title 5, United States Code, section 30r(d)

Section 29(d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(d)), is amended to read as follows:

"(d) When he is not on active duty, or when he is on active duty for training, a reserve is not considered to be an officer or employee of the United States or a person holding an office of trust or profit or discharging any official function under, or in connection with, the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity: *Provided, however,* That a reserve on active duty for training shall be deemed an employee of the United States for purposes of the Executive Conflict of Interest Act."

§ 36. Repeal of particular substantive restraints

The following sections are repealed:

(a) Section 190 of the Revised Statutes (5 U.S.C. 99) (relating to postemployment prosecution of claims by employees in departments); and

(b) Section 244 of the Revised Statutes (5 U.S.C. 254) (relating to certain business interests of clerks in the Treasury Department);

§ 37. Repeal of particular substantive restraints applicable to retired officers

The following sections are repealed:

(a) Section 1309 of the Act of August 7, 1953 (67 Stat. 437; 5 U.S.C. 59c), (relating to loss of retirement pay by retired commissioned officers engaged in certain selling activities).

(b) Section 6112 of chapter 557 of title 10 of the United States Code (relating to the loss of pay or retirement pay by certain officers who sell naval supplies to the Navy Department).

§ 38. Repeal of exemptions from particular conflict-of-interest statutes

The following sections are repealed:

(a) Section 173(c) of chapter 7 of title 10 of the United States Code (providing certain conflicts exemptions for advisers to the Secretary of Defense).

(b) Section 1583(b) of chapter 81 of title 10 of the United States Code (authorizing conflicts exemptions for persons employed by the Secretary of Defense to serve without compensation).

(c) Section 5153(d) of chapter 513 of title 10 of the United States Code (providing certain conflicts exemptions for members of the Naval Research Advisory Committee).

(d) Section 807 of the Act of August 2, 1954 (68 Stat. 645; 12 U.S.C. 1701h), (providing certain conflicts exemptions for members of advisory committees of the Housing and Home Finance Agency).

(e) Section 5 of the Act of June 4, 1956 (70 Stat. 243; 16 U.S.C. 934) (providing certain conflicts exemptions for commissioners and members of advisory committees appointed under the Great Lakes Fishery Act of 1956).

(f) Section 5 of the Act of September 7, 1950 (64 Stat. 778; 16 U.S.C. 954) (providing certain conflicts exemptions for commissioners and members of advisory committees appointed under the Tuna Conventions Act of 1950).

(g) Section 5 of the Act of September 27, 1950 (64 Stat. 1068; 16 U.S.C. 984) (providing certain conflicts exemptions for commissioner and members of advisory committees appointed under the Northwest Atlantic Fisheries Act of 1950).

(h) Section 5 of the Act of August 12, 1954 (68 Stat. 698; 16 U.S.C. 1024) (providing certain conflicts exemptions for commissioners and members of advisory committees appointed under the North Pacific Fisheries Act of 1954).

(i) Section 1003 of the Act of September 2, 1958 (72 Stat. 1603; 20 U.S.C. 583) (providing certain conflicts exemptions for members of advisory committees and information councils appointed under the National Defense Education Act of 1958).

(j) Section 14(f) of the Act of May 10, 1950 (64 Stat. 154, 155; 42 U.S.C. 1873(f)) (providing certain conflicts exemptions for members of the National Science Board and committees and commissions appointed under the National Science Foundation Act of 1950).

(k) Section 103 of the Atomic Energy Act of 1954 (68 Stat. 951), as amended by section 2 of the Act of September 21, 1959 (73 Stat. 574; 42 U.S.C. 2203) (providing certain conflicts exemptions for members of the General Advisory Committee and advisory boards appointed under the Atomic Energy Act of 1954).

(l) Section 1(t) of the Act of June 19, 1951 (65 Stat. 87; 50 U.S.C. App. 463(a)) (providing certain conflicts exemptions for particular Selective Service officials).

(m) Section 113 of the Renegotiation Act of 1951 (65 Stat. 22), as amended by section 13 of the Act of August 1, 1956 (70 Stat. 792; 50 U.S.C. App. 1223) (providing certain conflicts exemptions for employees of departments and agencies to which the Renegotiation Act of 1951 is applicable and of the Renegotiation Board).

(n) Section 7(h) (4) of the Act of August 9, 1955 (69 Stat. 582; 50 U.S.C. App. 2160 (b) (4)) (Providing certain conflicts exemptions for persons serving without compensation under the Defense Production Act of 1950).

TITLE IV—MISCELLANEOUS PROVISIONS

§ 41. Short title

This Act shall be known and may be cited as the "Executive Conflict of Interest Act".

§ 42. Effective date

This Act shall take effect ninety days after the date of its enactment, except that section 37 shall not take effect until the effective date of the regulations issued by the President pursuant to section 8(e).

Mr. LINDSAY. Preliminarily I should say also, Mr. Chairman, that the work of this special committee, which has been going on for over 2 years insofar as its formal weekly or monthly meetings are concerned, was designed to be helpful not only to the executive branch of the Government, by its review of the whole subject conflict of interest, but to the Congress, as well. Specifically, we had in mind the Committee of the Judiciary of the House of Representatives, of which I

am honored to be a member, and, of course, Mr. Chairman, who have spent years studying this all-important subject.

The background of this study by the Association of the Bar of the City of New York I will state very briefly. Upward of 5 years ago, members of the Association of the Bar of the City of New York became deeply concerned with the subject of conflict of interest in the executive branch of Government from two points of view:

One, at all times seeing to it that the public interest was protected. This required a clear understanding of the laws and a grasp of all of the weaknesses, loopholes and confusions in existing law.

Secondly, the committee was concerned about the problem of recruitment, particularly in this day and age, the 20th century, when increasingly the Government is in need of the services of leading citizens around the country in all phase of governmental activity.

Therefore, at the instigation of at least two past presidents of the Association of the Bar of the City of New York some years ago a committee was formed. It was financed by grants from the Ford Foundation to the extent of \$72,500. It began its work early in 1958.

Membership on the special committee consisted of the following:

Roswell B. Perkins of New York, former Assistant Secretary of Health, Education, and Welfare, who is the chairman and who is here this morning. He shall testify about the committee's report and the bill which I have introduced.

Also, Howard F. Burns of Cleveland, Ohio, who is also present this morning and sitting on my left, at the table here. Mr. Burns is a member of the Council of the American Law Institute.

Charles A. Coolidge of Boston, former Assistant Secretary of Defense for Legal and Legislative Affairs.

Paul M. Herzog of New York, former Chairman of the National Labor Relations Board.

Alexander C. Hoagland, Jr., of New York, who is also here this morning sitting on Mr. Perkins' left.

Parenthetically, let me say that Mr. Hoagland, in a rather special capacity, sometime prior to the formation of the special committee, had been undertaking a review of this whole subject at the request of a past president of the Association of the Bar of the City of New York.

Other members are:

Everett L. Hollis, former General Counsel of the Atomic Energy Commission.

Charles A. Horsky, former Assistant Prosecutor at Nuremberg with the Chief of Counsel for War Crimes, now a practicing lawyer.

John E. Lockwood of New York, former General Counsel, Office of Inter-American Affairs.

Samuel I. Rosenman of New York, former special counsel to Presidents Roosevelt and Truman.

And, lastly, myself. I became a member of this committee, Mr. Chairman, sometime prior to my election to Congress and continued on in that capacity.

The committee met for 2 years in New York, 2 days each month and 1 evening (all day Fridays, Friday evenings and Saturday) for a period of approximately 2 years. A great deal of testimony was taken from people in and out of Government and, of course, the spe-

cial committee was honored when you, Mr. Chairman, came up to New York to give the committee the benefit of your views.

May I say that the committee, and I should like to emphasize this, had only one object in mind and that was to be helpful to the Government in this touchy area of conflict of interest.

It had been the intention of the committee, and it is still its intention, to publish in hard cover form the very voluminous background report that it has prepared. It had also been the committee's intention to release the text of the draft bill at about the same time.

However, this subcommittee went forward with hearings on this subject, which, let me emphasize, it not only had every right to do, but should have done. I should like to compliment the chairman and the subcommittee for proceeding with such dispatch at this all-important time when clarification in this area is so desperately needed.

In view of the hearings that were going forward, it was decided by the special committee of the Association of the Bar that if we were going to make a contribution, and if the over 2 years of study were to be put to good use, we ought to make our report available as fast as we possibly could. For that reason, mimeographed copies were prepared in advance of the hard-cover publication. In effect, a crash program by the special committee was inaugurated to make certain that the draft bill was completed and polished. That program was not finished until just a few weeks ago. At that time the mimeographed copy I have here was made available to this subcommittee and the completed and polished draft bill was introduced in the House of Representatives and in the Senate.

Mr. Chairman, the Association of the Bar of the City of New York has undertaken, in the past, other reviews of subjects of national importance, such as the question of the right to travel and passports. Another, which came before the House Committee on the Judiciary not long ago, was on the subject of the public defender system in the United States. In neither of those cases, however, in connection with those reports that were made by the Association of the Bar of the City of New York, also funded, I might add, by foundation support, was a draft bill prepared. Thus, although those reports, in my judgment, made a substantial contribution, they fell short by not undertaking the difficult task of actually trying to translate the recommendations made in those programs into legislative form.

This special committee has attempted to overcome that shortcoming by translating into terms of specific legislative proposals the recommendations that it makes in the report.

Lastly I might add that the achievement of the special committee would not have been possible without the guiding hand and selfless devotion and energy of the staff director, Prof. Bayless Manning of the Yale Law School, and Prof. Marver H. Bernstein of Princeton University, associate staff director.

Professor Manning more than met the herculean challenge of marshaling the many views of the special committee and its consultants into a unanimous report and recommended bill. The research which he and Professor Bernstein did met the highest tradition of academic scholarship. The entire special committee and I, as one of its members and as the sponsor of the legislation in the House of Representatives, are deeply grateful to both Professors Manning and Bernstein.

Mr. Chairman, at this point I should like to read into the record two paragraphs that appear in the foreword of the committee's report:

Our final expression of gratitude goes to Bayless Manning and Marver H. Bernstein. They planned and carried out the enormous task of research with vigor, imagination, tact, and thoroughness. But they brought to our conference table not only the results of their researches; they also brought us their own wide knowledge, sound judgment, and rigorous professional standards. They were our intellectual leaders, and the work of their minds is everywhere in this report.

As the individual responsible for the staff work on the entire project—for fitting all its pieces together and guiding the committee's deliberations—Professor Manning has rendered a truly outstanding performance both as a legal scholar and as a practical administrator. His work on this project, superimposed on a full teaching schedule and major commitments to several other projects, could easily have required full-time labors of several years' duration for anyone of lesser capacity and diligence.

Now, if I may be permitted, Mr. Chairman, I should like to introduce Mr. Perkins, the chairman of the special committee, who will tell you in greater detail about the proposal that the special committee has to make.

Mr. McCULLOCH. Mr. Chairman.

The CHAIRMAN. Mr. McCulloch.

Mr. McCULLOCH. Mr. Chairman, before Mr. Perkins begins his testimony, I would like to say that I am very happy that our very able Congressman, John Lindsay, is interested in this most important subject and has introduced a bill. I am sure we will continue to use his help and his interest as this subcommittee continues its study.

And, if it be in accordance with the wishes of the chairman, I would be very happy if our colleague would join us up here and be permitted to participate in the questioning.

The CHAIRMAN. We would be very happy to have Mr. Lindsay up here.

The Chair wishes to make a statement.

The Chair welcomes the testimony of Mr. Roswell Perkins, chairman of the Special Committee on the Federal Conflict-of-Interest Laws of the Association of the Bar of the City of New York.

The Chair has read with great interest the association committee's voluminous report and recommendations on conflict of interest and the Federal Service and has also carefully examined H.R. 10575, introduced by our distinguished colleague, Mr. Lindsay, which embodies the association's recommendations.

Commendation is due the bar association group for its painstaking analysis of many of the vexing problems presented by conflicts of interest. As its report aptly points out, present legislation on this subject is inconsistent, vague, and unreasonably complicated. Federal conflict-of-interest legislation comprises, in short, a hodgepodge of overlapping, inconsistent, and incomplete provisions. In these circumstances, the extensive and conscientious consideration given to this matter by the bar association will be most helpful to the Congress in the consideration of legislation which will protect the Federal service against unethical practices on the part of its employees without, at the same time, undermining the dignity of Government service or making it repugnant to able and talented men and women.

In this connection, the bill I have introduced, H.R. 2156, would revise, codify, and strengthen existing provisions of the Criminal Code

dealing with conflicts of interest and with the related subjects of bribery and graft, on the assumption, oft reiterated by the courts, that the various conflict-of-interest sections are intended to prohibit bribery in its subtle forms. I note with interest the statement in the bar association report (IX-8) that "a major contribution to the field would be made even if no more were done than to consolidate and unify this patchwork of 100 years of fitful legislation."

The bar association bill—Mr. Lindsay's bill—adopts a somewhat different approach. It repeals existing conflict-of-interest statutes applicable to executive branch personnel and places, instead, principal reliance upon the President and agency heads to invoke administrative sanctions. While criminal sanctions would be available for the most flagrant violations, even such sanctions could not as a practical matter become operative in certain areas until a Presidential regulation were promulgated. This, of course, presents a question as to the extent to which it is appropriate for the Congress to delegate to the President responsibility for defining with particularity what shall constitute a Federal criminal offense.

I observe too that the effect of the bar association bill—Mr. Lindsay's bill—is to place far more stringent restrictions on full-time Government employees but to relax even the admittedly inadequate existing restraints on those who work for the Government on an intermittent basis. For example, the bill would place additional restrictions upon full-time Government employees with respect to their assisting persons in transactions involving the Government. In contradistinction to the regular employees, the intermittent employee under the bill, however, could apparently range throughout the Government with immunity from the existing prohibitions. He could with impunity further his employer's interest in any transaction involving the Government as long as he has not had any governmental participation or responsibilities in the specific transaction. Furthermore, in dealing with the partners of former Government employees, the association's bill appears to waive to some extent the disqualifications imposed on attorneys by canon 36 of the American Bar Association "Canon of Ethics."

I mention these matters not as definitive criticisms, but because they have given me some preliminary concern. I hope that you will expand upon them in the course of your testimony.

STATEMENT OF ROSWELL B. PERKINS, CHAIRMAN, SPECIAL COMMITTEE, FEDERAL CONFLICT-OF-INTEREST LAWS, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

The CHAIRMAN. We will be glad to hear from you, Mr. Perkins. Will you identify for the record the gentlemen on your left and right?

Mr. PERKINS. Yes, sir. On my left is Mr. Howard Burns of Cleveland; and on my right, Mr. Alexander C. Hoagland, Jr., of New York City, both members of our committee.

Mr. Chairman and members of the committee, we greatly appreciate your invitation to appear before you and present the conclusions of the 2-year study our special committee has conducted on the subject of Federal conflict-of-interest laws.

We are sorry that our whole committee was not able to be here. Mr. Lindsay has given you their names and I would like to add a tribute to our two committee staff members, Prof. Bayless Manning of Yale Law School and Prof. Marver H. Bernstein of Princeton University. The contributions of these two individuals was of incalculable value, and the committee could not have possibly have completed the study without them.

Each member of your committee received approximately 2 weeks ago a mimeographed copy of the prepublication edition of our report. Its substance was made public a few days later, on February 22, 1960. This prepublication edition was issued for the sole purpose of being available at these hearings you are conducting. Our report is being published this summer by Harvard University Press. However, our special committee deemed it a public duty to make the results of our study available to your committee at this time, and hence the prepublication edition for your benefit.

The CHAIRMAN. Let me interrupt you, Mr. Perkins. Will the Harvard University Press place comments in connection with your report in juxtaposition therewith?

Mr. PERKINS. You mean in the same volume, sir?

The CHAIRMAN. The Harvard University Press will publish your report, is that it?

Mr. PERKINS. Yes, sir.

The CHAIRMAN. Is that to be distributed among lawyers throughout the country by the Ford Foundation Fund?

Mr. PERKINS. No, that is to be put on the regular publication lists of the university press.

The CHAIRMAN. Well then, are you receiving funds from the Ford Foundation with which to circulate this report that is being published by the Harvard University Press?

Mr. PERKINS. There has been no determination as to that, Mr. Chairman. At the moment the arrangements with the press is that they will publish it without any printing subsidy for it. The book would be sold by the Harvard University Press.

Mr. LINDSAY. If I may interrupt—it will be published in the normal course?

Mr. PERKINS. By the Harvard University Press.

The CHAIRMAN. It is just the report of the Association of the Bar of the City of New York?

Mr. PERKINS. I am hopeful there will be a second volume in addition to present volume, of which you have the mimeographed version. The second volume will be a report on the law as it is today, a rather detailed legal analysis of the status of the conflict-of-interest laws, rather than any proposal.

The CHAIRMAN. The point is, I hope the same publicity might be given comments on your report as might be given to the report itself. Of course, you have no jurisdiction over that, I suppose.

Mr. PERKINS. No, sir.

The CHAIRMAN. I would not want to see this as a one-sided matter. I have read the report and it is an excellent one. But in some respects I think the bar generally ought not to accept the conclusions of the association of the bar without realizing that others may have a difference of opinion.

Mr. PERKINS. Well, you have an excellent point, Mr. Chairman. I hope that the record of this committee's deliberations would be very widely available and, indeed, I think it might be well for us to call attention to them as an item in the bibliography that might go in our report—I think it is very important.

The CHAIRMAN. This subject is fraught with a great deal of difficulty and the more light shed on it the better it would be for us in our responsibility to come to some conclusion.

Mr. PERKINS. We could not agree more, Mr. Chairman.

The CHAIRMAN. All right.

Mr. PERKINS. Our special committee feels, as indeed must every person sincerely interested in the subject of conflict-of-interest law, a tremendous debt to your committee and its staff. You have performed a great service in focusing on conflict-of-interest problems as an important, complex, and independent subject of concern in the management of the governmental establishment. This parallels the very first of our special committee's recommendations. And the staff studies undertaken and completed under your direction and leadership provide a magnificent foundation for inquiry into this field. We found your staff studies invaluable to our consideration of the problems.

Congressman Lindsay has been kind enough to mention the background of our special committee: how it was appointed and how the work was conducted. The foreword to our report contains further background.

We regard the work we did in drafting a proposed Executive Conflict of Interest Act as a vital part of the study. It became apparent that perhaps the most difficult aspect of the work would be to reflect our conclusions in the form of actual language which could be considered by the Congress and others. Thus, the draft bill included in our report expresses our findings and recommendations. It represents literally hundreds of hours of painstaking consideration by the members of our special committee.

That bill has now been introduced by Congressman Lindsay, and bears the number H.R. 10575.

We wish to be responsive to your chairman's invitation to testify on H.R. 2156, H.R. 2157, and H.R. 7556, and we believe we can do so most effectively by giving you an overall picture of our conclusions and recommendations, relating them in certain aspects to the provisions of H.R. 10575.

Attached to our prepared statement as appendix A is a summary of the major conflict-of-interest rules which a Government employee would be governed by if H.R. 10575 were to be enacted. This summary of rules is written in much the same way that an employee handbook would be prepared.

In addition to our prepared statement, Mr. Chairman, I would like very much to submit one additional document for the record, and, with your permission, I do so herewith. It is a technical commentary on H.R. 10575. This technical commentary will appear as part of appendix A of the final published report of our special committee. It is in the nature of a section-by-section analysis of H.R. 10575, and supplements the discussion which appears in chapters X and XI of our report.

The CHAIRMAN. You have that permission.

(The document referred to appears at p. 469.)

Mr. LINDSAY. Mr. Chairman, I think it might be well at this point in the record to spread out the bill.

The CHAIRMAN. Your bill has already been placed in the record.

Mr. PERKINS. Before stating our recommendations, I shall summarize, in a most capsulized way, the philosophy and rationale which underlie the recommendations.

The report of the special committee has two themes. The first is that ethical standards within the Federal Government must be beyond reproach, and that there must, accordingly, be effective regulation of conflicts of interest in Federal employment. The second is that the Federal Government must be in a position to obtain the personnel and information it needs to meet the demands of the 20th century.

These themes are coequal. Neither may be safely subordinated to the other. In the opinion of the special committee, what is needed is balance in the pursuit of the two objectives. We need a longrun national policy which neither sacrifices governmental integrity for opportunism nor drowns practical staffing needs in moralism. We need a careful regulatory scheme that effectively restrains official conflicts of interest without generating pernicious side effects on recruitment.

The basic conclusion of the special committee is that such a scheme can be worked out. Our report and the proposed Executive Conflict of Interest Act contain a recommended new program which we believe would achieve this result.

Mr. McCULLOCH. Mr. Chairman—

The CHAIRMAN. Mr. McCulloch?

Mr. McCULLOCH. Mr. Chairman, I would like to make this observation. It seems to me that in addition to legislation and codes of ethics and a governmental approach, that a thing of equal importance is the continuing necessity for high moral standards upon the part of private citizens of this country. There seldom will be conflicts of interest unless private citizens encourage and make selfish use of conflicts of interest.

Mr. PERKINS. It is a very good point, Mr. McCulloch.

Continuing:

B. ASSESSMENT OF EXISTING RESTRAINTS

Our special committee concluded that the legal and administrative machinery of the Federal Government for dealing with the problem of conflicts of interest is obsolete, inadequate for the protection of the Government, and a deterrent to the recruitment and retention of executive talent and some kinds of needed consultative talent.

1. *Obsolescence*: The statutory law—most of it a century old—is not broad enough to protect the Government against the manifold modern forms of conflict of interest. Most of the statutes were and are pointed at areas of risk that are no longer particularly significant, mainly the prosecution of Government claims. Today, with the greatly expanded regulatory functions of the Federal Government, applications for rulings, clearances, approvals, licenses, certifications, grants, and other forms of Government action are far more signifi-

cant in the daily operation of Government than the prosecution of claims. Several of the basic statutes now on the books do not concern themselves at all with these modern governmental activities.

Other aspects of obsolescence in the present statutes are:

(a) Their focus of interest upon a class of lower ranking politically appointed clerks that has disappeared. The Government today obtains its manpower through a vast civil service, a top layer of short-term political appointees, an increasing group of advisory and part-time personnel, and through an unlimited variety of contracts for services provided by non-Government personnel.

(b) Their failure to recognize internal procedures of modern Government, such as the flexible processes of personnel administration available to assist in enforcement.

(c) Their lack of recognition of the facts of modern economic life, such as the existence of private pension plans.

(d) Their failure to recognize the essential blending of public and private endeavor in the modern American society, as illustrated by the partnership of government, industry, and educational institutions in the science field.

2. Inadequate administration: Partly by reason of the deficiencies in the statutory law, administration of the conflict of interest restraints has always been weak. The Government has failed to provide a rational, centralized, continuing and effective administrative machinery to deal with the problem. If the statutes presented a coordinated whole—a unified program—and if they imposed direct responsibility on the President to carry out that program, the central coordination and leadership missing in the past would improve. A well administered program could, and should guide the thousand good men as well as snare the one bad one.

The CHAIRMAN. At that point, Mr. Perkins, I would like to ask you a question, particularly in view of your statement that:

The Government has failed to provide a rational, centralized, continuing and effective administrative machinery to deal with the problem.

It is correct, is it not, that your association recommends a bill which would place primary emphasis on the responsibility of the President and agency heads to invoke administrative sanctions in dealing with conflict of interest problems?

Mr. PERKINS. Yes, sir.

The CHAIRMAN. Is it not a fact that the President already has power under existing law to issue regulations under the conflict of interest laws which would be controlling on all civil service personnel in the executive branch of Government?

Mr. PERKINS. To the best of my knowledge there is no expressed statutory authorization in that respect covering every Government employee.

The CHAIRMAN. I think you state so in your report.

Committee counsel will read the pertinent portions.

Mr. MALETZ. Mr. Chairman, at IV-2, of the Bar Association the bar report the following statement appears:

The Civil Service Commission has full authority to promulgate rules governing to conduct of civil service employees, including regulations under the conflict-of-interests laws.

Footnote 4, chapter IV, Mr. Chairman, reads:

Under Revised Statute 1753 (1875), 5 U.S.C. 631 (1952) derived from an act of 1871, and the Civil Service Act of 1883, the President is authorized to issue rules and orders relating to Federal personnel policies, including the application and enforcement of conflict of interest laws. By act of October 31, 1951, 65 Statutes 712 (1951), 3 U.S.C. 301 (Supplement IV, 1957), the President may delegate many of his functions to other officials. Accordingly under Executive Order 10530 promulgated on May 19, 1954, personnel authority was delegated to the Civil Service Commission.

Footnote No. 5, Mr. Chairman reads:

Chapter 2 of the Commission's Federal Personnel Manual, entitled "Conduct of Officers and Employees," sets forth some general rules of conduct for Federal employees, but they deal only fleetingly with matters peripheral to conflict of interests.

One statement, Mr. Chairman, in footnote 4 was particularly pertinent to your inquiry and, to repeat, that statement reads:

* * * the President is authorized to issue rules and orders relating to Federal personnel policies including the application and enforcement of conflict of interest laws.

The CHAIRMAN. Now your report indicates that regardless of the administration in office the President has not provided central leadership for the executive branch as a whole in the administration of conflict-of-interest restraints.

You say that at IV-7 and IX-7. Do you recall that?

Mr. PERKINS. Yes, sir.

The CHAIRMAN. Now does not your report state specifically at IV-7 that, "The administration of the conflict of interest restraints has always been weak, particularly in its want of coordination and leadership from the Chief Executive?"

Mr. PERKINS. Yes, sir.

The CHAIRMAN. And furthermore, did you not also indicate that the Civil Service Commission, the Attorney General, the President's Assistant for Personnel Management, the Bureau of the Budget, and the Cabinet, have also failed to provide central leadership for the executive branch as a whole in the administration of conflict of interest restraints—that is at IV-7 and IV-8?

Mr. PERKINS. Yes, sir.

The CHAIRMAN. As a matter of fact, does not your report disclose at IV-6 that notwithstanding the fact that in August 1955 the Director of the Bureau of the Budget requested the Attorney General to prepare a general consolidation and review of the conflict of interest statutes, the Attorney General has taken no apparent action on that request?

Mr. PERKINS. Well, the sentence you are referring to says:

* * * no apparent action on this request has been taken other than what may be inferred from the report of the Attorney General in 1956 that the topic was under review.

As I understand from recent conversations with the Attorney General's Office, it is under very active review at this very moment and I believe that they are in very much the same stage of thinking in evolving their own recommendations that our committee has just completed, and that this subcommittee is going through at the moment.

The CHAIRMAN: That is almost 5 years ago. But is it true your report contains the language I read?

Mr. PERKINS: Yes, sir; with the addition that I read.

The CHAIRMAN: I think it might be well to read the whole thing, sir:

On August 17, 1955, the Budget Director requested the Attorney General to prepare a general consolidation and review of the conflict-of-interest statutes but no apparent action on this request has been taken other than what may be inferred from the report of the Attorney General in 1958 that the topic was under review.

Similarly, the recommendation of the second Hoover Commission for an overall attack on the conflict-of-interest question has not been followed. On the other hand, the Department of Justice has, together with the Bureau of the Budget, successfully stood against efforts by other agencies to obtain exemptions from the conflict of interest statutes for their employees.

In these circumstances, Mr. Perkins, would not Congress be taking a most serious risk if it scrapped the present—and I emphasize “present”—conflict-of-interest statutes and placed primary reliance on the very branch of the Government whose administration of conflict of interest restraints has, according to your report, been inadequate?

Mr. PERKINS: In the first place, sir, no one as far as I know has proposed scrapping criminal enforcement penalties, and I think it would be dangerous to abandon completely—

The CHAIRMAN: But you want to repeal the present criminal conflict of interest statutes?

Mr. PERKINS: We would amend and replace the present ones with a broader set of statutes.

The CHAIRMAN: But placing the responsibility upon the Executive?

Mr. PERKINS: No, sir. The statutes would be completely spelled out in just the same way that they are now but in a new, broader, integrated act in which there would be criminal penalties.

The CHAIRMAN: But the primary reliance would be chiefly upon the Executive?

Mr. PERKINS: Only for day-to-day administration, Mr. Chairman.

The CHAIRMAN: You do set forth the power to be given to the Chief Executive to invoke administrative sanctions; do you not?

Mr. PERKINS: In addition to criminal sanctions.

The CHAIRMAN: I am speaking as to primary reliance. You place primary reliance upon the Chief Executive to invoke administrative sanctions?

Mr. PERKINS: The statute itself would specifically authorize the executive branch to invoke administrative penalties which would come before the stage of criminal enforcement, but there would be nothing to inhibit criminal enforcement.

In other words, the basic philosophy of our committee is there should be a much more active day-to-day administration of the statutes, and this would be encouraged by placing a very specific responsibility in Congressional language, in express terms of a statute, imposing upon the executive branch a responsibility actively and on a day-to-day basis to use an arsenal of administrative remedies short of criminal penalties; but this would not inhibit criminal action when it was appropriate.

The CHAIRMAN. That is correct, and you summarize it in your recommendation No. 7 which I quote:

Regular, continuing and effective enforcement of the law and regulations should be assured by emphasizing administrative remedies rather than the clumsy criminal penalty of the present law.

Isn't that in your summary?

Mr. PERKINS. That is correct. The criminal penalties are extremely difficult to invoke. You have all the difficulties of proof and of indictments—but if you want quick and prompt action, it is our feeling you can do a much more effective job on conflict-of-interest regulation by emphasizing active day-to-day administration.

The CHAIRMAN. Despite the fact that the administrative agencies and the Chief Executive have failed to provide leadership in the administration and enforcement of the present statutes, according to your own statement?

Mr. PERKINS. Well, we will stand on our statement as it stands—

The CHAIRMAN. Mr. Perkins, I want you to know that I am only asking these questions for the information of the committee. I am not trying in any sense to get you to change any statement; I want you to understand me on that.

Mr. PERKINS. Yes; I fully understand. The statement in the report is true. There has not been, in our view, the degree of centralized administration and enforcement of the conflict-of-interest laws that we believe there should be.

I should say here, Mr. Chairman, that individual agencies, many of them, have done a fine job internally and have followed a very active and effective set of regulations and are doing an excellent job; but this is spotty, and we believe it should be true of all agencies of the Government, that which is true of some agencies of Government.

The CHAIRMAN. But there has been, as you say, no leadership in this regard on the part of the Executive?

Mr. PERKINS. I don't know as the word "no" is appropriate, Mr. Chairman, but there has not been the degree of leadership and coordination we believe is desirable.

The CHAIRMAN. And despite all that, your proposal would place primary responsibility upon that very Executive which has not offered leadership and which has been rather inefficient in this regard in the past?

Mr. PERKINS. I would say that if Congress says to the executive branch, "Here is a new conflict-of-interest statute with some clear guidelines and clear and specific statements as to what can be done and what cannot be done, we have revamped the whole thing. Now, you enforce this law in the same way you enforce other employee misconduct and we will have criminal penalties standing by for the flagrant cases," we think this is what would do the job, Mr. Chairman.

We do not think it is possible for Congress to enforce on a day-to-day basis conflict-of-interest laws.

Conflict of interest in an executive agency comes up in the normal channels that other types of employee misconduct do. Inspection programs on the part of the department are likely to disclose them and at that point a great deal can be done and should be done and is being done in many, many agencies in the way of administrative remedies.

The CHAIRMAN. I hope what you say is true, but my own long experience in Congress indicates that that is not so, that the agencies themselves are very reluctant to invoke sanctions against their own employees; they just do not like to do it. And if you are going to place primary reliance on these agencies, I think you are going to be extremely disappointed in this respect.

I just point that out as a comment only.

Mr. McCULLOCH. Mr. Chairman.

The CHAIRMAN. Mr. McCulloch.

Mr. McCULLOCH. I would like to ask one question there. I would like to have clear in my mind the exact position of your report as far as repealing the criminal laws with respect to conflict of interest.

Do I properly understand you to say that you do not ask repeal of the criminal statutes; that they will, in effect, remain the law of the land, with however, the first responsibility upon administrative procedures. The criminal laws will stand as they are, in substance, to be used as the first barrel of a double-barreled action?

Mr. PERKINS. That is correct, sir. We are advocating a revised body of substantive law which would be enforced by both administrative remedies and criminal remedies or penalties—as you suggested, a double-barreled approach to the problem.

Mr. McCULLOCH. You place your first reliance on the administrative program?

Mr. PERKINS. Yes, sir.

The CHAIRMAN. But you do repeal—wipe away the present criminal statutes and substitute another set of statutes under which the primary reliance would be upon the Executive to invoke administrative sanctions. Isn't that the situation?

Mr. PERKINS. I do not think that quite correctly characterizes it, sir, when you, "sweep away the present set of statutes." Technically, it can be done either by amending or by repealing. We happened to have amended the criminal statutes, just as your bill has amended the criminal statutes of existing law.

We suggest amending them in a particular way which would invoke a new set of restraints, and a broader set of restraints, for executive branch employees than is presently in the existing law. But there is not, as in your statement you might have implied, wholesale repeal—

The CHAIRMAN. Well, you would set up an entirely new statutory code to be enforced primarily through administrative sanction.

Mr. PERKINS. I have used the word "primary," and I have used the word "initial." Initial responsibility lies in the executive branch because we feel it is actually impossible for Congress to be in the position of the personnel and inspection officers of the various departments. On a day-to-day basis, conflict of interest has to be regulated in exactly the same way as other types of employee misconduct.

The CHAIRMAN. And you feel there would be in the future, under your provisions, a leadership which is missing now in the executive branch in its enforcement through administrative sanctions?

Mr. PERKINS. Absolutely, sir. We think that if Congress has done it in other fields it can be done. If Congress will focus upon the problem as a unified whole and say, "This is the job that has to be done, and we delineate the scope of the job, and here is how we want to see it carried out." I have no doubt it will be.

The CHAIRMAN. In one breath you say the Executive has been delinquent, weak, inefficient, and has offered no leadership in this field; and yet you say that if you wave the magic wand of your bill, the Executive will show greater leadership in invoking these so-called administrative sanctions.

Mr. PERKINS. There were some pretty colorful words in that remark, Mr. Chairman.

The CHAIRMAN. You used some very strong characterizations—"inadequate leadership"—

Mr. LINDSAY. Mr. Chairman, would you yield at this point?

The CHAIRMAN. Yes.

Mr. LINDSAY. Mr. Perkins, it is true, isn't it, that the review of the special committee and the recommendations of the special committee were based, first of all, upon examination of the statutes and the history of the statutes on conflicts of interest from their beginning. Isn't that correct?

Mr. PERKINS. Yes.

Mr. LINDSAY. And, isn't it true also, that a second aspect of this problem which the committee undertook to examine was in the regulatory field, that is, the regulation by the responsible agency over a long period of years going back prior to World War II.

Now, isn't it true also that your conclusion, that the committee's conclusion was that first of all, what was needed was to broaden the coverage of the statutory field?

Mr. PERKINS. Yes, sir.

Mr. LINDSAY. And pull the several statutes together and make sense out of them. They are not well understood at the present time and they have not been adequately enforced over a long period of years; isn't that true?

Mr. PERKINS. Absolutely.

Mr. LINDSAY. And the reason that they have not been enforced is because no one fully understood them. Isn't that correct?

Mr. PERKINS. That is absolutely true.

Mr. LINDSAY. Isn't it true, that the purpose of the committee here is to consolidate into one omnibus, well-understood, clear statute on conflicts of interest, including criminal sanctions for violations?

Mr. PERKINS. Absolutely.

Mr. LINDSAY. And isn't it true also that your suggestions in the regulatory field are to put the day-to-day administration of this highly complex problem in responsible agency hands? It has been a problem over a great many years and that your report simply attempts to focus primarily on the importance of the day-to-day problems involved?

Mr. PERKINS. Exactly.

The CHAIRMAN. I will say to the gentleman from New York, the longer you remain here the more you will realize that you cannot expect the agency to enforce conflict-of-interest statutes through administrative sanctions. They just won't do it and, human nature being what it is, you run up against a blank wall. And if you expect the agencies to do this by administrative sanctions, you just will not get anywhere.

Mr. LINDSAY. Mr. Chairman, if you will yield further, the history of criminal prosecution in this whole area over a period of decades has

been miserable, indicating clearly that criminal sanctions are not necessarily—

The CHAIRMAN. I certainly agree with you and that is why we are amending and changing and that is why we are having these hearings. There are many approaches. We want to examine all of them. Committee Counsel wishes to ask a question.

Mr. MALETZ. Mr. Chairman. Mr. Perkins. You indicated in your report that a number of agencies have adopted codes of ethics covering the conduct of their own employees. Is that right?

Mr. PERKINS. Yes, sir.

Mr. MALETZ. Has your committee made a study to determine how effectively each of these agencies has administered its own code of ethics?

Mr. PERKINS. Yes. That is rather completely spelled out in—I believe it is chapter 4 of the report.

Mr. MALETZ. And what would be your conclusion with respect to the adequacy of administration by the executive agencies of their own codes of ethics?

Mr. PERKINS. In some agencies very good; in others, not sufficiently active.

Mr. MALETZ. In other words, is it not correct that a number of agencies have not adequately enforced their own code of ethics?

Mr. PERKINS. I would have to review it, but I think it is fair to say, in general, that it tends to be the agencies which have not promulgated an adequate set of regulations of their own who are not also doing an adequate day-to-day enforcement job.

Mr. MALETZ. But isn't it also true that some agencies that have promulgated codes of ethics have not adequately enforced their own code?

Mr. PERKINS. I suspect that is true. I would, again, have to review it to agree 100 percent.

Mr. MALETZ. Well, if Congress should adopt your bill, which in effect would prescribe a code of ethics controlling on all agencies, what assurance would there be or could there be, in view of past experience, that these agencies, would enforce such a code adequately?

Mr. PERKINS. I don't think that we can base anything on past experience because I don't believe there has been a statutory structure that has been effective for the conduct of an active administrative program. It seems to me and to our committee clear that if the Congress creates a consolidated, understandable law and says "These are the substantive restraints that are applicable in this field, and they must be effectively carried out and enforced on a day-to-day basis," then we will see a regulatory scheme to do it. We are completely persuaded that you will have a vast improvement—more day-to-day consciousness and awareness of the problem, coordination among the agencies and a general improvement.

I do think, Mr. Chairman, I have gotten into a lot of points that come into our committee's recommendations and perhaps if I hasten over the committee's recommendations it might help bring out some of the points I am now making.

The CHAIRMAN. I just want to make this one final observation. I think it would be very difficult, Mr. Perkins, and your distinguished colleagues whom I am addressing now, it would be very difficult to get the Congress to take the risk of amending and dismantling to a

major degree the present criminal statutory structure, upon your hypothesis that the executive branch leadership, missing in the past, would improve. I question whether we would do that.

Mr. PERKINS. Mr. Chairman, the word "dismantled," as I think you have used, is an unfair and inaccurate characterization of what we have actually proposed, which is a much wider structure of substantive law.

The CHAIRMAN. But do you not do that for the intermittent employees?

Mr. PERKINS. I would like to discuss in detail the intermittent employees.

The CHAIRMAN. I want to ask you some more questions. First, does the committee counsel have any?

Mr. MALETZ. No, sir.

The CHAIRMAN. Is it fair to say an important reason for adopting your program is the difficulty of recruiting able and talented men and women in the Government service? Is that one of the reasons for your approach?

Mr. PERKINS. Well, when you say "your approach"—

The CHAIRMAN. Well, your bill.

Mr. PERKINS. That was certainly one of the major themes underlying our own studies, but if you are seeking to tie day-to-day emphasis—

The CHAIRMAN. No, no. The purpose of your bill is to change present conflict-of-interest statutes. Now is one of the reasons for your approach the inability of the Government to recruit able and talented men and women for Government service?

Mr. PERKINS. That is right.

The CHAIRMAN. Now, I should like to examine with you a moment the problem of recruitment in the face of present conflict-of-interest restrictions. And I will quote from chapter VII, page 4. Do you have that?

Mr. PERKINS. Yes.

The CHAIRMAN. I quote:

Available evidence supports the conclusion, however, that the conflict-of-interest restrictions have been a substantial factor contributing to the Government's difficulties in recruiting executive personnel.

That is correct, isn't it?

Mr. PERKINS. Yes, sir.

The CHAIRMAN. And does your report not also state, and this is in chapter VII, page 4:

The rigid attitude of the Senate Armed Services Committee on stock divestment has been one source of difficulty.

Mr. PERKINS. Yes, sir. I do want to make it clear, Mr. Chairman, that you are now focusing on the first subheading—

The CHAIRMAN. I am coming to that.

Mr. PERKINS. Yes, sir.

The CHAIRMAN. Now, this difficulty can in no way be ascribed, can it, to the present statutory restrictions on conflict of interest?

Mr. PERKINS. No, and, indeed, sir, our report is focused on the whole system of conflict of interest, including its manifestation in these confirmation hearings, and our recommendation No. 12 is focused on the question of confirmation which is on page 18 of our testimony.

The CHAIRMAN. As a matter of fact, did not your report specifically state at chapter V, page 15:

It is unlikely that the committee would have proceeded differently if no statutes were on the books—

referring to the Armed Services Committee of the Senate.

You stated that, did you not?

Mr. PERKINS. Yes, but we did not state at that point the corollary which I would now like to state, that they would have behaved differently if there were different statutes on the books, and that is our recommendation No. 12.

The CHAIRMAN. Is it not a fact that recruitment of Defense Department officials to positions requiring Senate confirmation cannot be affected by your bill?

Mr. PERKINS. No, sir. We think it can be affected—

The CHAIRMAN. How? It is up to the Senate. Senate committees act in their own very peculiar ways.

Mr. PERKINS. Maybe we should distinguish between direct handling by statute—the problem cannot be dealt with directly by statute, I would agree with you.

The CHAIRMAN. Well, that is all I asked for.

Mr. PERKINS. But indirectly I think it would have a substantial effect.

The CHAIRMAN. You think it would have a substantial effect on the minds of the Senators as to whether they would or would not confirm? Are you acquainted with the insides of the minds of many Senators?

Mr. PERKINS. We think that if a modern and effective system of statutory restraints was adopted by Congress and implemented by executive branch administration that the confirming committees might be willing to place greater reliance on the statutory rules and procedures. One clear example is the procedure for disqualification recognized by the proposed act—where a Government official holds a particular economic interest in a private entity.

If the Senate Armed Services Committee is aware of the fact that there is an active and effective disqualification procedure operating throughout the Government, we think that the members of that committee would face the question of a few shares of stock in some company with an entirely different approach than they do now.

The CHAIRMAN. Is it your position that if your proposals were enacted into law, that when Mr. Wilson came up for confirmation the situation would be different than it was when he originally came up for confirmation? Do you think that there would be any difference?

Mr. PERKINS. I think it would be somewhat different, but that was perhaps an almost unique case in terms of the whole gamut of confirmation cases which come up.

The CHAIRMAN. But it is certainly an example, is it not?

Mr. PERKINS. It is certainly an example.

Mr. LINDSAY. Mr. Chairman, if I may.

The CHAIRMAN. Yes.

Mr. LINDSAY. It is my understanding, and correct me if I am wrong, that under the present system there is a statutory gap here on this question of stockownership and the impact it may have on conflict of interest; isn't that true?

Mr. PERKINS. That is true. There is a very grievous gap. For instance, there is nothing that says an executive branch official cannot make a ruling within his department which might affect his own company.

Mr. LINDSAY. What your proposal is attempting to do is to establish a statutory process by which the conflict-of-interest problem, such as stockownership, is recognized and pinpointed. Isn't that true?

Mr. PERKINS. Precisely; yes. The statutory proposal we make in relation to dealing with entities in which you may have an economic interest is one of great broadness, and what we in effect recommend is that the statute be so broadened that the executive branch official would have to disqualify himself from any participation whatsoever, whether mere advice or otherwise, in connection with an organization in which he holds a substantial economic interest.

Mr. LINDSAY. Present statutes do not require them?

Mr. PERKINS. That is correct. Present statutes have only a ban upon acting as an agent on behalf of the Government in a business transaction with a business entity.

The CHAIRMAN. But there is nothing in the statutes requiring stock divestment as a condition precedent to confirmation by the Senate of the following men: Charles E. Wilson, Robert Stevens, Dudley Sharpe, Roger Kyes, and Harold Talbott. In each of these cases you had a situation where there was nothing on the statute books requiring divestiture and yet the Senators of the Armed Services Committee insisted upon divestiture.

Mr. PERKINS. The point we make, Mr. Chairman, is that if there were an effective body of conflict-of-interest laws which spelled out they must disqualify themselves from any participation whatsoever in any matter relating to the organization in which they have an interest, the confirming committee might then well be willing to rely on that statute and on its effective administration.

In other words, where there is a vast gap in the conflict-of-interest laws today, we feel that the Senate confirming committees have felt a need of stepping in and taking what we would regard as a rather drastic step: one not needed. This is one of our very major points with respect to recruitment—if there is an effective body of conflict-of-interest law, one that is broad enough to encompass the entire range of risk to the Government, and if it is effectively enforced, the confirming committees will place greater reliance on that body of law and will not feel it necessary to make this drastic surgery before the person even gets on the job, and probably keeps him out of the job.

The CHAIRMAN. Is it not correct that you say in your report, chapter VIII, page 3, that in positions not requiring confirmation the deterrent effect of a conflict-of-interest statute on recruitment is less clear?

Mr. PERKINS. Yes, sir; that is correct.

The CHAIRMAN. Are you familiar with the fact that the General Counsel for the Department of the Navy, appearing on behalf of the Federal Bar Association, testified just yesterday that he knew of no instance where the conflict-of-interest statute operated as a deterrent to recruitment of personnel, are you familiar with that statement?

Mr. PERKINS. Did he say what kind of personnel?

The CHAIRMAN. He just made the statement—I will read it to you:

Mr. PEET. Mr. vom Baur, as General Counsel of the Navy, are you aware of any situations in which personnel were prohibited from coming into the Government because of conflict-of-interest laws?

Mr. VOM BAUR. No, sir; I cannot say that I know of any such situations.

Mr. PERKINS. I was not aware of that piece of testimony, Mr. Chairman, but it certainly is inconsistent with a tremendous amount of interviewing that we did with officials of the Defense Department.

The CHAIRMAN. Are you familiar with the fact that the Deputy Assistant Secretary of Defense for Manpower, Personnel, and Reserve, Mr. Jackson, in testifying before this subcommittee could not say that the present conflict-of-interest statutes hampered the Defense Department in recruiting civilian personnel?

Mr. PERKINS. I was not aware of that statement, sir, and I would certainly like to see the full context of it.

The CHAIRMAN. I think you ought to read the testimony of the Deputy Assistant Secretary of Defense for Manpower, Personnel, and Reserve.

Are you also aware that this same official testified at page 191 of our hearings that the fact that the standard pay scale for Government employees is generally lower than for comparable civilian employment was a far more important deterrent with respect to recruiting personnel than the conflict-of-interest statutes?

Mr. PERKINS. Not specifically, but we certainly recognize the fact of the importance of the pay scale and do have a recommendation in connection with that.

The CHAIRMAN. Yes; but he said it was a far more important deterrent.

Mr. PERKINS. I think there is no question that it is a more important deterrent. Taking the broad range of problems of recruitment, I don't think there is any doubt that in terms of numbers of persons deterred the pay scales are a more significant factor.

The CHAIRMAN. Am I correct in my understanding that your report, VIII-10, concludes that the conflict-of-interest statutes have not made it difficult for the Government to fill scientific positions?

Mr. PERKINS. By and large we did find that the scientists had accepted these consultancies, but we also have a whole chapter in which we point out that it appears that there are many situations that may well be overlooked at the present time where there is at least potential conflict of interest.

The CHAIRMAN. And at VIII, page 15, you say:

Insofar as can be judged from the available evidence, the effects of the present conflict-of-interest statutes on the scientists are, therefore, almost zero.

Mr. PERKINS. Yes. I think it has to be read in relation to the preceding statement, that whole paragraph on page 15.

The CHAIRMAN. There is another statement of yours at VIII, page 10:

There has been no evidence found that these statutes made it difficult for the Government to fill scientific positions.

And, further, did your report not conclude that the conflict-of-interest statutes do not present difficulties in the Government's efforts to recruit lawyers into full-time Government service, chapter VII, page 11?

Mr. PERKINS. In the full-time service, that appears to be the case. There is some deterrent effect, but not nearly as great as there is in the case of the advisory capacity.

The CHAIRMAN. In this connection, there is a statement in your report reading as follows:

With the bulk of the conflict-of-interests statutes trained squarely on the lawyer and his practice, it would be thought that the Government would encounter particular difficulty from this source in its efforts to recruit lawyers into full-time governmental service. The facts, however, do not seem to bear out this anticipation. In spite of the restrictive conflict-of-interests restraints, the lawyer seems willing to accept full-time Government employment up to last 2 or 3 years.

Doesn't it all come down to this, Mr. Perkins, that the Bar Association Committee recommends changes of all the presently existing criminal conflict of interest statutes for the executive branch principally on the ground that present conflict-of-interest restraints effectively block the Government's efforts to secure the services of lawyers to help staff its thousands of advisory committees?

Mr. PERKINS. The major reason for what, Mr. Chairman?

The CHAIRMAN. One of the important reasons for your approach in this bill is that the conflict-of-interest restraints effectively block the Government's efforts to secure the services of lawyers to help staff those thousands of advisory committees.

Mr. PERKINS. This is one of the reasons for one small part of the entire approach out of 13 recommendations. The recommendation with respect to intermittent employees is one of our 13; and of the supporting reasons for that recommendation, the situation with respect to lawyers is a significant, and we think an important reason. But it would be a gross mischaracterization to imply that the lawyer-adviser situation was the reason for the total approach to the total problem.

The CHAIRMAN. I did not say that. I said it was one of the important reasons.

Mr. PERKINS. It is a significant factor in one of the 13 major recommendations.

The CHAIRMAN. Well, that is the answer, I believe.

Now, your report estimates that presently there are between 1,500 and 2,000 advisory committees in the Federal Government. Is that correct?

Mr. PERKINS. Yes, sir.

The CHAIRMAN. Many of these advisory committees are set up for the purpose of rendering advice on technical and scientific matters, isn't that correct?

Mr. PERKINS. That is correct.

The CHAIRMAN. And is it also not true that a large number of these committees are industry advisory committees in the Business and Defense Services Administration of the Department of Commerce?

Mr. PERKINS. Some of them certainly are. They are a part of the total range of advisory committees.

The CHAIRMAN. Well, a large number?

Mr. PERKINS. I would have to check the number.

The CHAIRMAN. I think you will find that is so.

Now, what role would a lawyer have on advisory committees of this character?

Mr. PERKINS. On a business advisory committee?

The CHAIRMAN. Yes.

Mr. PERKINS. I can conceive of a lawyer having a very significant role if he is particularly familiar with the category or area of industry.

The CHAIRMAN. Oh, now, but that is not what I am talking about. I am talking about industry advisory committees in the Business and Defense Services Administration. I must call your attention to the fact that the Department of Justice in 1951 advised Congress that it was improper to appoint attorneys as counsel to industry advisory committees. Now, are you aware of that?

Mr. PERKINS. That particular statement of the Department of Justice I was not, sir, I confess.

The CHAIRMAN. The lawyers have no place on industry advisory committees.

Mr. PERKINS. I am not challenging—

The CHAIRMAN. They have no place whatsoever.

Mr. PERKINS. Mr. Chairman, I wanted to be sure of the extent, of the scope of the Department of Justice statement as to whether it is applicable to all lawyers or whether it is applicable to companies in the particular field.

The CHAIRMAN. Would committee counsel read a letter from Peyton Ford, Deputy Attorney General, in 1951?

Mr. MALETZ. Mr. Chairman, this is a letter addressed to Senator Maybank, Chairman, Senate Banking and Currency Committee, under date of June 14, 1951, to read from this letter:

The entire notion of appointing a secretary and counsel for advisory committees is directed toward making committees self-contained entities. This is completely at variance with the concept of the committee function of advising Government officials when they request advice. To appoint a paid member of a trade association who is not a responsible Government official and who is not an active member of the industry concerned to perform these functions for committees would give each such committee a separate status with an accompanying lack of responsibility to the Government, which is not contemplated to further the purpose which such committees should serve. Further, the idea of a committee counsel who is not a Government official is completely violative of the statutory concept of the role of committees.

Mr. Chairman, I offer this entire letter in the record.

The CHAIRMAN. Yes.

(The letter referred to is as follows:)

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, June 14, 1951.

Hon. BURNET R. MAYBANK,
Chairman, Senate Banking and Currency Committee,
U.S. Senate, Washington, D.C.

MY DEAR SENATOR: This letter has reference to and supplements our letter of June 6, 1951, to the Joint Committee on Defense Production, which related to business advisory committees and trade association executives under the Defense Production Act of 1950.

We have examined the statement of Mr. George P. Lamb before the Senate Banking and Currency Committee, on June 6, 1951, recommending that section 701(b)(ii) of the Defense Production Act be amended to authorize specifically the appointment to each business advisory committee without expense to the Government of "a secretary and/or counsel who may, if not a member of the committee, attend all meetings of such committee, but without vote; * * *."

This Department considers that the suggested amendment would not be in the public interest and would be contrary to the purposes of the act. One of the stated purposes of this amendment is to permit the appointment of paid trade

association executives as secretaries or counsel to advisory committees. The suggested duties of such secretaries or counsel would include obtaining transportation and hotel reservations for committee members, sending out notices of meetings, preparing and circulating minutes of meetings, and supplying committee members with statistical information and know-how in connection with the industries concerned. Another stated purpose of the amendment is to permit committee members to have the assistance of counsel of their own choosing in their "dealings" with the Government in the course of serving on advisory committees.

Under section 701(b) (11) of the act as it is at present, business advisory committees need not include persons who serve as executives of trade associations and who are not actively engaged in the industry concerned. The decision as to whether trade association representatives are to be included as members of advisory committees has been left to the discretion of the President and those to whom he has delegated defense mobilization functions. In our opinion, the present statute appropriately meets the problem of committee membership.

The National Production Authority, the Office of Price Stabilization, and other defense agencies have excluded paid representatives of trade associations who are not themselves active members of the industries concerned from participation in committee activities. Further, privately employed counsel of committee members have also been excluded from committee meetings. This action has been based upon the concept—as set forth in our June 6, 1951, letter—that the proper function of business advisory committees is to give advice and make recommendations, but not to make decisions which properly should be made by the Government.

The entire notion of appointing a secretary and counsel for advisory committees is directed toward making committees self-contained entities. This is completely at variance with the concept of the committee function of advising Government officials when they request advice. To appoint a paid member of a trade association who is not a responsible Government official and who is not an active member of the industry concerned to perform these functions for committees would give each such committee a separate status with an accompanying lack of responsibility to the Government, which is not contemplated to further the purpose which such committees should serve. Further, the idea of a committee counsel who is not a Government official is completely violative of the statutory concept of the role of committees.

In our view, it necessarily follows from the foregoing concept of the proper role of industry advisory committees and from our letter of June 6, 1951, that no rights of trade association executives or business advisory committee members would be impaired by leaving section 701(b) (11) unchanged.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.

The CHAIRMAN. Now, remember, I am talking about industry advisory committees in the Department of Commerce—Business and Defense Services Administration of the Department.

Mr. PERKINS. Yes. If I may, I would like to make one comment on that statement read by Mr. Maletz. I do not have it in front of me to analyze as carefully as I would like, but I got the distinct impression, and correct me if I am wrong, that the Department of Justice was, in the first instance, referring to secretaries and counsel to these business and advisory committees, and then it got into a discussion of trade associations—

The CHAIRMAN. They said lawyers had no place on such a committee.

Mr. LINDSAY. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. LINDSAY. It seems to me that the witness and committee counsel are talking about two entirely different things here. I think Mr. Perkins ought to clarify what he is talking about on the subject of intermittent employees who happen to be lawyers.

The CHAIRMAN. I will ask the next question, then.

Is it not correct one of the purposes for your bill is to enable the Government to recruit lawyers to serve on advisory committees such as industry advisory committees, notwithstanding the fact that the Attorney General has recommended against appointing them on advisory committees?

Mr. PERKINS. No, sir; the bill would not seek to approach and recruit for advisory committees any people who are inappropriate for membership on such committees—

The CHAIRMAN. Without their being approached, would your bill permit a lawyer to serve on an industry advisory committee in the Business and Defense Services Administration of the Department of Commerce, would that be permissible?

Mr. PERKINS. Not if there were other rules or policies prohibiting it.

The CHAIRMAN. No, no. I mean just per se he is barred from that today. Would your bill permit him to serve?

Mr. PERKINS. Mr. Chairman, it would be impossible to answer that without a specific case of the type of advisory committee and the kind of lawyer we are talking about. You cannot answer it in the abstract.

The regulation that we propose as to intermittent employees is that you cannot assist in transactions involving the Government in which you have participated or have responsibility—

The CHAIRMAN. I know, but the simple point is this:

You say one of the purposes, is that you want lawyers to be permitted to serve on industry advisory committees free from conflict-of-interest restraints. That is one of your approaches?

Mr. PERKINS. No, Mr. Chairman—

The CHAIRMAN. You said that before. Let me go further. Industry advisory committees cannot have on their membership a lawyer, that is what the Department of Justice has ruled, and we have none today. Certainly not in the business advisory committees of the Department of Commerce. We have had Commerce Department officials before our committee on this very matter. A great difficulty with reference to those industry advisory committees was the fact that in some instances they had lawyers on their committees serving as counsel. I admonished the Department of Commerce right in this very room, not to permit lawyers as counsel for such committees, and the present Secretary and his predecessors have abided by that suggestion. Furthermore, we have every reason to believe that they will continue to abide by that suggestion.

Now, as I and Committee Counsel read your bill and your report I think it might perhaps open the door to allow lawyers to serve on industry advisory committees. Now if you take the position that everything is perfect with reference to everything that emanates from your committee, remember that is not the case. I believe that if you were more lenient and not so rigid, we would get along—

Mr. PERKINS. Mr. Chairman, we certainly do not pretend that this bill would not be subject of tremendous amount of change before it would be in an appropriate condition for further consideration and enactment; but on the specific point, please let me say as strongly as I can that there was no intent to modify the rules relating to lawyers serving on committees on which for other reasons there is good reason for them not to serve on them.

The CHAIRMAN. Committee counsel?

Mr. MALETZ. Mr. Chairman—

Mr. LINDSAY. Mr. Chairman, could counsel first enlighten me where, for my own information, wherein the existing statutes this subject of lawyers acting as counsel is covered in the Department of Commerce?

Mr. MALETZ. The Attorney General—

Mr. LINDSAY. No; I am talking about statutes.

Mr. MALETZ. As I understand it, there is no statutory prohibition against industry advisory committees retaining lawyers as committee counsel. However, the Attorney General has prescribed criteria to govern the conduct of industry advisory committees and the Attorney General's office has stated specifically that attorneys are not to serve as committee counsel for industry advisory committees.

Mr. Chairman, if I may clarify, the bar association report indicates that one of the reasons for—and there are a number of others—one of the reasons for their proposal is to enable the Government to procure and I quote, “the services of lawyers to help staff its thousands of advisory committees.” Is that not correct?

Mr. PERKINS. Yes, help staff them, correct.

Mr. MALETZ. Help staff those thousands of advisory committees.

Mr. PERKINS. To help—

Mr. MALETZ. Under the Attorney General's criteria, an attorney cannot staff industry advisory committees, isn't that correct?

Mr. PERKINS. Well, Mr. Maletz, the use of the word “staff” perhaps is causing confusion. “Staff,” in the sense it is used in the report, means where it is appropriate to be a *member* of an advisory committee—in the same way people of other professions and fields of experience are members of advisory committees.

If the word “staff” serves to confuse, certainly it should be changed. There was no thought, and we had not even discussed the question of the staff of the advisory committees in the sense of counsel to advisory committees, which I think is the focus of what you have been reading.

Mr. MALETZ. In what respect would an attorney serve on an advisory committee?

Mr. PERKINS. He would be a member of it. The word “staff” is used in our report in a wholly nontechnical sense, the way we use the word “staff” in terms of being employed in Government in one capacity or another. I can see the discussion we have been having in the last 15 minutes is probably oriented about a misconstruction of the word “staff,” for which we apologize.

Mr. MALETZ. Is it not correct that in many, many instances members of Government advisory committees are not regarded for any purpose as Government employees?

Mr. PERKINS. Could I have that once again?

Mr. MALETZ. Would you read that, Mr. Reporter.

(The question was read.)

Mr. PERKINS. I know of only one advisory committee in which that is the case, I think. It is clear, at least on the basis of the research that we did, that under existing Attorney General's opinions, substantially all members of advisory committees are regarded as Government employees.

Mr. MALETZ. Well, are you familiar with the fact that the Office of Price Stabilization had literally hundreds of industry advisory committees?

Mr. PERKINS. I, again, could not say anything about the number, but I assume they must have had many, many advisory committees.

Mr. MALETZ. Are you also familiar with the fact that no member of the Office of Price Stabilization advisory committee was regarded as a Government employee?

Mr. PERKINS. By whom, Mr. Maletz?

Mr. MALETZ. He was not a Government employee in terms of taking an oath of office or of being bound by Government directives applicable to Government employees.

Mr. LINDSAY. And that was by a statute, too.

Mr. PERKINS. Well, we would have to go into a retracing of the precise method of operation. Are you aware of any rulings which came up in the Justice Department as to the status of these advisers?

Mr. MALETZ. Let me put the question this way: Has your committee undertaken research to determine whether generally members of advisory committees are Government employees or not?

Mr. PERKINS. Yes, and there is an opinion cited in 40 opinions of the Attorney General—I have forgotten the page number—2 opinions, in fact. One was in the case of, as I recall, a recreational advisory committee of the Defense Department, and I believe the other was in the Selective Service System, which is in a slightly different category.

Mr. MALETZ. May I say that the counsel of this committee has checked with the Chairman of the Civil Service Commission as recently as yesterday on this very point and was advised that there is no categorical answer to the question as to whether or not a member of an advisory committee is a Government employee—that it depends on all the facts and circumstances in a given situation. I wonder whether, Mr. Perkins, you could shed some light on this particular problem.

The CHAIRMAN. Before you do that, I want to get some enlightenment for our good friend, Mr. Lindsay, as to whether there is any statute on this matter. In that letter which was sent to Senator Maybank, chairman of the Senate Banking and Currency Committee, under date of June 14, 1951, the Deputy Attorney General said the following:

MY DEAR SENATOR: This letter has reference to and supplements our letter to June 6, 1951, to the Joint Committee on Defense Productions, which related to business advisory committees and trade association executives under the Defense Production Act of 1950.

We have examined the statement of Mr. George P. Lamb before the Senate Banking and Currency Committee, on June 6, 1951, recommending that section 701(b) (ii) of the Defense Production Act be amended to authorize specifically the appointment to each business advisory committee without expense to the Government of "a secretary and/or a counsel who may, if not a member of the committee, attend all meetings of such committee, but without vote; * * *"

This Department considers that the suggested amendment would not be in the public interest and would be contrary to the purposes of the act. One of the stated purposes of this amendment is to permit the appointment of paid trade association executives as secretaries or counsel to advisory committees. The suggested duties of such secretaries or counsel would include obtaining transportation and hotel reservations for committee members, sending out notices of meetings, preparing and circulating minutes of meetings, and supplying com-

mittee members with statistical information and know-how in connection with the industries concerned. Another stated purpose of the amendment is to permit committee members to have the assistance of counsel of their own choosing in their "dealings" with the Government in the course of serving on advisory committees.

Under section 701(b)(ii) of the act as it is at present, business advisory committees need not include persons who serve as executives of trade associations and who are not actively engaged in the industry concerned. The decision as to whether trade association representatives are to be included as members of advisory committees has been left to the discretion of the President and those to whom he has delegated defense mobilization functions. In our opinion, the present statute appropriately meets the problem of committee membership.

The National Production Authority, the Office of Price Stabilization, and other defense agencies have excluded paid representatives of trade associations who are not themselves active members of the industries concerned from participation in committee activities. Further, privately employed counsel of committee members have also been excluded from committee meetings. This action has been based upon the concept—as set forth in our June 6, 1951, letter—that the proper function of business advisory committees is to give advice and make recommendations, but not to make decisions which properly should be made by the Government.

The other portion of the letter has been read and it has been placed in the record before.

Mr. LINDSAY. May I say, Mr. Chairman, I still think we are discussing two entirely different things.

The CHAIRMAN. I don't see why. We are talking about industry advisory committee counsel.

Mr. LINDSAY. Well, Mr. Chairman, I would like to inquire just what is so terrible about these committees having attorneys.

The CHAIRMAN. I am trying to indicate that the Department of Justice has taken a position on that matter. I am asking what the bill is all about; what it is intended to do.

Mr. PERKINS. Mr. Chairman, could I try to clarify once more, too?

The letter you have read, as I construe it, relates to the designation of staffs of business advisory committees, and it refers to secretaries and/or counsel of advisory committees. That is the focus of this letter and of the point that you made.

The point in our report is that we think in appropriate cases, among accountants, among engineers, scientists, and a whole range of other people, lawyers are appropriate for consideration as members of advisory committees.

I can conceive of a business advisory committee where a lawyer might have had years of experience in the field of mining or minerals, if there is such an advisory committee. We think such a lawyer should be eligible for appointment, as indeed he is today. There is no change in the law in our bill in that respect. We have no quarrel with the letter you have read, but it is not directed to that point, and I think Mr. Lindsay is correct in saying that Mr. Maletz and I may have been discussing two different things.

The CHAIRMAN. Do you mind reading the—

Mr. MEADER. Mr. Chairman—

The CHAIRMAN. Yes.

Mr. MEADER. Before we go too much further, I would like to go back to the question that you brought up.

As I understood, Mr. Perkins, you said that in your view there were a great many people, lawyers and others, who would be deterred from

accepting employment in Government because of existing conflict-of-interest statutes.

Am I correct?

Mr. PERKINS. Yes, sir.

Mr. MEADER. Can you point to the passage of the report where you summarize or refer to the investigation on which you based that conclusion?

Mr. PERKINS. As far as the technical scope of the investigation is concerned, it is referred to in appendix D. It describes the kind of interviewing we did. As far as the results are concerned, they are set forth in chapter VII, and chapter VII has several subheadings.

On page 2 we discuss civil service personnel; page 3, political executives; page 4, appointments subject to Senator confirmation; page 6, other full-time appointments; page 13, advisers and intermittent employees, and there is a discussion under that at the bottom of page 13; it starts the discussion of the lawyer phase of the intermittent problem, and points out the very strong deterrent effect that the present statutes do have on attorneys serving in any capacity.

I can give you a couple of specific examples.

Mr. MEADER. Well, now, let me go back a little bit. I am glad that you mentioned all of these chapters, because I think it makes it simpler for us to find the subject matter we have referred to.

Now, you say appendix D describes your investigation of this. I might say I raised this question because I think it is pretty difficult to come up with a general conclusion about what motivates anyone's conduct—

Mr. PERKINS. Certainly.

Mr. MEADER. And you have set out these conclusions in rather fixed and rigid terms, as though they were established propositions. And so, therefore, it seems to me it is material to inquire what facts, what evidence you have that you based this conclusion upon about which you seem to be so certain.

I do not see how it would be possible for any of the agencies, the Bar Association of the City of New York, or this committee, or any agency, to make a comprehensive survey of those who have accepted Government employment and those who were considering it, but refused to accept it, as to their reasons for refusing, and I would like to know just how many people you talked to and just how you went about the investigation.

You see, it does not do any good to say, "numbers of people" or "We talked to a lot of lawyers who did not accept Government employment." I mean, can you not give us a little more specific detail as to how you went about your investigation and what evidence you obtained to arrive at this conclusion?

Mr. PERKINS. In appendix D we have a section on staff research, and we point out the administrative agencies that we talked to, the executive officials, we mentioned discussions with congressional personnel, and on interviewing, we say on page 4 of appendix D that a large group of persons were interviewed who were selected because of their unusual experience in Government, who were members of or students of government—

Mr. MEADER. Let me ask you one more thing on that point.

Mr. PERKINS. Yes.

Mr. MEADER. Were these interviews recorded in any way?

Mr. PERKINS. I would say that a good many of them were, yes; some of them.

Mr. MEADER. You do not have a transcript of the conversations or discussions?

Mr. PERKINS. No, sir.

Mr. MEADER. Do you have any correspondence on it?

Mr. PERKINS. On occasions.

Mr. MEADER. Do you know how many people—you say “a large group of persons was interviewed”—how many?

Mr. PERKINS. Well——

Mr. MEADER. Do you have a list of the names of the individuals and their positions that you interviewed on which you base this conclusion?

Mr. PERKINS. There is none here. It would be quite difficult to build, or rebuild, the list. I would say it ran to several scores of people, perhaps in the low hundreds, people talked to by members of our committee or the staff on a formal or informal basis.

Mr. MEADER. Now, we have had witnesses and we have asked some of the witnesses that we had here concerning hiring lawyers and I think one attorney, and I have forgotten his name, in the Department of Defense, said that he tried to get a lawyer to help him for a short time because of the conflict-of-interest statutes he refused to come and help him out, but, so far as our record shows, from interrogating any of the witnesses that appeared, we have not found that they regard existing conflict-of-interest statutes as a deterrent to recruiting personnel for Government work.

Now, you are in direct conflict with the testimony that we have had so far from Government officials, I believe.

Now, I believe it is important, if your conclusions are correct, and the present conflict-of-interest statutes impede the Government in obtaining competent talent, that we find out upon what basis your conclusion is based. I think you ought to be a little more specific than saying, “A large group of persons was interviewed.”

I mean, you could interview 1,000 persons and if they did not know anything about the subject matter, their cumulative testimony would be worthless.

Mr. PERKINS. Correct.

Mr. MEADER. If we do not know who you interviewed and what you said and what they said it would be very difficult just from generalities to come to the conclusion that the conflict-of-interest statutes today are deterring the Government from getting adequate help.

Mr. PERKINS. I certainly see the point, Mr. Meader, and I do hope that the committee will have an opportunity to continue these hearings long enough so you can talk directly with a great many people who have had this experience.

But I can say there are a great many individuals who gave this as a specific reason as to why they were unable to take a particular job.

Just for example, an individual who had served in the State Department was asked to be a consultant after he left his particular job in a particular country. He had been in service on a full-time basis. He was asked to come back as a consultant on a part-time basis, since he had acquired a considerable depth of knowledge about that par-

ticular country, and problems in relation to it. He had to decline the consultancy because of the conflict-of-interest laws, or so felt he did.

Another example, which again happens to be a lawyer who has been very active in the matter of improvement and the promotion of the civil service system—he was asked to undertake membership on one of the regular advisory committees of the Civil Service Commission and he declined, and the primary reason these individuals have declined, Mr. Meader, is that the present scope of section 281 is such that an employee who is a member of a firm which has regular day-to-day clients that are in regular day-to-day relationships with, for example, the Internal Revenue Service, and other agencies of the Government, the scope of 281 is such as to raise a very great doubt as to whether or not one would have to resign from his organization in order to undertake a part-time consultancy with the Government or to serve on one of its advisory boards.

Mr. MEADER. Well, I might make the statement that I have served as counsel for Senate committees for several years, and I recall that, speaking strictly of the Truman committee, that occasionally the Senate passed special resolutions exempting counsel from the statutes.

Mr. PERKINS. That is right, and I think that helps to make the point, and it is made again in my prepared statement—no, rather in the technical analysis that I submitted with our prepared statement. On page 31 of this technical analysis, we say this in relation to intermittent employees, we say:

It is pertinent to note that section 4 is similar to a number of the exemption provisions in present law for advisory boards and consultants in applying a more narrowly focused body of restraint upon intermittent employees. For example, 22 U.S.C. section 1792(a), a provision of the Mutual Security Act, exempts intermittent employees appointed under that act from "the provisions of sections 281, 283, or 284 of title 18, or of section 99 of title 5 * * * except insofar as such provisions of law may prohibit any such individual from receiving compensation in respect of any particular matter in which such individual was directly involved in the performance of such service." The Mutual Security Act language: "any particular matter in which such individual was directly involved," and the language of the proposed Executive Conflict of Interest Act: "in any transaction involving the Government in which he has at any time participated," are extraordinarily similar in their impact. Thus, Congress has already recognized and responded to the need for a different rule for the intermittent employee, in exactly the same manner as the proposed Executive Conflict of Interest Act. In a very real sense, the proposed Executive Conflict of Interest Act would merely make uniform for all intermittent employees in Government the present differentiation in conflict of interest principles already adopted under numerous acts of Congress.

Mr. MEADER. Well, I might add one further comment concerning exemptions on commissions. I happen to be a member of the Government Operations Committee and in recent years we have had legislation establishing a second Hoover Commission, the Intergovernmental Relations Commission, known as the Kestenbaum Commission, and one, I believe, that passed the last session of Congress, a permanent Government Relations Commission. I believe in all we exempted the staff of the Commission from the operation of the conflict of interest statutes and also from the civil service classification law.

Mr. PERKINS. I think that is exactly right, Mr. Meader, and I think it points up the discriminatory effect, where the particular committee for some reason, has a particular influence or it is in one way or another deemed important enough at a particular time, so that an exemption is obtained.

One commission which foundered because of the conflict of interest statutes is the so-called Nimitz Commission. I believe its scope was security matters, if I am not mistaken, and the Nimitz Commission was believed to have a very important mission. Yet it foundered because of the conflict of interest laws, according to the newspaper reports at the time, and they were unable to get special exemption for the members of the Commission. This is not for the staff; this is for members that I am talking about, and the Commission was never created.

We think the Nimitz Commission is a very clear and historic example of the Government not getting a job done because of archaic conditions not keyed to the actual risk—too broad in some situations, not broad enough in others.

Mr. MEADER. I would like to suggest, Mr. Perkins, if you can, you supply this committee with some kind of a memorandum giving more specific facts with respect to the evidence upon which you base your conclusion that the conflict of interest statutes are preventing the Government from obtaining the services of competent people, because I believe that would be quite material. You are certainly unequivocal in your conclusions and I think we ought to have some kind of evidence, some kind of idea of what evidence it is based on.

Mr. PERKINS. On this point of unequivocalness, I would like to say in relation to a particular executive who was asked to come down for several years, it was very clear from our interviewing that there was a whole variety of factors involved in the decision, which we spell out.

We find there were a number of factors involved in their decision—the salary point was already brought out—the fact that somebody has to live in two places, take children out of school and so on—certainly all these enter into the problem of recruitment.

And I don't think that we are unequivocal in the sense of saying we have evaluated the conflict of interest factor as the sole factor, or in many cases as the most important factor. They were cited in many instances as one factor and I believe the conclusions are so framed.

The particular statement I am referring to is on page 6 of chapter VI—I am sorry, page 10 of chapter VI, at the bottom, where it says:

Recruitment for top Government office is difficult for many reasons. General factors such as exposure to political harassment and newspaper publicity, ideological disaffinity to "Government," distaste for the generally more regulated environment, and low prestige of Government office, may all tend to lead a given individual to refuse appointment. And personal factors, such as a wife's veto, a desire not to upset children's school arrangements, and the nuisance of a temporary move into a strange community may all argue against the move to Washington.

Now, all of these factors are set forth here, and I don't want to leave the impression that we are unequivocal in the sense of saying that we can sort out and attach a precise weight to conflict of interest in many of these situations, but certainly in some of them, and I have already given you several examples, it was the reason.

Mr. LINDSAY. If you would yield for a moment, I think this is an important point that Mr. Meader has brought up. I do agree that it is difficult in any individual case to determine what the objective reason is behind any individual's decision. I should like to ask this

one question on the subject of scientists, in view of the fact there was read in the record a statement which appears in chapter VIII, page 10, to the following effect:

Thus, the conflict of interest statutes in their present form do not appear to have a noticeably restrictive influence on the conduct of the scientists participating in Government science programs during or after his period of employment. Conversely, there has been no evidence found that these statutes have made it difficult for the Government to fill scientific positions.

And on page 15 of the same chapter, your report concludes as follows:

As a final comment on the scientist's role in the conflict-of-interests field, it would not be amiss to fly a small storm warning. The scientist has not been long in the public arena, nor long in the marketplace. Scientist Alpha, pure in heart, knowing himself dedicated to the advance of scientific knowledge, regardless of who has title to the laboratory or pays for the research, and, with never a thought of the conflicting interests potential, is likely one day to undertake a set of multiple counselling commitments which will suddenly explode into political charge, countercharge, investigation, and conceivably even indictment. Or perhaps Scientist Beta, perhaps with less pure motive than Alpha, and more conscious of the economic possibilities of his Government advisory position, may turn his opportunity to good account, be discovered—and again trigger the political chain reaction. The results of either of these events would be most unfortunate. The new and shining public symbol of the scientist would be tarnished; the scientist's traditional suspicion of the political process would be further darkened; and the arbitrary restraints clamped down by a politically sensitive Congress upon the use of outside scientific advice might critically hinder the Government's scientific development programs.

Now, is it the committee's purpose to try to highlight the growing importance of governmental recruitment in the scientific field—

Mr. PERKINS. Yes, sir.

Mr. LINDSAY. In this 20th century?

Mr. PERKINS. Yes, sir.

The CHAIRMAN. Committee counsel.

Mr. MALETZ. Mr. Chairman; Mr. Perkins, to conclude a previous colloquy. I understand that among other things you feel that the present conflict of interest statutes tend to deter recruitment of personnel to become members of advisory committees, is that right?

Mr. PERKINS. Yes, sir.

Mr. MALETZ. Now, I know you would agree that the conflict-of-interest statutes apply only to Government employees?

Mr. PERKINS. Yes, sir.

Mr. MALETZ. Therefore, is it not a fact that if a member of an advisory committee is not a Government employee no problem whatsoever would be presented under the present conflict-of-interest statutes?

Mr. PERKINS. That is correct.

Mr. MALETZ. Now, my final question on this point is this: Has the bar association made a study to ascertain the membership of the various advisory committees of Government to ascertain whether they are or are not Government employees?

Mr. PERKINS. We were satisfied, Mr. Maletz, on the basis of the Attorney General's opinion that I have referred to, and Mr. Hoagland is getting the citation here, that the vast majority of advisory committee members would be regarded as Government employees.

Now, there may be some advisory committees because of a very special situation where this is not true, but certainly from the viewpoint of giving advice to people who have been asked to serve on

advisory committees it is our clear impression that most attorneys advising clients would say because of this Attorney General's opinion, "we think you will or may be classified as a Government employee and, if so, the whole body of conflict-of-interest laws would be applicable to you."

Mr. MALETZ. One important consideration in determining whether or not an individual is a Government employee is his taking or not taking an oath of office, is that right?

Mr. PERKINS. Yes.

Mr. MALETZ. Is there a general requirement to serve on advisory committees that the member take an oath of office?

Mr. PERKINS. I believe that varies, but there are other ways in which the formalities may be established other than by taking an oath of office, in other words, a letter from the Secretary of the Department saying, "I hereby designate you a member of the advisory committee," which would probably be given the interpretation of an appointment making the person a Government employee within the meaning of the Attorney General's opinion.

Mr. MALETZ. Has the bar association checked with the Civil Service Commission to ascertain the status of the various members of the various advisory committees with reference to their being or not being Government employees?

Mr. PERKINS. Not in the sense in which the Civil Service Commission could decide the issue, but the real ultimate issue is to be decided by the courts and, in the first instance, by the Attorney General's opinion, and we think that is the real source where you must look.

I would further say that if there is a lack of clarity with respect to the status of employees or nonemployees, that is the very specific point we are trying to get out, and we think that in general advisory committee members should be viewed as employees and under a set of regulations. In other words, there are some things an advisory committee member should not be allowed to do, and to the extent—you may be right, there may be some advisory committees outside the scope of what at least the Civil Service Commission views as members of the Government, and we think it preferable, by and large, that they be viewed as employees.

Now, we do in our technical analysis in the discussion of the meaning of employees, on page 9 of the technical analysis I submitted, discuss this, and we say:

The reason for the fairly elaborate definition of "Government employee" lies in the desire to achieve a much greater certainty than presently exists as to who is subject to the restraints of the conflict-of-interest laws. The definition in the act clearly excludes, for example, the man who is informally telephoned by a Government official for consultation, or may even come to the office of the Government official and confer with him for a few hours or a day.

On the other hand, the definition clearly includes any consultant who obtains consulting pay or reimbursement for travel and/or a per diem expense allowance, pursuant to a "WAE" (when actually employed) designation. Any such designation would constitute a sufficient appointment to meet the test of paragraph (1). While it is conceivable that the requirement of an "appointment" may permit some informal consultants to escape application of the conflict-of-interest laws, the same is true today, and is inevitable. It would be impossible to try to draw lines, for example, between (1) an experienced friend whose views are sought during a social evening, (2) a Bernard Baruch on a park bench, to whom a Cabinet Secretary goes for advice, (3) a Washington lawyer called over

to a department lunch with a Cabinet Secretary to discuss a problem, and (4) the representative of a civic organization who spends 2 days participating in a small departmental conference or "seminar." Which is an "employee," assuming none of them has received an "appointment" of any sort. The only difference between the third and fourth cases is that in the fourth a written invitation may have been issued, and the time spent at the department may have been a little longer.

And we go on to discuss an approach to the definition of employee which we rejected.

The CHAIRMAN. I think it might be well if you continue with your prepared statement now. There will be no further questioning until you have finished your statement.

Mr. PERKINS. All right, Mr. Chairman. I left off at the bottom of page 5:

3. Uncertainty in interpretation: Enacted fitfully over a 100-year span, the uncoordinated statutes are inconsistent, overlapping, and at critical points defy interpretation.

4. The Congress: Congress has done a useful and constructive job in its capacity as investigator. But the Senate confirming committees have seldom considered the overall issue of conflict of interests in relation to recruitment. The Armed Services Committee has applied a wavering standard of stock divestment, useful for certain purposes, but overemphasizing one single source of conflict-of-interest problems and having little bearing on the question of actual official conduct.

5. Recruitment: The main adverse effect of the present system is its deterrent effect on the recruitment and retention of executive talent and some kinds of consultative talent. The restrictions tend to encircle the Government with a barricade against the interflow of men and information at the very time in the Nation's history when such an interflow is most necessary.

C. RECOMMENDATIONS

I shall now turn to the basic recommendations of our special committee.

We concluded that the defects in the present law cannot be cured by tinkering. A thoroughgoing reconstruction is called for—a new program of controls designed for modern needs, providing for adequate administration and written as an integrated unit. The program must, in our view, achieve a balance between the Nation's need for protection against conflicts of interest and its need for personnel.

Recommendation 1: Conflict-of-interest problems should be recognized and treated as an important, complex, and independent subject of attention and concern in the management of the governmental establishment.

Up until the present time, the subject of conflict of interest in the executive branch has been conceived of and dealt with only peripherally as an aspect of the general problem of ethics in Government. The fact is that its unique and complex nature and the variety of difficult problems it raises, particularly the problem of recruitment, demand that it be isolated and identified as an independent subject of governmental concern. Until it receives the consideration and attention which it deserves, the problem of conflict of interest cannot be adequately resolved.

I have already noted the great contribution of your committee in achieving the objectives of our first recommendation.

Recommendation 2: The present scattered and uncoordinated statutes relating to conflicts of interest should be consolidated into a single unified act, with a common set of definitions and a consistent approach. Archaic provisions should be repealed.

One of the principal shortcomings of the present law is that it is composed of many diverse elements scattered throughout the statute books and containing inconsistencies, overlapping, and exemptions. The chaotic nature of the law is an impediment to understanding and a deterrent to recruitment.

The proposed Executive Conflict-of-Interest Act embodied in H.R. 10575 would unify the general law of conflict of interest in one comprehensive statute. Basic terms would be defined and then used consistently throughout. Examples of key terms, carefully defined at the outset and then used consistently throughout the proposed act, include "Government action"; "transaction involving the Government"; "assist"; "participate"; and "responsibility."

The proposed act would treat the basic forms of conflict of interest in a logical progression. The first of the six substantive restraints deals with action by a Government employee in his official capacity in a matter in which he has a personal interest. The second deals with action by a Government employee in his private capacity in furtherance of an interest adverse to the Government. The third deals with receipt of pay from outside sources. The fourth deals with receipt of gifts from outside sources. The fifth deals with action as a Government official designed to induce payments from outside sources. The sixth deals with postemployment activities in furtherance of an interest adverse to the Government.

As an example of the close integration of these sections, the second and sixth prohibitions are almost precisely parallel in their application to the intermittent Government employee and the recent former employee, reflecting the basic similarity of the two situations from the conflict-of-interest viewpoint.

The points in the total statutory scheme where it is important to supplement the statutes by regulation are clearly identified.

A few archaic statutory restraints superseded by the new act would be repealed. Others of the existing statutes would be amended to exclude from their coverage all executive branch employees (i.e., those covered by the proposed new act).

Fourteen special exemptive provisions contained in present law for members of various advisory committees and persons holding other part-time posts would be repealed, as being unnecessary in the light of what we regard as a realistic approach of the new act toward the intermittent employee problem.

Mr. Chairman, I do want to underscore that, that referring to the existence of those exemptions for advisory committees proposed in numerous places, we would propose those exemptions be repealed and discrimination among the advisory committees be eliminated as far as the basic statutory law by providing uniform rules which would be supplemented by further regulation.

Such a unified act would, we believe, be more enforceable and more rational in its application than present law, or even improved ver-

sions of present law based on the present statutory structure. It would, by its very drafting, remedy many of the fundamental shortcomings of the present law.

Recommendation 3: The restraints contained in the present statutes should be greatly expanded in their scope by making them applicable to essentially all matters in which the public deals with the modern Federal Government.

Six of the seven conflict-of-interest statutes on the books today have their roots in the problems of a century ago; they are directed primarily against corruption in the prosecution of claims against the Government and the process of letting contracts by the Government. Claim prosecution and, to a lesser degree, procurement procedures have, however, been brought largely under control by administrative devices other than the conflict-of-interest statutes. In their places have grown up other risks that the draftsmen of the present statutes did not foresee and provide for. The proposed act strikes hard at those deficiencies.

The proposed act would extend the conflict-of-interest restraints to every kind of transaction in which today's Government engages with the private segment of the economy. The term "transaction involving the Government" is broadly defined as "any proceeding, application, submission, request for a ruling or other determination, contract, claim, case or other such particular matter" which will be the subject of Government action. The effect of this broad definition in expanding the scope of the present restraints would be very great.

In this respect recommendation 3 is consistent with H.R. 2156, the bill introduced by you, Mr. Chairman, and a recommendation made by the Justice Department to Congress several years ago in response to a court decision holding that the present postemployment restraints apply only to assisting in the prosecution of claims against the Government for money or property. In that case an application for a premerger clearance ruling from the Antitrust Division of the Justice Department was held not to be a "claim" within the scope of the statute.

The proposed act would expand present offenses in other respects. To cite a few examples, present law forbids a governmental employee to transact business as an agent of the Government with any "business entity" in the pecuniary profits of which he is interested. The comparable rule in the proposed act would apply not only to business transactions with business organizations, but to any kind of transaction with any kind of entity in which the employee has a substantial economic interest. Furthermore, unlike the present law, the statute specifies a number of specific situations where the employee is deemed to hold an economic interest, such as where that interest is in fact owned by his wife or child, or where he has an understanding as to future employment with a private person or firm.

Recommendation 4: Certain important restraints now covered in regulations or not at all should be included in the basic statutes, particularly restraints relating to receipt of gifts and coercive use of office.

Present law would be further strengthened by the addition of two important areas of conduct heretofore treated only in regulations or not at all.

The first would forbid an employee of the Government to receive a thing of economic value as a gift, gratuity or favor from anyone who the employee has reason to believe would not give the gift but for the employee's office or position with the Government. Furthermore, regular Government employees would be forbidden to receive gifts or favors from anyone who does business with or is regulated by his agency. Some room is left in the statute for limited exceptions to be provided for in regulations.

The second new offense would forbid a Government employee to use his office or position with the Government in a manner intended to induce or coerce a person or company doing business with his agency to provide him with anything of economic value.

Recommendation 5: The statutes should permit the retention by Government employees of certain security-oriented economic interests, such as continued participation in private pension plans.

Hallmarks of modern American society are the pension plan, the group insurance plan, and other kinds of security-oriented arrangements. They are the basis of long-range economic planning by millions of individuals and families. Under present conflict-of-interest laws—passed when few, if any, of such plans existed—there is some doubt whether an employee of the Government may legally continue as a member of some plans maintained by his former employer, at least if contributions to the plan by the employer are regularly made which benefit the Government employee. This overhanging doubt presents a great deterrent or creates a severe hardship to the noncareer employee.

The proposed act permits Government employees to continue their participation in certain private plans under some circumstances and with adequate safeguards. For example, it would permit a Government employee to remain a member of a pension, group insurance, or other welfare plan maintained by his former private employer so long as the employer makes no contribution to the plan on behalf of the former employee who is in Government service. Similarly, a Government employee could continue to belong to certain of these plans even if the former employer does make contributions on his behalf, so long as the plans are qualified under the Internal Revenue Code and so long as the payment by the former employer continue for no longer than 5 years of Government service.

Recommendation 6: Wherever it is safe, proper, and essential from the viewpoint of recruitment, the statutes should differentiate in treatment between regular employees and citizens who serve the Government only intermittently, for short periods, as advisers and consultants.

To an ever-increasing extent the Government is dependent for information and advice—for learning not only how to do it, but what to do—upon part-time, temporary, and intermittent personnel. These serve individually, or as members of committees, but that service is in addition to their regular private work as scientists, technicians, scholars, lawyers, businessmen, and so on. Technically, they are, however brief their service, "employees" of the Government, and at present, all of the conflict-of-interest statutes apply to them. This fact has brought about both refusals to serve and conscious or unconscious ignoring of the statutes by those who do serve. It has also resulted in a welter of special statutory exemptions.

The proposed act distinguishes, in a few key places where it is safe and proper, between rules for regular full-time Government employees and rules for what are defined as "intermittent employees." Under the proposed act, an "intermittent employee" is anyone who, as of any particular date, has not performed services for the Government on more than 52 out of the immediately preceding 365 days. The 52-day limit could be increased to 130 days by Presidential order in a narrow class of cases.

For these intermittent employees, there are certain special rules under the proposed act. For example, regular full-time employees are forbidden to assist private parties for pay in transactions involving the Government; intermittent employees, who have to earn a living in addition to their occasional Government work, are allowed to assist others for pay in such transactions, except in cases where the particular transaction is, or within 2 years has been, under the intermittent employee's official responsibility or where he participated in the transaction personally and substantially on behalf of the Government.

Similarly, since intermittent employees, by definition, are employed by organizations in addition to the Government, they are not subject to the rule forbidding their Government pay to be supplemented from private sources in return for personal services. Finally, the rules as to receipt of gifts are somewhat different for the two classes of employees.

Recommendation 7: Regular, continuing, and effective enforcement of the law and regulations should be assured by emphasizing administrative remedies, rather than the clumsy criminal penalties of present law.

The basic purpose of a system of conflict-of-interest restraints is to help maintain high ethical behavior in the executive branch of the Government. It is the judgment of our special committee that the flexible and multiple weapons of the modern administrative process are more fitted to the day-to-day task than the criminal law.

Because the present statutes rely on criminal sanctions, they are rarely enforced. They are, in many respects, too harsh for offenses they declare. Furthermore, enforcement by criminal law is difficult, expensive, and time-consuming. Accordingly, the proposed act relies for its sanctions, in the first instance, on ordinary disciplinary procedures, including dismissal. These procedures are supplemented by civil remedies particularly apt for former employees and nonemployees dealing with the particular agency—such as bans against appearances before the agency and civil damage actions.

The proposed act retains classified criminal penalties for the most flagrant violations: those committed "knowingly" or "purposely." The definitions of these terms are adopted from a draft model penal code prepared by the American Law Institute.

Recommendation 8: The statutes should create the framework for active and effective administration of the system of conflict-of-interest restraints, headed up with clear responsibility in the President. The President should designate, pursuant to the proposed act, an Administrator to assist him in this function.

One of the greatest deficiencies in the present statutes is their failure to recognize the importance of a continuing administrative structure to deal with the problem of conflict-of-interest. The proposed act would specifically provide for such an administrative machinery.

Clear overall responsibility would be placed upon the President—for the establishment of appropriate standards to protect against actual or potential conflict-of-interest on the part of Government employees and for the administration and enforcement of this act and the regulations and orders issued hereunder.

To assist the President in carrying out this responsibility, the act calls for the designation by him, from within the Executive Office of the President, of an "Administrator." He would be answerable directly to the President. He is given a series of coordinating, consultative, and advisory functions under the act. He would work closely with the Department of Justice and agency heads or their designees, but his would be a small office, and in no sense charged with centralized operation or enforcement of conflict-of-interest restraints.

Recommendation 9: In addition to the statutes themselves, there should be a "second tier" of restraints, consisting of presidential regulations amplifying the statutes, and a "third tier," consisting of agency regulations tailored to the needs of particular agencies. The responsibility for day-to-day enforcement of the statutes and regulations should rest upon agency heads.

The proposed act contemplates the issuance by the President of a set of regulations extending, supplementing, implementing, and interpreting the provisions of the act. The act also visualizes another set of regulations at the next lower level—that of the agency heads. The presidential regulations would take precedence over any regulations issued by agency heads.

Agency regulations would tend to follow the present pattern, namely, particularized rules adapted to the special risks of the particular agency. For example, some agencies may have special rules on use of confidential information available within the agency. Others may adopt special post-employment restraints which go beyond the statutory provision. This diversity and particularization is realistic and desirable.

Recommendation 10: At all levels of administration potential conflict-of-interest problems should be headed off by preventive action, such as, for example, orientation programs for all new employees to acquaint them with the applicable conflict-of-interest rules, and periodic reminders as to such rules.

Much can be done to fight the conflict-of-interest problem by preventive measures. Section 11 of the proposed statute makes several suggestions. New employees can be required to certify that they have read the conflict-of-interest rules and to report on their outside employment. In particular, an effective orientation program would be helpful. Agents and attorneys appearing before agencies can also be required to file an affidavit stating that they are not, by such appearance, violating any conflict-of-interest law.

Recommendation 11: There should be more effective prohibitions and penalties applicable to persons outside Government who induce or participate in conduct by Government employees in violation of the conflict-of-interest laws.

Not infrequently a Government employee is found in a conflict-of-interest situation and penalized for it while the person responsible for placing him in the situation remains unscathed.

The proposed act contains a new and broad section making it a violation for a person to make a payment (or transfer any other thing of economic value) to a Government employee while "believing or having reason to believe that there exist circumstances making the receipt thereof a violation of" certain sections of the act. This prohibition also covers the making of gifts in the situations corresponding to the situations in which an employee may not receive a gift.

Both administrative and criminal sanctions are applicable to these violations by persons dealing with Government employees.

Recommendation 12: Each committee of the Senate considering a Presidential nominee for confirmation should be given the benefit of a full analysis, prepared by the Administrator in consultation with the Department of Justice, of any conflict-of-interest problems the nominee's particular situation may present. The confirming committee should give due consideration to this analysis and to the protections afforded by a modern and effectively administered overall scheme of conflict-of-interest restraints, if one is put into effect.

There is substantial evidence that the Government's efforts to recruit top-level executives have been impeded by the requirements of stock divestment imposed by the Armed Services Committee of the Senate.

This problem cannot be dealt with by statute. The confirmation power is a constitutional prerogative. However, this problem should be a subject of joint concern and increased cooperation between the executive branch and the Senate. There is some evidence that recently the executive departments have taken more pains to prepare their nominees for confirmation. Legal opinions have on occasion been furnished by the Justice Department; plans have been worked out in advance of hearing as to what need be sold and what could be kept, and representatives of the appointing department or agency confer in advance of hearing with appropriate authorities of the committee.

If the proposed act were passed, the "Administrator" would become the central repository for all information concerning conflict of interest, and he would be expected to assist the executive branch in working out regular procedures for preparing nominees for confirmation. He could, in cooperation with the Department of Justice and general counsel to the agency in question, prepare a full analysis of the conflict-of-interest problems of the particular nominee. Over a period of time, these analyses might be given substantial weight by the confirming committees.

Furthermore, if a modern and effective system of statutory restraints is adopted by Congress and implemented by active executive branch administration, the confirming committees might be willing to place greater reliance on the statutory rules and procedures. One clear example is the procedure for disqualification recognized by the proposed act where a Government official holds a particular economic interest in a private entity.

Recommendation 13: The Congress should initiate a thorough study of the conflict-of-interest problems of Members of Congress and employees of the legislative branch of the Federal Government.

Primarily because of their representative function, Members of Congress and legislative branch employees are, in matters of conflict

of interests, in a significantly different position from that of executive branch employees. As such, Congress must be considered separately.

A fresh examination of these problems by Congress, or by a study initiated by Congress, is needed. However, we are of the strong opinion that such a study should in no way deter immediate action with respect to the executive branch along the lines of the proposed act.

Conclusion:

The program we have advanced will not "solve" the problem of conflict of interests in Federal employment. Like most real problems, this is one we must live with permanently, strive to mitigate, and adjust to. The program proposed, however, will do several things.

It meets the flaws of the present pattern of conflict-of-interest restraints—obsolescence, weakness of administration and faulty drafting. It would greatly strengthen the main policy of the conflict-of-interest statutes—preservation of the integrity of Government. It would provide for an integrated and comprehensible system of standards and sanctions, together with an effective machinery for administering that system. It is grounded upon a realistic conception of the problem of conflicting interest as it appears in the modern setting of American government and society. It would, we are convinced, make a significant contribution toward intelligent staffing of the Federal Government for world leadership.

(Mr. Perkins' statement appears at p. 459.)

The CHAIRMAN. At this point I think that we will take an adjournment until 2 o'clock, but I want to say, Mr. Perkins, that your statement is a very comprehensive one. It is a splendid statement and it shows a great deal of painstaking and unremitting toil. We are very grateful to you and your colleagues, particularly to our distinguished colleague from New York on my right.

We will ask you to return at 2 o'clock for some further questions.

Mr. LINDSAY. Thank you very much.

The CHAIRMAN. And we have put all of the documents into the record, the appendixes and so forth.

Mr. PERKINS. Thank you very much.

(Whereupon at 12:50 p.m. a recess was taken until 2 p.m. the same day.)

AFTERNOON SESSION

The CHAIRMAN. You may proceed, Mr. Perkins.

Mr. PERKINS. Mr. Chairman, with your permission, I think it might be helpful to an overall understanding of our proposals if I refer to appendix A to my prepared statement and just run very quickly through the structure of the bill as reflected in appendix A.

As I mentioned at the beginning of the testimony, this appendix is prepared to reflect roughly what might be said in a briefing pamphlet for Government employees. It is not a summary of the act in the traditional sense, but it has been rephrased to express how the act might look from the viewpoint of the Government employee seeking to know what rules apply to him.

First is the preamble, expressing the policy and the purposes. Then the set of definitions, which is section 2 of the bill; and (a) is the definition of "employee."

And I might mention, Mr. Chairman, because it has a bearing on what we were discussing earlier, that this definition of "employee" was taken, in effect, from your bill introduced to recodify much of the law relating to Government employees. It would pin down who is an employee, we believe.

Then (b) is the reference to the "intermittent Government employee" definition and the definitions of "Government action," "Transaction involving the Government," and "Responsibility."

Turning to section 3, this is the first and a very basic provision which prohibits a Government employee from participating in any Government action which may affect a personal economic interest. This is a very substantial broadening of section 434 of 18 U.S.C. But it embodies all that is in 18 U.S.C. 434 now, greatly broadens it and clarifies it.

Section 4 is, in a sense, the converse. This section prohibits Government employees from assisting in transactions involving the Government—from assisting the outsiders. In other words, this says what you cannot do in your private capacity in relation to the Government. And this parallels in effect, the present sections 281 and 283 of 18 U.S.C., and broadens them in several respects; and again, we believe, clarifies them in several respects.

Section 5 is a general prohibition against receipt or supplementation of Government pay for Government services, and to that extent parallels the present 18 U.S.C. 1914.

In addition to that, this section, for the first time, would, in statutes, set up a general prohibition relating to outside work for pay in the sense that it would recognize the existing regulations which ban certain types of outside employment. And this would say, in statutory terms, that you may not be paid for personal services to others except for bona fide work done outside Government hours which is not prohibited by law or by regulations of the agency.

Then there is the feature with respect to security plans which we have already referred to.

Section 6 is wholly new as far as statutes is concerned. It is the gift section.

Section 7 is wholly new as far as statutes are concerned. It sets up a prohibition against the use of Government office as a club or an inducement or coercive power to derive something of economic value for the officeholder.

Section 8 is the postemployment section, which in general tracks the present section 284 but, we believe, clarifies it in several respects. And it extends it to a permanent ban, as does your bill, Mr. Chairman, for anything that the employee was personally a participant in.

Section 9 carries out one of the recommendations, namely, strengthening the bans against outsiders who deal with Government employees and who may make payments to Government employees the receipt of which would be illegal.

Section 10 is the section authorizing regulations by the President and agency heads and imposing specific responsibilities on the President and agency heads.

Section 11 sets up a series of suggested preventive measures with authorization to the executive agencies to adopt a set of preventive measures.

Section 12 sets up a series of additional civil remedies, in addition to recognizing in statute the basic employee conduct disciplinary powers of the administrative agencies. And, finally, title II sets out the criminal penalties for acts in violation of any of the substantive rules which we have covered.

Title III is amendments and repealers, and title IV is miscellaneous sections, the effective date, and the short title.

Now, the net effect of all this, as I think I have said, Mr. Chairman, is that you would establish by statute a great deal more than is presently in statutes.

Far from cutting down, we believe strongly that this set of restraints would add to and expand the existing law of conflict of interest in a very broad way. It would close the gaps. We believe that it would remove many doubts and ambiguities, and it would consolidate all of the existing restraints in one place.

In other words, instead of derogating or taking away from, it builds up, coordinates, consolidates and sets forth in one place a great many more and broader restraints than exist under present law.

I think that substantially summarizes the structure of the bill in relation to the recommendations we have made, Mr. Chairman.

(The document referred to appears at p. 466.)

The CHAIRMAN. Mr. Perkins, I am quite sure none of the members of the committee has come to any final conclusions on any of these recommendations. That is why we have these hearings, so that we can get all the facts that we can focused and come up with something that will be in the best interests of the Government and the public.

Now, one thing I am a little concerned about is the manner you handle what is known as an intermittent employee. I would like to ask you some questions about that. More specifically, I should like to examine with you several major provisions of your bill, starting with section 4. Is it not a fact that, under your bill, section 4 (b), a regular Government employee is prohibited from assisting any other person, for compensation, or as agent or attorney in any transaction involving the Government?

Mr. PERKINS. For compensation; that is correct.

The CHAIRMAN. For compensation; I said that.

Mr. PERKINS. Yes.

The CHAIRMAN. Is that correct?

Mr. PERKINS. Yes.

The CHAIRMAN. And is it not true he cannot assist anybody as an (The document referred to appears at p. 466.)

Mr. PERKINS. That is right.

The CHAIRMAN. In a transaction involving the Government?

Mr. PERKINS. Yes.

And I should point out there that serving as agent or attorney is merely another form of assisting. It is not something different and separate; it is just included within the concept of "assist."

The CHAIRMAN. Is it not a fact in contradistinction that an intermittent employee, who is defined as one who performs service on not more than 52 working days in the preceding year, is prohibited from such activities only if he has participated in or has responsibility for such transactions?

Mr. PERKINS. Yes.

The CHAIRMAN. However, an intermittent employee, in the event he has only had responsibility for the transaction, and more than 2 years

have elapsed, may assist any other person in the transaction involving the Government; is that not correct, under your bill?

Mr. PERKINS. If his responsibility dated back to a period of more than 2 years earlier?

The CHAIRMAN. That is right.

Mr. PERKINS. Yes.

In that respect it is exactly similar to the present 2-year ban on post-employment. We feel that there is a distinct analogy there, that when something is back in the past that far, that, just as present law ceases the ban after 2 years, we think there is reason to do so in cases where the individual did not personally participate.

The CHAIRMAN. Now let us take a specific type of situation.

Suppose a Washington representative of a textile manufacturer was appointed as a consultant to the Secretary of the Army on, say, manpower policies. Is there anything in your bill which would prohibit this intermittent employee from negotiating with the Department of the Army a contract for the supply of uniforms?

Mr. PERKINS. No, sir.

The CHAIRMAN. In other words, would not your bill give the intermittent employee in such circumstances an inside track in the Department of the Army for negotiating a contract for his private employer?

Mr. PERKINS. In my opinion, no.

The intermittent employee who is an adviser on manpower policy would not normally come into contact with the procurement officers of the Army or be in any way involved in procurement procedures of the Army. And we, therefore, do not believe that it would give him an inside track.

The CHAIRMAN. But he might come in daily contact for, say, 51 days with the Secretary of the Army or the Assistant Secretary of the Army or the particular deputy who has charge of the assignment of contracts; is that not so?

Mr. PERKINS. Assignment of contracts? If his personal——

The CHAIRMAN. If he just comes in daily with him and meets him, he is in the Pentagon, he fraternizes with him, and so forth; that is possible, is it not?

Mr. PERKINS. It is conceivable that a consultant on manpower policy could have a great many contacts with top officers of the Army. But this does not, or would not, normally include procurement matters. It would not include procurement officers.

The CHAIRMAN. Mr. Maletz.

Mr. MALETZ. Mr. Chairman.

The CHAIRMAN. Counsel wishes to ask you a question.

Mr. MALETZ. Mr. Perkins, would not this particular individual, as a result of his position as consultant with the Secretary of the Army, have a position of considerable prestige in the Army Establishment?

Mr. PERKINS. He might or he might not, but I am willing to make an assumption.

Mr. MALETZ. Well, assume that he does——

Mr. PERKINS. Yes.

Mr. MALETZ. Have a very important consultative job in the Office of the Secretary of the Army.

Mr. PERKINS. Right.

Mr. MALETZ. Now, then, there is nothing in your bill which would prohibit this same consultant from negotiating with the Secretary of

the Army, if you will, with respect to a possible cost-plus contract to this consultant's private firm; is that not right?

Mr. PERKINS. That is correct. If you—

The CHAIRMAN. Well, now, at that point, would that not place others than the employer of that consultant at a serious disadvantage?

Mr. PERKINS. I do not believe so, sir.

The CHAIRMAN. You do not think it would?

Mr. PERKINS. No, sir.

Mr. MALETZ. Mr. Chairman.

The CHAIRMAN. All right, go ahead.

Mr. MALETZ. We will assume that this Washington representative deals with the Secretary of the Army 51 days a year. He has intimate contact with the Secretary of the Army on manpower policies. Is there anything in the bill which would prohibit this consultant, while having discussions with the Secretary of the Army with respect to manpower policies, from seeking to persuade the Secretary of the Army to award a cost-plus-fixed-fee contract to this consultant's private firm?

Mr. PERKINS. No.

The CHAIRMAN. Section 5 of your bill would in no wise preclude this person from continuing to receive pay from his private employer for securing this particular contract from the Department of the Army. He can still keep up his relations with his private employer and still, for those 52 days, remain a consultant. He would get his pay from his private employer and, in addition, he could negotiate the contract that counsel mentioned?

Mr. PERKINS. Well, it is the same as present law. A person can continue to get his pay from his private employer, which is not for or in connection with his Government services, his Government employment. And there would be no change in present law insofar as payment of his continuing salary from his private employer is concerned.

The CHAIRMAN. That may be, but do you think the law should be changed?

Mr. PERKINS. No, sir. We think that the present section 1914 should be clarified, but its basic purpose should remain; namely, that you do not get supplementation for Government services from a private employer.

The CHAIRMAN. Go ahead.

Mr. MALETZ. Well, let us, if we may, Mr. Perkins, consider again the case of this consultant to the Secretary of the Army on manpower policies. Is there anything in the bill which would prohibit this consultant, on behalf of his private employer from appearing before, shall we say, the Board of Contract Appeals in the Pentagon with respect to a claim which his employer had pending in the Department?

Mr. PERKINS. No.

Mr. MALETZ. Now, present sections 281 and 283, in the absence of specific exemption, would preclude these activities; would they not?

Mr. PERKINS. They would. And the qualification you make, "in the absence of specific exemption," is an exceedingly important one.

Mr. MALETZ. Yes.

Mr. PERKINS. Because the entire Defense Production Act and the entire Mutual Security Act do have exemptions because of this.

Mr. MALETZ. The Defense Production Act contains exemptions as you point out, as does the Mutual Security Act.

Mr. PERKINS. And the Renegotiation Act.

Mr. MALETZ. Is it not correct that many consultants are appointed—for example, in the Defense Establishment, in the Department of the Army, the Department of the Navy, and the Department of the Air Force; quite apart from the exemptive provisions of the Defense Production Act and the Mutual Security Act?

Mr. PERKINS. I am sure that is true; yes.

Mr. MALETZ. And to that extent, is it not correct that the provisions of your bill would relax exceedingly the present provisions of sections 281 and 283?

Mr. PERKINS. Well, "relax exceedingly," is a descriptive phrase which I am not sure that I would adopt.

The CHAIRMAN. Well, let us not worry about "exceedingly." They would change those standards.

Mr. PERKINS. Definitely.

And we think it is very important that there be some modification in present law as it strikes that type of person; and we do think the law should be changed in that respect.

The CHAIRMAN. So when you said before that you do not change the law, that is not quite accurate.

Mr. PERKINS. I do not believe I said that you do not change the law, Mr. Chairman. What I said was that I think that the basic—

The CHAIRMAN. You do relax the provisions of the present law, particularly those two sections with respect to intermittent consultants.

Mr. PERKINS. On the precise point you are talking about, we propose a modification in the present law which would permit the consultant to continue dealing with the Department in areas for which he is neither responsible nor participates in person.

The CHAIRMAN. Now let us take another illustration.

Suppose an attorney, say, for a New York law firm, is appointed as a consultant serving on an intermittent basis to advise the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice on personnel problems. Could he not, under your bill, at the same time that he is a consultant with the Antitrust Division advising the Assistant Attorney General—could he not negotiate an antitrust consent decree with the Assistant Attorney General on behalf of his private employer or client?

Mr. PERKINS. Yes.

The CHAIRMAN. Now, do you think you want to do that, Mr. Perkins?

Mr. PERKINS. Yes, sir.

In the first place, I think that the examples you pose are not entirely realistic in the sense that people who negotiate antitrust consent decrees on behalf of clients, by and large, are not the people who advise on personnel policies.

The CHAIRMAN. No, they do not advise on personnel problems, but if I were attorney for some corporation which was enmeshed with the antitrust laws and there was an antitrust proceeding against my employer, it would be a nice thing for me to get myself appointed as a consultant with the Department of Justice, for any purpose. I do not care whether it is personnel policies or anything, because I

would then have access to, and liaison with the Assistant Attorney General in charge of the antitrust case. And it would make it very nice and comfortable for me to talk to him about the preparation of a consent decree which might be of material help to my client. It strikes me that that is serving two masters at the same time.

Mr. LINDSAY. Would the chairman yield—

The CHAIRMAN. Yes.

Mr. LINDSAY. So I could comment on that, or perhaps ask a question?

You may visualize this possible situation, which makes the problem a little tougher, I would think, Mr. Chairman. Supposing a group of attorneys across the country are asked by the Attorney General to serve on a consultant, intermittent basis on the question of backlog in the courts—congestion in the Federal courts. Therefore, they are Government employees, although they serve less than 52 days, let us say. But one or more of those attorneys may have litigated matters before the Department of Justice

So the question arises whether that service, on an intermittent basis, to assist the Attorney General in trying to figure out ways and means to cure the congestion problem, should disqualify that particular man. That is a little closer situation.

The CHAIRMAN. You, by your question, which is a very intelligent and very cogent one, indicate the difficulties in this proposition.

Mr. LINDSAY. Yes.

The CHAIRMAN. And it is a matter of degree.

Of course, if the Attorney General appoints a group of men throughout the country to try to resolve the difficulties attendant upon court congestion, they probably would not have the access that the consultant we mentioned in the example concerning the Assistant Attorney General in charge of antitrust cases. But if he is a consultant in the Department of Justice offices, he comes in daily contact with the officials there, has lunch with them, fraternizes with them, goes to cocktail parties with them, visits with them—and there is a consent decree in the offing, there is tremendous temptation to talk about that consent decree. As I said, this is a question of degree.

In the case you offered, I do not see that there would be a conflict, necessarily; but in this other case, there might be.

And I am frank to confess I do not quite know how to handle it; I would like to give some real thought to this problem.

Mr. PERKINS. Mr. Chairman, may I point out that the closer you get to a situation in which there is an actual conflict of interest, as distinct from a possibility of better personal association—which is the point that you are driving at, I think—section 3 would come into play under our proposed bill. Under that section the consultant cannot advise, recommend, or—

The CHAIRMAN. I understand that.

Mr. PERKINS. Or suggest anything on any matter which might affect his personal economic interest.

The CHAIRMAN. That applies to a permanent employee?

Mr. PERKINS. Both.

The CHAIRMAN. Both?

Mr. PERKINS. Both, Mr. Chairman.

And that is terribly important, because section 3 creates a much broader ban than has ever been conceived before in relation to what

you can do inside a department as it relates to something that you have got in the way of an interest outside.

And this would have a very broad impact on the intermittent employee, which would prevent him from seeking to wear the second hat inside Government and to suggest approaches which might benefit him personally in an outside capacity.

And the meshing of these two sections is something that I cannot overemphasize. It is extremely important to see how sections 3 and 4 relate and that the intermittent employee you are concerned with cannot do anything on the inside of the Government, or indeed whisper anything—under our broad definition of “participate”—which would have a beneficial, or any effect, beneficial or otherwise, on him in an outside capacity.

The CHAIRMAN. Mr. Maletz.

Mr. MALETZ. Thank you, Mr. Chairman.

Mr. Perkins, with respect to section 3, as I understand it, every Government employee, whether regular or intermittent, must disqualify himself from participating as a Government employee in transactions involving the Government which might substantially affect his personal economic interests or the substantial economic interest of his employer or any concern in which he has a substantial economic interest; is that correct?

Mr. PERKINS. That is right.

Mr. MALETZ. Now, is it not also a fact that the President can exempt a particular Government official or employee from these disqualification requirements?

Mr. PERKINS. Under the standards and with the limitations set forth, yes.

The CHAIRMAN. As the law stands now, the only entity that can do that is the Congress.

Mr. PERKINS. Yes. But the statute that the Congress can do it with respect to is a very much narrower statute, and it is the—

The CHAIRMAN. We have, in this committee, passed innumerable bills for that purpose.

Mr. PERKINS. Yes, sir. And, as I think I have indicated earlier, the bills are not uniform. They have responded to specific situations called to the attention of Congress at a particular time; but that the net effect of these exemptive provisions, in our view, is one of inconsistency and discrimination, rather than uniformity and applying a rule that can be effectively enforced across the board.

The CHAIRMAN. I will say this. I should like to have a method by which this committee can be rid of those bills. We do not like them; they are a perfect nuisance, like many other types of bills that come to this committee; because they depend upon the intellectual idiosyncrasies of each author; they are all written in a different way. It becomes, finally, a veritable hodgepodge.

Mr. PERKINS. There could not be a better statement of the situation, in our view, Mr. Chairman.

Mr. MALETZ. Mr. Chairman.

The CHAIRMAN. Mr. Maletz.

Mr. MALETZ. Now, the standards under your bill controlling the exercise of the President's discretion with respect to exempting particular employees from the operations of section 3 are rather broad, are they not?

Mr. PERKINS. I believe that is fair to say, yes. But they are the kind of standard that is going to be scrutinized very carefully. We have this requirement of publication and laying the whole thing on the record and specifying all of the facts and the justification for any exemptive power exercised under this section.

Mr. MALETZ. Now, your report has criticized the Senate Armed Services Committee on the ground that it has acted in an ad hoc manner in requiring certain officials appointed to the Defense Department to divest themselves of stock interests. I am a little curious as to why, in your judgment, it is wrong for the Senate Armed Services Committee to use an ad hoc approach but proper under your bill for the President to use an ad hoc approach in waiving the disqualification provisions of section 3 of the bill?

Mr. PERKINS. Well, that is a fair question. Now, there are a number of very important and basic distinctions between the two situations.

The first is that in the confirmation situation you are faced with a question of whether or not an individual, in order to undertake a particular office, must divest himself of a particular stock, even before we know whether a situation of potential conflicting interests may develop. In the case of section 3, a very specific assignment is presented to the President and a very specific situation in which some degree of conflict is potentially present.

In the Senate Armed Services situation, the employee can disqualify himself when he is on the job in the particular capacity, when the situation arises. He could, holding a particular stock, when a specific situation arose, under the rule that we propose, be subject to the disqualification procedure. In other words, you would then have your ad hoc situation once the individual had undertaken the assignment, and the particular question arose in which an actual conflict of interest existed.

So that, actually, what we propose is that the ad hominem, as you suggest, or ad hoc approach be applied equally to the stock situation, but at a later stage; namely, where this specific conflict of interest may arise.

Now, at the confirmation stage you are dealing with a hypothetical conflict of interest; nobody knows whether or not it will arise.

We do not say, and never would say, that there are not some jobs in which an individual ought not to own the stock in order to be able to be in the job at all. But these situations, we think, are very rare; and most of them are already provided for by statute.

For example, a Civil Aeronautics Board official may not hold stock in an aeronautical industry or company; this is 100 percent sound. The instinctive reaction of everybody on the point is that the rule is a good one. And the Senate Armed Services Committee, if it had that case for confirmation, would react in exactly the same way; namely, that the nature of the job is such that he just cannot own this particular stock.

Now, our concern with the cases before the Armed Services Committee is that there has not been a similar demonstration that you could not do the job and hold the stock. Nor has there been consistency in application of principles, nor has there been consistency in selection of the particular types of property interest with which the committee is concerned.

We feel that they have perhaps overemphasized the stock interest and perhaps let a whole lot of other things go by; such as leases, real estate holdings which conceivably, we do not know, but conceivably are there.

So to try to restate it, we think the ad hoc approach has to be applied at some stage to specific situations.

We think that, in most instances, the ad hoc situation should arise under the disqualification procedures of our bill, rather than at the confirmation level. But admittedly there are some jobs for which you cannot have some property interests and still embark on the job.

Mr. MALETZ. Well, could there be any real assurance that the President would apply the exemption standards of section 3 on a consistent basis?

Mr. PERKINS. I think there is very real assurance of it. I think that the factors of exposure and publicity, plus the recitation of the bases for the exemption, are going to force the President to apply consistent standards.

If you had several of these in the courts, or one or two or three or four or five a year, whatever it might be, there would be very quickly built up a series of precedents which any President would feel constrained to regard and to work with; his own precedents, in fact.

Mr. MALETZ. In other words, you feel that the force of public opinion would impel consistency in the application of these standards by the President?

Mr. PERKINS. I think it would be an excellent force, as it always is, in Government operation, to have the public opinion impact there. It would assist in keeping the use of this power within an area that everybody feels instinctively, from the viewpoint of appearances and otherwise, is right and sound.

Now, I think we give in our report a very good example, and I would like to read it:

The United States may, for example, need expert representation at an international conference on the peaceful uses of atomic energy. In all likelihood, the most qualified men to represent the Nation in such negotiations would be top scientific officials with private American companies engaged in atomic development. Yet these might be the companies that would most clearly be directly affected by any international policy decisions reached on future atomic development. Where such situations arise, a balance must be struck between the national interest in using its best, perhaps its only personnel, and the national interest in protecting the public against dangerous conflicting personal interests. In some cases it may be expected that the balance will be struck in favor of using the best qualified men available. For these cases, some carefully circumscribed leeway should be left for partial relaxation of the disqualification principle. Consequently, the statute offered here provides that the President be given a partial exemptive power for this purpose. The power is closely hedged about. The exemption should go only to a particular employee, not to a position. It should be used only after full disclosure of the employee's economic position producing the interest conflict and, except where national security is involved, that information should be put on the public record. And the President should be required to make an express determination that the national interest in the employee's participation exceeds the public interest in his disqualification. This special exemptive power should be rarely used. But where it is needed, it is badly needed. It would be foolish to impose a disqualification rule so inflexible that we are forced to cut off our arm to avoid the possible risk of breaking it.

Mr. MALETZ. Mr. Perkins—

The CHAIRMAN. I just want to interrupt a bit to make a statement.

I want to state, Mr. Perkins, this record will be held open for you to make any additions or revisions that you wish. You will be the last witness, unless the Department of Justice sees fit to respond to our request to appear and testify concerning these bills.

Mr. PERKINS. I appreciate that. Thank you, Mr. Chairman.

Mr. MALETZ. One further question about the exemptive power given to the President.

Under section 3, to take another hypothetical case, the President could permit, could he not, a Secretary of the Army, for example, to negotiate a cost-plus-fixed-fee contract with a concern in which that Secretary of the Army has controlling stock interest?

Mr. PERKINS. Well, I cannot conceive of his being able to meet the standards for the Presidential determination, but theoretically, as a legal matter, you are correct.

Mr. MALETZ. Under title II of the Lindsay bill, it would be a crime, would it not, for any Government employee purposely or knowingly to participate in a transaction involving the Government in the consequences of which he has a substantial economic interest of which he may reasonably be expected to know?

Mr. PERKINS. Yes.

Mr. MALETZ. Now, the meaning of the term "substantial economic interest" is rather vague, is it not?

Mr. PERKINS. Yes. But it is not a bit vaguer than a great deal of criminal law that exists today on human behavior, and certainly no vaguer than the present laws of conflict of interest.

It is an extraordinarily difficult thing to do to define that degree of economic interest which should be prohibitive. I think that, however, irrespective, if the word "substantial" were supplemented by regulation—even if it were just left absolutely alone—it would be possible for a court to interpret and construe that word, and I think that it is a phrase which is very close to a great many other phrases that have long been used in criminal law.

Mr. MALETZ. But as a practical matter the meaning of the term "substantial economic interest" would be heavily dependent upon the President's definition by way of regulation; would you agree with that?

Mr. PERKINS. Yes.

Mr. MALETZ. In other words, as you envisage this particular section, Congress would delegate to the President power to define the content of a Federal criminal offense.

Mr. PERKINS. That is absolutely correct.

Now let me explain the limitation on it. When you say "delegate the power to define a criminal offense," it would delegate that power only to the extent that the Congress was satisfied with what was the result in terms of the regulation. The Congress could change the law and override the regulations the day after they were promulgated.

So that when you say "delegate," it is what I would call a first-instance delegation and not an ultimate one. It is one that the Congress can pull back the next morning.

Secondly, may I say—

Mr. ROGERS. May I interrupt there?

How can Congress pull it back the next morning?

Mr. PERKINS. By adopting, if it so desired, its own characterization of the meaning—

Mr. ROGERS. You mean by passing another bill?

Mr. PERKINS. Yes.

Mr. ROGERS. Well, I have news for you; it cannot pass it that fast.

Mr. PERKINS. I agree.

Mr. MEADER. Especially not over a veto.

Mr. ROGERS. Especially not over a veto.

Mr. PERKINS. Mine was a very figurative use of the phrase. I will withdraw "the next morning."

But the basic point is that, as far as defining "substantial economic interest" is concerned, I do not think it really makes a great deal of difference who does it as long as it is recognized that a considerable amount of further particularization is needed.

Now, if the Congress can spell out the content of "substantial economic interest" in a way that makes sense, governmentwide, that would achieve the same purpose as the Presidential regulation.

Frankly, Mr. Chairman, when we came to trying to draft a suggestion for you of the content of "substantial economic interest" for possible inclusion in the statute, we found it to be an exceedingly difficult process. It is one that has to be particularized, we think, to a certain extent, to reflect experience in daily operation of these statutes.

If it can be done so as to be incorporated in a statute, that would serve the purpose in just the same way as regulation. But we think it would be very difficult.

The CHAIRMAN. Let me interrupt there.

Mr. PERKINS. Yes.

The CHAIRMAN. If you cannot do it, with all your acumen and intellect, how in the world could the President do it or even Congress?

Mr. PERKINS. I think that it has to be done with experience over a period of time to see what the situations are that actually arise and what kinds of judgments have to be exercised. You would have to live with the thing over a period of time. And we would find great difficulty in sitting down and drafting at this point a concept of "substantial economic interest" for all purposes.

Now, the regulations might well, in the last analysis, come down to a series of examples as guidelines. They might be a series of criteria to be taken into account.

The CHAIRMAN. You know what the President is going to do—he will appoint a commission. And you know what we call "commissions" around here: the appointment by the unknowing of the unwilling to do the unnecessary.

I do not know what or how the President is going to wrestle with this if you put it in his lap. He is going to have an awful time of it.

Mr. PERKINS. I think anyone is going to have an awful time with it, Mr. Chairman, because it is a very difficult job. But I do think you could have several approaches. One would be to list some criteria, which would not be necessarily absolute rules but would give guidelines—a series of them.

Now, for example, in the case of a stock interest—

The CHAIRMAN. You must remember you are talking in terms of a criminal offense.

Mr. PERKINS. That is correct.

The CHAIRMAN. This is made a crime.

Mr. PERKINS. That is correct.

The CHAIRMAN. This is a very serious matter.

Mr. MALETZ. Mr. Chairman—

Mr. MEADER. Mr. Chairman, might I ask some questions?

The CHAIRMAN. Yes, Mr. Meader.

Mr. MEADER. I think this is material to the entire section 10.

The CHAIRMAN. It is.

Mr. MEADER. And I believe that we ought to read that, Mr. Chairman, of this H.R. 10575, and I want to ask some questions which I think bear upon this matter that we have been talking about, defining "substantial economic interest."

I want to read this and ask for Mr. Perkins' comment:

Section 10. Administration

(a) RESPONSIBILITY OF THE PRESIDENT.—(1) The President shall be responsible for the establishment of appropriate standards to protect against actual or potential conflicts of interest on the part of Government employees and for the administration and enforcement of this Act and the regulations and orders issued hereunder.

Now, if we just took the first phrase there:

The President shall be responsible for the establishment of appropriate standards to protect against actual or potential conflicts of interest on the part of Government employees * * *

if that means anything at all, it would seem to me we could just put that phrase in there and strike out all the rest of the bill and let the President pass upon conflict of interest statutes.

Mr. PERKINS. Well, I think the section certainly says impliedly, Mr. Meader, and it should have said so expressly, "Within the scope of this Act and subject to other laws passed by Congress affecting conflict of interest;" and then pick up from there.

Mr. MEADER. Well, if we have delegated validly to the President the power to establish, or to be responsible for, the establishment of appropriate standards to protect against actual or potential conflicts of interest, if we have validly delegated that authority to him, then I think he can do anything he wants to that he thinks accomplishes that end.

Mr. PERKINS. Well—

Mr. MEADER. And I believe that it would be held—although I cannot be sure any more—to be an unconstitutional delegation of legislative authority.

Mr. PERKINS. Well, in the first instance, sir, it certainly should be qualified by the general phraseology "subject to any congressional enactments."

Now, the second point I would like to make; it was already pointed out this morning by the chairman that in a certain area, in some areas, the President and the executive agencies do have regulatory power. I answered negatively to the question as to whether there was an overall authority on the part of the President in relation to conflicts of interest for all types of employees.

The CHAIRMAN. In other words, the President has authority now to promulgate, under appropriate standards, matters involving conflicts of interest. But I think he cannot do that on the criminal side; he can only do that on the civil side.

Mr. MEADER. Well, that, if I might continue—

The CHAIRMAN. Yes.

Mr. MEADER. It is certainly true that the executive power which is vested in the President by article II of the Constitution contains within it disciplinary authority over subordinates for any kind of wrongdoing. Certainly there inheres in the President, by the very virtue of his being vested with the executive authority of this Government, to protect the Government against wrongdoing by its agents and officials; is that not true?

Mr. PERKINS. Well, with some limitations, I believe that is true.

Mr. MEADER. And to the extent executive authority exists in the President, by virtue of the Constitution, then Congress cannot touch it, no matter what laws it passes, is that not correct?

Mr. PERKINS. Well, Congress certainly has enacted a great body of legislation relating to employee conduct. We believe that is right and appropriate, and that this is one of the areas in which the Congress does do exactly that. It already has done so.

Mr. MEADER. Well, Congress has the legislative power, and it may make a criminal offense of certain types of conduct on the part of citizens or Government employees.

Mr. PERKINS. That is right.

Mr. MEADER. There is no question about that being within Congress' legislative authority.

Mr. PERKINS. Precisely.

Mr. MEADER. But, I am saying, to the extent that the President, as the Chief Executive, possesses the executive power of this Government by virtue of the Constitution, the Congress can neither add to it nor take away from it; he exercises the executive power of the Constitution of the United States.

Mr. PERKINS. Yes. I am not sufficiently clear to give a flat "Yes" to the point that the President's power is unlimited in this area. I do not think it is unlimited.

Mr. MEADER. I did not say it was unlimited; I said whatever it is.

Mr. PERKINS. Right.

Mr. MEADER. Whatever power of a disciplinary nature the President has, by virtue of being the Chief Executive and the possessor of the executive power of this Government, he has by virtue of the Constitution, Congress does not need to give it to him. It can neither add to that executive power nor take away from it, because it exists by virtue of the Constitution.

Mr. LINDSAY. Will the gentleman yield at that point?

I do not think it is quite that simple: We have seen case after case which the Supreme Court has wrestled around with as to the extent to which Congress has or has not given necessary powers to the President to promulgate regulations in the security field governing employees, both in the Defense Establishment directly connected with the Federal Establishment and indirectly connected with the Federal Establishment. I do not think that it is quite that simple.

Mr. MEADER. Well, I think—

Mr. LINDSAY. Congress has a lot to do with it. What the Congress says can govern the extent of the power of the Executive when it comes to matters involving disciplinary action of Federal employees.

Mr. MEADER. Well—

Mr. LINDSAY. That is true in the Green case.

Mr. MEADER. I do not know that I want to interrogate my colleague on the committee. I was asking a question of Mr. Perkins

in the form of trying to get at this section 10 on administration. And my purpose in referring to the disciplinary power over the conduct of subordinates that the President possesses by reason of the Constitution—and I do not know whether you agreed with me or not, but maybe it does not matter whether he agrees with me or not—that the President does possess certain power by virtue of the fact that he is the Chief Executive and vested with the executive authority of the Government by the Constitution.

Now, the second point I wanted to make is that in section 10(a)(2), I am adding in that subsection this language, and I quote:

“The President may, and shall do so when required by this Act, issue regulations extending * * *”—and I want to emphasize these words: “* * * extending, supplementing, implementing, or interpreting the provisions of this Act.”

Now, if “extending the provisions of this Act” means that we are vesting authority in the President to add legislation beyond this Act, then is not that clearly an unconstitutional delegation of legislative authority?

Mr. PERKINS. Well, I think it should probably read, to express the point you are making it should probably read “carrying out the policies and purposes of this Act,” is what it is intended to connote. And I think if we were to revise it to the language “issue regulations carrying out the policies and purposes of this Act” it would have the same effect, from our viewpoint, and not have the same objection which you see, which I think is a fair one.

Mr. MEADER. Now I want to go on to the “Administrator” that is provided for in subsection (b) of section 10. It is at the bottom of page 27. It says:

The President may delegate any or all of his powers under this subsection (a) (4) to the Administrator referred to in subsection (b) or to others, either generally or in particular instances.

Then it goes on to say: to designate an official within the executive branch of the Government who has certain specific authority and duties.

Now, I note that there is no provision that that official, who is referred to as the Administrator, be confirmed by the Senate. Was that intentional?

Mr. PERKINS. I honestly cannot recall to what extent our committee gave express consideration to the confirmation question. Just speaking personally, I cannot see any reason why that should not be an appropriate addition.

Mr. Burns, or Mr. Hoagland, do you see any reason why confirmation power would affect the essentials here at all?

Mr. HOAGLAND. I do not see any reason against it.

Mr. BURNS. No.

Mr. MEADER. The point that I have in mind is this: I am not sure that I understand precisely what this Administrator may do. Apparently he may do anything the President may delegate to him. And I suppose he could do that anywhere. I think the President would have the authority to delegate regardless of whether it is specified in the statute.

Mr. PERKINS. Well, no sir.

Mr. MEADER. But, at any rate, he would seem to have some very important responsibilities in this field which would cut across many departments and agencies of the Government. In other words, you would anticipate that he would be a man of some stature and rather extensive authority.

And it would strike me that, if he were not confirmed by the Senate, you might have some doubt about the importance or the caliber of the man who, in a sense, was going to be the moral guardian of the conduct of the executive branch of the Government.

Mr. PERKINS. I think you have got an excellent point there, sir, and I think that it would have the positive value of giving him a position of greater prominence in the public eye, and I think it would be a valuable addition.

I might note, however, without differing on anything, but just to be sure we are agreed that the delegation power that you read does relate to section (a) (4) and not to sections (a) (2)—

Mr. MEADER. (1) to (3)?

Mr. PERKINS. Right.

Mr. MEADER. Well, but I wonder—

Mr. PERKINS. (a) (1).

Mr. MEADER. Whether we expressly authorize the President to delegate some of his authority to subordinates, if he does not have that power anyway to delegate authority to a subordinate.

Mr. PERKINS. I think he does have powers to delegate. But in issuing regulations under this bill, I feel certain that he would have to issue the regulations in his name. The role of the Administrator—I hope—under the way we have drafted it, would be confined to putting the regulations up to the President and saying: "I think these should be promulgated." The President would have to do it, I believe, under the way we drafted it. I certainly hope so.

Mr. MEADER. Well, I dare say if you said the President shall issue regulations, or if he should publish something in the Federal Register, that that should have his name on it.

Mr. PERKINS. That is right.

Mr. MEADER. Whether he prepares it personally or some subordinate, it still would have to be done in his name.

Mr. PERKINS. Right.

Mr. MEADER. I would like to ask you if you feel it is necessary for us to create another agency in the Government to accomplish the purposes of this act?

Mr. PERKINS. No, sir. And this does not propose what we would regard as another agency.

In the first place, it could be small; it could be one individual and perhaps one or two assistants. And we conceive that as entirely possible that the "Administrator" could have other functions; for example, if you have a presidential assistant on personnel matters, conflict of interest could easily be added to his functions.

And we do not think that another agency is needed as such. The language here refers to the creation of an office; and that is done because we were advised that, technically, that is the way you may have to refer to it in order to meet the appropriations law technicalities.

But as spelled out in the report, the office would be an exceedingly small proposition. Essentially, the Administrator would be working with others, with agency heads, general councils, of departments, Department of Justice, Civil Service Commission, Comptroller General. There would be a consultative, creative and advisory function, and not a centralized bureaucracy type of arrangement.

Mr. MEADER. Well, these agencies have a way—these new offices that are created in the executive branch of the Government usually have a way of being presented as something rather minor and small and very economical, but it does not take long after something has been created that it tends to grow and grow. And sometimes, instead of actually coordinating and clearing up things, it just adds another layer and causes more confusion.

Mr. PERKINS. Well, I am familiar with the experience, and the observation you make, sir, is quite accurate in accordance with my observation.

But we have to have it one way or the other; either conflict of interest law is to be focused on and given clear recognition as a problem of complexity and importance or it isn't. In our recommendation No. 1 we said: Conflict of interest problems should be recognized and treated as an important, complex and independent subject of attention and concern in the management of the governmental establishment.

Now, if we are going to do that, it does seem to me that at least one individual, perhaps in addition to his other duties, has got to be recognized as a repository of a good deal of information and as having a coordinating and assisting capacity.

I think to give the subject proper attention you have to pinpoint at least one person to follow it closely all the time.

Mr. MEADER. Well, now, Mr. Perkins, I would like to get at what I think is essentially this same problem from just a little different angle.

We have criminal statutes now resulting in various penalties on the violators of those statutes, and we have some administrative regulations not founded upon statute in the executive branch of the Government. Some of these bills, 2157 particularly, propose to have a law passed to tell what administrative sanctions there should be against certain types of misconduct.

Now, it seems to me, that we, here in Congress, do have a right to deal with the criminal laws with our legislative power. But I am going back to this basic question that I asked a little while ago, that as far as administrative sanctions are concerned, is there not already sufficient authority in the executive branch of the Government, in the President, by virtue of his possession of the executive power of this Government, by regulation or otherwise, to do everything that this bill does or would authorize him to do, or everything that H.R. 2157 would authorize him to do without any new legislation?

Mr. PERKINS. I want to be careful in response to this, and I cannot be dogmatic because I really would have to go back and review the statute that Mr. Maletz so validly pointed out this morning. As he pointed out this morning, there is a statute that creates a tie between the President and the functions of the Civil Service Commission, which

I had temporarily forgotten; and it is sufficiently broad to give the President powers with respect to the civil service employees.

Now, it is clear that the civil service employees are only one, although by far the major, block of employees in the Government today. I may be wrong, but I do not think that statute is broad enough to encompass other personnel systems within the Federal Government.

Now, assuming that to be true—if I am correct on that—there is no statute which expressly gives the President power to do everything that this bill does.

But I think that, actually, the question is secondary as to whether or not we could construct that presidential power out of a series of constitutional interpretations and statutes; because, in our committee's view, the important thing is to have a statute which expressly focuses on it and says to the President: Here is what we want, and here is what the Congress feels should be done in the way of having an active and effective and continuing structure for administration of conflict of interest principles.

So that, to answer your question another way, if the question implies that we do not need a law to the extent that we are dealing in the noncriminal area, we would say very definitely we do need a new law.

In the first place, you need a law to consolidate the present statutes, to clarify them, to revise them, to add to them, to fill in the gaps; and this statute, a new comprehensive statute, should form the basis for whatever additional regulations may be issued by the President.

In other words, the very same principles which the Congress establishes with respect to criminal laws should apply to the civil. The substantive restraints should still hang on the very same principles.

You can evolve certain principles of conflict of interest. For example, the first is that a person inside Government should not do something that affects his interests outside Government. The second is that a person outside, a person who wears a Government hat, should not assist others outside Government to further their matters against the Government.

Now, after you have developed a set of "conflict of interest" principles, we feel that those principles should be adopted into law and that they should be used as the basis for both criminal and administrative sanctions.

But we think that the Congress should undertake to revamp these laws that exist now and to develop a consistent and comprehensive statute and then should permit the agencies to supplement it by regulations which are pertinent, applicable and apt for their particular agencies.

So that while it may be that the President does have regulatory power as to most Government employees because of the breadth of the Civil Service System, we do not think that that reduces or obviates the necessity for new broad, comprehensive legislation.

Mr. MEADER. Mr. Perkins, when the General Counsel of the Office of Civil Defense and Mobilization, Mr. Kendall, was here the other day, I was rather shocked to learn that all of the dollar-a-year men who worked for the Government in World War II relied upon the Attorney General's opinion rather than upon any statutory exemption with respect to the conflict-of-interest laws. Are you aware of that?

Mr. PERKINS. I certainly was not——

Mr. MEADER. They drafted hundreds of businessmen in the War Production Board and the Office of Defense Transportation and all these war agencies, and they came down here, many times, without compensation at all. But they exercised very important and extensive governmental powers.

But I understand from Mr. Kendall, who was here at the time, that they relied solely on the opinion of the Attorney General. There was not any statute which exempted them from the operation of the conflict-of-interest laws.

Mr. PERKINS. Well, I confess that we are under the distinct impression—I will have to go back and recheck them—that there were a great many exemptions adopted within that period. Certainly, the Defense Production Act contains a broad exemption.

Mr. Hoagland, do you wish to say——

Mr. MEADER. You are talking about the Korean War Defense Production Act, I believe?

Mr. PERKINS. Yes.

Mr. HOAGLAND. The opinion of the Attorney General, which we cited earlier, I think, which extended the conflict-of-interest rules by implication, that interpretation to consultants, persons who served without pay—this was 1953—so I am assuming that you are saying that there was an opinion of the Attorney General saying that the conflict-of-interest laws did not apply to the dollar-a-year men.

Mr. MEADER. Well, I have not seen the opinion; I am just basing it upon Mr. Kendall's testimony.

Mr. PERKINS. Yes.

Mr. MEADER. But, anyway, I just wanted to lead to this question.

Mr. Kendall urged that any legislation on the conflict-of-interest subject that might be adopted should contain express authority in time of war or national emergency for the President, under appropriate restrictions and standards, to exempt emergency employees or officials from the operation of the conflict-of-interest statutes.

Now, is there anything in 10575 which provides that type of exception? We have been talking about the limited exemption.

Mr. PERKINS. Yes.

Mr. MEADER. On page 14 of the bill. But is there any general exemption, in time of war and national emergency, provided?

Mr. PERKINS. No, sir; there is not.

I think that the bill is so designed and so pinpointed in its provisions that you might find a far less need for exemptions because the same problems would not arise under this bill as under existing statutes.

Now, there would be some situations probably where you would want a general exemption. We did not include it in this bill, but I think it might well be needed.

I think that as far as our committee is concerned, we would like to see some experience operating with a statute of this type in order to get a clearer impression of what the need would be in the case of a national emergency for a broad general power of exemption. There might well be such a need, and certainly, if there were, our thinking would be consistent with Mr. Kendall's; namely, to add the power.

But I am not sure that we can say definitively that this set of restraints, with the limited exceptions that are in the bill, would not work. I think it might work.

Mr. MEADER. Well, since the chairman has indicated that you will have more time to submit additional views or statements, do you think it would be worthwhile for your committee to give attention to this problem Mr. Kendall raises and see whether or not such authority should be included in any legislation we adopt providing for wartime or in time of national emergency?

Mr. PERKINS. It would be tremendously worthwhile. I am not positive we can do so; and, as I say, I am not sure the evidence would really be in until you had a new set of restraints on the books to see how they actually operate in practice. My hunch is that a bill such as H.R. 10575 would eliminate enough of the problems so that a general wartime exemption would be far less needed.

But I think it is a good point you make, and if we can we will give it consideration.

Mr. MEADER. Now, Mr. Perkins, maybe you could refer me quickly to the passages in this document which indicate the need for urgency for legislation of this type? I questioned you to some extent on the statements, the conclusions that present conflict-of-interest statutes deter individuals from accepting Government employment. If that were a well-established case that it was really harming the functions of the Government, then I say that would be an indication of an urgent need for some legislation that would remove that impediment to the functioning of the Government.

Mr. PERKINS. Yes, sir.

Mr. MEADER. Now, of course, on the other hand, I suppose that you can say that there would be an urgent need for this legislation only if the present laws were not operating effectively and there was widespread dishonesty and wrongdoing on the part of Government officials. You are not suggesting that there is any such widespread misconduct, are you?

Mr. PERKINS. No, sir; we are not. The chapter which I think most aptly answers your question is chapter 9 of the book. It is a summary assessment of existing restraints. It was also summarized in my statement, in which we seek to treat with the various features of it that we think are inadequate.

Mr. MEADER. Well, now, I notice in your statement you point to some obsolescence and that these statutes were a century old. But this form of misconduct is not just a hundred years old: it is centuries and almost eons old. I guess as long as we have had human beings there have been tendencies to self-aggrandizement. It is not necessarily true that we have got to revamp these statutes every hundred years if they are dealing with rather constant human traits of character.

Mr. PERKINS. Certainly, as far as the human behavioral aspects of it are concerned, I could not agree with you more. These are as old as society itself.

But what the Government does has changed markedly in the last hundred years. We do think that, just the way Congress brings up to date legislation in many, many areas, there is a very great need

for bringing up to date its laws recognizing these behavioral aspects that were enacted, a good many of them a century ago.

Mr. MEADER. Well, that argument would seem to me, if that is the basis of it—our Government has grown a great deal, certainly, and times have changed; but our Constitution is a lot older than these statutes, and we do not feel we have to overhaul it all the time.

Mr. PERKINS. No. But I think the language of the statutes is far different from the language of the Constitution. Just take, for example, this section on postemployment, which is perhaps the most striking example. The only ban on someone who leaves Government today is acting as attorney or agent in the prosecution of a claim.

Now, I think the facts of life in Government today are that the Government has a far broader impact in relation to the private segment of the economy than in the mere matter of claims. And claims are handled through the claims procedures of Government, and we have a Court of Claims. It deals with claims. But what about all sorts of applications for licenses, for certificates, for rulings, for clearances? All of the independent agencies have grown up since the statutes were first enacted, and there is a vast area of activity in Government that simply did not exist at the time these statutes were first enacted.

Mr. MEADER. Section 281 was enacted in 1864, almost a hundred years ago. It has some very broad language in it.

Mr. PERKINS. 281 is the broadest of the present statutes, as we point out in the report, and that is the one where the least substantive change is suggested by our recommendations. In fact—

Mr. MEADER. In other words, the longer ago we passed legislation, the better job we did? This other one that is referred to was only passed after World War I, 40 years ago. Maybe we better stop passing these laws, because the older ones are the best.

Mr. PERKINS. I would say that 281 did meet the test of time, to a very large extent, particularly because it has the words "or any other particular matter" in it.

Mr. MEADER. "Directly or indirectly interested."

Mr. PERKINS. Yes.

And that language "any other particular matter" is what makes that statute sufficiently broad to encompass and to be flexible enough to expand with the added functions of Government.

Mr. MEADER. I have a feeling about that statute that it is probably too broad.

Mr. PERKINS. I think in certain respects, which we have pointed out, it is. It is certainly too broad for somebody that you expect to come from private life where he is conducting his daily activities. To expect the same statute to work for a person who comes from private life to serve on an advisory committee, in the same way it does for a person who has a career in Government service, we think is unreasonable.

Mr. MEADER. Let me say—what attitude do you take on how we pass laws, that those who are advocating new laws or changes in an existing law have the burden of proof? They have got to make a public showing that there is a need for what they are advocating?

Now, I pointed to the deterrence argument or conclusions of your committee, and now we have been discussing the adequacy of the sanctions against misconduct.

Of the two reasons for taking action at this time, which would you regard as most important, that our laws deter people from accepting Government employment or that there is a lot of misconduct that gets by because we do not want to use the harsh criminal penalty?

Mr. PERKINS. Well, that is an extremely difficult evaluation to make, because they are both important objectives of Government. To set one off against the other, or to try to say which is most important, I would find extremely difficult. We think both of them are important. And we think either one independently is a sufficient reason for moving ahead.

I think I would be unable to assess a relative weighting. On the enforcement side, we have talked about section 284, and there was a specific case in which the Justice Department sought to bring an action where they thought there was a clear and a real conflict of interest. Justice sought to get a broad construction of the word "claim," to include an instance of seeking a premerger clearance ruling. The Department of Justice lost the case. It then came up and recommended legislation to expand the law—to encompass what the Justice Department felt was an instance in which there was a clear conflict of interest.

Congressman Celler's bill would recommend that situation, and H.R. 10575 would do the same. So it is not purely hypothetical. There are situations, very clearly, in day-to-day activity of the Federal Government, in which the present conflict of interest laws are simply not broad enough to encompass full protection.

Mr. MEADER. I would like to draw your attention to the statement in the last paragraph on II-7. I do not want to read it all. I must say that it sounds like a little more colorful language than you usually find in a lawyer's brief. But let us read the last two sentences:

So long as a prevailing ethleal worry of the populace is economic, conflict of interest restraints must emphasize economic. For public confidence is the single-most goal at stake in the field of Government ethics.

I would like to ask whether—this seems to indicate that you believe there is a widespread lack of public confidence in the ethics of Government employees at the present time.

Mr. PERKINS. Well, I think the "widespread" is too broad. No, I do not think there is a widespread lack of confidence. I think we always run up against, in our daily lives, people who take a rather pessimistic and dim view of what constitutes the average Federal servant. It does not happen to coincide with my observation and experience. But I think there are a great many people that think that people in public office, to a large extent, are often there in one way with another with their hand in the till. That is the expression that a lot of people tend to use.

To the extent that we have an effective and going system of conflict of interest regulation that does help to create public confidence, we have achieved a tremendously important national objective.

Mr. MEADER. Do you think that the adoption of this or other similar legislation will improve public confidence in them?

Mr. PERKINS. Yes, we do. We think that it would demonstrate that the Government is constantly concerned, active, and alert to guard against any situations of wrongdoing or of conflict of interest. New and comprehensive legislation would help to increase public con-

fidence and thereby be a contribution to the operation of democratic government.

Mr. MEADER. Is not the fact that we are considering this legislation and that the Bar Association of the City of New York is urgently recommending that something be done in this field, an indication that somebody, at least, lacks confidence in the honesty of Government officials at the present time?

Mr. PERKINS. I think that is one of many factors. I do not think it is a new factor. I think that all throughout our history there have always been a lot of people in society as a whole who do not have confidence in the operation of Government. I think that we want to minimize this, and the proposed legislation is one effort to help to minimize it.

Mr. MEADER. That is all.

Mr. MALETZ. Mr. Chairman.

Mr. ROGERS (presiding). Proceed.

Mr. MALETZ. Mr. Perkins, turning again to section 6 of H.R. 10575; as I understand that section, no Government employee, whether regular or intermittent, may receive a gift from anyone if the employee has reason to believe that the person would not give the gift but for the employee's office or position within the Government, is that correct?

Mr. PERKINS. Yes, sir.

Mr. MALETZ. And a purposeful or knowing violation of that provision would be a criminal offense, would it not?

Mr. PERKINS. Yes, sir.

Mr. MALETZ. In addition, is it not correct that, under that section, a regular employee would be prohibited from receiving a gift from anyone who does business with his agency or is regulated by his agency?

Mr. PERKINS. Unless it came within one of the permitted exceptions, that is correct.

Mr. MALETZ. However, is it not also true that the intermittent employee could receive a gift, gratuity or fee from anybody who does business with this agency or is regulated by his agency?

Mr. PERKINS. Yes; and for what we think is an extremely good reason; namely, that he could receive compensation from someone who is regulated by his agency. It might well be his regular employer.

To use an example, a scientist could be drawn from a company which is regulated in one way or another by the Atomic Energy Commission. The scientist can receive pay from his company and still be drawing pay after the Atomic Energy Commission appoints him to advise the Atomic Energy Commission. If he can receive pay from his own company, it seems perfectly obvious that it would be absurd to try to ban a gift from him. You could not distinguish between the two. There would be a mere question of which way the company preferred to pay it. And so it is a very simple reason that intermittent employees cannot, in our view, be covered by the same gift rule.

Let me use another example. Take the case of a labor relations consultant who has a great many labor unions for whom he consults on labor relations matters. We will say that he is one of the outstand-

ing experts in the field of labor relations. The Labor Department may well want the advice of this individual on an advisory board or as a consultant. Now, if that labor relations consultant has been retained for years by a particular labor union, and that labor union sees fit to give him a gift at Christmas time, in addition to his consulting fees for that labor union, again it would be impossible, in our view, to ban and prevent that.

On the other hand, as we point out in our technical commentary on page 36, that that consultant, in the capacity as an adviser to the Labor Department, having had not prior relationship with a particular labor union, were given a gift by a labor union under circumstances which indicate that they are giving it to him because of his special relationship with the Labor Department and not because of a prior relationship to that labor union, he would come within the ban of section 6(a) and, therefore, the gift rule would be applicable to him.

Mr. MALETZ. Well, now, Mr. Perkins, the intermittent employee could receive a gift not only from his private employer but also from any person or any concern which has business before his agency or is regulated by his agency, is that not right?

Mr. PERKINS. No, sir; because under 6(a), if any—

Mr. MALETZ. With the proviso of 6(a)?

Mr. PERKINS. But that is such an important proviso; because the case, I suspect, that you have in mind is one where the circumstances imply or infer that the intermittent employee is being given this gift because of his status with the agency.

Mr. MALETZ. Well, now, under this bill the regular Government employee is precluded, under pain of criminal prosecution, from receiving a gift from any company which does business or is regulated by that employee's agency.

Mr. PERKINS. That is right. But as far as—

Mr. MALETZ. However, an intermittent employee, a person who serves 51 days a year, or possibly 130 days a year, could receive a gift from any concern which has business before the agency or is regulated by the agency, is that not correct?

Mr. PERKINS. I cannot accept the use of the word "any" in characterizing the draft statute. He could only receive it from a company, regulated by the agency, which had such a relationship to him personally that he would have no reason to believe that the donor would not be giving him a gift, gratuity, or favor but for his office.

Mr. MALETZ. That is applicable to both Government and intermittent employees as well.

In other words, all Government employees are prohibited, on pain of prosecution, from receiving a gift from anyone if the employee has reason to believe the person would not give the gift but for the person's office or position in the Government.

Mr. PERKINS. That is right.

Mr. MALETZ. Then you go on to effect a dichotomy, do you not, as between the regular Government employee and the intermittent Government employee. On the one hand you preclude the regular Government employee from receiving a gift from anyone who does business with the agency but permit the intermittent employee to receive a gift from anyone who does business with the agency.

Mr. PERKINS. I would still have to differ over the last few words—over “anyone who does business with the agency.”

It is true that, under 6(b), there is an additional restraint set up in the case of a regular Government employee such that you have to make no inquiry as to whether or not the gift would be given but for the official's job in Government. In other words, there is a conclusive statutory presumption.

Or another way of saying it, we think that the appearance factors are so strong in the case of the regular Government employee so that you should not have to make an inquiry as to whether or not the gift would be given but for the official's position within Government, and that the gift should be barred, in all events, unless it comes within a permitted exception. These exceptions would, of course, include family, and so forth.

Mr. MALETZ. Could you not accomplish that objective by prohibiting a gift to any Government employee, regular or intermittent, by any concern which has business before the agency or which is regulated by the agency and then have an exception to permit the intermittent employee to obtain gifts from his private employer; would not that accomplish the same thing without—

Mr. PERKINS. It would begin to approach it; but you would have to go a little bit further. You would have to expand that exception, in my view, to be sure that “employer” includes other situations, such as an independent contractual relationship which he may have had in the past. In the example of my labor relations consultant, he would not necessarily be an employee of the labor union but he may have been retained by it for years and may have an established past relationship with the labor union such as to justify the gift. There are other ways of creating the distinction, but the basic point that I make is that here must be a distinction if you expect to get people to come from private life to serve in a part-time capacity. There must be some distinction in this gift area. You, in effect, are recognizing this when you say, could you not achieve the same result by another means? Yes, you could.

Mr. MALETZ. Now, I would like to turn to section 8, and at the outset, ask you this question. Is it not correct that under article 36 of the “Canons of Ethics” of the American Bar Association if a former Government attorney is disqualified by a conflict of interest, his partners are also disqualified?

Mr. PERKINS. There is nothing in the “Canons of Ethics.” to the best of my knowledge, that so states. It is my understanding that various rulings and interpretations applied by—I believe it is the committees of the American Bar Association—have so ruled in particular cases involving particular firms and particular lawyers.

Mr. MALETZ. In other words, under interpretative rules, construing article 36 of the “Canons of Ethics” of the American Bar Association, not only the attorney but his partners as well are banned permanently from switching sides, is that not right?

Mr. PERKINS. I do not think we can say it that broadly.

Mr. MALETZ. How would you say it?

Mr. PERKINS. I would say that the canon says that where a former Government employee has passed upon or investigated a given matter, he cannot pick it up on the outside.

I think further that individual cases have come to the ethics committees in which the ruling has been made that in that situation his partner could not participate.

Mr. MALETZ. In other words, his partners would be disqualified as well?

Mr. PERKINS. In those cases on which there has been a ruling.

Mr. MALETZ. In those cases—

Mr. PERKINS. But I would emphasize the fact that the "Canons of Ethics" do not say "nor may his partner."

Mr. MALETZ. You are addressing yourself to the rulings construing article 36 of the canons?

Mr. PERKINS. Right; in particular cases and given certain sets of facts.

Mr. MALETZ. Now, as I understand it, under your bill the disqualification of the partners extends for only 2 years, and then only for matters in which the former Government employee had directly participated, is that right?

Mr. PERKINS. Participated in, that is correct. In other words, the "participated in" language would cover the same scope, in our view, as the words "passed upon or investigated." In fact, the word "participated" is much broader than the present canon which uses the words "passed upon or investigated"; because there can be a great many activities that you can engage in inside Government which would not fall within the words "passed upon or investigated." And the word "participated" picks those up. So our proposed statute is much broader.

And I would like to point out additionally, that under present conflict-of-interest law, there is no prohibition on the employee or on the partner beyond 2 years—none whatsoever.

The question to which you are addressing yourself is a very difficult question, but the basic elements that were in our minds in approaching this particular problem are:

(1) You are extending greatly the scope of the ban in relation to what the person did inside Government: you are including recommendations and all sorts of activities inside Government, in addition to "passed upon or investigated."

(2) You are making a permanent bar for the individual himself on matters that he participated in, which has never been done before. The bar, so far, has been a 2-year bar on Government employees.

(3) For the first time, we are having any statutory recognition in our proposal of the partnership situation at all.

Now, with those three factors, we felt that it was unreasonable to propose at this time, and without further experience, that we go any further than those three tremendous expansions, in the partnership situation.

The reason I am emphasizing the fact that you are dealing with particular interpretations in the "Canons of Ethics" is an important one: the construction of a partnership varies and is constantly changing. In the modern world today a partnership may consist of as many as several hundred people. You have accounting firms that have offices in every city of the country, every major city of the country. And yet they all call themselves partners.

And the same with investment firms. The concept and idea that two people are the typical partnership, two or three people, and that each knows everything that the other does, is an archaic and outmoded concept from the realistic viewpoint.

Now, I can conceive perfectly well of an accounting firm in San Francisco and many other cities, with the San Francisco office not having the slightest idea what the Atlanta, Ga., office was doing on a particular matter. To impute knowledge to a San Francisco partner of the accounting firm as to some activity of one of the partners in the Atlanta office, when the most they see each other is at an annual convention, we think is just not up to date.

And I would add to that that you have the whole problem of the corporation and the relationship of a corporation to a partnership. You are probably well aware of the fact that under existing internal revenue law, the treatment of partnerships and corporations is greatly in flux. And you can drop into either classification, depending on certain aspects of the firm structure.

To pick out partnerships and to have an utterly and completely different concept of imputation of liability than you do for the corporation is something that has got to be thought through a great deal. And we are not prepared to say that, with these three broad extensions I have referred to, you should impute liability on a statutory basis to partnerships beyond a 2-year period.

Mr. MALETZ. Now, Mr. Perkins, one further question along the same lines.

Under H.R. 10575, a partnership, as I understand it, would not be disqualified at all, even though the former employee had exercised responsibility—responsibility—with respect to a given matter; is that right?

Mr. PERKINS. No, that is not accurate. You said "exercise responsibility."

Mr. MALETZ. I am using the word "responsibility" as defined by your bill, "had responsibility" as defined by your bill.

Mr. PERKINS. Had responsibility?

Mr. MALETZ. May I repeat the question?

Mr. PERKINS. Yes; please.

Mr. MALETZ. Under H.R. 10575, is it not correct that a partnership would not be disqualified at all even though the former employee who has become a member of the firm had responsibility with respect to a given matter—

Mr. PERKINS. Provided he did not participate?

Mr. MALETZ. If he had responsibility for a given matter while a Government employee. If he leaves Government to join a law firm, that law firm would not be disqualified, would it—

Mr. PERKINS. I would have to—

Mr. MALETZ. From handling that particular matter?

Mr. PERKINS. If he had responsibility and no participation?

Mr. MALETZ. Yes.

Mr. PERKINS. I do have to add that qualification of no participation, because the connotation of the word "responsibility," unless it is used in relationship to our definition, might be one of close relationship.

Mr. MALETZ. I agree that it is a word of art.

Mr. PERKINS. Right.

Mr. MALETZ. I recognize that, and I am using it exactly as defined by your bill.

Mr. PERKINS. We are excluding a case in which the former employee had anything to do with the matter himself, other than what is a legal responsibility. He did not see the matter, did not participate in it, did not recommend about it. In this situation, your answer is correct. Under the bill, if the former employee had no personal involvement with the matter whatsoever, the partnership would not be barred.

Mr. MALETZ. Now, then—

Mr. PERKINS. And that, may I say, is the precise rule which is in effect today under the "Canons of Ethics" as we understand it, in that the words "passed upon or investigated" are the bases in the "Canons of Ethics" for the application of the postemployment rule.

Mr. MALETZ. To put this matter in complete focus, then, your bill would disqualify the partnership for 2 years, where a member of the firm had participated in a given transaction involving the Government as a Government employee.

Mr. PERKINS. Yes.

Mr. MALETZ. And I take it, as you previously testified, that this represents a modification of rulings of the Committee on Professional Ethics of the American Bar Association under canon 36?

Mr. PERKINS. No. It represents two things. First, it represents a great extension of present statutory law. Secondly, it represents a decision not to recommend extending the statutory law beyond a certain point. Today, there is a vast dichotomy between statutory law and the canons of ethics rulings rendered in specific instances.

The effect of this statute is to move substantially in the direction of incorporating into statutory law the rulings of the canons of ethics, but not to go beyond a certain point at this time.

Mr. MALETZ. Well, is it not correct that, under present rulings of the American Bar Association, a law firm is barred in any situation where any member is barred?

Mr. PERKINS. I cannot say that that is the law, stated that broadly. And, in any event, this statute—

Mr. MALETZ. You cannot? Is that not the way that canon 36 is viewed by the American Bar Association?

Mr. PERKINS. I do not know that it has been ruled upon that broadly.

Mr. MALETZ. Well, may I quote from your report at page X-58?

Mr. PERKINS. Yes.

Mr. MALETZ. I quote:

Canon 36 is apparently viewed to bar the law firm in any situation where any member is barred.

Mr. PERKINS. That is correct. The "apparently viewed" and the footnote citation there will be to the very rulings that we have been talking about.

Mr. MALETZ. That is right.

Mr. PERKINS. Rulings in specific situations.

Mr. MALETZ. So, therefore, under canon 36, is it not correct that a Government attorney who enters the Federal service and joins a

law firm is permanently disqualified from handling a matter or transaction in which he participated as a Government employee?

Mr. PERKINS. That is possibly true. And I wish to emphasize that we do not propose to change, by statute, the canons of ethics of any profession.

What we are dealing with here is a question of the extent to which Government-wide statutory law should incorporate this partnership principle and the extent to which it should be left to things like canons of ethics for the particular professions involved. You are focusing on lawyers. There are engineers, there are accountants, there is a vast variety of other professions in which partnerships are a prevailing form of organization. Simply because we are lawyers, I do not think that we can recommend imposition of the canons of ethics that we have adopted for our profession on a Government-wide statutory basis and say that "This is it."

There are a great many other professions, as I say, that have entirely different problems from those of lawyers.

Simply because we recommend extension of the Federal Government-wide statutory law well beyond its present scope, but not, perhaps, as far as our profession's canons have gone, we do not think this is a criticism, or can be made a criticism, of the proposed statute.

What we are saying is that this is as far as we think the overall Federal statutory law should go. And we must keep in mind that a criminal prosecution is permitted under the statute.

But, to the extent that you have either special circumstances in a particular agency of Government, or special circumstances in a particular profession, there may well be reasons to go a great deal further than the statute—

Mr. MALETZ. Well, are you saying, then, that even should 10575 become law, the law partnership would be barred permanently where any member of the firm was barred from handling the transaction involving the Government?

Mr. PERKINS. Well, for me to answer that would be for me to say that I could know the rulings that will come down under the canons of ethics in the future. I do not know the rulings that will come down, but I would like to hazard the guess that modifications in the rulings are a theoretical possibility.

Let us just suppose that intercity law firms are becoming a common practice. Some now have Chicago or San Francisco offices and a Washington office. They are rather limited. But I can well conceive that, if intercity law firms become a vogue and a pattern, a committee on ethics faced with this issue for the first time, and, looking at it in a realistic fashion, might say: "Maybe we ought to modify this general rule of imputation a little bit, and look at the particular facts to see to what extent we can realistically impute liability and knowledge to partners."

Mr. MALETZ. Well, if—

Mr. PERKINS. And I do not think that you and I sitting here can anticipate what the canons of ethics rulings might be on a particular set of facts involving a particular type of organization.

Mr. MALETZ. Well, then, is it not a fact that one of the major reasons for your recommending this particular provision is that you

have certain qualms about canon 36 to the extent that it bars the law firm in any situation where a member is barred?

Mr. PERKINS. We would have great qualms about adopting the interpretations under canon 36 for all professions, with criminal penalties, and on a Government-wide basis, yes.

Mr. MALETZ. Let me read what you said in the report, X-58, and I am quoting:

It is questionable whether this internal professional rule is in accord with modern conditions of law practice, especially the growth of the large, departmentalized and hierarchical law firm.

And my question is this, and it may be repetitious: Is it one of the purposes in recommending this provision of the bill to obtain a change in canon 36 to the extent that it bars the law firm in any situation where a member is barred?

Mr. PERKINS. No, sir. We were not addressing ourselves to the canons of ethics. We were addressing ourselves to the question of what should be Government-wide statutory law involving criminal penalties. And that is the sole question to which we addressed ourselves.

Mr. MALETZ. But you do criticize the, shall we say, sweeping nature of canon 36 to the extent that it disqualifies an entire law partnership, do you not?

Mr. PERKINS. Well, I do not think the language "It is questionable whether this internal professional rule is in accord with modern conditions of law practice," is a criticism. I think it raises a valid inquiry.

I think if I were sitting on a bar association ethics committee, I would want to raise this question: "Well, look, fellows, that decision of this particular ethics committee was back many years ago, and it involved two people in a small town. Should we not at least take a look at the differences of fact? After taking a look, we might well conclude: 'Well, the same rule ought well to apply. In our profession of lawyers, we think the imputation of liability and knowledge is a good thing, and let us keep it.'"

So that—

Mr. MALETZ. All right.

Now I would like to turn to section 12(e), beginning on page 36. Under that provision, a Government employee or former employee is not subject to prosecution under any provision of law dealing with conspiracy by reason of receipt of any payment prohibited by section 9. May I ask you what the reason is for that provision?

Mr. PERKINS. Yes. The language in the statute is to prescribe what Government employees should and should not do. We believe we have comprehensively covered the situations under which a Government employee should not receive anything from an outside person.

Now, in those sections involving prohibitions on receipt of a thing of value from an outside person, or other relationships with an outside person, we have made an effort to draft them very carefully. In some connections a very particularized element of subjective intent is involved; for example, in the gifts section. We have made an effort to draft, as carefully as we possibly could, the language with respect to having "reason to believe" the donor would not give the gift or gratuity but for the employee's office.

Similarly, under (b)(1) of the gifts section, we say: "has reason to believe such person has or is seeking to obtain a contractual relationship."

Those are examples of where we have sought to particularize the state of mind of the Government employee quite carefully, and to provide what he can and cannot do.

Another example of a special state of mind appears in the concept of "transaction involving the Government." There is an element of subjective knowledge on the employee's part, that the matter does involve the Government, in order to make the statute applicable.

Now, section 9 comes along and says what outsiders cannot do. And under the existing law of conspiracy and aiding and abetting, you can tie one person to another person's crime, through both statute and a great deal of case law that has been built up over the years.

Now, what might well happen is that, having prescribed an offense for an outsider, that you could then indict an insider in Government, a Government employee, under a conspiracy count which would vitiate all of the effort we have made to define the scope of the ban on the insider with particularity. That careful delineation of the employee's state of mind could all be swept away by bringing a conspiracy or an aiding and abetting count.

Thus, our exclusion of conspiracy and aiding and abetting counts is more for fear that we would overrule and override what is, hopefully, a set of carefully drafted statutory restraints than anything else. This exclusion would not apply to an attempt to defraud the Government or anything like that. You will notice how limited it is, in terms of these particular conflict-of-interest sections. Obviously you would not repeal the sections on aiding and abetting as they apply to bribery or anything else that we have not covered.

Mr. MALETZ. Now, your report discusses the origins of many of the present conflicts-of-interest statutes. For example, you pointed out that several of the enactments were developed as a result of misfeasance at the highest Government level. I take it you recall chapter 3 of the report in that connection?

Mr. PERKINS. Yes; some of it was high, some of it was low.

Mr. MALETZ. For example, your report points out that the generating causes of several of the conflict-of-interest statutes were the Gardiner incident, the Hall carbine affair, to mention two; is that right?

Mr. PERKINS. Right.

Mr. MALETZ. Thus, in connection with the Hall carbine affair, the report states and I quote:

It appears that to their own profit the aide-de-camp to General Fremont, and others, were able to arrange for the Government to purchase at \$22 apiece a large number of carbines which, not 6 months earlier the Government itself had sold as defective weapons at \$3.50 each. A House investigating committee reported on December 17, 1861, that the affair was "remarkable in illustrating the improvidence of gentlemen prominently connected with the public service the corrupt system of brokerage by which the Treasury has been plundered and the prostitution of public confidence to purposes of individual aggrandizement."

Now, how do you reconcile that with the statement in your report that the focus of the present conflict of interest statutes is upon a class of lower ranking politically appointed clerks that has disappeared?

Mr. PERKINS. Well, the statement there perhaps is a little broader than it ought to be. But what it is intended to say is that the focus is on the same area that the word "claims" connotes, as both your staff's studies and ours have indicated. The primary area that was the focus of these statutes was the "claims" area, and there was a great deal of trafficking in claims in the old days. And this trafficking in claims was largely conducted by people fairly well down the line. And it was these political, one-administration, spoils-systems clerks who were doing much of the drumming up of claims. They would find something in the files, leave Government at the end of the administration and drum up a claim against the Government and help to prosecute it. And that is all that our statement refers to.

I am sure there are some other examples, but that is the kind of thing that we mean when we say that the focus is on this class that were engaged primarily in the claims trafficking.

Mr. MALETZ. Well, actually, as I understood your report, the generating cause of many of the conflict of interest statutes was misfeasance at the very highest level of Government, is that right?

Mr. PERKINS. There are a variety of examples of misfeasance that are given in our report.

Mr. MALETZ. Yes.

Mr. PERKINS. Some of them were people high up, some were not.

Mr. MALETZ. Now one final point. Mr. Kendall, the General Counsel of the Office of Civil and Defense Mobilization, testified before this committee on February 19 and was asked whether he believed it desirable for the Congress to enact a statute prescribing a code of ethics which would be controlling on all agencies of Government. He testified as follows, at page 214:

I have not discussed that question with my chief. Let me say that if a code of ethics is to have criminal sanction then I have grave fears for the effort. I do not see how you can express ethics with sufficient clarity and definiteness that you would be justified in making a criminal penalty attached to them.

Question: Suppose the sanction were dismissal?

Mr. KENDALL. If the sanctions were dismissal there would be of course only the question of whether these standards were ones that the department heads should be using anyway and in the case of Concurrent Resolution 175 I think they were standards they should be using anyway so I would have no objection. It would be a good idea.

Question: I don't think your answer with all due deference has been responsive. If I may repeat the question is it the position of your office that the Congress should or should not legislate a code of ethics with administrative sanctions controlling on the various executive agencies of Government?

Mr. KENDALL. I regret, as I say, that the absence of Mr. Hoegh from this table prevents my saying what the agency position is on that. I might myself as the witness before the committee say, I think that legislating a code of ethics with sanctions is not necessary and may be dangerous.

I wonder, Mr. Perkins, whether the subcommittee might have your comments on this phase of Mr. Kendall's testimony.

Mr. PERKINS. Are you asking me what we think about codes of ethics? Is that the question?

Mr. MALETZ. No, on the testimony which I have just quoted, I am asking this since your bill prescribes, in effect, a code of ethics controlling on all employees in the executive branch, with the sanctions of dismissal and criminal prosecution in flagrant cases; is that not correct?

Mr. PERKINS. In one sense, that certainly is correct. I think that we have to analyze what we mean by "code of ethics." You have to start there.

As far as I am concerned, in a very real sense the whole structure of statutory conflict of interest law can be characterized as a code of ethics. The law says what Government employees can and cannot do.

Now, I think that the test of whether a given ethical concept—such as that you should not, inside of Government, act on something in which you have got an interest on the outside—is to be incorporated in a statute should be whether or not that ethical concept can be defined and articulated with sufficient clarity to form the basis of a prohibition with criminal sanctions. That is, roughly, the test that we applied in drafting our proposed bill.

For example, as you know, we suggest that gifts be covered within the statutes themselves. This would be the first time that gifts have ever been encompassed within statutes. Heretofore, they have been covered in regulations of the agencies, in most of them. These regulations are, I think, another form of a code of ethics; that is, the regulations that the agencies adopt for their own employees is a form of code of ethics.

We suggest, in our proposed statute, elevating that particular element of the code of ethics to the statutory level; because we think you can spell out with sufficient clarity and particularity a concept as to when, and when you should not, receive a gift.

So that my first point is that, if there are ethical concepts which can be defined in statutes with sufficient clarity and particularity to form the basis of a criminal act, we see no reason for not incorporating those concepts into substantive law enacted by Congress.

Let me add to that one other standard: We think that an ethical concept should be included in the statutes only if it has fairly broad application across Government. If it is a unique situation that would arise only in the Small Business Administration, for example, we think the ethical concept ought to be reserved, in all probability, for the regulations of that agency. This need not be true in all cases. I have already cited the case of members of the Civil Aeronautics Board being precluded absolutely from holding stock in aeronautical companies. There is, in a sense, an ethical concept which is embodied in statute, even though it does only apply to that one agency.

So Government-wide applicability is not a rigid standard to apply. But I think that, in general, the standards ought to be that you can define the ethical concepts and that they do have a fairly broad application.

Now, when you progress below that level of an ethical concept, our inclination is toward the view that it should be incorporated in regulations. There will be a great many areas in which you want to expand on the statutes, and particularize them for the situations of the particular agencies. In those situations, whatever we regard as an ethical concept that ought to be recognized should be included in a regulation.

And we suggest two levels of regulation—(1) Presidential; and (2) agency.

But the concept of a code of ethics, in our view, would be incorporated in one or the other of those two areas, either in statute

law enacted by Congress, which would carry with it the potentiality of criminal penalties, or in administrative regulations, which would be issued by the President and the agencies.

Our overall approach to what has been viewed as a general code of ethics for the executive branch employees is expressed in chapter X, page 10, in which we raise several objections to the adoption by Congress of an overall code of ethics. We say:

From the standpoint of this immediate study, a code of ethics covering only conflicts of interests would be incomplete since the general problem of ethics in Government is far broader than the topic under consideration here. A second objection is that, necessarily, any code adopted by Congress must be applicable on a broad scale and must, therefore, be couched in very general terms. The actual provisions of proposed codes of ethics have tended to be primarily hortatory. Probably the most important consideration weighing against congressional enactment of an overall code of ethics, however, is that any such congressional action would continue one of the fundamental defects that has historically characterized this field—absence of a focus of clear responsibility upon the President to police the ethical practices of the executive branch. The view taken here is that, in essence, Congress should lay down general policy, enact those provisions which are of sufficient concreteness to require and permit criminal enforcement, and impose specific responsibility on the President to put the administration of ethics in the executive branch into order and keep it there.

And therefore we go on to propose the six major substantive restraints that we think both can be defined with sufficient particularity and do have a general application.

And from there on, we think the responsibility should be imposed on the executive branch.

Mr. MALETZ. Thank you very much.

I have no further questions, Mr. Chairman.

Mr. ROGERS. Do you have further questions?

Mr. Meader.

Mr. MEADER. Mr. Chairman, I have about three questions. That is all I intend to ask.

Mr. ROGERS. Go right ahead.

Mr. MEADER. My attention was directed to the provisions on page 36 of the Lindsay bill, 10575. I am curious why you provided that fines against employees in section (e) should be in partial reimbursement to the United States for the expenses of administering this act. Is it not contemplated that these recoveries in these civil suits would be paid into the general Treasury of the United States?

Mr. PERKINS. Yes.

Mr. MEADER. Is that just oratory, or does that have some purpose?

Mr. PERKINS. It has this purpose, that there is some question about the validity of civil fines, and apparently, under the case law on the subject, the courts have justified civil penalties of this nature if they can find in the penalty an element of reimbursement of the United States for its activities in regulation of the particular field. And this is merely to help assure that that case law would be applicable here.

Mr. MEADER. Thank you.

Now I would like to direct your attention to paragraph (G) on page 29. Among the duties of the Administrator, I find the following, and I quote:

To undertake and conduct, in conjunction with agency heads, a study of the extent to which any of the principles of this act should be made applicable to persons and to the employees of persons having contracts, subcontracts, licenses, or similar relationships with or from the United States; * * *.

I am not sure that I understand precisely what is to result from that study. Is it contemplated that the principles of this act may be made applicable to contractors with the Government without amending the act?

Mr. PERKINS. No, sir.

Mr. MEADER. Well—

Mr. PERKINS. The fact—

Mr. MEADER. If I may interrupt you, I presume that it would be possible by writing it into a clause in the contract—

Mr. PERKINS. Yes.

Mr. MEADER (continuing). To make the principles of this statute applicable to employees under the contract?

Mr. PERKINS. Yes, sir. But as a statute, of course, it would require additional legislation. But it would be possible to incorporate some of the principles in a contract. We examined the question of the extent to which Government functions are being conducted by contracts.

Mr. MEADER. I was going to ask you if there was any passage in your report where you discuss that?

Mr. PERKINS. Yes. There is a section in the report that discusses contracting out as a problem, which I will try to find; and then it is referred to again in chapter XI, page 6, where we say:

Earlier chapters have pointed out the extent to which the Government looks to independent contractors for the performance of services. Such contracting out is essential to the Government's operations. Specialists—whether for operating cafeterias, developing an engine, setting up a filing system, or designing war games, can, through the contracting out arrangement, be brought in on an ad hoc short-term basis to help the Government where it needs help. These specialists are sometimes individuals; more often they are specialized professional or semiprofessional institutions or companies. Often the contracting out arrangement makes it possible to attract the services of specialists who would not be willing to serve as direct employees of the Government, mainly because of law salary scales, but also because of the generally more regulated environment.

The relationship of conflict of interests regulation and the contracting out practice is ticklish—

we said.

Legally the party undertaking to perform the services under the contracting out arrangement is an "independent contractor" and not an "employee." As such, he is not subject to the existing statutes and regulations respecting Government employees. Yet in particular cases the work being performed by the specialist-contractor can be identical with that which would be performed by him if the legal arrangement between him and the Government were that of employee and employer. In these functionally identical situations all the conflict of interests problems of one are mirrored in the other. The only significant exception to this statement arises from the fact that there is less of an identification in the public's eye between the contractor and the Government. And thus in the public's view of appearances, the contractor is not in as sensitive a position as the employee with respect to conflicts of interests.

An overall statutory solution is impossible. As described earlier, the variety of different kinds of contractual relationships between outsiders and the Government is endless. Especially in the case of the specialist organization, there can be no workable general rule defining the reach and scope of the possible particular conflict of interests restrictions. To use an admittedly extreme example, if

General Motors contracts to design and develop a new rocket, which, if any, of the conflict of interests rules discussed here in this program should be applied to which employee of General Motors? The limitations on outside compensation? Or the restrictions on assisting outsiders? Would the rules include employees of subcontractors—General Motors as a corporation—all employees of General Motors—only those working on the project—only executive personnel working on the project? The questions multiply easily.

Again the service contract, in which a private concern and Government work closely together, illustrates the interpenetration of Government and private segments characteristic of this century. Yet the normal and useful contracting out arrangement can be abused for the purpose of evading conflict of interests regulation.

Mr. MEADER. Well, now, Mr. Perkins, I think this is all very good, and I was glad for you to read it, and I appreciate your calling attention to it.

First, let me ask one or two questions. There is nothing in the proposed statute Mr. Lindsay introduced, or the bill, rather, Mr. Lindsay introduced which would cover contractors at all, is there?

Mr. PERKINS. No, sir.

Mr. MEADER. And you do not believe it is possible at this time to deal with that problem?

Mr. PERKINS. By statute?

Mr. MEADER. By statute?

Mr. PERKINS. Right.

Mr. MEADER. And yet you do recognize that there seems to be a growing tendency, possibly because of some limitations and restrictions and redtape where the Government does perform the function directly, which tends to encourage them to contract out what essentially is a governmental function?

Mr. PERKINS. Precisely.

Mr. MEADER. And that some of the evils sought to be reached by the conflict of interest statutes are applicable to contractors—or some contractors, anyhow, who are performing work for the Government?

Mr. PERKINS. We think they certainly may be. And that is why we think it is very important to focus on the problem. We think it should be studied, and we think that the best way of emphasizing that would be to have a congressional mandate for a study. Somebody should look at it very hard and begin right now.

Mr. MEADER. I might even suggest that some committees of Congress have used the contract device. I think they have got it more over at the Senate than we have in the House. But I know the Foreign Relations Committee has contracted out—I do not know, what kind of firms?

Mr. PERKINS. That is right.

Mr. MEADER. Several firms.

Mr. PERKINS. To make studies.

Mr. MEADER. To do some studies as to foreign relations.

Mr. PERKINS. Precisely.

Mr. MEADER. On a policy level.

Mr. PERKINS. That is right.

Mr. MEADER. And I think there is some tendency in the ICA to contract out various operations overseas—

Mr. PERKINS. That is right.

Mr. MEADER. With outside concerns. I think we have had contracts with—well, I believe there is one with the American Political Science

Association to take care of visiting dignitaries who come over here, and things of that kind.

I noticed in the press this morning a report of the Post Office and Civil Service Committee on the multitude of surveys financed by various Government agencies. They have wanted to make a survey to determine how many surveys there are. And apparently there are a lot of them, and they cost a lot of money.

Mr. PERKINS. That is right.

Mr. MEADER. And I am glad that you have given some consideration to this problem, and I think it does require some attention.

Mr. PERKINS. Yes, sir.

Mr. MEADER. And I would like, while I have the floor Mr. Chairman—and I do not intend to ask any further questions—

Mr. ROGERS. You said you were only going to ask three.

Mr. MEADER. Well, I said a statement. I wanted to commend Mr. Perkins and the Bar Association of the City of New York and others who assisted in this study in one way or another, for what seems to have been a very laborious and skillfully executed operation, including our colleague on the committee, Mr. Lindsay, who introduced the bill.

I have sat through a number of these hearings, mainly with members of the executive branch of the Government, and I certainly see there are a lot of rough spots that need a little smoothing somewhere before we can present to the House a bill which we could say would be an improvement over the existing situation.

And I must say I have some misgivings about the burden of proof having been met, that there is some great public need to have this legislation, at least in this rather elaborate form, at the present time. I think there could be greater support of that.

I am sure we are not going to legislate morality. And I think a lot of the problems involved in the proper conduct of governmental agents and the handling of tax funds and the exercise of governmental power in a fiduciary capacity are going to have to depend, in the long run, on the character of the individual and the proper disciplinary action of the branch of the executive in the Government.

And I believe, from this discussion we have had, that, tentatively, there probably should be some amendment additionally to the criminal laws to which this committee ought to give attention. And I think in that work, we can thank the Bar Association of the City of New York for having provided us with a lot of good reasoning and good suggestions.

Mr. PERKINS. Thank you very much.

Mr. ROGERS. Thank you, Mr. Perkins.

Mr. Lindsay, I understand you have some questions?

Mr. LINDSAY. I just have one question, Mr. Chairman.

Mr. Perkins, there was quite a bit of discussion during the course of the afternoon on the recommendation of the committee that agency heads take upon themselves the responsibility, subject to guidance from the Chief Executive—take upon themselves the responsibility for maintaining a body of regulations which are peculiar to their particular agencies. That assumes that what may be good for one particular agency would not necessarily be good for another one; is that not correct?

Mr. PERKINS. Yes.

Mr. LINDSAY. In other words, in the Securities and Exchange Commission, for example, a highly detailed body of regulations, going to the question of ownership of equity securities, even to the extent of one share of stock in a particular corporation insofar as the right of an employee to hold shares, disclosure or trading may be necessary. But such a detailed body of regulations may not be particularly applicable in some other agency; is that not correct?

Mr. PERKINS. Precisely.

Mr. LINDSAY. And is that not the reason, in your testimony, you emphasized the importance of having a certain degree, or a rather large degree of responsibility placed in the heads of the agencies of these various governmental bodies?

Mr. PERKINS. Absolutely.

Mr. LINDSAY. Is that not true?

Mr. PERKINS. Absolutely.

I might add that these administrative agency heads are endowed with tremendously serious responsibilities of a substantive way already. Each agency is wielding a tremendous amount of power that has been granted to him by the Congress to exercise, and that we think, in perspective, the power to regulate his own employees with respect to certain aspects of conflict of interest within a total framework laid down by the Congress is not an extraordinary delegation of power at all.

Mr. LINDSAY. It already exists.

Mr. PERKINS. Yes.

Mr. LINDSAY. Mr. Chairman, just in closing, I should like to express my gratification to Mr. Perkins for the job that he has done, and also to state for the record here in this subcommittee, as I did on the floor of the House, the personal gratification that I have for having been associated with this particular special committee of the Association of the Bar of the City of New York for the past 2 years. It has been a very rewarding and stimulating experience, chiefly because of the caliber of the men who are members of this committee. I have been associated, in and out of Government, with a number of committees in the past, but never have I been associated with a committee which worked harder or more conscientiously or with a greater degree of devotion to the task that was assigned to them than this particular committee.

Mr. ROGERS. Thank you, Mr. Lindsay.

Any questions, Mr. Peet?

Mr. PEET. Mr. Chairman.

Mr. Perkins, a good deal has been said, both this morning and this afternoon, about the intermittent governmental employee exception to your bill. I take it that the rationale of the committee in inserting that provision was that the committee thought the Government should have access to all individuals who are employed or called in to do jobs on an intermittent basis. And perhaps a blanket disqualification of individuals, in subjecting them to the conflict-of-interest laws, would be likely to keep such individuals out of the Government?

Mr. PERKINS. That is right; to reduce the available resources of Government for selecting people that it needs.

Mr. PEET. Mr. Perkins, how did the committee arrive at that conclusion? Was it based upon the testimony of individuals or a survey

conducted of particular individuals who had rejected governmental employment because of potential conflicts of interest; or how was it arrived at?

Mr. PERKINS. Yes. It was arrived at in exactly that way. A great—or I shall say a substantial—number of people that we talked to had declined Government service simply because of the conflict of interest laws.

Just to take probably about as innocuous an example as I can conceive of—at one point the Secretary of Health, Education, and Welfare needed advice on what might be conceived of as the Government's responsibility to help take initiative in encouraging artistic performance, and there were a lot of bills pending in Congress for a Federal Advisory Commission on the Arts. Well, the Secretary of Health, Education, and Welfare thought it would be desirable to have some advice from someone who had spent a good deal of time thinking about the relationship of Government and the arts in order that the Secretary could inform himself to assist Congress in considering this area.

An examination of the conflict of interest restraints convinced the person that he selected that he could not serve in this utterly innocuous capacity as a consultant or adviser to the Secretary on a very short-term basis to help bring up some of the considerations involved.

Now, this is a very small example and not one of great national importance. But I have already given the example of the Nimitz Commission. I have given the example of a State Department high official in a foreign country who, when he came back, was asked to consult and give his views and help to the State Department on a continuing basis, who was unable to do it.

I know of numerous other examples of where people had to decline intermittent appointments because of the conflict-of-interest statutes, solely. And the odd and discouraging thing about it is that it is the conscientious ones who are deterred. There are a great many who just overlook the situation. They do not think about the statutes, or the statutes are not called to their attention. But I am persuaded that there are hundreds of examples of people in Government serving in advisory committees today who are in very delicate situations vis-a-vis the conflict of interest law.

The effect of the statutes is that if anybody gets himself informed about them, looks at them, and is conscientious, he will back off an appointment to an advisory committee.

Mr. PEET. Does your committee keep a record of those instances which come to its attention of people who had backed off from these appointments because of these laws?

Mr. PERKINS. Not in the sense that you are probably visualizing. We did not try to make a statistical compilation or tabulation. Our research was a collection of interviews and reports and impressions.

We do have a number of examples in mind as to where—

Mr. PEET. Well, could you make such a survey for this committee of the material that has come to your attention thus far?

Mr. PERKINS. Well, in a great many cases people would give us an example in confidence. In these situations I do not think we are at liberty to produce anything, but we will certainly scratch our heads and think about what we can furnish that would be helpful to you.

Mr. PEET. Just in general terms.

Mr. PERKINS. Yes.

Mr. PEET. Now, concerning this inhibitory effect of the conflict-of-interest laws on intermittent governmental employees, have you had the opportunity to study H.R. 2156 and H.R. 2157?

Mr. PERKINS. Yes, I have. Not as thoroughly as I want to, and I do not feel I can make any definitive statements on them, but I can give impressions.

Mr. PEET. Well, I have particular reference to section 207 of H.R. 2156 and section 103 of H.R. 2157, and I wonder—

Mr. PERKINS. The first one again, sir?

Mr. PEET. Section 207, which appears in H.R. 2156, and section 103 of H.R. 2157.

Mr. PERKINS. Yes.

Mr. PEET. I wonder could you give us your impression as to whether you think that section 207 would have an inhibitory effect upon hiring potential employees by the Federal Government?

Mr. PERKINS. This, of course, does not involve necessarily the intermittent employee problem?

Mr. PEET. No.

Mr. PERKINS. This is a section applicable to both intermittent and regular employees.

I do have a question about the content of the word "responsibility" in the permanent bar of section 207. The first paragraph of this is a permanent bar, as I read it.

Mr. PEET. Right.

Mr. PERKINS. Now, the permanent bar that we propose and that the Canons of Ethics adopt, is one that is related to the personal participation—you had to have been involved in it in some way. That is precisely the concept that is used in some of the regulatory material relating to postemployment.

Now, this creates a permanent bar for matters in which the former employee did not participate but for which he had any responsibility, and that bar would go on for life.

I do think that that raises a very serious question because it would encompass a whole range of matters. For example, a top official of the Treasury Department has underneath him every income tax return of everybody in the country who has filed an income tax return. He has "any responsibility," in my opinion, with respect to every single one of those income tax returns.

Now, I do not see how, under a permanent bar, a top official of the Treasury Department could go back to an accounting firm, a law firm or many other financial relations—perhaps a bank—without being desperately fearful that he might become involved in some particular tax matter as to which the income tax return had been filed while he was in Washington. He would not have the slightest knowledge of it whatsoever. It would be way down in the files of the Department someplace or maybe some examiner out in San Diego is looking over the income tax return on the day he leaves the Treasury Department. But the Treasury official has a technical responsibility.

And so I do think that those words are extraordinarily broad, perhaps not at first reading, but when you analyze it in relation to an example such as I have just given.

If I were advising somebody who said, "Should I take a job high up in the Treasury Department?" and this statute were in the books,

I would have to be frank to say to him that he could not, for many, many years, until he was sure that every income tax return had been settled, closed, go back to an accounting or law firm which had important tax involvements.

Mr. PEET. You think that during that period he would be within his rights to fill out his own income tax return?

Mr. PERKINS. Without an exception in the statute, it is not entirely clear what you can do vis-a-vis your own tax matters.

We have provided an express exception. I assume that any court would be reasonable in construing a statute like this and would say, of course Congress did not mean to prevent a person from fighting over his own income tax. But that is the kind of extraordinarily difficult kind of question that this field involves. You have to examine words with the greatest scrutiny and particularly to see what you are actually doing.

Mr. PEET. Did the committee in its deliberations give any consideration to suggesting a code of ethics, a limited code of ethics, which would apply only to the President's so-called Executive family—his Presidential appointees and that group of schedule C employees who work under them?

Mr. PERKINS. No; in our deliberations it never seemed to appear or emerge that different principles were applicable to the political appointees than to, for example, top-level civil servants. And we point out somewhere in the report that there is even an increasing development, we think, in Government to many times fill what was normally viewed as a political job with a top-level civil servant, particularly some of the administrator posts in the departments. You will find career people taking the job that is the equivalent of administrative assistant secretary. And we do not see any dividing line between what you would call the President's official family or the sub-Cabinet political appointee level.

Mr. PEET. Except that the President has direct responsibility for the appointment of these particular individuals whereas within the Civil Service Commission he takes these people as he finds them when his administration begins.

Mr. PERKINS. Yes; that is a point.

Mr. PEET. I have no further questions.

Mr. ROGERS. Well, thank you, Mr. Perkins. We certainly appreciate the thorough study that has been made by your committee and your presentation to this subcommittee here today. And as you recognize, it is very difficult to determine what is the proper legislation we should enact. We are hopeful that you and your staff will continue its liaison with our staff in trying to work out the solution to this problem.

We certainly appreciate it that you and the rest of the committee could be present today to enlighten us on this matter.

The committee will now stand recessed, subject to the call of the Chair.

Mr. PERKINS. Thank you very much, Mr. Chairman.

(Whereupon, at 4:45 p.m., the subcommittee recessed, to reconvene at the call of the Chair.)

(The statement referred to at p. 418 follows:)

PREPARED STATEMENT OF ROSWELL B. PERKINS, CHAIRMAN, SPECIAL COMMITTEE
ON THE FEDERAL CONFLICT-OF-INTEREST LAWS OF THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

Mr. Chairman and members of the committee, we greatly appreciate your invitation to appear before you and present the conclusions of the 2-year study our special committee has conducted on the subject of Federal conflict-of-interest laws.

Each member of your committee received approximately 2 weeks ago a mimeographed copy of the prepublication edition of our report. Its substance was made public a few days later, on February 22, 1960. This prepublication edition was issued for the sole purpose of being available at these hearings you are conducting. Our report is being published this summer by Harvard University Press. However, our special committee deemed it a public duty to make the results of our study available to your committee at this time, and hence the prepublication edition for your benefit.

Our special committee feels, as indeed must every person sincerely interested in the subject of conflict-of-interest law, a tremendous debt to your committee and its staff. You have performed a great service in focusing on conflict-of-interest problems as an important, complex, and independent subject of concern in the management of the governmental establishment. This parallels the very first of our special committee's recommendations. And the staff studies undertaken and completed under your direction and leadership provide a magnificent foundation for inquiry into this field. We found your staff studies invaluable to our consideration of the problems.

Congressman Lindsay has been kind enough to mention the background of our special committee: How it was appointed and how the work was conducted. The foreword to our report contains further background.

We regard the work we did in drafting a proposed Executive Conflict of Interest Act as a vital part of the study. It became apparent that perhaps the most difficult aspect of the work would be to reflect our conclusions in the form of actual language which could be considered by the Congress and others. Thus, the draft bill included in our report expresses our findings and recommendations. It represents literally hundreds of hours of painstaking consideration by the members of our special committee.

That bill has now been introduced by Congressman Lindsay, and bears the number H.R. 10575.

We wish to be responsive to your chairman's invitation to testify on H.R. 2156, H.R. 2157, and H.R. 7556, and we believe we can do so most effectively by giving you an overall picture of our conclusions and recommendations, relating them in certain respects to the provisions of H.R. 10575.

Attached to our prepared statement as appendix A is a summary of the major conflict-of-interest rules which a Government employee would be governed by if H.R. 10575 were to be enacted. This summary of rules is written in much the same way that an employee handbook would be prepared.

In addition to our prepared statement, Mr. Chairman, I would like very much to submit one additional document for the record, and, with your permission, I do so herewith. It is a technical commentary on H.R. 10575. This technical commentary will appear as part of appendix A of the final published report of our special committee. It is in the nature of a section-by-section analysis of H.R. 10575, and supplements the discussion which appears in chapters X and XI of our report.

Before stating our recommendations, I shall summarize, in a most capsulized way, the philosophy and rationale which underlie the recommendations.

A. OBJECTIVES

The report of the special committee has two themes. The first is that ethical standards within the Federal Government must be beyond reproach, and that there must, accordingly, be effective regulation of conflicts of interest in Federal employment. The second is that the Federal Government must be in a position to obtain the personnel and information it needs to meet the demands of the 20th century.

These themes are coequal. Neither may be safely subordinated to the other. In the opinion of the special committee, what is needed is balance in the pur-

sult of the two objectives. We need a long-run national policy which neither sacrifices governmental integrity for opportunism nor drowns practical staffing needs in moralism. We need a careful regulatory scheme that effectively restrains official conflicts of interest without generating pernicious side effects on recruitment.

The basic conclusion of the special committee is that such a scheme can be worked out. Our report and the proposed Executive Conflict of Interest Act contain a recommended new program which we believe would achieve this result.

B. ASSESSMENT OF EXISTING RESTRAINTS

Our special committee concluded that the legal and administrative machinery of the Federal Government for dealing with the problem of conflicts of interest is obsolete, inadequate for the protection of the Government, and a deterrent to the recruitment and retention of executive talent and some kinds of needed consultative talent.

1. *Obsolescence*

The statutory law—most of it a century old—is not broad enough to protect the Government against the manifold modern forms of conflict of interest. Most of the statutes were and are pointed at areas of risk that are no longer particularly significant, mainly the prosecution of Government claims. Today, with the greatly expanded regulatory functions of the Federal Government, applications for rulings, clearances, approvals, licenses, certifications, grants, and other forms of Government action are far more significant in the daily operation of Government than the prosecution of claims. Several of the basic statutes now on the books do not concern themselves at all with these modern governmental activities.

Other aspects of obsolescence in the present statutes are:

(a) Their focus of interest upon a class of lower ranking politically appointed clerks that has disappeared. The Government today obtains its manpower through a vast civil service, a top layer of short-term political appointees, an increasing group of advisory and part-time personnel, and through an unlimited variety of contracts for services provided by non-Government personnel.

(b) Their failure to recognize internal procedures of modern Government, such as the flexible processes of personnel administration available to assist in enforcement.

(c) Their lack of recognition of the facts of modern economic life, such as the existence of private pension plans.

(d) Their failure to recognize the essential blending of public and private endeavor in the modern American society, as illustrated by the partnership of Government, industry, and educational institutions in the science field.

2. *Inadequate administration*

Partly by reason of the deficiencies in the statutory law, administration of the conflict of interest restraints has always been weak. The Government has failed to provide a rational, centralized, continuing and effective administrative machinery to deal with the problem. If the statutes presented a coordinated whole—a unified program—and if they imposed direct responsibility on the President to carry out that program, the central coordination and leadership missing in the past would improve. A well-administered program could, and should guide the thousand good men as well as snare the one bad one.

3. *Uncertainty in interpretation*

Enacted fitfully over a 100-year span, the uncoordinated statutes are inconsistent, overlapping and at critical points defy interpretation.

4. *The Congress*

Congress has done a useful and constructive job in its capacity as investigator. But the Senate confirming committees have seldom considered the overall issue of conflict of interests in relation to recruitment. The Armed Services Committee has applied a wavering standard of stock divestment, useful for certain purposes, but overemphasizing one single source of conflict of interest problems and having little bearing on the question of actual official conduct.

5. *Recruitment*

The main adverse effect of the present system is its deterrent effect on the recruitment and retention of executive talent and some kinds of consultative

talent. The restrictions tend to encircle the Government with a barricade against the interflow of men and information at the very time in the Nation's history when such an interflow is most necessary.

O. RECOMMENDATIONS

I shall now turn to the basic recommendations of our special committee.

We concluded that the defects in the present law cannot be cured by tinkering. A thoroughgoing reconstruction is called for—a new program of controls designed for modern needs, providing for adequate administration and written as an integrated unit. The program must, in our view, achieve a balance between the Nation's need for protection against conflicts of interest and its need for personnel.

Recommendation 1

Conflict-of-interest problems should be recognized and treated as an important, complex, and independent subject of attention and concern in the management of the governmental establishment.

Up until the present time, the subject of conflict of interest in the executive branch has been conceived of and dealt with only peripherally as an aspect of the general problem of ethics in Government. The fact is that its unique and complex nature and the variety of difficult problems it raises, particularly the problem of recruitment, demand that it be isolated and identified as an independent subject of governmental concern. Until it receives the consideration and attention which it deserves, the problem of conflict of interest cannot be adequately resolved.

I have already noted the great contribution of your committee in achieving the objectives of our first recommendation.

Recommendation 2

The present scattered and uncoordinated statutes relating to conflicts of interest should be consolidated into a single unified act, with a common set of definitions and a consistent approach. Archaic provisions should be repealed.

One of the principal shortcomings of the present law is that it is composed of many diverse elements scattered throughout the statute books and containing inconsistencies, overlapping and exemptions. The chaotic nature of the law is an impediment to understanding and a deterrent to recruitment.

The proposed Executive Conflict of Interest Act embodied in H.R. 10575 would unify the general law of conflict of interest in one comprehensive statute. Basic terms would be defined and then used consistently throughout. Examples of key terms, carefully defined at the outset and then used consistently throughout the proposed act, include: "Government action"; "transaction involving the Government"; "assist"; "participate"; and "responsibility."

The proposed act would treat the basic forms of conflict of interest in a logical progression. The first of the six substantive restraints deals with action by a Government employee in his official capacity in a matter in which he has a personal interest. The second deals with action by a Government employee in his private capacity in furtherance of an interest adverse to the Government. The third deals with receipt of pay from outside sources. The fourth deals with receipt of gifts from outside sources. The fifth deals with action as a Government official designed to induce payments from outside sources. The sixth deals with postemployment activities in furtherance of an interest adverse to the Government.

As an example of the close integration of these sections, the second and sixth prohibitions are almost precisely parallel in their application to the intermittent Government employee and the recent former employee, reflecting the basic similarity of the two situations from the conflict-of-interest viewpoint.

The points in the total statutory scheme where it is important to supplement the statutes by regulation are clearly identified.

A few archaic statutory restraints superseded by the new act would be repealed. Others of the existing statutes would be amended to exclude from their coverage all executive branch employees (i.e., those covered by the proposed new act).

Fourteen special exemptive provisions contained in present law for members of various advisory committees and persons holding other part-time posts would be repealed, as being unnecessary in the light of what we regard as a realistic approach of the new act toward the intermittent employee problem.

Such a unified act would, we believe, be more enforceable and more rational in its application than present law, or even improved versions of present law based on the present statutory structure. It would, by its very drafting, remedy many of the fundamental shortcomings of the present law.

Recommendation 3

The restraints contained in the present statutes should be greatly expanded in their scope by making them applicable to essentially all matters in which the public deals with the modern Federal Government.

Six of the seven conflict-of-interest statutes on the books today have their roots in the problems of a century ago; they are directed primarily against corruption in the prosecution of claims against the Government and the process of letting contracts by the Government. Claim prosecution and, to a lesser degree, procurement procedures have, however, been brought largely under control by administrative devices other than the conflict-of-interest statutes. In their places have grown up other risks that the draftsmen of the present statutes did not foresee and provide for. The proposed act strikes hard at those deficiencies.

The proposed act would extend the conflict-of-interest restraints to every kind of transaction in which today's Government engages with the private segment of the economy. The term "transaction involving the Government" is broadly defined as "any proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other such particular matter" which will be the subject of Government action. The effect of this broad definition in expanding the scope of the present restraints would be very great.

In this respect recommendation 3 is consistent with H.R. 2156 and a recommendation made by the Justice Department to Congress several years ago in response to a court decision holding that the present postemployment restraints apply only to assisting in the prosecution of claims against the Government for money or property. In that case an application for a premerger clearance ruling from the Antitrust Division of the Justice Department was held not to be a "claim" within the scope of the statute.

The proposed act would expand present offenses in other respects. To cite a few examples, present law forbids a governmental employee to transact business as an agent of the Government with any "business entity" in the pecuniary profits of which he is interested. The comparable rule in the proposed act would apply not only to business transactions with business organizations, but to any kind of transaction with any kind of entity in which the employee has a substantial economic interest. Furthermore, unlike the present law, the statute specifies a number of specific situations where the employee is deemed to hold an economic interest, such as where that interest is in fact owned by his wife or child, or where he has an understanding as to future employment with a private person or firm.

Recommendation 4

Certain important restraints now covered in regulations or not at all should be included in the basic statutes, particularly restraints relating to receipt of gifts and coercive use of office.

Present law would be further strengthened by the addition of two important areas of conduct heretofore treated only in regulations or not at all.

The first would forbid an employee of the Government to receive a thing of economic value as a gift, gratuity, or favor from anyone who the employee has reason to believe would not give the gift but for the employee's office or position with the Government. Furthermore, regular Government employees would be forbidden to receive gifts or favors from anyone who does business with or is regulated by his agency. Some room is left in the statute for limited exceptions to be provided for in regulations.

The second new offense would forbid a Government employee to use his office or position with the Government in a manner intended to induce or coerce a person or company doing business with his agency to provide him with anything of economic value.

Recommendation 5

The statutes should permit the retention by Government employees of certain security-oriented economic interests, such as continued participation in private pension plans.

Hallmarks of modern American society are the pension plan, the group insurance plan, and other kinds of security-oriented arrangements. They are the basis of long-range economic planning by millions of individuals and families. Under present conflict-of-interest laws—passed when few, if any, of such plans existed—there is some doubt whether an employee of the Government may legally continue as a member of some plans maintained by his former employer, at least if contributory to the plan by the employer are regularly made which benefit the Government employee. This overhanging doubt presents a great deterrent or creates a severe hardship to the noncareer employee.

The proposed act permits Government employees to continue their participation in certain private plans under some circumstances and with adequate safeguards. For example, it would permit a Government employee to remain a member of a pension, group insurance, or other welfare plan maintained by his former private employer so long as the employer makes no contribution to the plan on behalf of the former employee who is in Government service. Similarly, a Government employee could continue to belong to certain of these plans even if the former employer does make contributory on his behalf, so long as the plans are qualified under the Internal Revenue Code and so long as the payments by the former employer continue for no longer than 5 years of Government service.

Recommendation 6

Wherever it is safe, proper, and essential from the viewpoint of recruitment, the statutes should differentiate in treatment between regular employees and citizens who serve the Government only intermittently, for short periods, as advisers and consultants.

To any ever-increasing extent the Government is dependent for information and advice—for learning not only how to do it, but what to do—upon part-time temporary, and intermittent personnel. These serve individually, or as members of committees, but that service is in addition to their regular private work as scientists, technicians, scholars, lawyers, businessmen, and so on. Technically, they are, however brief their service, “employees” of the Government, and at present, all of the conflict-of-interest statutes apply to them. This fact has brought about both refusals to serve and conscious or unconscious ignoring of the statutes by those who do serve. It has also resulted in a welter of special statutory exemptions.

The proposed act distinguishes, in a few key places where it is safe and proper, between rules for regular full-time Government employees and rules for what are defined as “intermittent employees.” Under the proposed act, an “intermittent employee” is anyone who, as of any particular date, has not performed services for the Government on more than 52 out of the immediately preceding 365 days. The 52-day limit could be increased to 130 days by Presidential order in a narrow class of cases.

For these intermittent employees, there are certain special rules under the proposed act. For example, regular full-time employees are forbidden to assist private parties for pay in transactions involving the Government; intermittent employees, who have to earn a living in addition to their occasional Government work, are allowed to assist others for pay in such transactions, except in cases where the particular transaction is, or within 2 years has been, under the intermittent employee’s official responsibility or where he participated in the transaction personally and substantially on behalf of the Government.

Similarly, since intermittent employees, by definition, are employed by organizations in addition to the Government, they are not subject to the rule forbidding their Government pay to be supplemented from private sources in return for personal services. Finally, the rules as to receipt of gifts are somewhat different for the two classes of employees.

Recommendation 7

Regular, continuing, and effective enforcement of the law and regulations should be assured by emphasizing administrative remedies, rather than the clumsy criminal penalties of present law.

The basic purpose of a system of conflict-of-interest restraints is to help maintain high ethical behavior in the executive branch of the Government. It is the judgment of our special committee that the flexible and multiple weapons of the modern administrative process are more fitted to the day-to-day task than the criminal law.

Because the present statutes rely on criminal sanctions, they are rarely enforced. They are, in many respects, too harsh for offenses they declare. Furthermore, enforcement by criminal law is difficult, expensive, and time consuming. Accordingly, the proposed act relies for its sanctions, in the first instance, on ordinary disciplinary procedures, including dismissal. These procedures are supplemented by civil remedies particularly apt for former employees and nonemployees dealing with the particular agency—such as bans against appearances before the agency and civil damage actions.

The proposed act retains classical criminal penalties for the most flagrant violations: Those committed “knowingly” or “purposely.” The definitions of these terms are adopted from a draft model penal code prepared by the American Law Institute.

Recommendation 8

The statutes should create the framework for active and effective administration of the system of conflict-of-interest restraints headed up with clear responsibility in the President. The President should designate pursuant to the proposed act an Administrator to assist him in this function.

One of the greatest deficiencies in the present statutes is their failure to recognize the importance of a continuing administrative structure to deal with the problem of conflict-of-interest. The proposed act would specifically provide for such an administrative machinery.

Clear overall responsibility would be placed upon the President “for the establishment of appropriate standards to protect against actual or potential conflicts-of-interest on the part of Government employees and for the administration and enforcement of this act and the regulations and orders issued hereunder.”

To assist the President in carrying out this responsibility the act calls for the designation by him from within the Executive Office of the President of an “Administrator.” He would be answerable directly to the President. He is given a series of coordinating consultative and advisory functions under the act. He would work closely with the Department of Justice and agency heads or their designees but his would be a small office and in no sense charged with centralized operation or enforcement of conflict-of-interest restraints.

Recommendation 9

In addition to the statutes themselves, there should be a “second tier” of restraints, consisting of Presidential regulations amplifying the statutes, and a “third tier,” consisting of agency regulations tailored to the needs of particular agencies. The responsibility for day-to-day enforcement of the statutes and regulations should rest upon agency heads.

The proposed act contemplates the issuance by the President of a set of regulations extending, supplementing, implementing, and interpreting the provisions of the act. The act also visualizes another set of regulations at the next lower level—that of the agency heads. The Presidential regulations would take precedence over any regulations issued by agency heads.

Agency regulations would tend to follow the present pattern; namely, particularized rules adapted to the special risks of the particular agency. For example, some agencies may have special rules on use of confidential information available within the agency. Others may adopt special postemployment restraints which go beyond the statutory provision. This diversity and particularization is realistic and desirable.

Recommendation 10

At all levels of administration potential conflict-of-interest problems should be headed off by preventive action, such as, for example, orientation programs for all new employees to acquaint them with the applicable conflict-of-interest rules, and periodic reminders as to such rules.

Much can be done to fight the conflict-of-interest problem by preventive measures. Section 11 of the proposed statute makes several suggestions. New employees can be required to certify that they have read the conflict-of-interest rules and to report on their outside employment. In particular, an effective orientation program would be helpful. Agents and attorneys appearing before agencies can also be required to file an affidavit stating that they are not, by such appearance, violating any conflict-of-interest law.

Recommendation 11

There should be more effective prohibitions and penalties applicable to persons outside Government who induce or participate in conduct by Government employees in violation of the conflict-of-interest laws.

Not infrequently a Government employee is found in a conflict-of-interest situation and penalized for it while the person responsible for placing him in the situation remains unscathed.

The proposed act contains a new and broad section making it a violation for a person to make a payment (or transfer any other thing of economic value) to a Government employee while "believing or having reason to believe that there exist circumstances making the receipt thereof a violation of" certain sections of the act. This prohibition also covers the making of gifts in the situations corresponding to the situations in which an employee may not receive a gift.

Both administrative and criminal sanctions are applicable to these violations by persons dealing with Government employees.

Recommendation 12

Each committee of the Senate considering a presidential nominee for confirmation should be given the benefit of a full analysis, prepared by the Administrator in consultation with the Department of Justice, of any conflict-of-interest problems the nominee's particular situation may present. The confirming committee should give due consideration to this analysis and to the protections afforded by a modern and effectively administered overall scheme of conflict-of-interest restraints, if one is put into effect.

There is substantial evidence that the Government's efforts to recruit top-level executives have been impeded by the requirements of stock divestment imposed by the Armed Services Committee of the Senate.

This problem cannot be dealt with by statute. The confirmation power is a constitutional prerogative. However, this problem should be a subject of joint concern and increased cooperation between the executive branch and the Senate. There is some evidence that recently the executive departments have taken more pains to prepare their nominees for confirmation. Legal opinions have on occasion been furnished by the Justice Department; plans have been worked out in advance of hearing as to what need be sold and what could be kept, and representatives of the appointing department or agency confer in advance of hearing with appropriate authorities of the committee.

If the proposed act were passed, the Administrator would become the central repository for all information concerning conflict-of-interest, and he would be expected to assist the executive branch in working out regular procedures for preparing nominees for confirmation. He could, in cooperation with the Department of Justice and general counsel to the agency in question, prepare a full analysis of the conflict-of-interest problems of the particular nominee. Over a period of time, these analyses might be given substantial weight by the confirming committees.

Furthermore, if a modern and effective system of statutory restraints is adopted by Congress and implemented by active executive branch administration, the confirming committees might be willing to place greater reliance on the statutory rules and procedures. One clear example is the procedure for disqualification recognized by the proposed act where a Government official holds a particular economic interest in a private entity.

Recommendation 13

The Congress should initiate a thorough study of the conflict-of-interest problems of Members of Congress and employees of the legislative branch of the Federal Government.

Primarily because of their representative function, Members of Congress and legislative branch employees are, in matters of conflict-of-interests, in a significantly different position from that of executive branch employees. As such, Congress must be considered separately.

A fresh examination of these problems by Congress, or by a study initiated by Congress, is needed. However, we are of the strong opinion that such a study should in no way deter immediate action with respect to the executive branch along the lines of the proposed act.

Conclusion

The program we have advanced will not solve the problem of conflict of interests in Federal employment. Like most real problems, this is one we must live with permanently, strive to mitigate, and adjust to. The program proposed, however, will do several things.

It meets the flaws of the present pattern of conflict-of-interest restraints—obsolescence, weakness of administration and faulty drafting. It would greatly strengthen the main policy of the conflict-of-interest statutes—preservation of the integrity of Government. It would provide for an integrated and comprehensible system of standards and sanctions, together with an effective machinery for administering that system. It is grounded upon a realistic conception of the problem of conflicting interest as it appears in the modern setting of American government and society. It would, we are convinced, make a significant contribution toward intelligent staffing of the Federal Government for world leadership.

(The document referred to at p. 420 follows:)

 APPENDIX A
SUMMARY¹ OF PROPOSED EXECUTIVE CONFLICT OF INTEREST ACT

(Section references are to sections of the proposed Executive Conflict of Interest Act, H.R. 10375)

Section 1. Preamble

This will explain to you the policy and purposes of the act.

Section 2. Definitions

(a) You are covered by the act if you are an employee of the executive branch of the U.S. Government.

(1) The "independent agencies" are within the executive branch.

(2) If you are an employee of a Government corporation, you may be covered by the act. Check the statute and regulations.

(b) You are classified as an "intermittent Government employee" if you worked on not more than 52 working days out of the last 365 days. The President may increase this to 130 working days in special cases.

(c) Otherwise, you are a "regular Government employee."

(d) "Government action" is defined broadly so as to include practically anything the executive branch decides or does.

(e) "Transaction involving the Government" means any proceeding or particular matter which you have reason to believe is or will be the subject of Government action; or in or to which the Government is a party; or in which the Government has a direct and substantial proprietary interest.

(f) "Responsibility," in connection with a transaction involving the Government, means the "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, effectively to approve, disapprove or otherwise direct Government action in respect of such transaction." In general, an adviser or consultant would not have "responsibility."

(g) "Person" includes a company, firm or nonprofit institution, as well as an individual.

NOTE.—Unless otherwise indicated, the rules stated below apply to both regular and intermittent employees.

Section 3. Acts affecting a personal economic interest

As a Government employee, you must disqualify yourself from participating in or advising with respect to transactions involving the Government in which any of the following has a substantial economic interest: you; your spouse or child; any company, firm or institution in which you have a substantial economic interest, or of which you are an officer, director or employee, or with which you have arrangements to work in the future; and any person who is a party to a contract with you, or holds your note or similar obligation, and who

¹ This is a summary only and does not contain the actual statutory language.

is thereby in a position to affect directly and substantially your economic interests.

(a) Check the regulations for further guidance as to what may constitute a "substantial economic interest."

(b) Of course, if the transaction involving the Government is something which affects everybody, or a significant economic or other segment of the general public, you do not have to disqualify yourself. (For example, an employee of the Treasury Department may work on a tax reduction program even though it benefits himself as well as others.)

Section 4. Assisting in transactions involving the Government

(a) Regular Government employees:

(1) Except as it may be a part of your official duties, you may not assist others for compensation in connection with transactions involving the Government. (For example, an FCC economist may not help write a brief for pay for an airline in a route case before the CAB.)

(2) In three situations you may not assist others whether or not for compensation—

(i) where you participated in the transaction personally and substantially as a Government employee;

(ii) where the particular transaction involving the Government is under your official responsibility or has been within the last 2 years; and

(iii) where you would be representing another person as his agent or attorney.

(b) Intermittent Government employees: You are subject only to the rules stated in (a) (2) (1) and (a) (2) (1) above.

(c) In general (whether you are a regular or intermittent employee), if you have partners in an "outside" business, they may not render assistance to others in connection with a transaction involving the Government, in which you participated personally and substantially as a Government employee, or which is under your official responsibility or has been within the last 2 years.

(d) Certain limited and necessary exceptions concerning, for example, assistance to your personal family, are provided in the law, subject to safeguards. For these you must refer to the statute and regulations.

Section 5. Compensation for regular Government employees from non-Government sources

(This section applies to regular Government employees only. It does not apply to "w.o.c.s.," i.e., persons appointed as Government employees without compensation.)

(a) In general, subject to the balance of the section, you may not have your Government pay supplemented from any other source for or in consideration of your regular Government work.

(b) Furthermore, you may not be paid for personal services rendered to others except for bona fide work outside Government hours—work not prohibited by law or by the regulations of your agency.

(1) You may not work for persons who do business with or are regulated by your agency, unless the head of the agency specifically approves in writing.

(c) In general, you may continue as a member of a bona fide pension plan, group life, health or accident insurance plan or other employee welfare or benefit plan maintained by your former employer.

(1) However, you may benefit from employer contributions made to any such plan while you are in Government service only in the case of qualified pension and group life, health or accident insurance plans, and even then, only for a period of Government service not exceeding 5 years. After 5 years you may remain a member of the plan but not receive the benefit of employer contributions.

Section 6. Gifts

(a) You may not receive a thing of economic value as a gift, gratuity or favor from anyone who you have reason to believe "would not give the gift, gratuity or favor but for [your] * * * office or position within the Government."

(b) If you are a regular Government employee, you may not receive a gift, gratuity or favor from anyone who does business with your agency or is regulated by it.

(c) Certain exceptions are provided in regulations (such as certain business luncheons). Check the regulations carefully.

Section 7. Abuse of office

You must not, in your relationships with anyone who does business with your agency or is regulated by it, use the power or authority of your office or position within the Government in a manner intended to induce or coerce him to provide you with anything of economic value, directly or indirectly.

Section 8. Postemployment

(a) After you leave Government, you may not assist others, whether or not for compensation, in connection with—

(1) transactions involving the Government in which you participated personally and substantially during your Government employment (a permanent bar).

(2) transactions involving the Government which were under your official responsibility at any time within a period of 2 years preceding such assistance (a bar which can never last longer than 2 years following your Government employment).

(b) You may not, after you leave Government, share in compensation received by another person for services which you are prohibited from rendering. Also, special rules are applicable to your partners, as to which you should check the statute.

(c) Check the regulations for special postemployment rules applicable to your agency.

(d) If you are a former military officer, special regulations may apply to you in connection with assisting in the sale of anything, including services, to certain units of the Department of Defense. Check the regulations carefully.

Section 9. Illegal payments

In general, a person who is not a Government employee may not make any payment or transfer of money or thing of economic value to a Government employee where the receipt thereof would be illegal under sections 4, 5, 6 or 8.

Section 10. Regulations

The President, and your own agency head, will have issued other regulations on conflicts of interest. You should check with your personnel officer for information as to these regulations.

Section 11. Preventive measures

(a) There may be regulations of your agency requiring periodic statements or reports designed to help prevent conflict-of-interest situations. Check the regulations on this point.

Section 12. Remedies; civil penalties; procedure

(a) Any violation of the act or of applicable regulations may result in your dismissal, suspension, or other appropriate disciplinary action.

(b) The procedures for any such action correspond to those applicable to disciplinary action for employee misconduct generally.

(c) Violations of the postemployment rules may result in your being barred from—

(1) appearances before your former agency;

(2) the conduct of business with your former agency.

For this purpose, hearings would be held in accordance with the provisions of the Administrative Procedure Act.

(d) In addition to these penalties, you would be subject to a civil action to recover triple the amount of any economic advantage you might gain through a violation of the act or regulations.

(e) Anyone who violates the act or regulations is also subject to a civil penalty of not more than \$5,000.

TITLE II. CRIMINAL PENALTIES

Section 21. Acts in violation of Executive Conflict of Interest Act

Any person who purposely or knowingly violates the act or regulations may be fined not more than \$10,000 or imprisoned for not more than 1 year, or both.

(The document referred to at p. 386 follows:)

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,
NEW YORK, March 3, 1960.

SPECIAL COMMITTEE ON THE FEDERAL CONFLICT OF INTEREST LAWS—PROPOSED
EXECUTIVE CONFLICT OF INTEREST ACT, H.R. 10575, 86TH CONGRESS, 2D SESSION

TECHNICAL COMMENTARY

(Page references herein refer to H.R. 10575 as introduced on February 22, 1960)

Structure of the proposed act

The basic approach of the Act is to consolidate the existing law on conflicts of interest for Federal Executive Branch employees into a single unified Act, with a common set of definitions and a consistent approach and to repeal archaic provisions.

The heart of the Act is Title I, in which the preamble, the definitions, the six basic statutory restraints, the proposed administrative structure and the civil remedies are set forth. Title II establishes the criminal penalties by creating a new chapter to Title 18 of the United States Code. Title III amends and repeats various laws relating to conflicts of interest presently applicable to Executive Branch employees. Title IV sets forth the short title and effective date of the proposed Act.

TITLE I

§1. Preamble; declaration of policy and purpose (p. 2)

The preamble emphasizes two objectives: (a) protecting Government integrity and promoting confidence in Government; and (b) facilitating the recruitment and retention of the personnel needed by Government. The preamble states that it is the "policy and purpose of this Act to promote and balance" these dual objectives. This emphasis on balancing of objectives reflects the basic theme of the Report of the Special Committee on the Federal Conflict of Interest Laws of The Association of the Bar of the City of New York (hereinafter referred to as the "Special Committee").

Existing statutes in the field of conflict of interests give no express recognition to the need for this balancing of policies.

§2. Definitions (p. 4)

Section 2 sets forth definitions of the basic terms used throughout the Act. Existing scattered conflict of interest statutes make no effort at consistent usage. The definitions are discussed below in order, and their significance pointed out.

(a) "Agency" (p. 4, line 12):

The definition of "agency" is an adaptation of the definition found in H.R. 8748, 86th Congress, 1st Session, introduced by Congressman Celler on August 20, 1959. The definition is an important link in marking out the scope of application of the Act, and in other respects. It includes:

(1) The Executive Office of the President, which consists of the White House Office, the Bureau of the Budget, the Council of Economic Advisers, National Security Council, Operations Coordinating Board, Central Intelligence Agency, National Aeronautics and Space Council, Office of Civil and Defense Mobilization, President's Advisory Committee on Government Organization;

(2) The ten Executive Departments;

(3) Each "independent establishment" within the Executive Branch (this is in itself a defined term which includes the independent agencies and miscellaneous Government commission and committees); and

(4) Each "Government corporation." Government corporation" is defined to include, first, every corporation that is defined as a "wholly owned Government corporation" in the Government Corporations Control Act of 1946. Section 2(a) of the Government Corporations Control Act, 31 U.S.C.

§ 846, specifically enumerates these corporations.

The term "Government corporation" also includes other corporations designated by the President as a "Government corporation" for purposes of the Executive Conflict of Interest Act. The President's designation must be in the form of a regulation issued pursuant to section 10 of the Act. The President could, under this authorization, designate as a "Government corporation" one that is

within the classification of "mixed ownership Government corporations" under section 201 of the Government Corporations Control Act of 1946. (31 U.S.C. § 856).

Thus, the definition of "Government corporation" has flexibility in two respects:

(A) The Congress may from time to time add to the list of enumerated "wholly owned Government corporations" under the Government Corporations Control Act of 1946; and

(B) The President may designate additional corporations by regulation.

(b) "Agency head" and "head of an agency" (p. 5, line 13):

The first sentence of the definition needs no amplification.

The second sentence authorizes the Secretary of Defense to delegate "such of his responsibilities as an agency head as he may deem appropriate" to the service Secretaries. In all probability the Secretary of Defense would want to make such a delegation, particularly since each of the three military services now has its own conflict of interest regulations promulgated by its own Secretary.

(c) "Assist" (p. 5, line 20):

The term "assist" is a key term in section 4 (assisting in transactions involving the Government) and in section 8 (postemployment). The concept has antecedents in several of the basic statutes presently in effect. These existing statutes, and the pertinent language in each, are as follows:

18 U.S.C. sec. 281: " * * * any services rendered or to be rendered, either by himself or another, in relation to any proceeding, * * *."

18 U.S.C. sec. 283: " * * * acts as an agent or attorney for prosecuting any claims against the United States or aids or assists in the prosecution or support of any such claim * * *."

5 U.S.C. sec. 99: " * * * act as counsel, attorney, or agent for prosecuting any claim against the United States * * * nor in any manner, nor by any means, to aid in the prosecution of any such claim * * *."

18 U.S.C. sec. 284: "prosecutes or acts as counsel, attorney or agent for prosecuting, any claims * * *."

These critical provisions in existing conflict-of-interest laws have caused much difficulty in their vagueness. The definition in the Act meets a variety of points not answered at all by these provisions.

The definition of "assist" in the Act is more inclusive than any of the foregoing, in that it includes: "to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to * * *."

The language "offer or agree to act" makes the actual rendering of services irrelevant, so long as the Government employee or former Government employee indicates, by offer or agreement, his willingness to perform the services. In this respect the definition precludes a holding such as that contained in *United States v. Reistley*, 35 F. Supp. 102 (D.N.J. 1940) holding that section 281 was not violated where the purported services were not actually performed by the officer who received compensation for them.

It should be noted that assistance may take the form merely of furnishing information to another person. The information need not be confidential in any sense, or even have been acquired in the course of Government employment. In this respect, the concept of "assist" goes beyond the various limited regulations and the specific spot statutes prohibiting sale of certain kinds of Government-acquired information. To constitute a violation of either section 4 or 8, however, the employee or former employee must assist in a "transaction involving the Government," as defined.

It may be noted that the language "acts as counsel, attorney, or agent," which appears in 18 U.S.C. sec. 284 (and a variant of it in 5 U.S.C. sec. 99) does not appear expressly in the definition of "assist." Such language is unnecessary, since serving as counsel, attorney, or agent for another person would clearly be encompassed by the words "help, aid, advise." See, however, the special rule of section 4(b) where regular employees are forbidden to assist by representing another as his agent or attorney even where no compensation is involved.

Other important features of the definition of "assist" are the requirements that the employee know that the action is of assistance to the other person and that he intends to assist the other person. Thus, for example, if a Government employee publishes an article which in fact provides another person with valuable assistance in furthering a proceeding he has pending in a Government

agency, but the Government employee had no knowledge of such person and no intent so to assist him, the definition of "assist" would not be met.

On this question of the state of mind of the Government employee, the definition of "transaction involving the Government" in sections 4 and 8 is also pertinent. As will appear, that term requires belief, or reasonable ground for belief, that the particular transaction does or will involve the Government.

(d) "Compensation" (p. 6, line 1) :

The term "compensation" appears in several places in the Act, particularly in—

Section 4 : as a key element in the broad prohibition of section 4(b) (2) ; and

Section 5 : throughout the section.

This definition incorporates another defined term "thing of economic value" (see section 2, subsection (m)).

The definition of "compensation" is confined to payments and other transfers made "for, or in consideration of, personal services to any person or to the United States." Thus the term does not include a payment or other transfer made bona fide either as a gift or as the purchase price of property sold. But a loan of money or goods in consideration of personal services may constitute compensation.

Similar terms, but undefined, appear in 18 U.S.C. §§281, 1914, and 216, and have, on occasion, raised questions of interpretation. See especially the discussion of section 5 *infra*.

(e) "Government action" (p. 6, line 6)

The definition of "Government action" expresses a new concept. Existing statutes, with the exception of 18 U.S.C. sec. 281, are narrowly limited to particular kinds of Government matters, particularly claims and contracts. The definition of "Government action," however, taken together with the term "transaction involving the Government," extends the coverage of the conflict of interest provisions well beyond the existing structure of restraints and adds greatly to the scope of their protection. No present conflict of interest statute contains a similar concept.

The second paragraph of the definition merely enumerates certain specific manifestations of the items in the first paragraph. The two paragraphs of the definition thus overlap, since it is hard to conceive of a "grant, payment, award, license, contract," etc. (paragraph (2)) which is not also a "decision" (paragraph (1)).

(f) "Government employee" (p. 6, line 15) :

(1) *General*.—This definition, like that of "agency", is an adaptation of a similar term found in H.R. 8748, 86th Congress, 1st Session, introduced by Congressman Cellar. In order to be within the definition of "Government employee," one must meet all three of the tests prescribed by paragraphs (1), (2) and (3) of the definition.

The term "Executive act" used in paragraph (2) is not intended to be limited to Executive Orders, but encompasses other types of official and duly authorized action by the Executive Branch.

The term "authority" used in paragraph (3) is broad enough to cover consultants and experts who might not be acting under the "supervision" of another official in the normal sense of the term "supervision".

The reason for the fairly elaborate definition of "Government employee" lies in the desire to achieve a much greater certainty than presently exists as to who is subject to the restraints of the conflict of interest laws. The definition in the Act clearly excludes, for example, the man who is informally telephoned by a Government official for consultation, or may even come to the office of the Government official and confer with him for a few hours or a day. On the other hand, the definition clearly includes any consultant who obtains consulting pay or reimbursement for travel and/or a per diem expense allowance, pursuant to a "WAE" (when actually employed) designation. Any such designation would constitute a sufficient appointment to meet the test of paragraph (1). While it is conceivable that the requirement of an "appointment" may permit some informal consultants to escape application of the conflict of interest laws, the same is true today, and is inevitable. It would be impossible to try to draw lines, for example, between (1) an experienced friend whose views are sought during a social evening, (2) a Bernard Baruch on a park bench, to whom a Cabinet Secretary goes for advice, (3) a Washington lawyer called over to a Department lunch with a Cabinet Secretary to discuss a problem, and (4) the representative

of a civic organization who spends two days participating in a small departmental conference or "seminar". Which is an "employee", assuming none of them has received an "appointment" of any sort? The only difference between the third and fourth cases is that in the fourth a written invitation may have been issued, and the time spent at the Department may have been a little longer.

An alternative approach to the definition of "Government employee" which was considered and rejected, is to enumerate criteria analogous to the common law tests of employee vs. independent contractor, such as whether or not a place to work is provided for the individual. But these criteria are difficult to apply, the weighting of criteria pointing to opposite conclusions is difficult, uniformity could not be expected and the approach proves impractical.

(2) *Relationship to "agency"; exclusions.*—Since the Act is intended to apply only to employees of the Executive Branch, and since the three tests for a Government employee would sweep in legislative and judicial branch employees, an exclusion for "officers and employees in the legislative and judicial branches of the United States" is set forth in the second part of the definition. Similar reasoning calls for the express exclusion of employees of the District of Columbia and of corporations other than Government corporations, as defined. In other words, the basic intent is that only employees of an "agency" be included within the definition of "Government employee."

(3) *Reservists.*—Under present law, a reservist of the Armed Forces is not considered an "employee" when on active duty for training (5 U.S.C. sec. 30r (d)). Under the definition in the Act, the reservist who is not on active duty is similarly excluded from the category of "employee." But the Act does not contain an exclusion for reservists on active duty, so they are "employees" for purposes of the Act. As will be seen in later discussion, however, reservists on active duty for training only are classified as "intermittent Government employees." See also the corresponding technical amendment at section 35 of the Act conforming 5 U.S.C. sec. 30r(d) to this approach. The more carefully refined restrictions of the Act distinguishing between intermittent and regular employees make it no longer necessary to undergo the risks of a blanket exemption for reservists on active duty for training.

(4) *Retired personnel.*—In *Morgenthau v. Barrett*, 108 F. 2d 481 (D.C. Cir. 1939), cert. denied 309 U.S. 672 (1939) it was held that a retired Army officer was an "officer" for purposes of 18 U.S.C. section 281. Subsequent amendments to sections 281 and 283 expressly exempt retired officers but contain independent provisions restricting sales to and prosecution of claims against the Government by retired officers. The other conflict of interest statutes presumably cover retired officers.

Under the Act, however, the next to last paragraph of the definition of "employee" excludes retired persons, including military personnel, who merely receive Government pensions or similar payments, not for current services. In respect of retired military officers, this provision has the effect of overruling the *Morgenthau* case. The retired officer or employee, of course, is still a "former employee" under the Act and subject to all restraints applicable to persons in that class. See section 8. And the retired military officer is also subject to whatever special rules are set by the President pursuant to section 8(e). See the discussion at pages 59 through 64 of Chapter X of the Report of the Special Committee.

(5) *"Intermittent" or "regular."*—The definition expressly provides that every Government employee will be deemed "intermittent" or "regular," as determined under the definitions of subsections (g) and (j) of section 2.

(g) "Intermittent Government employee" (p. 7, line 22):

The concept of an "intermittent" or part-time employee represents an innovation for purposes of conflict of interest statutes. On the other hand, it is not unknown to federal personnel administration (see, e.g., 36 Decs. Comp. Gen. 351 (1956)), and so many statutory exemptions and special provisions now appear with respect to advisory boards and consultants, it is apparent that Congress has recognized the necessity of treating them differently from regular, full-time employees. The necessity is real; for it is obvious that by his very nature an intermittent employee will have outside economic interests on which he is primarily dependent. In many cases, these economic interests (primarily, his private employment) provide the intermittent employee with the very expertise that makes Government seek his advice.

The sections of the Act that in some degree differentiate in treatment between the intermittent employee and regular employee are:

Section 4 (assisting in transactions involving the Government) ;

Section 5 (compensation for regular Government employees from non-Government sources) ;

Section 6 (gifts).

In general, an intermittent Government employee is one who has performed services as such on not more than 52 working days in the preceding 365 days. The rationale of a 52-day test is that it permits the intermittent employee one day of Government service per week each year and also 52 days happens to be exactly 20% of the 260 days adopted by the Civil Service Commission for certain purposes as the basic working year. Fifty-two days is a minimum figure in the view of the Special Committee.

(1) *Application of the "time test".*—Under the Act, working days do not include Saturdays, Sundays and holidays, in conformity with present practice of the Civil Service Commission in computing the number of days a "temporary" employee has worked. See 36 Dees. Comp. Gen. 351 (1956).

The date for counting up the 365-day year is the date as of which it is important to know whether an employee is intermittent or regular. If, for example, a part-time Government consultant wants to know on May 15 whether on that date he is an intermittent rather than a regular employee he counts backward 365 days from May 15 and ascertains whether, during that period, he has worked on more than 52 working days.

Work performed on any part of a working day would be treated as work for the full day. It would make no difference whether or not the work is performed on Government premises.

(2) *The Presidential power as to intermittent employees.*—The proposed Act provides some flexibility in the "time test" by permitting the President to increase from 52 days to not more than 130 days the number of working days within a year on which a particular Government employee may perform services while still being classified as an intermittent employee for purposes of the Act. The 130-day figure represents one-half of the working year adopted by the Civil Service Commission, and is also the same figure used by the Civil Service Commission in distinguishing between intermittent and other employees. In order to grant this additional time to a part-time employee to continue to serve the Government under the less stringent rules applicable to intermittent employees, the President must make a specific determination that the "national interest requires the retention of such employee's services during a further specified period." This determination and a statement of the pertinent facts must be published in the Federal Register.

While the element of flexibility described above would probably be used rarely, it seems essential. There are numerous instances of special studies which last for six months or even more, and even assignments to represent the United States at important international conferences frequently run well over 52 working days. The complete severance of a private employment relationship, or the dissolution of a partnership, because of undertaking a relatively short-term assignment such as these, will probably be unnecessary in 99% of the cases to protect the Government from conflicts of interest risks.

(3) *Reservists on training duty.*—As has been noted, the Act would bring within the scope of the conflict of interest rules all Reserves of the Armed Forces on active duty solely for training (a change in present law). But it is essential that they have the status of "intermittent employees" under the Act, and the Act so provides. While most Reserves will not exceed 52 days of training in a year, a one-day-per-week trainee who takes two full additional weeks of training each year would exceed 52 days and therefore special provision is made for such reserves on training duty to retain their intermittent status past the 52-day limit.

(4) *Full-time employees in the first 52 days of their service.*—There is no reason to classify as an "intermittent employee" a new regular, full-time employee who has simply not yet served 52 days in his job. Subsection (3) of the definition of "intermittent employee" prevents such a classification. The critical elements are (A) the nature of the position, and (B) the intent evidenced by the appointment, i.e., whether it was for a temporary assignment of less than 130 working days in the year.

If the intent evidenced by the original appointment was for less than 130 working days of service, the employee would become a regular Government employee if he worked over 52 days without Presidential extension of his intermittent status.

(5) *Cessation of status.*—An intermittent employee is subject to the conflict rules on days on which he performs services as well as days on which he does not perform services for the Government.

An intermittent Government employee may become a regular Government employee by working on more than 52 working days in the preceding 365 calendar days. He may also resign, retire or be dismissed; or his appointment may be (and often is) for a specified period of days, after which it runs out and he automatically ceases to be an employee.

A special and probably very rare situation must also be considered; that of the consultant who is appointed to serve when and as needed for an unspecified period. He may be called, let us say, to serve on January 2, 1960, but is not called again. Under the rules of the definition, he is an intermittent employee all during 1960 and on January 1 and 2 of 1961. However, under the rule of paragraph (iii) a needed cut-off is provided. When 365 calendar days has elapsed since the last working day on which he performed services as an intermittent Government employee, he ceases to be a Government employee of any kind (unless his original appointment was expressly for a longer period).

It should be noted that an intermittent employee in the special situation just described can always end his state of suspended animation by submitting a resignation. And in the one case where the proposed Act contains a provision that is geared to time elapsed since the termination of employment (section 8(c)), the Act also contains a special provision in section 8(d) that prevents the "unused" consultant from being penalized for not having been told by the Government that his services were no longer needed. Thus, the fact that the technical termination of his employment for conflicts purposes may not come until a year after he last performed services for the Government will not put the "unused" consultant in a worse position, for purposes of applying the post-employment rule of section 8(c), than that of the consultant who resigns immediately after the last day of his services.

(h) "Participate" (p. 9, line 24):

The term "participate" is used with reference to Government employees acting (or purporting to act) in matters for the Government. It has essentially two functions, neither of which is adequately performed by the vague provisions of existing law.

(1) In section 3 of the Act, the concept is used in a prohibitory sense, prescribing what a Government employee may *not* do with respect to a transaction involving the Government in which he has a personal economic interest; and

(2) In sections 4 and 8 it is used to express that degree of association with a transaction involving the Government that will invoke the rules prohibiting the participating employee from assisting private persons in furthering that particular transaction involving the Government.

The definition gives several examples of what may constitute "participating," namely: "approval, disapproval, recommendation, decision, the rendering of advice, investigation or otherwise." These words are analogous to but broader than the words "investigated" or "passed upon" in Canon 36¹ of the Canons of Professional Ethics of the American Bar Association.

Again in an effort to add concreteness of meaning, each of these types of participation is qualified by the words "personally and substantially." Under this qualification, a C.A.B. official would presumably, for example, not have "participated" in a proceeding for a route certificate if his sole relationship to the case was to affix his signature to a list of assignments of hearing examiners, one of which was for the proceeding in question. On the other hand, if the same C.A.B. official affixed his initials to the decision of the hearing examiner in a manner connoting substantive approval or disapproval, or made a recommendation to the Board concerning the case, he would have participated "personally and substantially" even if he in fact had done no more than glance at the final sentence of the decision. In other words, the qualifying phrase "personally and substantially" is intended to rule out participation by purely ministerial or procedural acts, but not to create a loophole for the lazy executive in the chain of command who may have not bothered to dig into the substance of the case.

¹ * * * A lawyer, having once held public office, or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ."

Drawing the line for the "personally and substantially" test will not always be easy; but it is a vast improvement over existing ambiguity, is a familiar legal distinction, and is vitally important for sensible administration of conflict of interest principles.

(i) "Person" (page 10, line 6) :

The definition of "person" requires no special comment other than to note that neither the United States nor an "agency" is a "person" within the definition. Other political entities, including foreign countries, states of the United States, and municipalities are "persons."

(j) "Regular Government employee" (p. 10, line 16) :

The definition here is a simple one, in that it includes all Government employees not classified as intermittent Government employees under subsection (g).

The second sentence of the definition establishes criteria for the date of termination of any particular term of employment. For a related technical point, see page 23, line 24 of the Act. Presidential regulations issued under section 10 should amplify these criteria to provide guidance as to whether, for example, a period of terminal leave would be treated as a part of the term of employment for purposes of the Act.

(k) "Responsibility" (p. 10, line 23) :

This term, along with "participate," constitutes a key test for the invocation of certain rules under sections 4 and 8 prohibiting a present or former Government employee from assisting private persons in furthering a particular transaction involving the Government.

"Responsibility" is designed to express "chain of command" operational authority. For example, with respect to a decision made by a field representative of the Bureau of Public Assistance in the Department of Health, Education, and Welfare, at least the following would have "responsibility" :

- (1) The Director of the Bureau of Public Assistance;
- (2) The Commissioner of Social Security; and
- (3) The Secretary of Health, Education, and Welfare.

The field representative himself, not only was "responsible," but "participated" and is therefore subject to more stringent rules.

Others might have "responsibility," depending on the circumstances, such as the Regional Director of the Department in the region in which the decision was made, and one or more of the sub-Cabinet officers of the Department or the Director of Administration.

Personal aides and assistants to officials having "responsibility" would not have responsibility solely by virtue of their positions. But they might acquire responsibility by delegation, and also could at any time shift into the category of persons who "participate" if the particular transaction reached their desks within the Department.

The fact that an official's decision is subject to approval, disapproval or modification by higher authority does not negate his "responsibility." Otherwise the only "responsible" official would be the agency head. The word "intermediate" in line 25 on page 10 is intended to connote this point.

The fact that a higher authority never has any personal contact with a particular transaction involving the Government, and does not even know of its existence, does not negate his "responsibility" if he could theoretically exercise it. A complete delegation of authority to a subordinate does not relieve the higher authority of "responsibility" if he could revoke the delegation of authority.

Where a commission or board has final authority, each member has "responsibility."

On the question of the scope of responsibility, see *United States v. Standard Oil Co.*, 136 F. Supp. 345 (S.D.N.Y., 1955), discussed in the Report of the Special Committee at pp. III-29-31.

(l) "State" (p. 11, line 5) :

No special comment is needed.

(m) "Thing of economic value" (p. 11, line 8) :

This term is analogous to similar phrases used in various statutes. For example, 18 U.S.C. sec. 216 uses the phrase "money or thing of value."

A loan is expressly included in the concept of "thing of economic value," as is a business contract or a job which carries with it a right to compensation. In other words, the fact that a loan is arm's length and bears full interest;

the fact that a contract is arm's length with full consideration on both sides; and the fact that bona fide services are performed in a job: none of these facts would remove the loan, contract or job from the concept of "thing of economic value."

An option to obtain a thing of economic value is itself a thing of economic value. The same is true of a promise or undertaking to deliver or procure a thing of economic value.

For purposes of section 5 of the bill it is important to know the time when a thing of economic value is received. Accordingly, the definition itself establishes rules as to time of receipt in the case of an option or promise. In the case of an option, the time of its receipt is declared to be "the time the right to the option becomes fixed." Thus, an option to acquire a share in an oil lease in six months by payment of a stated sum is deemed to be a thing of economic value received at the time the option terms and rights are fixed. Similarly, an option to acquire stock of a corporation in five blocs of 100 shares each over a five-year period, upon payment of the stated purchase price at the time of exercise as to each bloc of shares, is a thing of economic value received at the time the option terms and rights of the parties are fixed. See the discussion at pp. X-41-43.

In the case of a promise or undertaking, the time of receipt is the time the promise or undertaking is made.

(n) "Transaction involving the Government" (p. 12, line 1) :

This term is of major importance in the Act and is used in numerous places, particularly sections 3, 4 and 8. Its definition approximates the series of words in 18 U.S.C. sec. 281: "any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested."

It is much broader in scope than the corresponding scope provisions of the other conflict of interest statutes. See, for example, 18 U.S.C. sec. 434 ("transaction of business") and *Ingalls v. Perkins*, 33 N.M. 269, 263 Pac. 761 (1927) narrowly constraining this already narrow term.

Section 281 and the Act's definition of "transaction involving the Government" are sufficiently similar to permit close legal comparison between the drafting of the two. Some of the differences between the 18 U.S.C. sec. 281 language and the definition of "transaction involving the Government" are these:

(1) The words "controversy, charge, accusation, arrest" in 18 U.S.C. sec. 281 have been dropped in favor of words more expressive of the nature of most modern Federal Government action, i.e., application, submission, request for a ruling or other determination."

(2) The modifying word "particular" has been inserted before the word "matter", so as to read "or other particular matter."

(3) Whereas 18 U.S.C. sec. 281 appears to require that the proceeding or other particular matter actually be "before" an agency, i.e., already pending, "transaction involving the Government" could include a proceeding or other particular matter at a pre-filing stage.

(4) "Transaction involving the Government" requires, in most situations, a belief (or reason to believe) on the part of the individual whose conduct is being considered that the proceeding or other particular matter does in fact or will in fact involve the Government. This element of state of mind is a necessary addition. Suppose, for example, that a Government employee with certain technical skills assists a friend to perfect a machine. The Government employee thinks he is only helping his friend to get a contract with Corporation X. In fact, the friend is in negotiation with the Government as to a contract for the purchase of the machine, and the work the Government employee is doing is a critical element in furthering the friend's efforts to obtain the Government contract. As such, it might well, without the state of mind clause in the definition, violate section 4 prohibiting assistance to outsiders in transactions involving the Government.

(5) The words "directly or indirectly interested", which appear in 18 U.S.C. sec. 281, have been dropped. The Federal Government's range of interest today is so limitless that the need in the Act is to find a way to circumscribe its application, not to extend it further.

The relationship of "transaction involving the Government" to "Government action" is worth noting. The latter is a far broader phrase, serving only to express the concept of what Government does. "Transaction involving the Government", on the other hand, expresses a particular relationship between Gov-

ernment and a private person. It seeks to bring the non-Governmental party into focus, and to express a concrete relationship between him and the Government.

See, also, the discussion in Chapter X of the Report of the Special Committee, pages 14 and 15.

§ 3. Acts affecting a personal economic interest

The purpose, rationale and main features of section 3 of the Act are discussed at pages 15a through 25 of Chapter X of the Report.

The section should be compared with 18 U.S.C. section 434. See Chapter III, pages 19-21.

Subsection (a) states the general prohibition against participation by a Government employee "in a transaction involving the Government in the consequences of which he has a substantial economic interest of which he may reasonably be expected to know."

The test of "reasonably be expected to know" is new, but necessary. It exculpates the Government official who, for example, is the beneficiary of a trust of securities, who has instructed the trustee not to advise him of the specific securities held by the trust, and who in fact is wholly unaware that a given security is held by the trust. Another example is the case of an employee who is the residuary legatee under the will of a person who has just died. The Government employee may well be unaware of (1) the death; (2) the terms of the will; or (3) the assets held by the estate. On the other side of the line of "reasonably be expected to know" is the case, for example, of an official who claims he simply forgot that his portfolio of ten securities included 20% of the shares of a major construction company. While his state of mind would be relevant in a criminal prosecution, it would not (absent other special facts) excuse him from the disqualification requirement of section 3.

Subsection (b) lists a series of persons whose economic interest will be treated for disqualification purposes as though it were the employee's. There are two qualifications to this statement:

(1) the employee must have "actual knowledge" of the existence of the economic interest; and

(2) the economic interest must be "direct" as well as substantial. While the word "direct" cannot be given a precise content, it rules out remote interest in those cases where the interest is already once removed from the employee himself.

By including the spouse or child in paragraph (1) subsection (b) aims squarely at a form of subterfuge not usually covered by statutory or regulatory language.

Paragraph (2) covers, for example, the case of ownership of shares of a holding company that has a major subsidiary in a particular line of business; or being a partner in a partnership which has a major interest in a particular business.

Paragraph (3) covers certain situations where there may be difficulty in proving a substantial economic interest but where a special relationship gives rise to strong policy reasons for invoking the prohibition against participation as a Government employee. The most obvious example is that of an employee who is the director of a company but who owns only a few of its shares. Paragraph (3) would dictate an opposite result from that reached in *U.S. v. Chemical Foundation, Inc.*, 272 U.S. 1 (1926), where a corporate officer was held not within the scope of the present section 434, since he was not shown to have a "pecuniary interest" in the entity.

Careful consideration was given to the suggestion, raised by present Department of Commerce regulations, of including in paragraph (3) any person by whom the employee "has been employed within the last two years." This was found too broad, however, to adopt as a statutory general rule. There are many cases where an individual who has worked in a given industry most of his adult life will enter Government service for the latter portion of his career. For example, a mining engineer might well accept a top position in the Bureau of Mines. It seems wholly unrealistic to disqualify him from regulating the last company he worked for (and from which he has severed all connections) when he must issue regulations for the mining industry as a whole. It also seems pushing matters too far to insist upon a Presidential exemption for such a case. Accordingly, the Act relies on regulations to cover any special situations which may arise in a particular agency and which demand disqualification of recent employees of private concerns from acting with respect to their former em-

ployers. Middle grounds are possible. Presidential regulations might, for example, prescribe that recent employees expressly "on leave of absence" from former employment should be deemed employees of their former employers for purposes of section 3(b) (3).

Paragraph (4) covers a most important situation, that of the employee who is negotiating with respect to, or has any arrangement concerning, prospective employment. This situation has been covered in some of the more complete agency regulations. For example, the Department of Commerce prohibits official action affecting any private person or organization "with whom he has arranged or is negotiating for subsequent employment or business relations." (See Section 6 of the Dept. of Commerce Regulations on Conflicts of Interests.) General discussion of the need for prohibitions in this area appears at pages 64 to 66 of Chapter X of the Report.

Paragraph (5) states the principle of economic interest by reason of contractual relationship or debt obligation. See the discussion at page 20 of Chapter X.

Subsection (c) merely enunciates the requirement of disqualification from participation in cases where the prohibitions of subsections (a) and (b) are applicable.

Subsection (d) in effect creates two exceptions to the disqualification requirement:

(1) Where the employee's interest derives only from his position as an employee of the Government; and

(2) Where the employee's interest is shared by a broad segment of society such that it ceases to be personalized.

These are discussed at page 19 of Chapter X. While the second of these exceptions will present some difficulties in application, it is an essential concept and merely reflects a principle that a court would undoubtedly read into any statute drafted to achieve the general purposes of the present 18 U.S.C. sec. 434 and section 3 of the Act. No one would say that a Treasury official must disqualify himself from working on a general tax reduction program because he will benefit along with millions of other taxpayers. But one might well conclude that a Treasury official should disqualify himself from recommending retroactive application of a special rule as to tax treatment of stock options if he were a member of a relatively narrow class of people who would benefit. Subsection (d) (2) is designed to express this distinction.

Subsection (e), setting forth the power of Presidential exemption, is discussed at pages 23 to 25 of Chapter X of the Report. It should be noted that the recipient of a Presidential exemption is still subject to the restraints of the other sections of the Act. In this connection, see particularly the discussion of section 4, *infra*.

As is noted in the discussion on page 16 of Chapter X of the Report, section 3 is substantially broader than 18 U.S.C. sec. 434 in the scope of its protection, while being more precise in its application. The elements of broadening are chiefly these:

(1) Section 3 is not confined to economic interests in business entities;

(2) It expressly reaches certain important forms of indirect economic interest;

(3) It covers any participation by a Government employee (such as advising the Government officials who must make the decision), rather than being confined to cases where the employee "acts as an officer or agent of the United States for the transaction of business with" the private party; and

(4) It covers employees of Government corporations, (*cf. United States v. Strang*, 254 U.S. 491 (1921)).

§ 4. Assisting in transactions involving the Government (p. 14)

The purpose, rationale and main features of this section of the Act are discussed at pages 26 through 32 of Chapter X of the Report.

Comparative existing provisions are 18 U.S.C. sections 281 and 283.

The general rule of subsection (a), applicable to all employees, is precisely the same in scope as section 8, applicable to the post-employment status of former Government employees. This precise meshing reflects the conclusion that the intermittent employee, for purposes of the prohibitions against assistance to private parties in their Governmental matters, is in substantially the same position as the recent former Government employee. The one exception to this principle, the difference in scope between sections 4(d) and 8(c), is treated in the discussion of section 8, *infra*.

It is pertinent to note that section 4 is similar to a number of the exemption provisions in present law for advisory boards and consultants in applying a more narrowly focused body of restraint upon intermittent employees. For example, 22 U.S.C. section 1792(a), a provision of the Mutual Security Act, exempts intermittent employees appointed under that Act from "the provisions of sections 281, 283, or 284 of Title 18, or of section 99 of Title 5 * * * except insofar as such provisions of law may prohibit any such individual from receiving compensation in respect of any particular matter in which such individual was directly involved in the performance of such service." The Mutual Security Act language: "any particular matter in which such individual was directly involved," and the language of the proposed Executive Conflict of Interest Act: "in any transaction involving the Government in which he has at any time participated," are extraordinarily similar in their impact. Thus, Congress has already recognized and responded to the need for a different rule for the intermittent employee, in exactly the same manner as the proposed Executive Conflict of Interest Act. In a very real sense, the proposed Executive Conflict of Interest Act would merely make uniform for *all* intermittent employees in Government the present differentiation in conflict of interest principles already adopted under numerous acts of Congress.

Subsection (b) is in many respects a merger of the present 18 U.S.C. sections 281 and 283, but is confined to regular Government employees. Paragraph (1) adopts substantially the rule of the present 18 U.S.C. sec. 281; services for *compensation* are barred in respect of any matters before any agency. (It should be noted that this is a Government-wide prohibition.) Paragraph (2) adopts the concept of 18 U.S.C. sec. 283, that compensation is not an essential element of the offense in some situations. The situations selected by paragraph (2) are those where the Government employee acts in a *representative capacity* for the private party—"representing him as his agent or attorney." The rationale is, of course, that the weight of the factor of appearances is greatly increased where the Government employee "fronts" for the private party in a transaction involving the Government.

Among the "permitted exceptions" of subsection (e), the only one requiring special note here is paragraph (1)(G). This exception permits an employee, with special advance approval and certification as to the national interest, to assist a Government contractor or subcontractor in the performance of his work for the Government. The need for this exception is closely related to the need for the Presidential exemption under section 3. A scientist employed by a private company and serving on an advisory board under a section 3 exemption is cleared to advise the Government despite his outside employment—but he is still not cleared under section 4. His responsibilities with his company may practically compel him to assist his company in the performance of work under a Government contract. And it is undoubtedly in the interests of the United States that he should so assist. In such a case the "permitted exception" of paragraph (1)(D) of section 4 is needed and available. The protections surrounding the granting of an exception under section (1)(D) are sufficient to guarantee against abuses.

Altogether, section 4 in some respects broadens the present 18 U.S.C. sec. 281, clarifies it in almost all respects, and adapts it to modern Government by applying somewhat different rules for the intermittent Government employees.

§ 5. Compensation for regular Government employees from non-Government sources (p. 17, line 10)

The purposes, rationale and main features of section 5 are discussed at pages 33 through 43 of Chapter X of the Report.

The comparative section in existing law is 18 U.S.C. sec. 1914, discussed at pages 32 through 35 and 43 through 46 of Chapter III of the Report.

Subsection (a) states the non-applicability of the section to employees serving without compensation ("WOC"), in accordance with the terms of their employment. See the discussion at page 40 of Chapter X.

The first sentence of subsection (b) states the prohibition against supplementation of Government salary "for or in consideration of personal services rendered or to be rendered to or for the United States." In other words, if all the employee does it to work for the Government, he may not receive payments from others as supplementary compensation. The second sentence raises a presumption that payments received prior to entry into Government service are not "for, or in consideration of, personal services rendered or to be rendered to or for the United States." See the discussion at pages 35 to 37 of Chapter X.

Up to this point, Section 5 largely reflects present law, although "for, or in consideration of," is a concept substantially more precise than the "in connection with" which appears in the present 18 U.S.C. sec. 1914.

Subsection (c) goes well beyond present law by building a strong protective barrier as to payments *not* for or in consideration of Government services. See the discussion at pages 38 and 39 of Chapter X. The four conjunctive tests of the legitimacy of particular payments for non-Government services are self-explanatory.

Subsection (d) precludes evasion of the principles of subsections (b) and (c) through the subterfuge of making present payments for services to be rendered in the future. The second sentence of subsection (d), however, expressly authorizes contracts for future employment. (Here a reference back to section 3(b)(4) is in order. That provision requires a Government employee to disqualify himself in a transaction involving the Government which affects a person with whom the Government employee "is negotiating or has any arrangement concerning prospective employment.")

Subsection (e), as in the case of the present 18 U.S.C. sec. 1914, contains an exception for certain payments to Federal employees paid out of state, county or municipal treasuries. The provision is necessary to cover certain established categories of jointly paid employees, such as county farm agents.

Subsection (f) sets forth the wholly new provisions as to pensions, retirement, group life and other employee welfare and benefit plans, and also as to profit-sharing and stock bonus plans. See the discussion at pages 41-43 of Chapter X.

The handling of travel and related expenses is expressly left to regulations, under subsection (g).

§ 6. Gifts (p. 21)

The purposes, rationale and main features of this section are discussed at pages 43 and 48 of Chapter X. The discussion there is incorporated here. There is no comparative section in existing law. See, for regulations—in the field, pages 13-14 of Chapter IV of the Report.

Subsection (a) states the general prohibition against receipt or solicitation of a gift from any person who the Government employee "has reason to believe" would not give the gift, gratuity, or favor "but for such employee's office or position within the Government." While this is essentially a subjective test, this kind of a standard is not inappropriate for the difficult and necessarily personal area of gifts.

The rule of subsection (a) is applicable to both regular and intermittent employees. An illustration of the application of the section to an intermittent employee may be helpful. A labor relations consultant who also serves on a Labor Department advisory board may lawfully receive a gift from a labor union client even though the client is regulated in certain respects by the Department of Labor, provided that the relationships between donor and donee make it evident that the gift is not being made primarily *because of* the consultant's position on the advisory board. If, on the other hand, another union with which the consultant has never had dealings makes a gift to him, the circumstances may suggest that the donor "would not give the gift, gratuity, or favor but for such employee's office or position within the Government."

Subsection (b) prescribes three reasonably objective tests as to when a regular Government employee may not receive a gift. As is pointed out in the discussion on page 44 of Chapter X, these tests could not realistically be applied to the intermittent employee, since the typical consultant or adviser could not under section 6 then receive a gift from the same employer or client by whom he could lawfully be paid under section 5.

Subsection (c) authorizes exceptions by regulations. The need for such exceptions is discussed fully at pages 45-46 of Chapter X. The normal business luncheon, for example, would seem to be a clear case for an exception.

§ 7. Abuse of office (p. 22, line 13)

The purposes, rationale and main features of section 7 are discussed at page 49 of Chapter X. Little amplification is needed here.

It is to be noted that the same class of "sensitive" persons listed in the second of the gift prohibitions in section 6 are brought by reference into section 7. This is the class of persons to whom the power of the particular Government employee's office is significant.

Section 7 breaks essentially new ground; no statutes or regulations clearly embrace the concept of the section.

§ 8. Postemployment (p. 23, line 1)

The purpose, rationale and main features of section 8 are discussed at pages 50 through 66 of Chapter X. The discussion there is incorporated here. The comparative provisions in existing law are 18 U.S.C. sec. 284 and 5 U.S.C. sec. 99.

Subsection (a) states the general postemployment rule: (1) a permanent bar against assisting in matters in which the former Government employee "participated" during his Government employment; and (2) a two-year bar against assisting in matters which were under his official "responsibility." The parallelism of this subsection to subsection (a) of section 4 has been pointed out in the discussion of that section.

The rule of section 8 is the same for both regular and intermittent employees. However, most consultants and experts will not have "responsibility" since they are not given line operating authority. Accordingly, their primary concern will be with matters in which they have "participated."

It should be kept in mind that the scope of the postemployment bar can be expanded by particular agencies in relation to their special needs. Some of the present postemployment regulations are discussed at pages 12 and 13 of Chapter IV of the Report. Regulations such as these would continue under the proposed Act.

The present 5 U.S.C. sec. 99 would be repealed outright by section 36(a) of the proposed Act. This would be consistent with H.R. 2156 and most other proposals in this respect.

The point of time for measuring the two-year ban on assistance in "responsibility" transactions is discussed at pages 55 and 56 of Chapter X.

Subsections (b) and (c) relating to sharing in compensation and the activities of partnerships, are discussed at pages 56 through 58 of Chapter X. Subsection (c)(2) requires a full disclosure of a partner's former participation in a matter (more than two years earlier), if the partners handling the case are aware of his participation. Furthermore, the permanent personal bar against assistance by the partner who did participate is highlighted by the requirement of an affidavit by him that he has not in fact "assisted" in the particular transaction. When the broad scope of the word "assist" is considered, it becomes clear that the partner who participated must stay completely out of the matter in order to be able to give the affidavit. "Assist" is applicable to information and other help given to his partners as well as to the client.

Subsection (d) states a special rule, applicable in the case of certain former intermittent employees, for computing the two-year partnership bar of section 8(c). The particular former intermittent employees are those whose employment ended solely by reason of the expiration of a 365-day period following the day on which they last performed services. This is the case of the "unused" consultant, discussed in connection with subsection 2(g)(iii) above. The special rule of subsection (d) serves to eliminate any extension of the two-year period in the case of the "unused" consultant beyond the period applicable to the consultant who resigns at the end of his last day of service.

Subsection (e) is fully discussed at pages 59 through 64 of Chapter X.

Subsection (f) incorporates all of the exceptions of section 4(e). Thus, for example, the former Government employee could obtain permission from his former agency to work on a Government contract as a private citizen even though he participated in the same contract as a Government employee, if the agency head makes the certification required by section 4(e)(1)(G). Thus again section 8 is made parallel to section 4, in this case because there is no reason to apply a tighter rule to a former employee under section 8 than to a current employee under section 4.

§ 9. Illegal Payments (p. 26, line 1)

A frequent criticism of conflict of interests restraints, both at the Federal level and other levels of Government, is that they fall most heavily on the Government employee and rarely catch the "outsider" who may have induced the offense. Of the present basic Federal conflict of interest statutes, only 18 U.S.C. sections 216 and 1914 expressly apply to payments made by others to a Government employee. While it is true that the general conspiracy section, 18 U.S.C. sec. 371, and the prohibition against aiding and abetting, 18 U.S.C. sec. 2(a), may serve to reach payors of compensation illegally received, the outsider's offense should be an independent one.

Section 9 of the Act is aimed at bringing about a better balance between the impact of the conflicts statutes on the Government employee, or former employee, and the person who causes the wrong by making the payment.

Subsection (a) prohibits the transfer of anything of economic value by any person "believing or having reason to believe that there exist circumstances making the receipt thereof a violation of section 4, 5 or 8." These enumerated sections cover, it will be recalled:

Section 4. Assisting in transactions involving the Government.

Section 5. Compensation for regular Government employees from non-Government sources.

Section 8. Post-employment.

Subsection (b) creates a parallel offense for the donors of gifts. Section 6 of the Act, the section prohibiting receipt of certain gifts by Government employees, contains several provisions as to what the donee believes to be the donor's intent. The donor, of course, knows his own intent. Accordingly, the offense as to donors is restated directly in section 9 as a separate subsection (b) rather than in the subsection (a) terms of believing that there "exist circumstances" which would make the transfer a violation of section 6.

The same exceptions as to gifts that appear in regulations under section 6 will reappear in regulations under section 9(b).

Section 9 is by its nature inapplicable to the restrictions of section 3 (disqualification) and 7 (abuse of office) since these lie entirely within the command of the employee.

§ 10. Administration (p. 26)

The purpose, rationale and major features of section 10 are discussed at pages 3 through 9 of Chapter X. The comments therein made adequately cover the section for purposes of this commentary, since section 10 is essentially non-technical and self-explanatory.

§ 11. Preventive measures (p. 30)

The purpose, rationale and main features of section 11 are discussed at pages 11 through 13 of Chapter X of the Report of the Special Committee. See also the discussion of agency regulations covering certification, review of outside employment and reporting, at pages 22 through 25 of Chapter IV.

Recent proposals for enrollment of retired officers employed by defense contractors would be squarely within the purposes of section 11. Other types of reporting will be devised by agencies from time to time. These all serve to reduce the risks that actual conflicts of interest will arise.

§ 12. Remedies; civil penalties; procedure (p. 31)

The rationale and main features of section 12 are discussed at pages 13 to 17 of Chapter XI. There are no existing provisions comparable to section 12.

Subsection (a) is confined to present Government employees. Its main function is to establish a firm statutory base for application of the full range of employee disciplinary procedures to conflict of interest situations.

Subsection (b) sets up a structure of procedures for enforcement as to former Government employees and persons who neither are or were Government employees. The Administrative Procedure Act is relied on as to hearing procedures, and provision is made for judicial review. "The findings of the agency head as to the facts, if supported by substantial evidence, shall be conclusive."

Subsection (c) provides a statutory base for the common law principles of rescission. The provision is discussed at page 15 of Chapter XI.

Subsections (d) through (h) are characterized briefly at pages 15 to 17 of Chapter XI. Amplification of the statutory language in this Commentary is not necessary.

TITLE II. CRIMINAL PENALTIES

§ 21. Acts in violation of Executive Conflict of Interest Act (p. 38)

The criminal penalties of the Act are described at page 17 of Chapter XI of the Report. The criminal penalties are, of course, equally applicable to "outsiders," i.e., those who violate section 9, as they are to Government employees and former Government employees.

In the case of the existing statutes, the criminal penalties are contained in the individual substantive sections and differ substantially from one to another.

TITLE III. AMENDMENT AND REPEAL OF EXISTING LAWS

The provisions of Title III are discussed at pages 25 through 27 of Chapter X.

§ 31. Amendment of 18 U.S.C., sections 216 and 1914 (p. 39)

The amendments make these two sections inapplicable both to employees covered by the Executive Conflict of Interest Act and to "outsiders" dealing with them. These two sections of present law are in a special category since (as noted in the Commentary on section 9 of the Act) they are the only ones containing express prohibitions against payors.

§ 32. Amendment of 18 U.S.C., sections 281, 283, and 434 (p. 39)

The amendments make these three sections of present law inapplicable to employees covered by the Executive Conflict of Interest Act.

In addition, the special provisions of 18 U.S.C., sections 281 and 283, applicable to retired officers of the armed forces of the United States are deleted. See the discussion at pages 59 through 64 of Chapter X.

§ 33. Amendment of 18 U.S.C., section 284 (p. 40)

The amendment makes this section of present law inapplicable to former Government employees covered by the Executive Conflict of Interest Act.

§ 34. Amendment of 22 U.S.C., sec. 1792(e) (p. 40)

This amendment deletes the present exemption provisions of the Mutual Security Act as to advisers, experts, and consultants. The substance of the deleted language is quoted above at page 31 of this Commentary. The rationale of the amendment is set forth at pages 26 and 27 of Chapter XI.

§ 35. Amendment of 5 U.S.C., 30r(d) (p. 41)

This amendment has the effect of bringing reserves of the armed forces who are on active duty for training within the scope of the Executive Conflict of Interest Act. The new language is the proviso commencing at line 24 on page 41 of the bill. See the discussion at page 11 of this Commentary.

§ 36. Repeal of particular substantive restraints (p. 42)

The repeal of 5 U.S.C., sections 99 and 254, is discussed at page 25 of Chapter XI.

§ 37. Repeal of particular substantive restraints applicable to retired officers (p. 42)

The repeal of 5 U.S.C., section 59c and 10 U.S.C., section 6112, is discussed at pages 59 through 64 of Chapter X, and is referred to again at page 26 of Chapter XI.

§ 38. Repeal of exemptions from particular conflict of interest statutes (p. 42)

The various repealers set forth herein are discussed at pages 26 and 27 of Chapter XI.

(Subsequently the following were received:)

STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS ON H.R. 2156,
REGARDING CONFLICTS OF INTEREST

This statement is submitted on behalf of the National Association of Manufacturers, a voluntary association representing some 20,000 business enterprises, the vast majority of which are small business ventures.

These 20,000 business enterprises pay a very substantial amount of their income into the U.S. Treasury in the form of taxes and, therefore, they are extremely interested in the efficiency and integrity of Federal Government operations.

They believe that the Federal Government should be free to seek and fully utilize the skill and knowledge of businessmen in public service without undue hardship to those who are willing to serve and that the conflict of interest laws should be reviewed and revised to this end. The committee is presently reviewing such laws and is considering several bills for revision.

With this fundamental purpose in mind, we have examined section 208 of H.R. 2156 and wish to submit certain comments concerning this portion of the bill. We are not at this time commenting on other sections of H.R. 2156 or on

other bills before the committee since we believe that this section, and its antecedent, 18 U.S.C. 434, constitute the chief source of undue hardship to businessmen who are willing to serve the Federal Government. A statement on the subject of restrictions on retired military officers is being filed by this association with the House Armed Services Committee.

Section 208 would become a part of the criminal laws and, therefore, should describe the proposed crime with certainty and clarity so that each citizen can know unmistakably what conduct is prohibited. Thus, it is pertinent to highlight some of the language of this section, as follows: "Whoever, being * * * indirectly interested in the pecuniary profits or contracts of any * * * business entity * * * acts as an officer or agent of the United States, or any agency for * * * in any other manner transacting business with such business entity shall be fined not more than \$2,000, or imprisoned not more than 2 years, or both."

The phrase "indirectly interested" is sorely in need of definition. Would it include a man whose wife, parents, children, or other relatives held stock in shareholder in a closed-end investment company or an open-end investment company (mutual fund) which in turn held stock in an incorporated business entity? Would it include the beneficiary of a trust which held stock in the business entity? Would it include the holder of an insurance policy with an insurance company which in turn held stock in the business entity? Would it include a man whose wife, parents, children or other relatives held stock in the business entity? We do not believe indirect interests should be covered by a criminal statute and consideration of direct interests should be limited to those that are substantial and significant.

Likewise, the phrase "in any other manner transacting business with such business entity" is extremely vague and all-inclusive. It could encompass many nondiscretionary functions and is broad enough to include correspondence, telephone calls, and minor ministerial acts. A definition of "transacting business" should be limited to the making of official decisions of some import and the making of recommendations of such decisions.

Actually, the practical effect of any conflicts of interest criminal law cast in such general terms will be to discourage competent businessmen from entering Government service. Authoritative evidence of this is found in the May 1958 survey report of the Harvard Business School Club of Washington, D.C., entitled "Businessmen in Government." This report stated that the survey on which it was based showed that Government policy on so-called conflict of interest was one of the five main elements in the resistance of businessmen to Government service.

The club's report pointed out that "Those interests which have been referred to primarily by Congress, the press, and others generally have been defined only as pecuniary interests. But it is significant that there can be all sorts of other personal interests such as religious, social, fraternal, familial, or ideological interests which can influence Government decisions."

The opinion of those businessmen surveyed who had served in Government was that in most circumstances a requirement of divestment is unnecessary and unfair. The comment "you can't legislate honesty" was repeated many times in the questionnaires and interviews.

The report also stated that five suggestions were made to remedy aspects of Government policy considered to be unnecessary and unfair. These were:

"(a) Bring about increased public awareness that most businessmen enter Government service with a sense of integrity.

"(b) Bring about a recognition of the fact that pecuniary interest is just one of the several types of interest which give rise to the possibility of conflict.

"(c) Provide for disclosure by the businessmen of all relevant investment interests at the time of entry into Government service, and provide for disqualification with respect to any matter concerning which there is, or might be, or there is reasonable likelihood that the public would believe there might be, a conflict of interest.

"(d) Establish substantial criminal penalties for those found to have violated the public trust.

"(e) Establish a requirement of divestment of ownership interest only where the job, the ownership interest, the relationship between the company and the Government job are such as to indicate a clear and present danger of personal conflict."

Although this association does not necessarily endorse all these suggestions, it is obvious that they represent an approach far different than the harsh and sweeping approach of 18 U.S.C. 434 and proposed section 208.

It seems obvious that, if the language of section 208 is adopted, the prudent businessman who decides to enter Government service will be forced to the conclusion that he should divest himself of all his investments in order to avoid the possibility that his duties may some day require him to transact business with a business entity whose profits or contracts he is indirectly interested in. This appears to be the lesson of 29 Op. Atty. Gen. 446, 447 (1940) and 40 Op. Atty. Gen. 298, 294 (1943), which state "Generally, at least, it is the duty of persons who conceivably may come within the terms of the inhibitions so to shape their conduct as to avoid raising questions of the applicability to them of the statutory penalties. That this is the safe course is illustrated by the result in *United States v. Dietrich*, 126 Fed. 671, in which the court held a penal statute applicable to certain transactions by a U.S. Senator who professed to rely upon a contrary ruling by the Attorney General" and "the burden of construing the statute and of conforming to its prescriptions rest finally on the prospective consultant." This would certainly work an undue hardship on those competent businessmen willing to enter public service.

It seems clear that punishment should only be inflicted where wrongdoing such as bribery, graft, or conspiracy has occurred. To inflict punishment where no wrongdoing has occurred is repugnant to our American concept of fairplay. The mere holding of investments certainly does not prevent the exercise of honest judgment. Thus, the real question should be whether a Government employee permits himself to be improperly influenced, not the mere transaction of business. The presumption of innocence certainly must be a controlling factor in formulating legislation. A mere conjectural potentiality should not be declared a crime by the laws of a nation of freemen.

The importance of attracting businessmen to Government service should be emphasized. As the Harvard group's report stated, "we are forcibly reminded that democracies (or republics) that have perished, have perished for lack of capable, properly oriented public servants, supported by a citizenry which should have demanded superlative public service * * *. The evidence of our survey indicated that, whatever the need, there exists a frightening lack of interest in the business community for participation in the Government service * * *. It could well be argued now, we believe, that getting the best men into Government service is at least equally important to recruitment of men for military service."

Likewise, the Hoover Commission has stated that "The greatest weakness in the Federal Government's personnel is in expert managerial direction."

Further recognition of the need was given by Congress in establishing the National Defense Executive Reserve.

In its conclusions and recommendations, the Harvard Club survey report asserted:

"Persons who have spent a lifetime accumulating savings, however, should not be required to divest themselves of stocks and bonds if ownership of these investments does not conflict with the use of honest judgment in their jobs."

It was also recommended that all interested groups should "formulate rules of reason in their interpretation and application of 'conflict of interest' laws and regulations in order to utilize the services of exceedingly competent administrators from outside the Government and still safeguard the public trust."

Proposed section 208 would not only replace the present 18 U.S.C. 434, but would broaden it so as to prohibit an employee on leave of absence of a business entity from in any manner transacting business with such business entity. This prohibition would exist even though the employee on leave of absence had no employment contract, no pension rights, and no investment in the business entity. This would operate to restrict unduly the benefits the Government receives from the services of those businessmen who are willing to enter public service for comparatively short periods of time on leave from their regular employment.

The greater public interest would be served by the outright repeal of 18 U.S.C. 434 rather than its perpetuation. It has been suggested that the best solution to problems in this area is to add to the oath of office an affirmation that the appointee will not permit himself to be improperly influenced in questions involving the interest of the United States by considerations of his own pecuniary, familial, social, ideological, fraternal or religious interests.

We concur in the Hoover Commission's comment that "there is considerable overlapping and lack of clarity as to meaning and effect" of the conflict of interest statutes and that a review of them should be made to determine "(1) the extent to which simplification and clarity can be made, and (2) whether the public interest is really being served in each of them, when it is realized that some of them seriously hamper the willingness of competent top management to serve the Government."

The Hoover Commission further commented that:

"A particular obstacle to attracting competent men into political service is the problem caused by those portions of the conflict of interest laws requiring, divestment of personal investments and industrial pension and other rights. While competent men may be willing for temporary periods to accept lower pay in public service, increasingly they are becoming reluctant to give up their lifetime accumulations of investments and pension and other rights of private industry and life. We must develop a fresh approach to this matter."

On this basis, the Commission made the following recommendation:

"We recommend that the President and the appropriate committees of the Congress review the conflict-of-interest laws to determine whether the intent of such laws can be better achieved by other and more positive means which would encourage, rather than discourage, entry of competent men into public life."

Perpetuation and further broadening of 18 U.S.C. 434 is definitely not a fresh approach to this problem area and is just the opposite of a positive means of encouraging competent men into public life.

A House Judiciary Subcommittee reported in 1951 that although it believed employment of personnel without compensation should be kept to a minimum, it had discovered "no instances where such personnel * * * conducted themselves with other than the utmost selflessness and honesty."

Ross D. Davis, who made a special study of the conflict-of-interest statutes, characterized them as "arbitrary, inconsistent, and difficult to construe" ("The Federal Conflict-of-Interest Laws," *Columbia Law Review*, June 1954, pp. 894, 912).

In conclusion, we urge the committee to formulate a bill that would simplify and clarify the conflict-of-interest statutes with a view to encouraging businessmen to enter Government service. The imposition of undue hardships should be avoided. H.R. 2156 does not measure up to these requirements. Although it would achieve a certain amount of consolidation, some of the fundamental problems are accentuated rather than alleviated. Consequently, we do not believe the committee should recommend this bill.

We wish to thank the chairman and the committee for the opportunity to submit these comments.

ASSOCIATION OF INTERSTATE COMMERCE PRACTITIONERS,

Washington, D.C., March 22, 1960.

Re H.R. 1900, H.R. 2156, and H.R. 2157.

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN CELLER: On January 28, 1960, Mrs. Urmev, executive secretary of the Association of Interstate Commerce Commission Practitioners, wrote you requesting the privilege of submitting a statement of the association's position by letter before the record is closed on the hearings by Subcommittee No. 5 of the House Committee on the Judiciary relating to H.R. 1900, H.R. 2156, and H.R. 2157. Accordingly, I am writing this letter with the request that it be incorporated in the printed record of the subcommittee's proceedings as a statement of the position of this association.

On July 31, 1959, the following letter was addressed to the entire membership of the association:

"JULY 31, 1959.

"DEAR MEMBER: As you know, there are pending before both the House and Senate a number of bills which would prescribe a statutory code of ethics applicable to practice before and dealings with the several Federal regulatory commissions, including the Interstate Commerce Commission.

"It is expected that hearings will begin on these bills very shortly, and the executive committee believes it incumbent upon our association to state a position on this important subject. Accordingly, the executive committee has drafted a proposed resolution to express the views of the association, and it is submitted herewith for your approval or disapproval.

"By way of additional explanation, it might be said the subject of ethics was a foremost consideration of the association when first organized some 31 years ago, and it is no less important to the membership now—especially so since the code of ethics of the practitioners' association is the ethics of the Interstate Commerce Commission for its practitioners. It is the belief of our executive committee that each regulatory agency should be allowed to adopt a code of ethics particularly applicable to it.

"The executive committee fully appreciates the Commission's functions are largely legislation, and that its effectiveness could be seriously impaired if it were shackled with respect to its dealings with those who practice before it and the industries it regulates.

"This resolution recognizes the desirability of all Federal regulatory agencies enforcing a code of ethics, and it places the association in the position of supporting legislation to that end, so long as the regulatory agencies are not to be crippled by inflexible statutes.

"If you should disagree with the proposed resolution, the officers and executive committee would appreciate your writing in detail what position you think the association should take.

"As hearings on some of these bills appear imminent, your prompt returns of the ballot will be appreciated. Please check the enclosed post card as indicated and drop it in the mail.

Very truly yours,

"MARY LOUISE S. URMEY,
"Executive Secretary."

A proposed resolution enclosed with the above letter was as follows:

"ASSOCIATION OF ICC PRACTITIONERS

"PROPOSED RESOLUTION

"Whereas there has been proposed in the 86th Congress of the United States certain legislation which would prescribe a statutory code of ethics applicable to practice before the various Federal regulatory agencies, including the Interstate Commerce Commission, and provide for penalties for violations thereof; and

"Where as this association adopted a code of ethics on October 30, 1930, and thereafter the Interstate Commerce Commission on September 15, 1942, adopted this code as its own and incorporated it in the general rules of practice; and

"Whereas experience under said code of ethics has demonstrated that it has provided an adequate and satisfactory means of governing conduct of those appearing before the Commission; and

"Whereas it is the sense of the membership of this association that the problem of ethics can best be handled by adoption by each Federal regulatory agency of a specific code of ethics adapted to its particular procedures and practice: Now, therefore, be it

"Resolved by the Association of Interstate Commerce Commission Practitioners, That the association favors enactment of legislation directing each regulatory agency to adopt and enforce a code of ethics applicable to its proceedings.

"JULY 31, 1959."

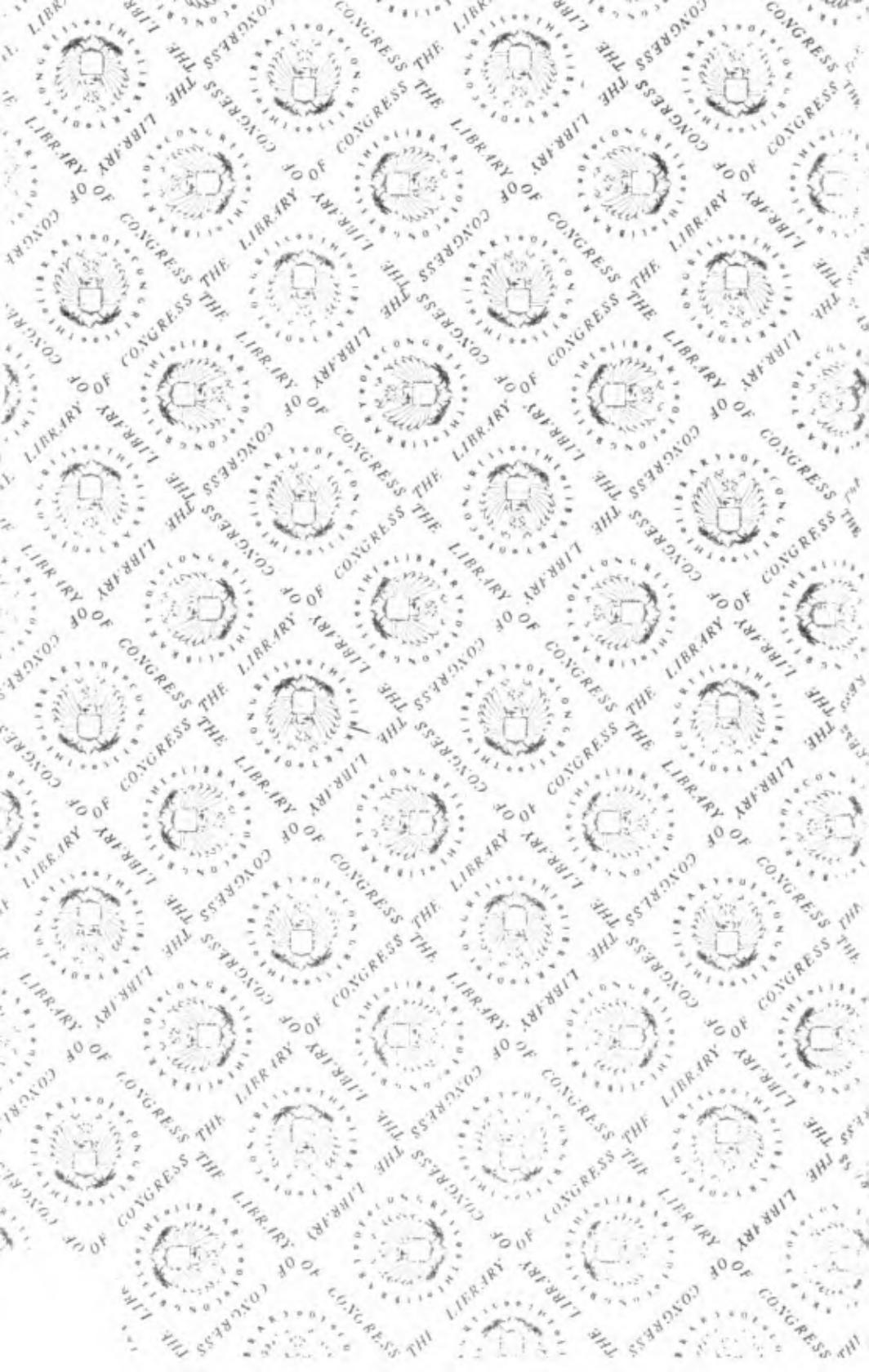
This resolution was adopted by an affirmative vote of 2,313 members of the association, representing 98.7 percent of those voting, and represents the official position of the association in this matter.

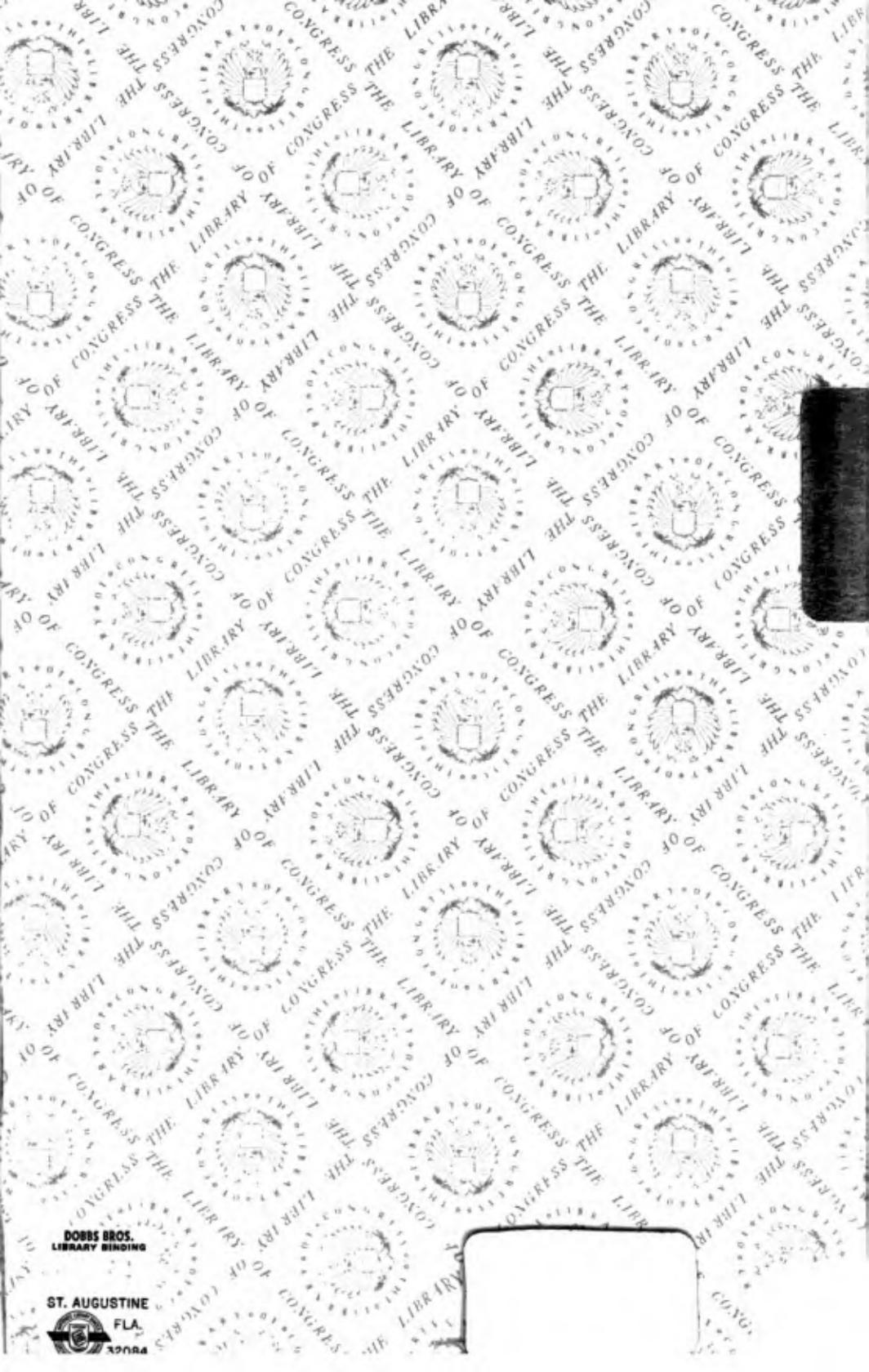
Sincerely yours,

SAM H. FLINT, *President.*

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