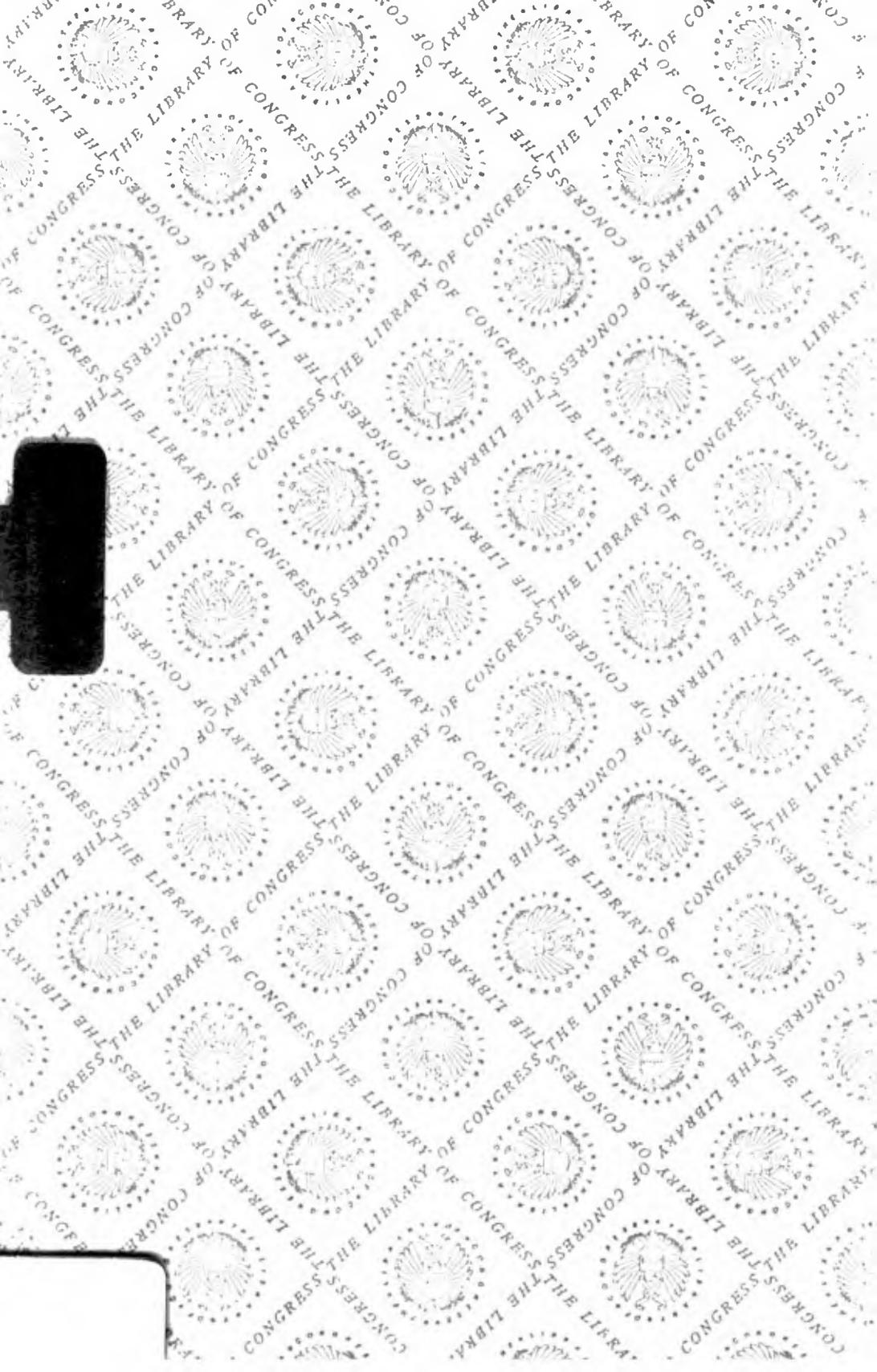
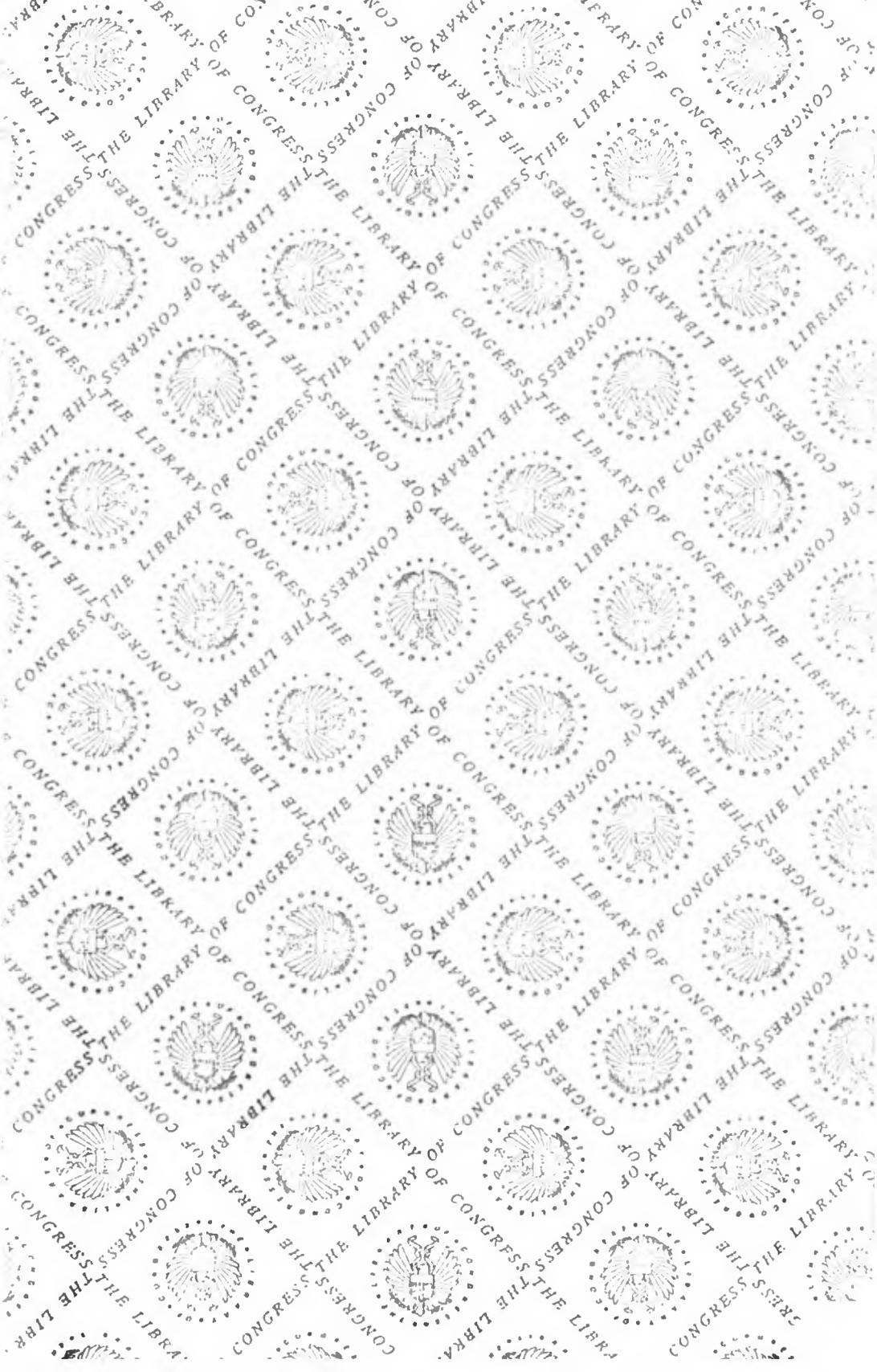


KF 27

.J832

1979c

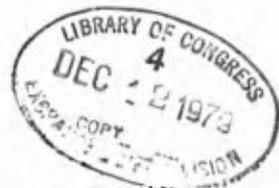






United States Congress, House, Committee on the
"Judiciary, Subcommittee on Administrative Law
and Governmental Relations.

RESTRICTIONS ON POST-EMPLOYMENT ACTIVITY OF FORMER FEDERAL OFFICERS AND EMPLOYEES



HEARINGS

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

RESTRICTIONS ON POST-EMPLOYMENT ACTIVITY OF FORMER
FEDERAL OFFICERS AND EMPLOYEES

APRIL 2 AND 6, 1979

Serial No. 96-20



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1979

COMMITTEE ON THE JUDICIARY

PETER W. RODINO, JR., *New Jersey, Chairman*

JACK BROOKS, Texas
ROBERT W. KASTENMEIER, Wisconsin
DON EDWARDS, California
JOHN CONYERS, JR., Michigan
JOHN F. SEIBERLING, Ohio
GEORGE E. DANIELSON, California
ROBERT F. DRINAN, Massachusetts
ELIZABETH HOLTZMAN, New York
ROMANO L. MAZZOLI, Kentucky
WILLIAM J. HUGHES, New Jersey
SAM B. HALL, JR., Texas
LAMAR GUDGER, North Carolina
HAROLD L. VOLKMER, Missouri
HERBERT E. HARRIS II, Virginia
MICHAEL LYNN SYNAR, Oklahoma
ROBERT T. MATSUI, California
ABNER J. MIKVA, Illinois
MICHAEL D. BARNES, Maryland
RICHARD C. SHELBY, Alabama

ROBERT McCLORY, Illinois
TOM RAILSBACK, Illinois
HAMILTON FISH, JR., New York
M. CALDWELL BUTLER, Virginia
CARLOS J. MOORHEAD, California
JOHN M. ASHBROOK, Ohio
HENRY J. HYDE, Illinois
THOMAS N. KINDNESS, Ohio
HAROLD S. SAWYER, Michigan
DAN LUNGREN, California
F. JAMES SENSENBRENNER, JR., Wisconsin

ALAN A. PARKER, *General Counsel*
GARNER J. CLINE, *Staff Director*
FRANKLIN G. POLK, *Associate Counsel*

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

GEORGE E. DANIELSON, California, *Chairman*

ROMANO L. MAZZOLI, Kentucky
WILLIAM J. HUGHES, New Jersey
HERBERT E. HARRIS II, Virginia
ABNER J. MIKVA, Illinois
MICHAEL D. BARNES, Maryland

CARLOS J. MOORHEAD, California
ROBERT McCLORY, Illinois
THOMAS N. KINDNESS, Ohio

WILLIAM P. SHATTUCK, *Counsel*
JAMES H. LAUER, JR., *Assistant Counsel*
JANET S. POTTS, *Assistant Counsel*
ALAN F. COFFEY, JR., *Associate Counsel*

be 20 11ja 80

KF21
J832
1979c

CONTENTS

HEARINGS HELD

| | Page |
|-------------------------|------|
| April 2, 1979..... | 1 |
| April 6, 1979..... | 63 |
| Text of H.R. 3325 | 2 |

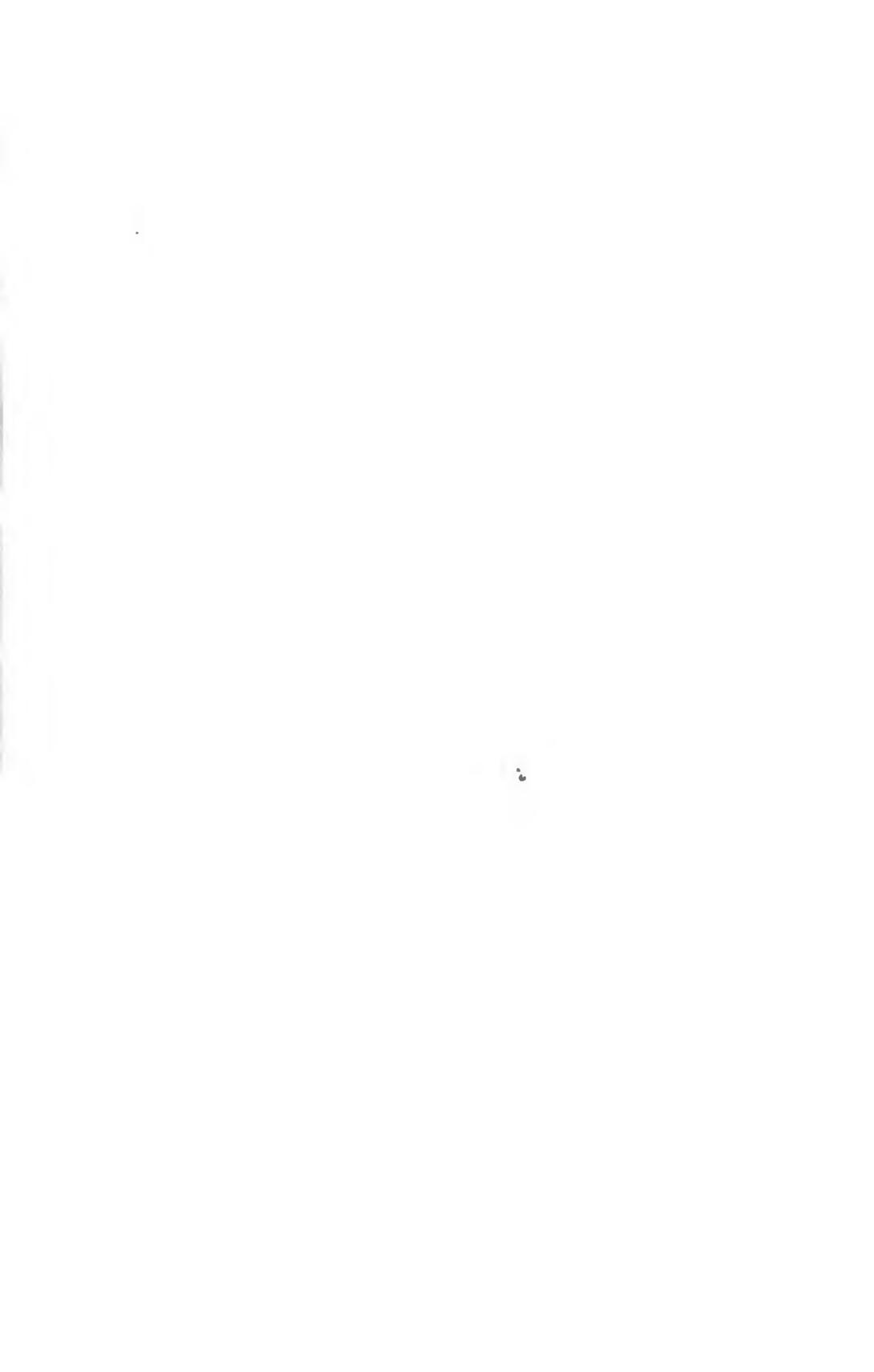
WITNESSES

| | |
|--|--------|
| Ain, Ross D. Federal Energy Regulatory Commission | 56 |
| Califano, Hon. Joseph A., Jr., Secretary of the Department of Health, Education, and Welfare | 37 |
| Prepared statement | 34 |
| Campbell, Alan K., Federal Office of Personnel Management | 5 |
| Curtis, Charles B., Chairman, Federal Energy Regulatory Commission | 56 |
| Prepared statement | 56 |
| Duncan, Hon. Charles W., Jr., Deputy Secretary of Defense, Department of Defense | 22 |
| Prepared statement | 22 |
| Eckhardt, Hon. Bob, a Representative in Congress from the State of Texas..... | 46, 64 |
| Prepared statement | 71 |
| Ferrara, Ralph C., General Counsel, Securities and Exchange Commission | 47 |
| McCloskey, Peter F., Electronic Industries Association | 88 |
| Prepared statement | 90 |
| Pitt, Harvey L., Fried, Frank, Harris, Shriver & Kampleman | 91 |
| Prepared statement | 95 |
| Steinbach, Sheldon Elliot, American Council on Education | 74 |
| Prepared statement | 77 |
| Sumberg, Alfred, American Association of University Professors | 74 |
| Prepared statement | 84 |
| Williams, Harold M., Chairman, Securities and Exchange Commission | 47 |
| Wruble, Bernhardt K., Office of Government Ethics..... | 5 |

ADDITIONAL MATERIAL

| | |
|--|-----|
| Christian Science Monitor | 109 |
| Clarke, David A., Council of the District of Columbia | 113 |
| Cohen, David, Common Cause | 120 |
| Congressional Quarterly | 112 |
| Cooper, John A. D., M.D., Association of American Medical Colleges | 118 |
| Doyle, Charles, Library of Congress | 99 |
| Enarson, Harold L. President of Ohio State University | 119 |
| Halvorson, Harlyn O., Council of Scientific Society Presidents | 120 |
| Hammond, Larry A., Department of Justice..... | 102 |
| Harmon, John, Department of Justice | 101 |
| Irving, John S., General Counsel, National Labor Relations Board | 117 |
| Los Angeles Times | 111 |
| McKinley, C. H., Department of the Army, Redstone Arsenal, Ala | 116 |
| Millstone, Phillip A., Millstone & Cannonson, Youngstown, Ohio | 120 |
| Newsweek | 105 |
| New York Times | 106 |
| Washington Post staff writers | 103 |
| Washington Star | 109 |
| Williams, Harold M., Securities and Exchange Commission | 99 |

1 Ja 80



RESTRICTIONS ON POSTEMPLOYMENT ACTIVITY OF FORMER FEDERAL OFFICERS AND EMPLOYEES

MONDAY, APRIL 2, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m. in room 2141 of the Rayburn House Office Building, Hon. George E. Danielson (chairman of the subcommittee) presiding.

Present: Representatives Danielson, Mazzoli, Harris, Barnes, Moorhead, McClory, and Kindness.

Staff present: William P. Shattuck, counsel; James H. Lauer, Jr., and Janet S. Potts, assistant counsel; Alan F. Coffey, Jr., associate counsel; and Florence McGrady, clerk.

Mr. DANIELSON. The hour of 10 having arrived and a quorum being present, the subcommittee will come to order.

This morning the Subcommittee on Administrative Law and Governmental Regulations will receive testimony on H.R. 3325 and related bills. I might state parenthetically that they are H.R. 2843, which I introduced 3 weeks ago, and H.R. 2119, which was introduced by my colleague, Mr. Carlos Moorhead, maybe 1 month or 6 weeks ago—all of which concern themselves with amendments to section 207 of title 18, United States Code, as it was amended by the recently enacted Ethics in Government Act.

The amended section will go into effect on July 1, 1979, and will deal with postemployment activity of Federal officers and employees. The section provides criminal sanctions which apply when former officers and employees represent others in certain matters with the Government or engage in specific related activity involving the Government.

[A copy of H.R. 3325 follows:]

(1)

96TH CONGRESS
1ST SESSION

H. R. 3325

To amend section 207 of title 18, United States Code.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1979

Mr. RODINO (for himself and Mr. DANIELSON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 207 of title 18, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) subsection (b) of section 207 of title 18, United
4 States Code, as amended by the Act of October 26, 1978
5 (Public Law 95-521, section 501(a); 92 Stat. 1864) is
6 amended as follows: in clause (ii), strike "concerning" and
7 insert "by personal presence at"; and in subparagraph (3),
8 after "responsibility, or" insert ", as to (ii),".

9 (b) Subsection (d)(3) of the aforesaid section 207 is
10 amended by striking "O-7" and inserting "O-9"; and by

1 inserting after "or" the following: "at a pay grade of O-7 or
2 O-8 who has significant decisionmaking or supervisory re-
3 sponsibility as designated by the Director of the Office of
4 Government Ethics in consultation with the head of the de-
5 partment or agency concerned; or".

Mr. DANIELSON. I might point out, while we're at it, since we're dealing with the Ethics in Government Act, which seems to attract a good deal of attention whenever the title is mentioned, that that act contains seven titles. We are engaged today only in examination of title V of that act. Title I dealt with legislative personnel financial disclosure requirements; title II, executive personnel financial disclosure requirements; title III, judicial personnel financial disclosure requirements; title IV, setup of the Office of Government Ethics and description of authorized functions. Title V dealt with postemployment conflict of interest—the subject in which we are involved in here today. Title VI set up some amendments to title 18, United States Code providing for special prosecutors. And title VII provided for an Office of Senate Legal Counsel.

Of those seven titles, as I said before, we are engaged today in examining the impact of an amendment in title V, postemployment conflict of interest.

The bill, H.R. 3325, and companion measures have been prompted by reports and complaints which we have received from persons employed in the executive branch of the Government, by editorials in the press, and by correspondence received by the committee to the effect that the new amendments to section 207 are so broad that key Government employees are leaving or are expected to leave their Federal jobs in order to avoid the July 1 effective date of the amendments.

Articles to this effect have appeared in the Congressional Quarterly, the Washington Post, and the Los Angeles Times, to cite just a few.

In addition, letters have been received in my office and by other Members of Congress from concerned Government employees who express fears that they will be unable to pursue their vocations and careers after leaving Government service, due to the stringent restrictions on post-Government employment which will go into effect after July 1 or on July 1, 1979.

Others have told us that these fears are, in large part, overstated, that they are more apparent than real.

However, we must keep in mind that the portion of the new law with which we are now concerned is a part of the criminal code. It is a section of title 18, United States Code, which is our criminal code. As long as there is the slightest chance that a criminal law could be used against someone acting in good faith, it will put up a barrier to the Federal Government's efforts to draw temporarily on the experience of top people in business, science, and other professions. That sort of doubt could weaken the fabric of the rest of the Government code of ethics, to say nothing of bringing about a manifest injustice by exposing government employees unnecessarily to charges of criminal conduct.

Today we hope to receive testimony which will define the actual situation faced by the Government and its personnel with reference to the amended law. We also welcome this opportunity to receive information concerning legislative resolution of any anticipated difficulties in connection with the recently amended law.

I would now like to yield, if the gentleman is willing, to my colleague from California, Mr. Carlos Moorhead.

Mr. MOORHEAD. Thank you, Mr. Chairman.

Last year, when the Ethics in Government Act was being considered, many of us expressed concern over the potential adverse effects of the so-called revolving door provisions. They seemed far too broad in scope, too rigid, and too punitive. The fear was that such an inflexible approach to ethics could only result in reducing the attractiveness and the effectiveness of public service.

Now, even before these new provisions have actually gone into effect, we are here to consider legislation to modify section 207 of title 18. Even the proponents of last year's amendments are now prepared to admit that portions of the new law are ambiguous and, if left alone, could negatively affect the professional competence of the Federal Government.

I have reviewed the administration amendments, and they do represent a step in the right direction. However, they still fall short of the dealing with the entire range of problems presented by section 207. For example, they do not address the unfairness presented by the 1-year "no contact" restriction in section 207(c).

It is my hope that this hearing represents the beginning of a sincere and comprehensive inquiry into the problems raised by the antirevolving door provisions. There are numerous witnesses that we are unable to accommodate today—members of Congress, officials from various Federal agencies, as well as interested groups in the private sector, businesses and the university community. They should be heard.

While I fully appreciate that time is a concern, we must take care that we do not legislate in such haste that we do so without a full understanding of all the ramifications. Perhaps the best way to guarantee an adequate time for study with respect to this problem is to act on your bill, Mr. Chairman, H.R. 2843, which would delay the effective date of these prohibitions for a 6-month period.

I look forward to working with the members of this subcommittee towards a solution to this difficult and complex problem.

I have worked with members of the committee toward a solution of the different problems that are presented by this legislation which we adopted last year and which we feel will be taken care of by legislation this year, to enable the Federal Government to remain strong, to enable us to get the very top people we can for the positions in the Federal Government without scaring them away by legislation that goes too far.

Mr. DANIELSON. Thank you, Mr. Moorhead.

Our first witness this morning will be Mr. Alan Campbell, Director of the Office of Personnel Management.

Mr. Campbell, would you proceed? I believe you have with you Mr. Bernhardt Wruble, our new Director of the Office of Government Ethics.

TESTIMONY OF ALAN K. CAMPBELL, DIRECTOR, FEDERAL OFFICE OF PERSONNEL MANAGEMENT, ACCOMPANIED BY BERNHARDT K. WRUBLE, DIRECTOR, OFFICE OF GOVERNMENT ETHICS

Mr. CAMPBELL. Thank you very much, Mr. Chairman.

I am accompanied this morning, as you said, by Mr. Bernhardt Wruble, who is the Director of the Office of Government Ethics. And I am pleased to have the opportunity to appear before this

subcommittee to discuss H.R. 3325, which was introduced by you, Mr. Chairman, jointly with Chairman Rodino. It is a bill, as you have said in your opening comments, directed to section 207, title 18 of the United States Code, as amended by the Ethics in Government Act.

The bill embodies three technical amendments to section 207. The President supports these amendments as part of the statutory and regulatory package designed to provide for the fair administration of ethics in Government.

I would like, with your permission, Mr. Chairman, to have inserted into the record a copy of the letter to me, and a similar letter to Attorney General Griffin Bell.

Mr. DANIELSON. You say it's similar to one to the Attorney General?

Mr. CAMPBELL. It's the same letter to the Attorney General as to me.

Mr. DANIELSON. It is received into the record.

[The two-page letter follows:]

THE WHITE HOUSE,
Washington, D.C., March 31, 1979.

Hon. ALAN K. CAMPBELL,
Director, Office of Personnel Management,
Washington, D.C.

To DIRECTOR CAMPBELL: Last year we worked closely with Congress to pass The Ethics in Government Act, which sets important ethical standards for Federal employees. It will stand as a landmark statute in providing the public with greater confidence and trust in the way in which the Federal government operates.

It is essential that the Act be implemented as effectively, fairly, and promptly as possible. I am pleased that you are taking steps to ensure such an implementation.

The regulations which you have approved provide sound and equitable interpretations of the Act. The technical amendments to the Act that you have proposed clarify important provisions and should eliminate legitimate concerns of Federal employees about certain post-employment restrictions.

When these are taken together, there should be no doubt that the intent of the Act will be fulfilled, and the public confidence in the conduct of government affairs will rest on a firmer foundation. Of equal importance, Federal employees interested in serving the public will not be harmed in future private employment by the requirements of the Act.

It is important that you work closely with the Congressional leaders to gain rapid enactment of the technical amendments. The Act's implementation should not be delayed. That can be avoided through prompt Congressional approval of the technical amendments.

I am ready to help you in any way necessary to encourage Congressional action. We need a strong, but fair, Ethics Act; and the enactment of these technical amendments, together with the regulations, will ensure the public as well as Federal employees of such a balanced approach.

Sincerely,

JIMMY CARTER.

Mr. CAMPBELL. The Attorney General could not be here today because of a prior conflicting engagement, and he has authorized me to speak on his behalf, as I speak on my own, in supporting the proposed amendments which are before you.

As you are aware, there has been considerable concern expressed about certain features of the Ethics in Government Act. While some such expressions were certainly proper, it is also true that some accounts tended to overstate the restrictions of the act.

The Office of Personnel Management has just released its regulations on postemployment conflicts of interest. They will be printed in the Federal Register tomorrow. Copies have been provided to the committee. These regulations were developed by the Director of the

Office of Government Ethics in consultation with the Attorney General, who has fully concurred in them as representing his interpretation of the act. They set out, in clear and detailed fashion, how the postemployment restrictions of the act will be implemented.

The regulations serve several very important purposes. They will give advance guidance to Federal employees as to their responsibilities. They particularize the ethical safeguards of the act, and they avoid unreasonable restraints which might inhibit the Government's ability to attract and retain first-rate personnel.

I anticipate that these regulations will be viewed as fair and balanced. In his letter, the President refers to the regulations as "sound and equitable interpretations of the act." Because the act itself is basically sound, it was possible through regulation issued under it, I believe, to reassure Federal employees as to most areas of concern.

Preparing these regulations served the additional purpose of accelerating the process of uncovering rough spots in the language of the act—a process which usually unfolds over a period of time as particular problems arise. The Office of Government Ethics elicited opinions as to possible problems from virtually all executive agencies, especially those employees who had first-hand exposure. It was able to determine what reasonable interpretations could be achieved by administrative means, and to narrow the scope of any adjustments that might be required by legislative action. Once these areas were defined, there was general agreement that they be resolved. These amendments, as I have said, enjoy the support of the President and the executive agencies and, I believe, the members of Congress who have been principally involved in drafting this legislation.

The first two proposed amendments deal entirely with subsection 207(b)(ii), the "assistance in representing" provision. Let me place this subsection in context:

Subsection 207(a) places a permanent bar on a former Government employee's representing another person before the Government on a matter in which he participated personally and substantially while in government.

Subsection 207(b)(i) contains a similar bar, but of two years' duration, as to a matter which was pending under the employee's "official responsibility," even though he may have had no involvement in it.

Section 207(c), which applies to certain high-ranking or "senior employees," prescribes a 1-year "cooling-off" period which bars an employee from attempting to influence his former agency on any matter, whether or not the employee had any prior participation in it, or responsibility for it.

The provision which is the subject of the proposed amendments establishes a 2-year bar for senior employees on activities which might be construed as "assisting in representing" another person in an appearance before the Government, as to any matter in which the employee personally and substantially participated or for which he had "official responsibility."

The first amendment I will address is the addition of the words "as to (ii)" in indented paragraph (3) of section 207, as indicated in

the text of H.R. 3225. The amendment requires that the two elements of involvement set forth in indented paragraph (3)—responsibility and participation—be read as applying respectively, in the order given, to “representing” under subsection 207(b)(i) and to “assisting” under subsection 207(b)(ii). It thus makes clear that section 207(b)(ii) is applicable only to those matters in which the former employee participated personally and substantially.

It seems clear that the logical foundation for barring a former employee from assisting in the representation of another as to a matter is his actual familiarity with that matter, gained as a Government employee. Thus, it is his prior participation in it, not his formal responsibility, that is the operative factor. So interpreted, we are sure that Federal employees would view it as a reasonable restraint.

This, as I understand it, was the original intent of the act. And, of course, this is exactly what Chairman Danielson and Congressman Moorhead stated to be their understanding of the act’s purpose, in the letter in which they, along with Senators Ribicoff and Percy, sent to the Director of the Office of Government Ethics on February 16, 1979.

Mr. DANIELSON. Let me interrupt for a moment. In order for the transcript of this proceeding to be complete, without objection, I would like to set forth a copy of that letter in the record at this point.

Is there objection?

[No response.]

Mr. DANIELSON. Hearing none, so ordered.

[A copy of the letter referred to follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C., February 16, 1979.

BERNHARDT K. WRUBLE,
*Director, Office of Government Ethics,
Office of Personnel Management, Washington, D.C.*

DEAR DIRECTOR WRUBLE: Recently there has been some misunderstanding regarding the scope of one of the provisions of the Ethics in Government Act, adopted by Congress last October. We believe clear and concise guidance by the Office of Government Ethics is essential.

As you know, the Ethics Act does not in any way prohibit forms of employment, or prevent a Federal employee from taking any position with any firm or organization which he chooses when he leaves the government. The major thrust of last year’s “revolving door” provisions was to restrict contact by high-ranking officials with their former agencies for a period of one year after leaving the government.

One additional limitation was added by the Ethics Act. The additional limitation bars former high-ranking Federal officials from aiding or assisting in representing on specific matters involving their former agency.

It is this additional provision which seems to have created some misunderstanding. Both the transcript and the report of the House-Senate conference demonstrate that this provision applies only to subsequent representational activities, and applies only to those matters in which a former high-ranking official had been personally and substantially involved. The provision was addressed solely to the problem of “switching sides” on specific cases or matters after an employee leaves the government. The intent was to foreclose active, specific involvement in representation on the part of certain former government officials. It is not in any way designed to restrict involvement in general matters which may have fallen under an employee’s official responsibility while he was in government service.

In connection with your responsibility to recommend regulations or guidelines under the Ethics Act, we are enclosing a memorandum which we hope will be helpful on the background and scope of this provision.

We stand ready to be of whatever assistance we can in connection with your efforts.

Sincerely,

GEORGE E. DANIELSON,
CARLOS J. MOORHEAD,
ABE RIBICOFF,
CHARLES H. PERCY.

Enclosure.

MEMORANDUM ON THE "AIDING AND ASSISTING IN REPRESENTING" PROVISION OF
18 U.S.C. 207(b)

Title 18, section 207(b), as amended by the Ethics in Government Act, contains two distinct restrictions on post government employment of Federal employees, based upon the degree of personal knowledge and association a former employee had with a particular matter during government service.

Section 207(b)(i) is essentially a restatement of existing law. This provision applies to all former Executive Branch officers and employees. It provides that, for a period of two years, an employee may not knowingly act as agent or attorney on a particular matter which was pending under his "official responsibility" during his final year with the government. As amended last year, the length of the prohibition is extended from one to two years.

In contrast, 207(b)(ii) applies only to high-ranking former Executive Branch officers, such as Presidential appointees, and others designated by the Office of Government Ethics as having major decision-making authority. This is the "aiding and assisting in representing" provision. It provides that, for a period of two years, such high-ranking officials may not knowingly represent, or aid, counsel, advise, consult, or assist in representing any other person on a particular matter, in which the former official was "personally and substantially involved" while in office. 207(b)(ii) was added by last year's legislation.

Both 207(b) (i) and (ii) have important limitations. Both include only "particular matters involving specific parties" that were pending before the official while in government service. Therefore, rule-making, formulation of general policies or standards, other similar administrative matters and legislative activities—none of which typically involve specific parties in specific cases—are not included in the prohibition. In addition, both 207(b) (i) and (ii) require that the proscribed conduct must occur in connection with a "formal or informal appearance" before a court or agency.

Questions have arisen concerning the scope of the 207(b) provisions. Some have asked whether the "aiding and assisting in representing" provision may not be limited just to those matters in which the former official was personally and substantially under official responsibility. Questions have also arisen about the meaning of the term "representing."

However, we believe that both the policy and legislative history of the provision demonstrate that "aiding and assisting in representing" is restricted only to matters in which the former high-ranking official was "personally and substantially involved" while in office. They also demonstrate that representational activities are limited to those where the former official is directly involved in a formal or informal appearance before an agency or court.

PERSONAL AND SUBSTANTIAL INVOLVEMENT

The original Senate version of the Ethics Act, S. 555, contained a provision which imposed a lifetime ban on matters in which a former official had extensive involvement while in office. The Senate report on S. 555 stated, "The more intimate and extensive the involvement of the official, the greater the restriction is on the official's later involvement on those matters . . . on behalf of private clients." Thus S. 555, as passed by the Senate, provided a subsequent consultation restriction which was part of 207(a), a lifetime ban which solely concerned particular matters in which there had been "personal and substantial" involvement.

In conference, the Senate agreed to accept the House language on "aiding and assisting in representing." Thus what had been a lifetime ban in the Senate bill was reduced to a two-year ban, as proposed in the House-passed measure. That language, which was only slightly modified in conference, was recommended by the Administration.

¹ The actual language of the provision reads: "aids, counsels, advises, consults, or assists in representing . . ." Hereafter in this memorandum, it will be referred to as the "aiding and assisting in representing" provision.

The House-Senate Statement of Managers on the legislation demonstrates that the two parts of 207(b) apply to different matters: 207(b)(i) applies only to matters under "official responsibility," and 207(b)(ii) applies only to matters where there had been "personal and substantial" involvement. The Statement of Managers, in explaining the "aiding and assisting in representing" provision, states:

"It is the intention of the conference that this provision will prohibit a former officer or employee from subsequent consultation on a matter, in which he was personally and substantially involved while in office, even though he is not representing a party in that matter."

The transcript of the House-Senate Conference proceedings further supports that construction. During the conference, the "aiding and assisting in representing" provision was repeatedly linked to "personal and substantial" matters.²

Therefore, the legislative history indicates that the "aiding and assisting in representing" applies only to those particular matters in which the former official had "personal and substantial" involvement while in office. Thus "switching sides" on specific cases is restricted. Also that conclusion is supported on policy grounds. Matters more remotely under "official responsibility" would not involve such specialized knowledge and thus would not justify this type of restriction.

REPRESENTATIONAL ACTIVITIES

As previously mentioned, the House-Senate Conference on this legislation agreed to accept the House language on "aiding and assisting in representing." The Senate bill had provided in 207(a) that officials would not "aid, assist or represent" parties in certain matters. The Senate language thus suggested a distinction between aiding and assisting, as compared with representing.

The House language made no such distinction. Indeed, the language proposed by the House and adopted by the conference established a definite relationship between aiding and assisting, and representation. The relevant language of 207(b)(ii) as enacted is: "represents or aids, counsels, advises, consults, or assists in representing." The legislative history indicated that the words "in representing" were intended to qualify the language, "aids, counsels, advises, consults, or assists."

In its report on H.R. 1, the House Judiciary committee stated that, "This revision [of 18 U.S.C. 207] makes it clear that subsections (a) and (b) prohibit representational activity . . ." In discussing this specific provision, the House report indicated that high-ranking officials would be "barred from aiding and assisting in the representation of any other person in any such matter before a government agency." According to that report, the conduct prohibited under the "aiding and assisting in representing" provision must occur in connection with some representational activities.

The transcript of the House-Senate conference proceedings fully supports the conclusion that aiding and assistance was linked to representation. Indeed, during the conference, Congressman Stratton specifically objected to the "aids, assists or represents" approach that was contained in the Senate version:

"The guts of this [207(b)(ii)] would seem to me to be in representing some person, as an attorney or in some other way. But if an individual who had been in the government goes to work for IT&T let's say, and some other individual in the company is going to appear before . . . a regulatory agency and he writes a statement for him or prepares a graph or tells him what a particular chemical reaction would be under certain circumstances, without even leaving the IT&T office, he would be banned from doing this.

"That is not what we want to accomplish . . . So it would seem to me that if we make this simple change, knowingly represents, or aids or assists in representing any other person. We are concerned about the aiding and assisting as it relates to the representation."

The following exchange that took place between Congressman Stratton and Senator Ribicoff further clarified the point:

"Senator Ribicoff. I want to know what your intentions are. Is it your intention that if a man works [in] the Antitrust Division on X case, that if he leaves and goes to work with Y law firm, he can then go and work with Y law firm on the X case when he is on the other side. You don't want that, do you?

"Mr. Stratton. Then he would be aiding or assisting in the representation which is what we specifically prevent.

"Senator Ribicoff. . . . What we are talking about is being involved on the other side of the case when he knew what was in the government's case.

² See Stenographic Transcript, "House-Senate Conference on S. 555," Oct. 5, 1978, pp. 133-34.

"Mr. Stratton. That is exactly it. So he is either representing or he is aiding or assisting in the representing."

"So the thing that each one of these paragraphs is trying to prevent is a representation, either as an agent or an attorney for.

"In this case, we would properly ban those who are aiding or assisting in that representation. That is the way it was drawn up. That is the way we understood it."

That interpretation was later accepted by the conference.³

In conclusion, 207(b)(ii) proscribes, for a period of two years, only aiding and assisting in connection with representation, which concerns a formal or informal appearance before a court or agency. Absent the element of representation, the provision has no application to consultation following Federal service, even in a matter in which the former official was personally and substantially involved.

One final point: It should also be noted that 207(b) (i) and (ii)—as with 207 (a) and (c)—do not apply to "communications solely for the purpose of furnishing scientific or technological information." (See 18 U.S.C. 207(f).) Congressman Stratton, the author of that exception, indicated that its purpose was to ensure a free flow of technical information between government and the scientific community. As the Congressman stated during floor debate, scientists should not be "prohibited from furnishing information to their former agencies which could assist research and development programs."

Thus the "aiding and assisting in representing" provision of 207(b)(ii) applies only if all of the following conditions are met:

1. The former high-ranking official must have been "personally and substantially" involved in that matter during government service;
2. It must be a particular matter involving specific parties;
3. The "aiding and assisting in representing" must occur in connection with representation, which directly concerns a formal or informal appearance before an agency or court; and
4. The assistance or consultation must be something more than furnishing scientific or technological information, which is expressly excepted by 207(f).

Examples:

A few examples may be helpful in understanding how these provisions will work. Some situations where 207(b)(ii) applies:

a. A high-ranking Justice Department lawyer personally works on an antitrust case against ABC Company. After leaving the Department, he discusses legal strategy with lawyers representing ABC Company on that same antitrust case. Such consultation in the same case would be prohibited.

b. A high-ranking Defense Department official participated personally and substantially in an award of a government contract to XYZ Company for fighter planes. After leaving the Department, the former official goes to work for XYZ Company. Subsequently, the contractor desires to renegotiate prices on the fighter plane contract with the Defense Department. The former official could not assist the lawyers for the contractor in obtaining DoD approval of that revision.

Some situations where 207(b)(ii) would not apply:

a. A high-ranking Justice Department lawyer personally works on an antitrust case against ABC Company, which is represented by Y law firm. After leaving the Department, he goes to work with Y law firm, and represents DEF, Inc. in an antitrust case. Such representation would not be barred. Nor would he be prohibited from representing, or assisting the lawyers who represent, ABC Company in a separate antitrust case. The 207(b)(ii) restriction does not apply, because the "aiding and assisting" does not occur in connection with the same case.

b. A high-ranking official of the Department of Health, Education and Welfare leaves the government to take a university position. Thereafter the former official has broad responsibility for various HEW contracts which the university holds. He also advises lawyers, who represent the university, in contract matters which are pending before HEW. Those same matters were under the former officer's official responsibility while he was in government service. The 207(b)(ii) restriction does not apply because the "aiding and assisting in representing" does not concern matters in which the former official was personally and substantially involved while in office.

c. A high-ranking scientist with the Food and Drug Administration was personally and substantially involved in a licensing proceeding on a specific drug. After leaving the FDA, he is employed by the manufacturer of that drug. There he engages in research, indicating that the drug is safe and effective, which his employ-

³ *Ibid.*, p. 138.

er later provides to FDA. The restriction does not apply because the former official is furnishing scientific information to the government (See 18 U.S.C. 207(f).)

d. A former General Counsel of the Federal Communications Commission leaves the agency to join a law school faculty. In one of his courses, he discusses a specific licensing case in which he was personally and substantially involved while at the FCC. The restriction does not apply because the conduct does not occur in connection with any representational activities.

Mr. DANIELSON. Proceed.

Mr. CAMPBELL. However, the present language of the act appears to require a different result, and thus we believe that this technical adjustment should be made.

The second amendment is designed to correct a matter not clear in the original text which left undefined the kinds of activities that constitute the advice, consultation, or other assistance "in representing" another person that is prohibited by section 207(b)(ii).

The amendment adds the words "by personal presence at" in lieu of the word "concerning." The new language makes it clear that the statute is limited to assistance which the former employee gives while personally present during an appearance before the Government—for example, while a proceeding or negotiation was ongoing.

The present language makes it hard to determine what specific activities are prohibited. Because of this, it had the unintended effect of leading many individuals to believe that they would expose themselves to jeopardy when they engaged in activities which, I am sure, we would all regard as legitimate and productive. High-level administrators and managers in many fields felt particularly threatened by reason of the responsibilities inherent in the position they would naturally be called upon to assume after Government employment.

The problem might typically arise, for example, when an employee who had designed or worked on a project which was the subject of a Government contract or grant later took employment with an organization—a university, research institution, or private corporation—as a manager, where his responsibilities included supervision of many projects, including some he may have worked on while with the Government.

Here is how the present language would impact this situation. When this individual conducted managerial activities—that is, when he decided how his organization would be run, including how its resources were to be utilized and on what terms—such activity might have been considered to be assisting representatives of his organization in an appearance, since such decisions must be communicated to the government.

Now, we can provide in regulations that communication of management decisions is lawful, even if they affect matters under Government contracts. But in important areas it is often difficult for a lay person conducting day-to-day activities in his own plant or university to distinguish between permitted management communications, on the one hand, and prohibited advice on "how to represent," on the other.

This has the effect of placing reputable administrators under a cloud of insecurity—indeed, under risk of felonious conduct. Many may refuse Government service if this is the prospect. It is a problem which, we believe, as you do, deserves a remedy.

The problem goes farther. Subsection 207(b)(ii) is the only prohibition which, as written, goes beyond curbing attempts to use personal influence and access and makes off-the-scene assistance criminal as well. But in fact, it would have been extremely difficult to enforce. Precisely because it would require proof of what was said behind the scenes, and especially in the context of project management, it raised special problems in an area where, as you know, enforcement is already particularly difficult.

So while it was not likely to have been a useful provision for actual enforcement, it had, on the other hand, the unfortunate effect of exposing former senior employees to loose allegations that, behind closed doors, they said the wrong things. The allegations alone would be damaging. And those who were so accused might find it difficult to defend. It is likely that they would never be accorded a trial or proceeding in which they might be vindicated. What makes this a serious human problem is that we are dealing here with high-ranking Government employees—who are conscientious individuals—and for whom personal reputation counts for a great deal.

A final practical element must be added to this picture. Organizations which do business with the Government, and who have careful lawyers of their own, would quickly anticipate the problems I have mentioned. Valuing both their Government business and their own reputations, they would try to avoid such problems. The simplest way to do so is to avoid hiring former senior Government employees burdened by such restrictions. And in this natural reaction lies the insoluble core of difficulty under the present language of section 207(b)(ii).

In sum, the present language has the effect of jeopardizing legitimate activities in a way which was wholly unintended. The language of the amendment, however, would provide a "bright line" which employees may fairly be expected to observe, and I believe they are fully willing to do so. It would also maintain an important restraint on these employees. It would not reach real or imagined off-the-scene advice; but it would remove these employees from the scene of activities so that they could not insert themselves on an immediate, real-time basis in assisting ongoing representations. This would be consistent with the central focus of section 207, by curtailing any impression that such employees can assert influence which would affect the results in Government negotiations and proceedings.

Finally, the third amendment seeks to correct an inequality in treatment between civilian employees and those in the uniformed services. Section 207(d) of the act lists several categories of individuals who are to be made subject to the special restrictions for senior employees; that is, assistance under section 207(b)(ii), and attempts to influence one's former agency under section 207(c). The act makes some groups of employees subject to these restraints automatically. But others are covered only if the Director of the Office of Government Ethics finds that they occupy a position involving "significant decisionmaking or supervisory responsibility," and so designates that position.

Under the present language, all uniformed officers at the grade of O-7 and above are automatically covered. This includes one- and

two-star military officers—the O-7's and O-8's—who are of rank comparable to, or of lesser rank than, their civilian counterparts at GS-17 and GS-18. Yet the GS-17's and GS-18's are covered only if they occupy positions designated by the Director.

This could result in a civilian GS-17 not being made subject to the restrictions, while a brigadier general who is his subordinate would be. There is no reason for this, and the amendment simply provides for equal treatment. It makes automatic the coverage of uniformed officers at O-9 and above, while it leaves those at O-7 and O-8 level to be designated by the Director of the Office of Government Ethics, along with their civilian counterparts, if they hold significant positions.

In conclusion, Mr. Chairman, I believe that the regulations which have been issued, together with these relatively minor amendments, will achieve exactly what we all intended. They will be perceived as resulting in a balanced and fair approach. They will promote public confidence in the process of Government. At the same time they will maintain the confidence of Federal employees in the Government's respect for their livelihoods and individual rights.

Thank you very much, sir.

Mr. DANIELSON. Thank you, Mr. Campbell.

Mr. WRUBLE, did you wish to make an independent presentation?

Mr. WRUBLE. No; I do not.

Mr. DANIELSON. Then I will yield first to the gentleman from Kentucky, Mr. Mazzoli.

Mr. MAZZOLI. Mr. Chairman, I have no questions. I do have an observation. I would take some issue with what Mr. Campbell said about this being perceived as a balanced effort and as wise and correct action. I would tend to believe that the people of America will view this, as they do everything else up here, as bureaucratic ineptitude on our part, being unable to write something that we intended to write.

I would have personally preferred—but it looks like it's not in the cards—to see these matters take effect under the gentleman who now heads the office, to see if indeed Armageddon would occur. I would tend to think it would not.

I tend to think that good people would continue to come to Government because we pay very well and give good credentials as a result of Government service.

Second, I believe that, again, lines would form to the rear, for those who felt they couldn't serve because of potential penalties.

I sense and hear the sound of railroad in the distance, and I know exactly what will happen here. But it does seem to me a bit unseemly that we make such haste here, because I think Mr. Wruble might, with his words being published today in the Federal Register, really solve most of the problem.

Thank you for your appearance, and I appreciate your attention.

Mr. CAMPBELL. Thank you very much, sir.

Mr. DANIELSON. The gentleman's time has expired.

Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman.

I think what the hearing today indicates is that we acted hastily and unwisely and overreacted to kind of a public perception of all

people in Government in the last Congress. And I might say, if a majority of the House of Representatives and the Senate had adhered to minority expressions, this dilemma would not have been upon us today, and I think that we are facing a real crisis in Government from the standpoint of some of our highest level, most capable professionals in the Government leaving Government service by reason of this overreaction and at self-sanctification. And it strikes me we should do at least what you are recommending here today and at least what is involved in the Rodino bill, and I would like us to do a lot more.

It seems to me it's not only a dilemma we are facing of people leaving Government, but it's the problem of getting people to serve in Government who, if they leave their profession, may find themselves in a position where they are virtually without an opportunity to perform in accordance with their education and experience and professional skill.

The question that I have is this: What I am wondering is whether or not your amendment is—whether the amended bill is going to go far enough? I want to know what you regard as being physically present at a hearing? What about the correspondence? What about telephone calls? What about preparation of a brief? Does that involve personally appearing? And I am referring now to the amendment related to 207(b)(ii).

Mr. CAMPBELL. In responding to that, obviously, the interpretation will be based upon the regulations which now have been issued. It is our belief that personal appearance does mean a personal contact, and that would suggest, for example, that a phone call would not be possible.

But, remember, we're talking about the relationship the person has with the Government representative. In terms of his contact with his colleagues, and giving advice and assistance, as long as it is not in an appearance, it is appropriate.

Mr. McCLORY. In the regulation you have now, it reads:

An appearance occurs when an individual is physically present before the United States in either a formal or informal setting, or conveys material to the United States in connection with a formal proceeding or application.

What I am wondering is: If someone in the office conveys something to someone else in the office and it ends up in a Government agency, bureau, or department, the person is stuck with the regulation, the way it is now.

Mr. CAMPBELL. I will ask Mr. Wruble to respond.

Mr. WRUBLE. Congressman McClory, the two examples you mentioned: The first instance, for example, a telephone call, would be covered by—not by 207(b)(ii), but by the direct prohibition of 207(a), which prevents representation of any kind with intent to influence.

So, that would be covered anyway. Personal appearance requires almost in all instances physical presence while the negotiation is ongoing.

The only instance that may go beyond that is where a lawyer actually offers a document which constitutes under the law a formal appearance. That is, a pleading, notice of appearance, or a continuation of appearance in some sort of formal legal document.

But I should add anyway that that possible extension is largely icing on a cake, since the Canons of Ethics are far broader than

these regulations, and no lawyer may accept employment in any matter in which he has had personal and substantial participation as a Government employee; and, therefore, many of the things that are technically permissible here, as being noncriminal at least, would be wholly barred to members of the legal profession, without regard to the legislation.

Mr. McCLORY. What you're talking about is the existing law. I mean, without this statute.

Mr. WRUBLE. Without this statute and under a noncriminal method of enforcement. What we meant is that since lawyers are covered already, the problem with the language as it stands—and I think that is wholly unintended—is that it reaches nonlawyers in management situations and so complicates the situation that it makes them very insecure about their standing under the criminal law.

Mr. McCLORY. It seems to me that by supporting so-called technical amendments, which I would support, that would help us out of this dilemma. But why are you opposed to 6-month delay in the application of this legislation, which would enable our committee to have more extended hearings and do a better job of adjusting the wrong that we have inflicted here? It would seem to me that it would provide a lot more hope to those in Government service now who are going to be faced on July 1 with this dilemma and may still have lingering doubts as to their future careers because of the uncertainty as to whether or not the technical amendments go far enough to relieve them of possible conflicts of interest or possible conflict with this legislation?

Mr. CAMPBELL. May I respond. The administration feels that an extension of time for the act going into effect would simply extend the period of uncertainty, would create problems in terms of the Federal employees not being sure what the situation they faced was. And we believe that with the combination of the regulations and these amendments, that the situation they face will be clear, and the sooner the law can take effect, the more likely it is that we will be able to deal with the amount of uncertainty which now exists across the Government.

Mr. McCLORY. What if we substituted the words "physical presence" rather than "personal presence"? Do you have an opinion on that?

Mr. WRUBLE. Off the cuff, I do not appreciate the difference between the two. I think the words were chosen because it was desirable to indicate that somebody had to be personally there and aiding the representation as it was going on.

I am not, frankly, sure of the difference between "physical presence" and "personal presence," and if a difference is intended, I would have to explore the nature of the difference.

Mr. McCLORY. If we recommended the technical amendment and also a 6-month delay, would that bother you?

Mr. WRUBLE. I think the 6-month delay would be counterproductive. I think attention is focused on this problem now. A great deal of work has gone into effecting the proper solution, and it would be my preference to have the Congress—of course, in its judgment—act rapidly in clearing up the situation.

Mr. McCLORY. Well, I think the testimony later will show, instead of just correcting the situation, what it's going to do is a partial job, still leaving us with a big problem. That's why it seems to me we ought to resolve the whole problem in the course of these hearings and not do a partial job, as I think you will agree later, and still have the problem on our hands.

Thank you very much.

Mr. DANIELSON. Thank you, Mr. McClory.

Mr. Harris, of Virginia.

Mr. HARRIS. Thank you, Mr. Chairman.

I want to compliment both witnesses on the testimony. I want to say especially that, representing a great number of people as I do that are affected by this, that I am particularly pleased that someone with the competence and experience of Mr. Wruble was placed in charge of the activity. I am familiar with your past work in government, and I can't imagine finding a more competent fellow to take on a more thankless job. You have proved yourself very competent and capable in thankless jobs in the past, and so they knew where they were going.

Mr. WRUBLE. Thank you, Mr. Congressman. You, I think, prove they do not turn out to be thankless, and I appreciate what you've said.

Mr. HARRIS. Very well.

I would first like to ask a question of Director Campbell. As you know, I ask philosophical questions mostly, Mr. Campbell. Do you see a need for this? You engaged in a real study of the Federal executive branch over the last couple of years, at least. Do you see a need for this type of an act?

Mr. CAMPBELL. Yes, sir.

Mr. HARRIS. The so-called revolving-door provision itself?

Mr. CAMPBELL. Yes, I certainly do, both in relation to the general matters covered by the legislation and, in addition, to the "revolving door," and specifically for the "revolving door." And I think it is a matter of need based on both the reality of the situation as well as on public perception.

There is a possibility of people being able to gain advantages as a result of Government employment of a kind which I think are inappropriate. I believe this legislation deals with that problem while simultaneously not eliminating the very effective part of our governmental system of people coming in and out of the Federal Government at high levels.

I think the legislation will go a long way toward convincing the public of the usefulness of that kind of back-and-forth, and we can convince them that it is not being improperly used by those who do it.

Mr. HARRIS. I had the great privilege of serving on two of the subcommittees that handled this bill last year. I believe there were four committees involved, as I recall, Mr. Chairman, who put it together. And I served on the conference.

I was aware of the fact that there was a great deal of input from about five different sources.

Do I understand that the printed regulations will not be available until tomorrow?

Mr. CAMPBELL. They will appear in the Federal Register tomorrow. They are available now. We have them available now and have distributed them to, I believe, members of the subcommittee in their draft form.

Mr. HARRIS. But basically speaking, the average civil servant will not have seen the regulations until tomorrow?

Mr. CAMPBELL. It depends on what one means by "average."

Mr. HARRIS. The grapevine works pretty well sometimes.

Mr. CAMPBELL. They are in the hands of those departments and agencies and general counsel that are most concerned, because they were much involved in the drafting of them.

Mr. HARRIS. I mean that I have seen a lot of publicity and what have you, different people, and yet the regulations have not been issued. I just wondered how so many people got upset before they even saw the regulations. Frankly, I didn't realize how many people in Washington actually read the law.

Mr. CAMPBELL. We were a little surprised at the amount of attention this matter received before the regulations were issued, too.

Mr. HARRIS. Can you tell me, about this onslaught of resignations that the Government executive branch has received? Is there evidence there is a great exodus that is occurring now from Government?

Mr. CAMPBELL. No; there is no such evidence at all. There are a small number of individual cases which, whether they are the result of legislation or the result of a career change that would have been made any way. We can't be sure. But there are fewer than can be counted on one hand.

Mr. HARRIS. Are we losing all our generals?

Mr. WRUBLE, do you want to comment on that?

Mr. WRUBLE. The only thing I would add, I'm sure Dr. Campbell meant to incorporate, was that in large part, whatever effect there might have been, we have, to a large extent, delayed by urging affected public employees not to take precipitous action and not rush out and seek other employment, on our assumption and indeed our confidence that the act would be fairly administered.

So that if there is such evidence, to a large extent, our assurances have suppressed it.

Mr. DANIELSON. Mr. Harris—

Mr. HARRIS. Mr. Chairman, I would just like to conclude by saying I think a great deal of effort did go into this law. I for one would be very reluctant to make any major changes in it without being really sure of those changes, and I would applaud the administration's position against any sort of moratorium of this law going into effect. I know what these 6 months would be like. I know what they would be like in the eighth district. I know what they would be like in Washington, and I just don't think that's good.

Mr. DANIELSON. Thank you very much, Mr. Harris.

Mr. Kindness, I have to announce, with the greatest of reluctance, that since it's already 8 minutes before the hour of 11 and we have several important witnesses here, the Chair will be constrained to enforce the 5-minute rule.

Thank you very much. The gentleman is recognized for 5 minutes.

Mr. KINDNESS. Thank you, Mr. Chairman. I'll keep it short. Pardon my tardiness.

But this is an area in which I would like to solicit your thoughts concerning the references in the existing law, section 207, to GS-17 grade levels. In the Civil Service Reform Act of 1978, the distinctions between GS-16, 17 and 18 were eliminated, and it appears that there is no real defined meaning by which to make reference to GS-17's. Would you care to comment.

Mr. CAMPBELL. Yes, sir. We have been concerned about that and Mr. Wruble has been working specifically on that issue. And I'm going to ask him to respond.

Mr. WRUBLE. The regulations that were issued today—well, let me draw back and say one thing: The special provisions for "senior employees" apply to those 17's and 18's and others that are designated by the Director of the Office of Government Ethics, and because of the new Civil Service Reform Act, some of the distinctions in 17 and 18 are going to disappear and blend in with the larger, more flexible kind of Senior Executive Service.

What we are doing in that regard is essentially asking the executive agencies, since they know best, to state which of their senior employees should not be covered by the act and to state the basis upon which they should not be covered, utilizing certain criteria in the regulations which are issued.

I think I said "should not be covered by the act." What I mean is: Should not be covered by the special restrictions for senior employees. As I read the legislative history, the designation provision was designed to burden those employees who essentially had the same kind of responsibility as those who were serving at the executive levels.

Mr. KINDNESS. Let me be a little bit more direct and ask you to do the same. Is there statutory language that should be changed, in your view?

Mr. WRUBLE. I think not, at this point.

Mr. KINDNESS. You would rather keep that in the discretionary area?

Mr. WRUBLE. I think the requirement for discretion by somebody focusing on a real-world basis has been underscored by the study conducted of the act. I think it should be entirely discretionary.

Mr. CAMPBELL. May I add just a word on that, Mr. Congressman? Under the Senior Executive Service, there will be, even though rank is in person, there will be a set of positions with position descriptions, and on the basis of those position responsibilities it will be determined whether they are covered, and anyone who is in that position thereby becomes covered.

Mr. KINDNESS. In another area, there have been apparently no serious considerations given to possible need to revise or repeal the 1-year no contact rule which is considered by some to be an objectionable feature of the legislation passed last year, particularly as applied to situations where a person may go from the Federal service into State or local governmental service, or with a university or nonprofit group or what have you.

Would you care to comment in this area?

Mr. CAMPBELL. Yes. The issue of those who may go to work for State or local governments, in terms of our total Federal system, it

seems to us is a matter that needs consideration. We do not, however, believe that it is necessary at this stage for the effective implementation of the act to do that, because it does open up a wider range of issues.

In terms of the 1-year bar, it seems to us appropriate that there be that kind of restriction in order to provide a clear signal that experience and activity will not be one in which a person could step from one side of the issue to the other side of the issue, and in that manner be able to take advantage of the situation. The 1-year bar is in many ways, I would argue, the most important provision in relationship to dealing with the public perception of how people who serve for a while in the Federal Government are able to take advantage of it.

Mr. KINDNESS. Any further comment, Mr. Wruble?

Mr. WRUBLE. No, sir. Thank you.

Mr. DANIELSON. Thank you.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Kindness. The gentleman from Maryland, Mr. Barnes.

Mr. BARNES. Thank you, Mr. Chairman.

Dr. Campbell, as you know, I have had the privilege, as has Mr. Harris, to represent a lot of people affected by the statute we are talking about this morning. Given the headlines that we have read and articles referred to by the chairman, one would have expected that someone in my position or in Mr. Harris' position would have simply been besieged by constituents who are concerned about the potential impact of this legislation upon them as individuals. I have heard from nobody, and Mr. Harris told me this morning he has had the same experience. This mass exodus that is predicted as a result of what the Congress did last year raises questions in my mind.

You indicated that we could count on one hand the number of individuals who have resigned or who have indicated they will resign. Mr. Wruble indicated there has been expression of concern because of the knowledge that actions were being taken. What about this in the recruitment area? That is an area where maybe we would be more likely to see immediate reaction to what happened last year.

Are lots of people turning down jobs or refusing to be promoted into categories that would make them subject to this law? Do we have any evidence that this is really a problem?

Mr. CAMPBELL. To the best of our knowledge, based on what we have heard from heads of departments and agencies, as well as our own immediate employment, there has not been a major problem.

I would make one further point, if I could, about that, Congressman Barnes. We have met extensively with and talked with and had briefings for affected employees. I believe that Mr. Wruble's effort in this regard has at least gone a long way in the direction of convincing people that they ought to wait until they see what the regulations say and whether what we believe are technical amendments consistent with the original purposes of the act—whether they are adopted.

Quite frankly, I do not believe that there will be a mass exodus, nor do I believe it is going to be difficult to recruit people of the kind that we want to recruit.

Mr. Wruble says he would like to make a comment.

Mr. WRUBLE. I would like to say this: Lest some of the comments that we make today be misconstrued, I have talked to a large number of employees who have firsthand exposure to this problem at all levels. I have talked to groups of scientists and others. I have done exactly as has been portrayed, that is, I have given assurance that nobody is going to be responsible for an act which drives good people out of Government. So in terms of actual statistics, they're hard to generate.

On the other hand, I want to record my general impression in talking with these people at all levels, that there was a genuine concern over what would occur if a remedy were not accomplished, if some of the potentially excessive effects of the act were not made reasonable in application. And I would say, if you ask my judgment, based upon talking to other Federal employees, that unless something is done, it would indeed have an adverse effect on recruitment practices and on current retention possibilities.

Again, the statistical evidence is not there just because we have done our best to make sure nothing happened.

Mr. BARNES. Thank you.

Dr. Campbell, you had earlier said, in response to Mr. Harris' question about the philosophy of the statute, that you think there is need for a requirement to restrict the revolving door syndrome. Do you think that the amendments proposed in H.R. 3325 will protect the Government from the problem that you recognize to be a reality?

Mr. CAMPBELL. That certainly is what we think will be the case. Obviously, as with any legislation, implementation is a final determinant of its outcome. I think the steps taken in this legislation clearly move in the direction of reassuring the public about the kind of influence that former Government officials may have, while simultaneously not resulting in people not accepting Government positions or leaving Government positions because of restrictions.

It is a difficult balance to reach, and I think Congress worked well last session in drafting the legislation, and it is our judgment that the changes we are supporting today are not in any way inconsistent with what was intended at the time the legislation was passed.

Mr. BARNES. Thank you.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you.

Thank you, Mr. Barnes. And thank you, gentlemen, for your assistance.

The point that I wanted to inquire on has substantially been covered.

Mr. Wruble, it's my understanding that whether or not you have coverage under the new senior executive level as opposed to 16 and 17 will not require changes in the language of this law, am I correct?

Mr. WRUBLE. That's correct.

Mr. DANIELSON. I hope you will think on that a little bit and you can let us know, because we will be in markup in a few days.

Mr. Campbell, can you give us a number? How many people have left the Government because of the impending effective date of this particular law. Can you tell us that?

Mr. CAMPBELL. I cannot give you a factual number on that.

Mr. DANIELSON. Can you give it to us in a bracket? More than 10 or less than 10?

Mr. CAMPBELL. Less than 10.

Mr. DANIELSON. Have you received information that any substantial number would expect to leave before the 1st of July?

Mr. CAMPBELL. Well, certainly in all of these meetings we have held with senior people, a great deal of concern has been expressed. I believe, on the basis of what we were able to tell them would be the contents of the regulations, and now that the regulations are out, that in those meetings, we were able to satisfy most people that they could live with them. And I'm sure you will hear further testimony on this point from other people. But we think that the legislation is important and that it does indeed restrict to some degree, and that is the intent of the legislation.

But we do not think it's restrictions are of a kind that would cause people to not serve if they are asked to serve.

Mr. DANIELSON. And incidentally, also, the essence of your testimony was on the subject of recruitment, that you do not feel that the law, particularly if it's amended as we are now considering, would be much of a bar to recruitment.

Mr. CAMPBELL. That is my impression, that that is the case.

Mr. DANIELSON. Thank you very much, Mr. Campbell.

Our next witness will be the Department of Defense, represented here today by Mr. Charles Duncan, Deputy Secretary of Defense, who will be accompanied by Ms. Deanne Siemer. If you folks have someone else with you who will feel more comfortable at the table, they are invited.

TESTIMONY OF HON. CHARLES W. DUNCAN, JR., DEPUTY SECRETARY OF DEFENSE, ACCOMPANIED BY DEANNE SIEMER, GENERAL COUNSEL

Mr. DANIELSON. I'm going to make a suggestion, sir. Your statement I note is 16 pages long. I'm thinking of that terrible master, time. Without objection, the statement will be received in the record. You have filed your brief. Why don't you just argue your points to us now, and I'm sure we'll get along just fine.

[The complete statement follows:]

STATEMENT OF HON. CHARLES W. DUNCAN, JR., DEPUTY SECRETARY OF DEFENSE

Mr. Chairman and Members of the Committee, I appreciate the opportunity to present to you the concerns of the Department of Defense with respect to the Ethics in Government Act of 1978. We will follow the format set out in the Subcommittee Chairman's letter to us so that we may be helpful to you in your deliberations.

Before turning to the Chairman's specific questions, however, I want to make one general point. From my vantage point, there has been no more grave threat to the scientific and management capability of the Department of Defense during my tenure in office than the reaction to the Ethics in Government Act. The Act is complex and may be misapprehended or misunderstood by many, but it has caused a widespread reappraisal among our senior personnel of the value of continued government service. It has also caused a serious recruiting problem because govern-

ment service is perceived as carrying new unknown risks. These effects undermine the Department's capability on many fronts.

I have devoted a very substantial amount of my personal time and effort since November to dealing with this problem. The Attorney General and I have met on five occasions during the last month alone to work on this matter. We are grateful for the heroic effort put forth by the Director of the Office of Government Ethics and his small staff to publish regulations in what must be record time. In my view, the Executive Branch has exhausted its remedies. We must now come to the Congress for help in correcting a few onerous and, we believe, unintended consequences of the Act. With your help, I believe we can implement the Ethics in Government Act as you intended when it was enacted. We can curb the abuses that you set your sights on and at the same time we can maintain the strong, efficient scientific and managerial capability so essential to the national defense. Let me turn now to the specific questions in the Chairman's letter:

1. What part of the bill creates the problem?

We are primarily concerned about Section 207(b)(ii) which contains the restrictions on aiding and assisting in representing persons before the government. We are also concerned about Section 207(d)(3) which includes military officers in the coverage of the two-year bar on aiding and assisting in representing persons before the government and in the coverage of the one year bar on contacts with the Department of Defense in a way that is different and more onerous than that affecting civilians of a comparable rank.

2. Why is your agency worried about this part (generally)?

We have four concerns about Section 207(b)(ii):

(1) The "aids and assists in representing" language is very broad, quite vague, and presents great difficulties in drawing lines between legal and illegal conduct. This requires prudent people to refrain from a wide range of activities in order to avoid the few questionable activities Congress intended to reach.

(2) The "aids and assists in representing" language covers a great deal of conduct, particularly in the management of large technical and scientific projects, that the Congress probably did not intend to reach and that, if reached, would be to the detriment of the Department of Defense.

(3) The introduction of the concept of "informal appearances" into this already broad and vague restriction on aiding and assisting in representing draws into question a large variety of work that affects routine contacts between government inspectors, auditors, contract officers, and other persons responsible for implementing (but not making) government decisions.

(4) The use of the concept of matters "actually pending under his official responsibility" to trigger the restrictions instead of the more generally understood concept of matters "in which he personally and substantially participated as an officer or employee" creates an enormous disability for top agency officials in a department as large as ours where the scope of management responsibility is wide-ranging. The bookkeeping problem alone has the practical effect of making this into a total bar on all contacts for these officials.

We have three concerns about Section 207(d)(3):

(1) The different and more onerous treatment of military officers is perceived by them to be an unfavorable assessment by the Congress that we believe was not intended. This perception has a definite and adverse effect on morale.

(2) The automatic inclusion of pay grades O-7 and O-8 (brigadier and major generals, rear admirals) sweeps in over 1,000 positions. The lack of flexibility to deal with these jobs on a case-by-case basis makes the system unnecessarily harsh.

(3) The administrative burden on us is increased substantially without any concomitant benefit to the public.

3. What is the effect of the problem in the Act?

The problems in the Act have created an atmosphere in which senior government officials believe they must reevaluate whether they want to remain in government employment. The bill, in its present form, sweeps so broadly that it creates a basic uncertainty as to a senior government employee's capability to earn a living after leaving the government. The ability to earn a living and optimism about the future are so basic to job satisfaction that we simply cannot deal with the turmoil created when these fundamental factors are undermined. The Department of Defense relies heavily on a large group of talented scientists, engineers and technical managers to carry out its mission. We cannot maintain the technological advantage that this Nation now enjoys in its national defense without these people.

We believe strongly that movement back and forth from private industry to government service is valuable to people in systems management and scientific and

technical fields and that it is valuable to the Department of Defense. If this opportunity did not exist, we would quickly see the best minds move out of the government permanently and we would also find that promising young talent would move into non-defense fields where there were no such restrictions on their future professional development. We would also find ourselves stagnating as a permanent cadre of civil servants faced no fresh competition or infusion of energy from outsiders.

Let me try to describe the problem facing our top managers. When a manager leaves the government, he or she generally wants to have the option of accepting a challenging position with a large corporation or research or educational institution because that is where many management opportunities are. Under the present language of the Act, a technical manager who moves to the private sector either has to insulate himself from broad areas of government projects for two years, a practical impossibility in many corporations, or he has to worry about virtually every order, suggestion or comment that he gives to every subordinate on such projects for fear that someone will charge him with aiding or assisting in representing the company to the government in a formal or informal appearance. Even if the individual is willing to do the bookkeeping for the matters under his former responsibility and accept the burden of sifting conduct that might be said to be assisting in representing from conduct that is inherent in the management of company business, his employer may not be willing to do so. Government employees are worried that they will become unemployable if they stay with the government after July 1, 1979 because companies do not want to take the risk that hiring them might entail. Already stockholders in companies are asking about the liabilities that former government employees bring with them when they come to the company.

In order to comply with the present Section 207(b)(ii), a manager would have to keep a record of every matter pending under his official responsibility during his last year with the Department. That means he would have to account for every administrative or operating authority responsible to him which approved, disapproved or otherwise directed the Department's actions. The organization that he joined after government service might feel obligated to monitor every contact that he had with a colleague or subordinate within the company who had any contact with the government on a broad range of matters. I can tell you from practical experience that the general perception of this system is to require Defense personnel to go into non-Defense business until the two-year limitation runs out—if work is available to them there. A scientist in some defense specialty like anti-submarine warfare or application of laser technology would be very unsettled about the disruption of his or her professional career that sitting out two years would bring.

In talking about the practical effects of the problem in this bill I would also emphasize that Section 207(b)(ii) creates a felony violation that carries with it sanctions of a \$10,000 fine and two years in jail. No reputable professional person or company can take any chances. They will have to give wide berth to any conduct that creates any appreciable risk not only because of possible prosecutions but because of public criticism in the media or elsewhere that inevitably follows allegations of criminal conduct.

4. *Suggest changes of the law which you consider necessary to correct the problem which you have described.*

The Administration is offering three amendments which would meet the problems I have described.

Amendment 1: Section 207(b)(ii) is amended to read: ". . . having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by *personal presence at* [concerning# any formal or informal appearance before—"

There is a need to be able to determine with certainty what constitutes prohibited "aiding or assisting." Many kinds of legitimate work for an employer on a project, even general management activity involving a particular matter of this kind, might in some phase be construed as prohibited "aiding or assisting." The language of the Act prevents drawing a bright line to divide prohibited assistance from unobjectionable work for the private employer. The best way to remedy this is by limiting the restriction on "aiding or assisting" to situations where the former government employee is "personally present at" a formal or informal appearance before a Government agency considering the particular matter. By substituting "personally present at" for the word "concerning" at the end of the introductory paragraph of Section 207(b) there is no longer a possibility that work performed in an environment apart from a forum of representation could be considered prohibited "aiding or assisting" because it somehow "concerns" the subject of a hearing and may be used in some manner by the representative of the private employer. Such an amendment would reassure those in positions affected by Section 207(b), or consider-

ing offers of employment in such positions, that they would be able to ascertain exactly the kind of conduct that is prohibited. This language offers the certainty and predictability necessary to avoid constant conferring with legal counsel and Government officials in order to avoid the possibility of alleged impropriety that can be almost as damaging to a professional career as criminal prosecution.

Amendment 2: Section 207(b)(3) is amended to read: “. . . which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or as to (ii) in which he participated personally and substantially as an officer or employee; or”

This would alleviate the difficulty in determining the nature of conduct prohibited under Section 207(b), particularly as it relates to the two-year prohibition on “aiding or assisting” in the representation of the interests of a private party to an agency of the United States. As presently worded, this prohibition can be interpreted as applying not only to “aiding or assisting” in any particular matter in which the former officer or employee was personally and substantially involved, but also to those matters that were actually pending under the former employee’s official responsibility during the last year of his Government service. The letter of February 16, 1979, to the Director of the Office of Government Ethics signed by the Chairman Danielson of this Subcommittee, Representative Moorhead, Senator Ribicoff, and Senator Percy, clearly evidences the intent of Congress to limit the “aiding or assisting” prohibition only to particular matters in which the former officer or employee was personally and substantially involved.

In order to reflect clearly that intent in the language of Section 207(b)(3), however, an amendment is necessary to insert the words, “as to (ii)” after the words “responsibility or” in Section 207(b)(3), thereby overcoming any possibility that the restriction in “aiding or assisting” will be applied to particular matters that were merely a matter of official responsibility. We strongly support this change because of the difficulties faced by our top level officials who are involved in a vast range of programs within their areas of official responsibility. They can readily define matters in which they had personal and substantial involvement. This would eliminate the bookkeeping problem and would narrow substantially the burden of a private employer who takes on a former government employee.

Amendment 3: Section 207(d)(3) is amended to read:

“(3) on active duty as a commissioned officer of a uniformed service assigned to a pay grade of [O-7] O-9 or above as described in section 201 of title 37, United States Code or at such pay grade of O-7 or O-8 who has significant decision making or supervisory responsibility as designated by the Director of the Office of Government Ethics; or”

It is our recommendation that Section 207(d) be modified so as to provide comparable treatment for military and civilian personnel. Those in O-9 (Lieutenant General or Vice Admiral) and O-10 (General or Admiral) positions are by definition in positions of “importance and responsibility” and there can be no quarrel with subjecting these officers to the more stringent restrictions of Section 207. With regard to O-7 (Brigadier General or Rear Admiral (lower half)) and O-8 (Major General or Rear Admiral (upper half)) application of these special restrictions should be limited to those in designated positions where the prospect of conflict of interest is realistic. Such a change will serve to convince our military officers that they are not being singled-out for more stringent post-employment restrictions than are applicable to their civilian colleagues.

The proposed amendment to 18 U.S.C. § 207(d)(3) would make the provisions of Section 207(b)(ii) and Section 207(c) applicable absolutely to commissioned military officers of grades O-9 and O-10, but would make the applicability of this section to grades O-7 and O-8 dependent upon an individual determination with respect to significant decision-making or supervisory authority in a fashion similar to the existing treatment of civilians at grades GS-17 and GS-18. We strongly support this change. Commissioned officers serving in grades O-9 and O-10 have duties and responsibilities similar to those of civilian Presidential appointees. In addition, they are individually appointed to positions of great responsibility and, at least in initial assignment, specific duties are known. The duties and responsibilities of commissioned officers in grades O-7 and O-8 are approximately equivalent to those of civilians in grades GS-16, 17, and 18. In the Table of Precedence of the Department of Defense, grades GS-18 civilians are equated to commissioned officer grade O-9. Grade GS-17 civilians are equated with commissioned officer grade O-8, and grade GS-16 civilians are equated with commissioned officer grade O-7. A copy of the Table of Precedence for the Department of Defense is offered for the record. Similarly the Unofficial Precedence List of the U.S. Government equates the grades 16, 17, and 18 to officer grades O-7, O-8, and O-9. A copy of the Unofficial Precedence List is offered for the record. An official table of Military and Civilian Equivalent

Grades for Prisoners of War Identification is contained in DOD Instruction 1000.1, January 30, 1974, Subject: "Identity Cards Required by the Geneva Conventions." A copy of this Instruction is offered for the record. Commissioned military officers grades O-7 and O-8 are equated to civilian grades GS-16 through GS-18. The equivalency tables of DOD Instruction 1000.1 are carried forward to another official publication, DOD Instruction 4165.45, January 19, 1972, Subject: Determination of Family Housing Requirements. A Table of Military and Civilian Equivalent Grades is Attachment 1 to Enclosure 4 of the Instruction. A copy of this Instruction is offered for the record.

5. Statistics

You have asked for statistics on those who have resigned, those who plan to or may resign, and specific cases. That data is difficult to collect in the Department of Defense, in part because I have repeatedly and vigorously urged our personnel *not* to make decisions about remaining in government employment until they were able to consider the regulations under the Act and proposed amendments to the Act. Employees are reluctant to state publicly that they are leaving to avoid the Ethics in Government Act because that may cast a substantial shadow over their motives. Employees who may have several incentives to leave the government may be pushed over the brink into a firm decision by the possible effect of the Ethics in Government Act but their departure is officially attributed to something else.

Let me make the following points that, for me, speak as convincingly as columns of numbers:

(1) Many of our top people are known to be investigating employment opportunities outside the government. We expect these decisions to be influenced substantially by what the Congress decides to do in the next few weeks with the Administration's proposed Amendments.

(2) Personnel have requested legal advice in unprecedented numbers. The Navy reports over a thousand inquiries with respect to implementation of the Ethics in Government Act. The DOD General Counsel's Office has had to devote the equivalent of three full-time lawyers since January to answer questions about how the Ethics in Government Act is likely to be applied and to counsel with individuals thinking about leaving the Department to avoid the onerous effects of the Act.

(3) The informal surveys by the managers of our principal scientific and technical activities indicate that we may lose a full one-third of some of our most key components. We have pressed hard to get people to postpone these decisions until after the Congress acts, but serious consideration is being given to resignation by large numbers of our personnel.

(4) We cannot recruit people to take jobs vacated by those leaving government service for this or other reasons. Recruiting takes much longer; we have fewer qualified applicants; the applicants we do have do not want to make a commitment until the post government employment rules are clearer.

(5) In the last few months the Presidential appointees all across the Department have spent as much time talking, meeting, writing, and worrying about this problem as any other I know of.

It is my judgment that if we do not move decisively, the statistics will soon be available to prove my point. But by then it will be too late to save the talent that the Department needs so urgently.

6. Our position on the bills before the subcommittee

H.R. 2119: This bill essentially would restore Section 207(b) to the restrictions in effect prior to the enactment of the Ethics in Government Act of 1978. The only change not revoked is that which extends the prohibition on representation by a former Government official on behalf of a private party from one to two years in a particular matter within his area of responsibility as a Government officer or employee. This bill in our judgment would go too far in rescinding the new limitations in the Ethics in Government Act of 1978 on improper conduct by former Government employees. The lessons of recent history suggest that the tightening of these provisions proposed by President Carter as a limitation on the improper use of the "revolving door" should be retained with amendments limited, as we have suggested, to those technical changes that provide clear statutory support for the intent of Congress. Consequently, we do not favor H.R. 2119.

H.R. 2843: Section 1 of H.R. 2843 is the same as our Amendment 2 that I have discussed above and we favor this provision for the reasons that I have already described.

Section 2 of H.R. 2843 contains an amendment which would delay the effective date of the revised Section 207 of title 18 to January 1, 1980. We do not favor this proposal because it would encourage postponement of the substantive amendments that are essential immediately if we are to retain the services of some of our most

important officials, and if we are able to attract fully qualified candidates for positions that are or will become vacant. A further period of uncertainty can only contribute to a level of confusion and apprehension that is likely to make individuals unwilling to risk their professional development or their family's economic security on the vagaries of Government service.

H.R. 3325: This bill includes each of the amendments that are proposed by the Administration and that I have described. We support this bill.

Thank you for this opportunity to appear before the Subcommittee.

Mr. DUNCAN. Thank you. Thank you, Mr. Chairman, and I will do it just that way. As you will have noticed if you looked at my statement, it's very repetitious of what Dr. Campbell said.

Mr. DANIELSON. That's why I made the statement.

Mr. DUNCAN. The lady to my left is Ms. Deanne Siemer, who is General Counsel of the Department of Defense and has been participating very actively in the drafting of the regulations and also in the general agency discussions about the proposed amendments, and she is here to assist me as a backup witness.

The first thing I would like to do, Mr. Chairman, is to express our appreciation for your interest and your committee's interest and assistance. We are having a lot of trouble in this area in the Department of Defense. Our senior scientific and technical and management people see very serious employment problems for themselves after they leave the Government service. We are having difficulty recruiting right now, though I do think the adoption of these amendments will ease that situation and eliminate the problem.

I personally have talked to two people about a senior position in the Department of Defense, both of whom said to me that they cannot consider the position until such time as there was clarification of this particular matter.

We are also concerned about the impact of employee turnover. We spent a considerable period of time during the early months of this administration assembling the people that we wanted to follow the initiatives that we were implementing in the Department of Defense. These people have been on board about a year now, have been working effectively, and during the final 2 years of this administration we are anxious for what they were doing would really bear fruit.

So, a significant turnover in scientific, technical, and management people would be very adverse, in the judgment of all of us in the Department of Defense. We do think that we would have some turnover if we did not have the clarifying regulations and the amendments that we are discussing this morning.

As I indicated a moment ago, we do think that these amendments will rectify the situation. We have had a lot of input from a lot of people. I would emphasize to you the amount of concern that our people have expressed to me and to others. I don't think that since January we have had a single Armed Forces Policy Council meeting where there hasn't been some discussion of the subject. The Armed Forces Policy Council, as many of you gentlemen know, consists of the service Secretaries, the service Chiefs, and around the room are the Assistant Secretaries of Defense, the Under Secretaries of the services, and other people.

I got so concerned that I contacted the Attorney General personally, visited with him on five separate occasions, and I have had

many more phone conversations with him about the severity of the impact, as I saw it, to the Department of Defense.

There has been some discussion this morning about quantifying the problem. It's very difficult to quantify the problem, because people are now making their minds up, and what we have been doing at the Armed Forces Policy Council meetings and all of our discussions with the service Secretaries, with the service Chiefs, with the people within the Department, is to encourage them to get their people to be patient, that we do have a clarifying regulation coming, that we do have some legislative amendments, that we felt that sense of the Congress was not anything that would be onerous to them, and we felt that these technical amendments would clarify the situation to where they would have a situation that they felt that they could live with comfortably.

I talked to Dr. Bill Perry, who would have been here this morning. He's the Under Secretary of Defense for Research and Engineering. He told me that, of 12 senior people that he had in his department, 5 of 7 were long-term civil service employees and he felt that they would probably stay; of the remaining 7, he said 5 of the 7 had indicated to him that they would probably leave if there weren't clarification from the regulations and these amendments that I have referred to.

He estimates, in addition to those, that there would probably be one-third of his managers leaving the Department of Research and Engineering.

I have some information from the other services. I don't want to suggest to you these numbers are very hard, but there are three lawyers in the General Counsel's office who are listening to employees in the Department of Defense who have expressed concern, and that is a full-time activity of three individuals. We have been counseling patience. We urge these perfecting amendments of the regulation, which we have very substantially participated in the drafting of and which will be published tomorrow, as has already been indicated.

I would also say, Mr. Chairman, that we think that we should move now, that a further period of uncertainty would not be advantageous. People are making their decisions now in respect to staying or leaving Government. We are having recruiting problems now respecting getting good people into Government, and I think that a further period of uncertainty would not be desirable. And so I would urge that we move expeditiously.

Those are my formal comments, Mr. Chairman.

Mr. DANIELSON. Thank you very much.

Mr. McClory of Illinois. I'm going to stick to the 5-minute rule.

Mr. McCLORY. Thank you, Mr. Chairman.

I have very few questions, actually. I don't think we're dealing here with large numbers. If we're going to make some changes here based on the number of people involved, why, I think we're going to miss the boat. What we're talking about are high-level professionals, the very top, the most important people, it seems to me, in the executive branch of Government. And for us to measure our acts here on the basis of, well, we can get along without two or three or five or seven or a dozen or whatever, it seems to me is to misconceive the problem with which we are faced here.

And I have been aware of this problem before this hearing today, because these kinds of laws affect those in State government and many other areas besides just those about which we are expressing concern today.

I gather that your Department in a sense is the real target. It's been anti-Defense Department and antibusiness attitude that's been reflected here in a virtual attempt to bar some people from making a living in the private sector if they take on a position with the Federal Government. And I personally don't want to denominate any of these former military personnel or defense personnel who find employment with a private business where their skills and their knowledge and experience and professional talents are useful and valuable in the private sector as they were in the public sector.

I don't see any reason why we should assume or presume the guilt of a person at that level.

You have indicated that these so-called technical changes would satisfy you or would help us out with the present problem in the Department of Defense.

Mr. DUNCAN. That's my judgment, yes, sir, and it's also the judgment of the service Secretaries, the service Under Secretaries, and the Council and the service Chiefs about it. And as far as I'm concerned, I think that the adoption of these amendments in combination with the regulations will satisfy the problem.

Mr. McCLORY. You're not troubled by the present virtual 1-year bar which would affect many in the military and in the Defense Department?

Mr. DUNCAN. No. I think that all we're talking about this morning preserves what we had in the previous law, and it adds to it the provisions of 207, and I think that those provisions as amended as we have recommended would be satisfactory, and that 1-year restriction doesn't concern me.

Mr. McCLORY. What happens during the 1 year when some top-level person from the Department leaves? What happens during the year as far as that individual? Is he just out of business for a year?

Mr. DUNCAN. I think as a practical matter that's what people have been doing now. They have just been refraining from contacts on matters on which they were personally involved for the period of 1 year. I think it's 207(b)(2).

Mr. McCLORY. This would affect any kind of contact.

Mr. DUNCAN. I understand, sir.

Mr. McCLORY. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. McClory.

Mr. Mazzoli?

Mr. MAZZOLI. Thank you very much, Mr. Chairman.

I was rather interested in the comment of my friend from Illinois, Mr. McClory, with respect to the fact that numbers aren't really important. He feels the real pernicious part of this bill is that it is officials in the top levels of government who might resign. Yet, I have heard him on other occasions make great statements here about the bureaucracy and supergrades—the four, five, or six top wage jobs that we create—and that the supergrades are the problem, and not so much the lower level worker. And if I under-

stand correctly, it is the supergrades who are now bellyaching, if there is any bellyaching going on—which is questionable to me.

It isn't the lower level worker, is that correct, Mr. Duncan?

Mr. DUNCAN. Well, the people affected by the law are the senior military people and also the very top executives, and the GS-18's are the ones affected by the law.

Mr. MAZZOLI. Let me ask you this: Would not the regulations that have been proposed, along with what we're clearly talking about here this morning, be a sympathetic interpretation? Would they not solve most of the problem?

Mr. DUNCAN. I don't think you could draft regulations that would solve the problems that are created by section 207. I think that it takes amendments to the legislation to correct those problems.

Mr. MAZZOLI. Well then, if you don't amend the legislation then you force one of two things: either people stay on and become careerists or they leave. Is that basically the situation?

Mr. DUNCAN. Yes.

Mr. MAZZOLI. Would there be a great deal of harm if people stayed in Government because they were afraid to leave because they couldn't come back?

Mr. DUNCAN. I think that would be negative, because there's a lot to say for people coming in and out of Government, bringing new blood, new thought, new ideas. As I indicated earlier, 7 of the 12 people in research and engineering have come from industry. For them to go back to industry and to have the option of going back to industry I think is a desirable thing for them to have.

Mr. MAZZOLI. Well, you were here this morning when I already delivered myself of my little soapbox speech, and so there is no reason to repeat it now. But I would repeat my belief that we are making a very serious error here. While I see this as a better move than delay, which would be totally unacceptable to me just opening this thing up could cause serious problems. If the proper rule for floor consideration is not granted, then the whole bill could be wiped out and gutted. Again, I believe nothing should be done at this time, in haste. But, I'm likely going to be the lone voice in the wilderness.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Mazzoli.

Mr. Kindness of Ohio is recognized for 5 minutes.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Duncan, in this area of the levels or grades that are subject to the coverage of the act, the suggestion has been made that in the Defense Department the old O-7 level of lieutenant general or vice admiral ought to be selected instead of O-7. And I'm trying to understand how comparability and how the arguments are made to justify the O-9 level instead of O-7. And actually, when you look at the table of military compensation, it sort of seems like maybe O-8 is closer than O-9 to GS-17. But we have already established that GS-17 isn't very meaningful in this whole context.

Would you care to comment as to how the O-9 level is arrived at as a suggestion and whether there is any better answer that we might find in dealing with this part of the problem?

Mr. DUNCAN. Well, the intent here is to treat with the military and the civilians in the most identical manner possible. And, as Mr. Campbell pointed out during his testimony, there conceivably could be a situation where you would have a brigadier general reporting to a civilian that was not covered. We don't think that that's fair to the military.

We think that the O-7's and O-8's, the one-star and the two-star flag officers, to have them comparable to the 16's and 17's is the appropriate way to do it, unless there is a specific determination by the Director of the Office of Government Ethics that they are involved in some activity that ought to be subject to the restraints.

Mr. KINDNESS. And here again, you're sort of suggesting that there is the need for a bigger discretionary area in treating those?

Mr. DUNCAN. At the O-7 and O-8 level, yes, sir.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you.

Mr. Harris from Virginia, for 5 minutes.

Mr. HARRIS. Thank you, Mr. Chairman.

I would like to welcome Mr. Duncan. I don't know whether you recall, but I recall very well the meeting we had last September with regard to military installations and I want to compliment you on the type of studies that you did. Especially I would like to thank you on behalf of the Military Personnel Center in the Hoffman Building. We all think you did a great job. Not quite as good on the hospital, but very good on the Military Personnel Center.

I would like to ask you, if I may, the same sort of broad philosophical questions I asked Mr. Campbell.

In your experience in the Pentagon, do you see a need for the type of ethical restrictions that the basic thrust of this is to apply with respect to solving the problem?

Mr. DUNCAN. I think the bill is very appropriate with the amendment that we are talking about this morning. I think it is helpful; I think it does move forward in the right direction, and I think it's a desirable bill to have, even as amended.

Mr. HARRIS. Do you share the worry of some of my colleagues that should we move through the legislative process, that we will have a number of substantive amendments tacked onto the Ethics in Government Act that would tend to neutralize the effects of some of the provisions of the bill? Do you have that fear?

Mr. DUNCAN. I'm not sure I understand you.

Mr. HARRIS. If fact we proceed with the type of modification amendments which you have advocated, do you have a fear to open up the bill to the type of attacks that would water down the provisions and tend to neutralize the effects of the bill?

Mr. DUNCAN. My own personal judgment is no.

Mr. HARRIS. With regard to the Pentagon specifically, I think I hear in your testimony that there are a number of positions that are particularly sensitive to ethical requirements. There are a number of positions, especially in the higher grades, that are particularly susceptible to conflicts of interest, and you feel as if there should be discretion with regard to designating those positions? Is that basically your position?

Mr. DUNCAN. Well, of course, all of the scientific and technical positions are very directly affected and all have very top manageri-

al positions, where a person necessarily has a lot of things under his official responsibility but may not have substantial personal involvement. Those are very, very key issues.

Now, when you get down to the O-7 and O-8 level, as I was discussing a moment ago—

Mr. HARRIS. I'm sorry, I got mixed up on those. I'm pretty good on some of the rates and what have you.

Mr. DUNCAN. O-7 and O-8 are one-star and two-star military officers, and we are suggesting they ought to be looked at in a more or less equivalent way to a GS-16 and 17. These people are affected by the act only if designated by the Director of the Office of Government Ethics, and we think that's an appropriate thing, to have him have that discretion. In the case of the O-9 level, which is the three-star military officer or the O-10 level—the 10 level, which is four-star military officers—we think that they ought to be just covered by the act, period.

Mr. HARRIS. Just one final question. Have you seen instances in the Pentagon where you saw representatives come back shortly after retirement, where you would prefer that situation didn't exist?

Mr. DUNCAN. I have not personally seen that, no. But I think the 1-year restriction on that is an appropriate restriction.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Harris.

Mr. BARNES of Maryland.

Mr. BARNES. Thank you, Mr. Chairman.

Reviewing the legislative history of the act that Congress passed last year, it was apparent that many of the instances that were cited in support of the legislation of this type related to the Defense Department, and I don't have any questions, but it would have surprised me were there not substantial concern among employees of the Defense Department with respect to legislation of this type. And I simply am wondering this morning whether the expressions of concern that we are hearing aren't an indication that the legislation will in fact have the effect that was intended by Congress.

I am familiar with the testimony and I think it would not be necessary, unless you wish to comment, Mr. Duncan, on my reaction.

Mr. DUNCAN. Well, the main problem is something that, as I understand it, was not contemplated by the Congress. We never had a problem with what we understood, what I understood was contemplated by the Congress; 207(b)(2) I think went beyond what was contemplated by the Congress, and it's that that caused the very serious problems that I alluded to.

Mr. BARNES. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Barnes.

Mr. Duncan, I want to see if I can recapitulate your testimony. You have told us that you are already experiencing difficulties in recruitment of the types of people whom you need to staff your Department, but that with the amendments set forth in this bill and the regulations, you feel that your problems in that regard will be taken care of.

Mr. DUNCAN. That's correct.

Mr. DANIELSON. Second, on people leaving the Government, the same is true. At the present time you have lost some and you have the feeling that you would lose more, but with amendments to the bill plus the regulations you would not suffer, at least.

Mr. DUNCAN. That's correct.

Mr. DANIELSON. Not that it's going to affect your performance.

Mr. McCLORY. Mr. Chairman.

Mr. DANIELSON. Yes?

Mr. McCLORY. I would like——

Mr. DANIELSON. I have one more question. You also said that approximately one-third of the technical and engineering division in management responsibility would be leaving if the bill is not amended and the regulations were not adopted. Do you feel that would be alleviated if we do adopt it?

Mr. DUNCAN. Right. I don't know about the word "leaving." I would like to say this. They have indicated that they would probably leave. Now, whether that means actually leaving.

Mr. DANIELSON. I realize all you can state is the condition as it exists today.

Tell me this: What would that one-third amount to in absolute numbers, if you can?

Mr. DUNCAN. Well, Dr. Perry advised specifically his 12 top senior executives that report directly to him, and he said 5 of those 12 had indicated they would probably leave.

Mr. DANIELSON. Thank you very much.

Mr. DUNCAN. And there's about a hundred in his area of responsibility in addition that would be affected, so if you adopt the one-third, let's say another 30. More or less several dozen more people.

The other point I would like to make, if I could, Mr. Chairman, is that which already had some people leave—more than a handful.

Mr. DANIELSON. How many?

Mr. DUNCAN. Well, probably several dozen people have left and have given this as the reason for their departure.

Mr. DANIELSON. You mean at least 24?

Mr. DUNCAN. I would say about that. I would have to find that number for you, but let's say about that. In addition, there are a number of resignations of flag officers that are pending and they cite this as their reason. Now, whether or not they in fact have other reasons is another situation, but it's a matter that is of concern right now.

Mr. DANIELSON. Thank you, sir.

Mr. McClory, you have another question?

Mr. McCLORY. Thank you. I'm sure that your final statement there indicates a mischievous nature of this legislation, and I hope we can correct it by technical means or amendments or by substantial amendments.

I want to ask this question of general counsel, if I may: The present regulation provision with regard to the definition of an appearance, quote, "An appearance occurs when an individual is physically present before the United States in either a formal or informal setting or conveys material to the United States in connection with a formal proceeding or application." End of quote.

Now, the change that we are proposing to make in this technical amendment is merely going to eliminate the word "concerning any

formal or informal appearance" and it's going to substitute the words "personal presence." And I asked Mr. Wruble about physical presence and he said it could be interchangeable.

But what I am wondering about is this: Wouldn't the personal presence be involved if a person had contributed to a brief or had communicated the material? Wouldn't that—it wouldn't have to be physically, humanly present at some meeting with the Defense Department in order to overcome that difficulty.

Ms. SIEMER. The problem with the current language is not the meaning of "appearance"; it is the meaning of "concerning." Our problem is that if you transmit information to one person and he transmits it to another person, and yet a third person appears before the Government, you could have been aiding and assisting concerning an appearance, and it is the third-hand effect of that that gives us the problem.

Mr. McCLORY. What about substituting the words "personal presence"? Aren't you going to get into the same problem? And personal presence could mean personal presence by brief.

Mr. DANIELSON. Would the gentleman yield?

Mr. McCLORY. Or by communicating material.

Mr. DANIELSON. Would the gentleman yield? I checked that last Friday in Webster's dictionary, and we don't have a problem. A personal appearance means that you're there in body as well as in soul. [Laughter.]

I checked Webster.

Mr. McCLORY. It seems to me, Mr. Chairman, the regulation would indicate that personal presence is going to be interpreted by regulation, or it could be interpreted by a court as something more than just being physically, humanly present.

But you have no problem with that?

Ms. SIEMER. I'm satisfied, if we say "physical presence at," it means being personally there. If we say "personal presence at," we get the same result. My problem is taking out the word "concerning." It is that word that causes us a current difficulty.

Mr. DANIELSON. My time has expired. I thank both of you for your testimony. It has been very helpful. It should be clear to everyone, even on the committee, that it's perceived differently by different people, all of whom are highly intelligent and who are very, very diligent in their duties. I hope we'll determine whether this is real or apparent. If it is real, we'll do something about it.

Thank you very much.

Our next witness this morning is the Department of Health, Education, and Welfare, which appears in the person of the Honorable Joseph A. Califano, Secretary. And we're glad you were able to come, and I'm going to—you were not here at the time the last witness commenced, but I would like to suggest, sir, that you file your statement with us and it will be received in the record, without objection. And I know that you are one of the most able lawyers in America, and therefore you can simply argue your brief to us now.

Thank you.

[The complete statement follows:]

STATEMENT OF HEW SECRETARY HON. JOSEPH A. CALIFANO ON THE ETHICS IN GOVERNMENT ACT

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to be with you this morning to testify on the impact on the Department of Health, Education and Welfare of certain provisions in the Ethics in Government Act of 1978 and on proposals pending before this Subcommittee to amend those provisions.

The 1978 Act made substantial changes in the restrictions on post-employment activities of Government employees. I want to emphasize at the outset that I fully agree with the need for restrictions on activities that would amount to a switching of sides or would otherwise constitute a conflict of interest by Government officers and employees. But certain provisions in the new Ethics statute will have the unintended effect of impairing the ability of HEW and other Government agencies to attract and retain the kind of people we so badly need for the efficient operation of our programs.

These people—such as Administrators in the National Institutes of Health and Office of Education, and senior professionals throughout HEW—typically move between federal government and the non-profit world of universities and research institutions. They are not part of the “revolving door” problem. They do not take government positions with the intention of using inside knowledge and influence to represent large companies before their former agencies. These individuals are dedicated public servants who contribute their managerial experience and their knowledge of the problems that HEW must deal with. We must find a way to maintain the admirable objectives of the amendments enacted last year without denying the Federal Government the benefit of this vast resource of scientific and administrative experience.

The major problem caused by the 1978 amendments is in the addition to section 207 of Title 18 of the United States Code of the so-called “aiding and assisting” prohibition. This provision prohibits senior officials, for two years after leaving the Government, from aiding or assisting anyone else in that person’s representational activities before any Government agency or court. Under the terms of the statute, this prohibition applies not only to matters in which the former official had personally participated before leaving Government service, but also to matters which were under the former employee’s “official responsibility.” The impact of this section would be particularly severe on HEW. If it is not amended, I am concerned that a large number of senior administrators will leave HEW by July, when the provision becomes effective.

Let me explain why this will happen. The career opportunities of many senior officials who leave HEW are with organizations that necessarily receive substantial funding through grants and contracts from HEW, such as educational and research institutions. As I have noted, we often recruit professionals from these very organizations because of their unique expertise. As you know, these top scientists and administrators often serve the government at a financial and personal sacrifice. It is generally expected that these officials will return to similar educational and research institutions after completing their federal service. The practical effect of the “aiding and assisting” prohibition may be to preclude these administrators and scientists from taking any responsible management positions when they leave government, since their responsibilities would necessarily require that they “assist,” through decisions and direction, in matters where contact with HEW may eventually result.

A concern that this management activity might technically fall within the “aiding and assisting” prohibition will cause senior people leaving HEW to steer clear of such jobs, and cause employers to steer clear of former HEW employees. This, in turn, will make it even more difficult for us to attract outstanding people from outside the government to fill our high level positions.

Let me illustrate the impact of this section by discussing its effect on the National Institutes of Health. More than 150 of NIH’s scientist-administrators are in the senior level positions that will likely be covered by the “aiding and assisting” provisions of section 207(b)(ii). When these officials leave NIH, they are generally sought out for such positions as deans of medical schools or universities, or as directors of research institutions or large research programs. They are in demand for these positions not because of the inside knowledge or contacts gained through their government service, but because of their skills and professional reputations—indeed, the same skills and reputation that led to their appointment to positions of responsibility at HEW.

Top officials at NIH have under their official responsibility hundreds or even thousands of grants and contracts to universities, medical schools, and research organizations. Since NIH funds approximately two thirds of the health research in the United States—and at least 80 percent of the basic biomedical research—it is

quite likely that a former HEW official who becomes dean of a medical school would find that the school has a number of continuing grants that were under his official responsibility while he was at NIH.

In practical terms, a medical school dean (or comparable official) could not manage his institution effectively without becoming involved in deliberations and decisions at that institution on research funded by NIH. If a dean's participation in discussions about grants that were technically under his official responsibility while employed at NIH is interpreted to constitute "aiding and assisting" under section 207(b)(ii), senior officials at NIH will effectively be precluded for two years after they leave NIH from serving as medical school deans or as comparable management officials. The current language of section 207(b)(ii) is broad enough to allow such an interpretation. More importantly, the current language is broad enough to allow allegations that individuals participating in this kind of routine management activity are engaging in criminal conduct.

Similar problems resulting from the "aiding and assisting" provisions of section 207(b)(ii) would be created for top officials in our Education Division—those employed as administrators in the Office of the Assistant Secretary for Education, the Office of Education, and the National Institute of Education. Career opportunities for these senior managers are concentrated in high-level positions in institutions of higher education and other organizations that receive substantial funding from OE and NIE. To carry out their responsibilities as top officials of non-profit agencies that receive substantial funds from OE or NIE, these former officials must have the latitude to "assist" their new institutions in administering grants, contracts, or other matters that may involve "representational" contact between the institutions and HEW.

The regulations issued today by the Office of Government Ethics will be very helpful in achieving a reasonable interpretation of Section 207(b)(ii). For the individuals who are affected by the law, however, and for their prospective employers, clarity and certainty are imperative. Therefore, Mr. Chairman, I strongly urge that the subcommittee adopt the amendments contained in H.R. 3325 to resolve promptly and decisively the concerns I have described.

H.R. 3325 would amend the "aiding or assisting" provisions of section 207(b)(ii) by clarifying that they are applicable only to matters in which a former senior officer or employee had participated personally and substantially during his Government service. Mr. Chairman, as you, Congressman Moorhead and Senators Ribicoff and Percy pointed out in your February 16 letter to the Director of the Office of Government Ethics, it was always the intent of the Congress to have the aiding and assisting provision apply only to matters in which the former senior officials had been "personally and substantially involved." Your letter noted that section 207(b)(ii) was not designed to restrict a former employee's involvement in general matters which may have fallen under the employee's official responsibility while in Government service. Therefore, the amendment would reflect the true intent of the Congress by limiting the prohibition in section 207(b)(ii) to matters in which the former Government employee had participated personally and substantially.

A second amendment contained in H.R. 3325 would make clear that the "aiding and assisting" prohibition applies only to assistance given during a personal appearance of the former senior employee before a Government agency or court. This amendment will confirm that medical school deans, for example, can freely participate in management discussions at their institutions even if they relate to matters in which they had some involvement while at NIH.

I believe that these amendments will answer legitimate concerns that have been raised about the "aiding and assisting" provision.

Subsection (c), which was also added to Section 207 by the 1978 amendments, prohibits former senior federal officials, for one year after they leave government service, from representing anyone before their former agency on any matter before that agency. The purpose of this section is to curb the use of personal influence, for financial gain, by former high Government officials in transacting business with their former agency.

Many Department officials were initially concerned that subsection (c) might be interpreted to prevent former senior employees from serving as principal investigators on Government grants during the one-year period after they leave Government service. Because of their high standing in their specialties, senior employees of NIH, NIE, and other Government organizations often seek Government grants for research to be conducted at the universities or research organizations they join after leaving Government service.

I am advised that the regulations published by the Office of Government Ethics have resolved this concern. Paragraph 737.11(f) of the regulations provides that, in connection with an application for Government funding of research, the restrictions

of section 207(c) will not prevent a former senior officer or employee from assuming responsibility for the direction or conduct of such research or from providing scientific or technological information to his or her former agency regarding such research. This interpretation of section 207(c) will permit Government scientists, educators, and other professionals to seek and obtain research grants from their former agency during the one year period after they leave Government service.

While regulations may resolve my concern about research funding, I remain convinced that legislative amendments are necessary in order to address the problems raised by subsection 207(b)(ii). This subsection applies to more than 600 senior HEW officials. Obviously, I have not had the opportunity to speak to every one of those 600 officials about his or her plans, but based on a partial canvas I can indicate to you the order of magnitude of the resignations that this law will cause if left unamended.

In the Office of Human Development Services—the central office for providing social services to native Americans, children, migrants, the aged, the handicapped and other vulnerable segments of our population—six or seven of the top thirteen officials will resign if the law is not changed. That is about one-half of the top management.

In the National Institute of Education, one of four associate directors will clearly resign if the law is not changed, and four of 16 assistant directors have indicated an intention to resign—one-fourth of the top management.

Unless the Congress acts, the Public Health Service will be seriously affected. The Surgeon General, the Commissioner of the FDA, and the Director of the National Institutes of Health are all very concerned about the law.

Among the health agencies, the National Institutes of Health would be particularly hard hit. The Director of one of the largest research institutes has told me he will surely resign by July 1 if the law is not changed. The directors of three other institutes will likely resign. Senior staff within several institutes will also be affected. Within the National Institute of Allergies, Metabolism, and Digestive Diseases, for example, at least four section chiefs have indicated an intention to resign unless amendments are passed.

Title V of the Ethics in Government Act was passed to enhance the public's confidence in the federal government. But by causing many of our most valuable government officials to consider resignation, and by discouraging good people from joining government service, this law is now working to undermine public confidence. I urge this subcommittee to act promptly to enact H.R. 3325 so that HEW can continue to attract talented and experienced people.

TESTIMONY OF HON. JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Secretary CALIFANO. Mr. Chairman, I would just file the statement with the committee and not read it, if I may.

I would just like to note that the Department of Health, Education, and Welfare now funds almost 90 percent of the basic biomedical research done in this country. That means we effectively control all of it. We fund something approaching 70 percent of all the biomedical research done in this country.

We are talking in this particular instance about the Cancer Institutes, the Heart, Blood, and Lung Institutes, and the other Institutes. We are talking about that group of individuals who are truly at the top of their profession, whether they're working at the National Institutes of Health or whether they're working on the university campus or whether they're working in an independent research operation, nonprofit research operation. They will be working with Federal funds and they will be working with Federal grants, so that from that point of view it is imperative that these technical amendments be made.

Another group, of course, are the educators, who are particularly affected in higher education, where the Federal Government is now funding approximately 40 percent of all higher education. We are close to a national system of higher education in the United States. There is not a university or college, with a handful of exceptions,

that could possibly function without funds from HEW today. And any of those individuals who are at the top of HEW in the education area inevitably will be involved with the Federal Government if they are to fulfill roles and continue their careers in education or educational administration.

And it is in those two areas in particular that we feel the pinch. That's all, Mr. Chairman.

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

I will yield first to the gentleman from Kentucky, Mr. Mazzoli.

Mr. MAZZOLI. Thank you very much, Mr. Chairman.

And, Mr. Secretary, I will not take but a few moments. I'm against making any changes, period. I think they're untimely; I think they're unnecessary; I think they inevitably will open the floodgates to further changes. I know last year, as your people looked on, that we worked hard to strike a very finely tuned balance between the pain caused by restrictions and the need to curb revolving-door abuse. That effort lasted several months.

We came out with a bill that everybody seemed to think was going to do the job, and all of a sudden from your Department came the cries of anguish, the wailing and the lamenting about, gee, it will cost. It was supposed to cost people.

I will not dwell on this or further berate your eardrums with things that I have told earlier witnesses today. But it's my intention to oppose the changes. I think the changes proposed are better than delay, but I think it's just totally an outrage and unnecessary.

I thank you, sir.

Mr. DANIELSON. Mr. McClory of Illinois?

Mr. MCCLORY. Thank you, Mr. Chairman.

I was encouraged by the opinion expressed by the general counsel for the Department of Defense in regard to her interpretation of the insertion of the words "personally present" and overcoming the problem that exists in the law now by using the word "concerning."

What I would like to ask you, Mr. Califano, is how you view part (c) of the existing law, which represents a virtual bar for a 1-year period of anyone making any oral or written communication to anyone other than the United States? And especially since you make reference to the tremendous research role of the Department of HEW and the involvement of universities, what happens as far as someone who leaves your Department and goes to a university where they're going to carry on research? That would really put them out of business for a year, don't you think?

Secretary CALIFANO. Well, I think it would, under ordinary circumstances. We have been through 3 months of negotiations with Mr. Wruble, who is the President's adviser on ethics. I think that those regulations would solve the problems we would have in the health research area, which is the problem relating to the principal investigators on those research projects. He's accomplished an interpretational ruling that says, in effect, they would not be affected, by and large, by subsection (c).

Mr. MCCLORY. Did he make that ruling?

Secretary CALIFANO. Yes. That's an interpretation in the law, in the regulations on pages 37 and 38.

Mr. DANIELSON. Just a second. Let me interrupt for a moment. We do have a draft of the regulations. Counsel has them. They're 62 pages long, so I don't think any of us have memorized them as yet, but they are there.

Mr. McCLORY. I'm a little curious about that, though. Where the plain language states whoever, other than a special Government employee who has served for less than 60 days and so on, within 1 year of such employment makes any oral or written communication on behalf of anyone other than the U.S. Government—it seems to me that you're really involving the person, and you can't bail him out through any regulations that I could envision.

Secretary CALIFANO. Well, I don't want to be my own lawyer in this. Let me just read you his interpretation:

Application for or proposals for funding research. In connection with any application or proposal for Government funding and research, the restrictions of this section—

referring to that section, subsection (c)—

do not prevent the former senior employee from assuming responsibility for the direction of conduct of such research and from providing scientific or technological information to the senior employee's former agency regarding such research. The former senior employee may not, however, submit the application on behalf of the applicant or argue for its approval or funding by the agency.

And the example is an NIH example. A former senior employee of NIH, employed by a university, prepares an application to NIH for a research grant. The application is submitted to NIH by the university and lists the senior employee as the principal investigator. The senior employee does not violate section 207(c) by preparing the application or by being listed as principal investigator, since these are not representational activities.

He may also sign an assurance to NIH as part of the application that he will be responsible for the scientific and technological direction and conduct of the project if an award is made. He may also communicate with NIH to provide scientific or technical information on the application, including presentation to NIH personnel at the research site, so long as he does not argue for approval or funding of the application.

Mr. McCLORY. Well, I'm encouraged by that, but I think that you and I both have been critical that we do get some substantive changes here that would help us out and wouldn't have to rely on regulation or deciding the regulation doesn't correspond with the law.

Secretary CALIFANO. I think that's right, Mr. McClory. Our changes, of course, do not go to subsection (c). The other problem we have had with subsection (c) relates to State and local employees. But we thought that was a change in substance, if you will, and not a technical amendment, so we did not suggest it at this time.

Mr. McCLORY. You would like to take that up later?

Secretary CALIFANO. Well, at some point. But these changes, if I might just comment, Mr. Chairman, on what Mr. Mazzoli said, because I think it will do serious damage if you don't change this, particularly in the health research area. I think you will see a substantial exodus from NIH of senior researchers. You will see an

interruption of research and with what that means in terms of human life, in terms of our ability to solve these problems.

You cannot on the one hand reach the situation in which the Federal Government controls all biomedical research in this country, 90 percent of the basic biomedical research, that research that leads to curing cancer, that has led to all the artificial—to most of the transplant ability we have in surgery. It's led to most of the major advances in these killer diseases—and have that kind of an exodus of people which we will have, and say that it won't do any harm. It will do harm.

I don't believe for 1 minute that—maybe I'm wrong—that you or this committee or the Congress intended to do that. These are not people that work for money. They don't make any more or less money whether in NIH or where.

Mr. MAZZOLI. You just now said that the interpretation solved most of your health problems.

Secretary CALIFANO. No, it solves the communication problem. Mr. McClory was talking about section 207(c). This interpretation solves the communication problem for the principal investigator. It does not solve the problem at NIH. You will have Institute directors leave; you will have lots of senior personnel leave; and in that area, you will set back research in this country. It will be a brain drain, and I don't think this Congress ever intended that to take place.

Mr. MAZZOLI. Well, certainly the Congress intended no brain drain.

I wonder how many people have told you they're going to be leaving, actually.

Secretary CALIFANO. Well, our estimate is about 100. The individuals that have come to me personally and said they would be leaving—

Mr. MAZZOLI. Ten? Fifteen?

Secretary CALIFANO. It's in that area. But they have also come on behalf of other individuals and said that they expect to lose top people in this area.

Let me just give one example—

Mr. MAZZOLI. This is actually Bob's time.

Mr. DANIELSON. Bob, the time has expired.

Mr. McCLORY. Mr. Chairman, may I just make a comment?

Mr. DANIELSON. Yes.

Mr. McCLORY. I want to express my appreciation for the statement of the Director of the Department of HEW and for his courage in delivering the testimony that he has provided here, and it's a genuine public service.

Thank you.

Mr. DANIELSON. Thank you, Mr. McClory.

Mr. Harris?

Mr. HARRIS. Mr. Chairman, I would like to yield my time to my colleague, who wanted to finish the colloquy, because I thought it was very dynamic, and productive.

Mr. MAZZOLI. It was dynamic. I'm not sure productive.

My problem with the doomsday forecast has always been that they never seem to turn out, whether it's oil estimates or whether it's military defense figures or just whatever. We just deal with

hyperbole in this place, and it seems that's how we have to function in order to get over the background. That is, we have to distinguish our case by making it an absolutely horrendous Armageddon.

Now, let me just suggest to you, if 15 people or 150 people were to leave Federal service, this would be a kind of tragedy. But I would have to say, first of all, that recruitment would be certainly a potential for replacing those people, and you might get rid of a lot of deadweight and a lot of bloated bureaucracy. And I just don't know, Mr. Secretary, with due regard to one of our members of the executive branch, that there is any way to ascertain a setback by a strict guesstimate.

It seems to me that we ought to let these things go into effect, and if they do such damage, I will be the first one to put myself up on the altar and be sacrificed. I would think they wouldn't do that harm; and I would just personally believe that a better suggestion would be not to change before they become effective, but to change by way of oversight afterwards.

I thank the gentleman from Virginia.

Secretary CALIFANO. I do not mean to exaggerate. I think it will happen and I think particularly in the two areas of education and biomedical research, especially because we pay for all the basic biomedical research in this country. But I have already been turned down in at least one job by somebody who refused to come to work for the Federal Government because of this law. If we were talking about people that were going to go out and make money on some revolving door, that would be one thing; but we're not talking about people like that in this change.

This is not a provision that was in the President's bill. It's not a provision in the bill that passed the House of Representatives. The provision we're talking about was a provision that was put in at the last minute on the Senate side, and which, in my judgment, did not receive the thought that the rest of the bill received.

I could come in here and say we've got to change section 207(c), because what that says to a lot of the people in HEW who come from State government and want to go back there, is that you can't communicate with HEW when you go back to the human resources department in your State government. The reason this fellow left from HUD to become head of Metro in Washington, D.C., before July 1 was because he wouldn't be able to talk to HUD if he left after.

Now, we didn't come and ask for a change of that kind. That provision of the statute was there; you thought about it, talked about it, and on that point I agree with you: Let it take effect and let's see what happens. If we lose a lot of people in the State and local government, then we'll come here and talk to you about it.

Mr. McCLORY. Well—

Mr. HARRIS. You're using my time now and I have been waiting all my life to try to outtalk Attorney Califano, anyhow. [Laughter.]

I hate to do this, Mr. Chairman. I just have 2 minutes left.

Mr. DANIELSON. You're overly optimistic. You don't even have 2 minutes left.

Mr. HARRIS. I said 2 minutes.

Mr. Califano, you have been here for a long time in the position of Secretary. Do you see a need for this type of legislation, or do you feel that perhaps Congress is providing a scenario which is unnecessary and unproductive as far as the executive branch is concerned?

Secretary CALIFANO. No. In general, I think the Ethics Act is a very important contribution. I think we need it and it's important in terms of the competence of our people in the Government and the integrity of the Government. It is a very narrow problem, but it's a very serious problem, in my judgment, and that's why.

Mr. HARRIS. My second question: You do not feel perhaps some of the fears and panic over large-scale retirement, and resignations are somewhat premature? Testimony here indicates that the regulations are just being published in the Federal Register tomorrow. Have you not heard some of the comments? Have they not been predicated on fears that have perhaps not been justified? Isn't the example you used this morning, for instance, of the interpretation of one of the fears, a pretty good indication that perhaps the employees will feel differently after they see the regulations and clear up some of those fears?

Secretary CALIFANO. I have taken my key employees and have had other people through these regulations. They won't solve the problem drain of people from the educational world and from the world of biomedical research. There's no question about it.

And you have to remember that we are talking about a felony statute. We are talking about a world in which we know that the laws are interpreted by men; prosecutors make decisions as to whether to prosecute. Let me give you an example of individuals interpreting the laws.

In 1969 former President Johnson called me and said: Would you help? We're going to build an old-age home, a very modern old-age home in Austin, Tex. And because it was done in the last 60 or 90 days of the administration we—Senator Williams on the floor of the Senate raised questions about expediting it that fast, and the Republican administration stopped the process.

The President said: I have talked to President Nixon, and I wish you would go over and try to work this out. This is one of my little dreams. We wanted to build it in Washington, but we couldn't get a building code change; we'll build it in Austin.

I went to see Messrs. Ehrlichman and Haldeman and others, and I ended up about a week later in a conversation with Mr. Mardian, who was then counsel at HUD or one of the Departments—I forget which, with the Justice Department. And I walked in his office and he said—I went about 5 minutes in the conversation and he said: I want you to know that we are considering a criminal investigation of you for violating the conflict of interest law for dealing with a matter you dealt with when you were on the White House staff.

And I said: I thought I was trying to solve a problem between two Presidents in good faith, an ex-President and a current President. And in any case, that statute, as it was then drafted, applied to representations for money, and obviously, I wasn't getting paid anything to try and work this problem out.

Well, when you talk about a criminal statute and you can have a situation like that occur, I think the kind of people we're talking

about should not have to go into a cloudy, murky area which is confused, in which their reputations can be clouded inadvertently. And none of them are doing any of this for money. As I said, they would, unlike the lawyer that goes out and represents people in the private or profitmaking sector, they're going to be paid about the same, whether in NIH or outside. And I think therefore, we all have an obligation to give them a clear understanding of what the law is.

Mr. HARRIS. One final question, if I may. Your main concern is biomedical research, as I understand your position, and it's your feeling that with the amendment that has been proposed here and spoken to by Mr. Wruble and Director Campbell, you feel like that corrects the basic problems we have.

Secretary CALIFANO. Yes; I think it will, Mr. Harris. It will take care of that, and also the top education people, the educational administrators.

Mr. HARRIS. Thank you, Mr. Secretary.

Mr. DANIELSON. Mr. Kindness of Ohio.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Secretary, I appreciate your testimony here this morning. I would just ask, has there ever come to your attention any case involving people in the senior positions in the National Institutes of Health or education area of impropriety of some sort that causes great harm to the public good, that is going to be solved by the law as it was passed by the last Congress? Let me explain. I never heard of any problem with the law as it is, without amending it, and indeed, I can't really conjure up a situation among the kinds of professional people you're talking about where a great harm would be done to the public interest by amending the law as is currently proposed.

Do you know of any experience to the contrary?

Secretary CALIFANO. No. I think—I just don't think the law was ever intended by this committee or the Congress to cover the kinds of situations thought of. In terms of improprieties, we have none at the top of the biomedical research or the education area. We have on occasion had a couple of examples at lower levels relating to contracting, but it's been more in the area of computer contracting than the education area.

Mr. KINDNESS. I must admit I have been considering for a time adopting the same position that we heard expressed here by other members of the subcommittee: Let's wait until there's a horrendous problem before we deal with it. But I rather admire the stance that you have taken, and others, that says, let's deal with the problem now before it becomes a horrendous problem.

I would certainly urge that we straighten out at this time anything that does indicate there is going to be a problem created by the amendments that are being considered. But I certainly can't see it myself.

Thank you, sir.

Mr. DANIELSON. Thank you.

Mr. Barnes of Maryland.

Mr. BARNES. Thank you, Mr. Chairman.

Mr. Secretary, I am very impressed by the testimony and it's extremely persuasive, particularly with respect to the examples you have cited in the health field.

One of the concerns that I have in looking at the amendments is that, although they will solve the problem you seek to solve, they may loosen some of the restrictions that Congress, I think, did in fact intend to place on other Government employees.

I'm thinking, for example, of the Defense Department employee who leaves and goes to a private contractor, and then uses his experience and influence in order to retain contracts or obtain contracts for his new employer.

Do you see any room for amendments that would accommodate the real concern you have and the problem you have outlined very effectively for us, but would keep in mind what Congress was trying to achieve in other areas?

Secretary CALIFANO. I haven't, Mr. Barnes, thought about that issue. I think Attorney General Bell would be much better, in the Justice Department, able to testify with respect to that than I would. I was very much focused on health and education. The problem in the education area is similar for those who sit at the top of the university structure, people like Commissioner Boyer or the head of the National Institute of Education, Patricia Graham, who sit at the top of the university structure and who inevitably will be going back to run the university again; or, like Mr. Champion, the financial vice president of the university, or the administrative vice president.

No major university in this country can function today without Federal funding, and they will inevitably be involved in that.

But I have not looked upon whether there is some way to deal with this and not deal with the problems that Under Secretary Duncan testified about.

Mr. BARNES. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you.

Mr. Moorhead of California. We're holding tight to the 5-minute rule minus about 2.

Mr. MOORHEAD. Well, I'm not going to take that long this morning.

I want to apologize for not being here during your testimony, but we have had some important testimony in another subcommittee on the Sohio project. Sorry to be late.

I am somewhat concerned that at the present time we don't want to place a lot of emphasis on where an individual who had not been in direct contact with a portion of perhaps the Department that he has been with, or who has not worked on legislation or a project, would still be barred from any kind of indirect involvement. In other words, I'm talking about section (c).

Secretary CALIFANO. Well, Mr. Moorhead, as I indicated, there may—our concern with section (c) goes to State and local employees and that problem, the principal investigator problem, is solved by this interpretation. But we meant, you know, it was healthy to have people go from HEW to State and local government, and vice versa.

However, our feeling was that we will—you know, that was a considered judgment by the Congress. This particular provision,

subsection (c), was there in the legislation and, unlike the section we're asking for the technical amendment on, we ought to let that go into effect for a while and see what happens, and if we have a problem and it's a substantive change, come up here and we'll recommend the change.

We will undoubtedly lose some people who want to go back to State and local government, just as the Department of Housing and Urban Development lost the fellow to Metro. But it's nothing compared to the exodus of excellent and specialized and intelligent researchers and education people at the top that we will lose if these technical amendments are not made.

Mr. MOORHEAD. There's no way you can compute the loss that the Government will sustain from not being able to get top people in the future who would otherwise come to work for the Government, were it not for the prohibition?

Secretary CALIFANO. No. I think it's a serious deterrent in those areas to recruiting individuals. There's no question about that. We have already felt it on one occasion with respect to an individual. But I think it will be a serious problem of recruiting in the future in the biomedical research area, more so than in the education area.

Mr. MOORHEAD. I know that whenever you change a law of this kind there is a perception by the public you're going to back down from a position you once had taken, and for that reason I wish the administration had come up with their argument and with their opposition to some of these rather ridiculous portions of this bill when we passed it 2 years ago, because you wouldn't have had that feeling by the public that we are backing down, had we passed a meaningful and realistic piece of legislation to begin with.

Secretary CALIFANO. But as I noted, Mr. Moorhead, this particular provision was not in the bill proposed by the administration. It was not in the bill reported out by this committee or passed by the House. This particular provision was not there and it was—

Mr. MOORHEAD. Well, 207 (a), (b), and (c) were all in the bill.

Secretary CALIFANO. Not the way they now are. Counsel can—it was not in the President's initial bill.

Mr. MOORHEAD. But it was passed out of this House.

Secretary CALIFANO. Yes.

Mr. MOORHEAD. And it was a recommendation of the administration, that they came to us saying it had been approved.

Secretary CALIFANO. Well, this provision was never brought to my attention or the attention of anyone in HEW in a position of responsibility that was aware of the problem in the biomedical research or education area.

Mr. MOORHEAD. Well, I want to thank you for coming up and testifying. I am being told by my chairman my time is up.

Mr. DANIELSON. Thank you very much, Mr. Moorhead.

Mr. Secretary, I have one question, and it may be in two parts: Will the amendments in the bill before us, coupled with the regulations which are now proposed, meet the bulk of your problem?

Secretary CALIFANO. Yes; they will, Mr. Chairman. I have gone over these. Indeed, to be absolutely sure, I went over one of these issues with one of our key people yesterday, and they will take care

of the problem of the biomedical research area and in the education area.

Mr. DANIELSON. On the State and local government feature, it is rather involved for inclusion in this bill, and I don't know if it's something that's necessary, but you did make a comment which I wish to endorse, that if we do need to look into that feature, we can do that subsequently, but meanwhile we can stop this jugular vein from bleeding, as in fact it is bleeding.

Secretary CALIFANO. Yes, sir.

Mr. DANIELSON. Thank you very much, Mr. Secretary. I appreciate your help.

We have two more witnesses and I beg the indulgence of everyone for your time. I want to call the Honorable Harold Williams, our next witness.

While he's coming forward, Congressman Bob Eckhardt from Texas would like to file a statement with us.

Mr. ECKHARDT. Just a very brief statement. I have about two sentences.

Mr. DANIELSON. OK, fine. Come forward, Mr. Williams, would you, please, and Mr. Eckhardt here will have his throat cleared by the time you are seated.

Proceed, sir.

TESTIMONY OF HON. BOB ECKHARDT, REPRESENTATIVE IN CONGRESS OF THE UNITED STATES FROM THE EIGHTH DISTRICT OF THE STATE OF TEXAS

Mr. ECKHARDT. Mr. Chairman, the Committee on Oversight Investigation of Interstate and Foreign Commerce plans to have a rather informal hearing, a roundtable of persons who come under the jurisdiction of commerce and who we hope will give us some information that may be useful to your committee. The participants will be the Commissioners from the Federal Trade Commission, Securities and Exchange Commission, the Consumer Products Safety Commission, the Federal Energy Regulatory Commission and the Food and Drug Administration, tomorrow. And what we would like to do, with your permission, is to ask if you might leave the record open for a summary by myself or by the subcommittee for your records subsequent to such discussion.

Mr. DANIELSON. Is there any objection? Will that be forthcoming rather soon?

Mr. ECKHARDT. It will, sir.

Mr. DANIELSON. Without objection, then, the record will be kept open for that purpose. [See page 64 for testimony and statement of Representative Eckhardt.]

Thank you very much for making your announcement. We're glad to know about it.

Mr. Williams, would you please come forward and bring with you whomever you wish.

I might state that I am most pleased to have Mr. Williams with us, a man whom I have known for more than 25 years, and with each year I have a greater respect for.

Mr. Williams, the floor is yours.

TESTIMONY OF HON. HAROLD M. WILLIAMS, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION, ACCOMPANIED BY RALPH C. FERRARA, GENERAL COUNSEL, SEC

Mr. WILLIAMS. Thank you, Mr. Chairman.

I have with me this afternoon Ralph Ferrara, who is General Counsel of the Securities and Exchange Commission.

I appreciate the opportunity to testify before this subcommittee concerning the serious problems the Securities and Exchange Commission is experiencing with the postemployment provisions of the Ethics in Government Act of 1978.

From the outset of the public debate on the Ethics Act, the Commission has strongly supported the public policy goals implicit in the legislation. Indeed, in recent years, the SEC has been in the forefront of efforts to proscribe unethical conduct.

Our own stringent conduct regulations contain both financial disclosure rules and postemployment restrictions, and apply to all present and former Commission members and employees. They are broadly construed and vigorously enforced. Fulfilling our commitment to ethical conduct, both in the private sector and in the Government, has been and will continue to be a priority objective of our agency.

It is in this spirit that I appear before you today. I firmly believe that unless the postemployment provisions of the Ethics in Government Act of 1978 are clarified and amended, talented Government employees will be unnecessarily caused to leave public service and the ability of Government to persuade talented individuals in the private sector to accept Government service in the future will be significantly impaired. This hardship will fall with a particularly heavy hand on the Commission. I believe the act can be amended to moderate this impact without adversely impacting the substantive proscriptions or intent of the act.

The Commission's primary concern is with the postgovernment employment restrictions introduced by subsections 270(b)(ii) and 207(c) of title V of the act. The major problem arises from the 1-year absolute bar from any appearance before, or communication to, the Commission by former members or certain high-level employees. That provision also proscribes contact with the Commission where the matter is pending in the courts and elsewhere outside the agency, but where the Commission has a "direct and substantial interest" in it.

In view of the nature of the Commission's responsibilities with respect to the activities of the business and financial community, it would be very difficult for a senior official to obtain employment anywhere in the private sector pursuing his expertise in the securities laws which would not involve coming into contact with the agency at some point. The 1-year ban could, as a practical matter, preclude former Commission members and senior employees who wish to leave after the effective date of this provision from effectively pursuing their careers for a period of 1 year. By contrast, we recognize that the impact at some other Government agencies or departments, which deal only with a narrow segment of private industry, or only with the public at large, could be relatively slight.

We believe that the unique nature of the Commission's responsibilities and staff make the impact of the post-Government employ-

ment restrictions particularly troublesome. As you may be aware, this agency has traditionally drawn upon the private sector to obtain qualified personnel. A very high proportion of our staff are professionals, particularly lawyers and accountants. By offering challenging professional experiences to recent graduates and the opportunity for a meaningful change of career to persons closer to their middle years, we have been able to attract highly qualified individuals, many of whom, based on our experience, have served this agency and the public interest with extraordinary dedication and distinction.

Many of those persons do not remain with the Commission for their entire working lives. In their subsequent private careers, they retain a respect and understanding for this agency and its purposes which ease our task of communicating our views to the private sector and implementing our laws and regulations.

Thus, we are concerned about anything that impacts upon our ability to attract top graduates or other professionals. Although we greatly appreciate the efforts of our career professionals, without whom this agency literally could not function, we believe that the conversion of the Commission to an "all career" or even substantially "all career" staff would decrease the effectiveness of our agency and our regulatory efforts. Similarly, it could result in serious "inbreeding" which, in turn, could isolate the agency from the realities and the very practical problems which must be faced on a day-to-day basis and which we are expected to understand, oversee and regulate effectively.

Not only do we anticipate difficulty in attracting persons in the private sector who may otherwise have been willing to enter our agency at mid and upper management levels, but we also have been advised by some persons already in middle management grades that they will consider leaving the agency rather than being promoted into positions to be covered by the postemployment provisions.

In that regard, recruiting for at least one high-level position—that of Deputy Chief Accountant to the Commission—has been quite difficult as a consequence of the 1-year ban, and one promising Assistant Division Director, after about 8 years on the Commission's staff, resigned rather than seek further opportunities in Government which might entail postemployment restrictions under the act.

Finally, and of greatest concern, is the impact the act has already had on senior employees on the Commission's staff. A top-ranking official of one of the Commission's five operating divisions resigned prior to January 1, 1979, due to the financial disclosures required by title II of the act. Three other high-ranking Commission staff members have resigned since September 1978, in some measure due to the more stringent post-Government employment restrictions—primarily the 1-year bar in subsection (c).

They are, respectively, the General Counsel, the Administrator of the Commission's Los Angeles regional office, one of nine regional offices, and the Director of the Division of Corporate Finance, another of the Commission's five operating divisions. Each of those persons had served on the Commission's staff from almost 10 to 20 years.

In addition, we are aware that some 10 to 12 other senior Commission officials and long-time members of the Commission's staff—both in the headquarters office and in our regional offices, including at least one other Division Director and one Regional Administrator—have expressed deep concern about the impact of the 1-year bar on their future careers. A number of those persons are giving serious consideration to whether they should leave the Commission prior to the effectiveness of the postemployment restrictions, and several are actively in the job market.

In an agency with only about 45 supergrade positions, even limited losses as a result of the act will have a noticeable impact on our ability to discharge the responsibilities with which Congress has charged us.

We believe that these events are cause for concern and need to be promptly and effectively dealt with if we are not to risk seeing our agency transformed in character over time as its ability to attract and retain creative and dynamic talent is seriously diminished. Unfortunately, the administration's proposals for reform and the interim regulations adopted today by the Office of Government in Ethics—while constructive—fail to address the primary cause for concern at the Commission. As we understand them, H.R. 3325 and the new regulations would effect the following changes or clarifications:

Those who have participated personally and substantially as senior agency employees in particular matters will be permitted, upon leaving public service, to aid and assist others with an interest in those matters. The only remaining proscription, as we understand it, will be that they not do so by personal presence at any formal or informal appearance before the agency. Moreover, after 2 years, those former senior officials will be permitted to aid and assist in matters in which they were substantially involved even by personal presence, so long as they do not appear in a representational capacity.

While the Commission does not object to this amendment, attorneys, the substantial majority of Commission senior officials affected by section 207, would nonetheless be precluded by bar association ethical rules from engaging in the conduct permitted by the statute. Accordingly, the proposed amendment neither speaks to an area of concern to the Commission nor provides relief from the problems we are experiencing.

H.R. 3325 would also permit agency employees who had particular matters pending under their official responsibility, upon leaving public service, to aid and assist others with an interest in those matters. As we interpret the proposal, those former employees would be permitted to aid and assist even by personal appearance immediately upon leaving their Government jobs.

The Commission does not object to this amendment, and most Commission attorneys would not be prohibited by bar association ethical rules from engaging in the conduct which the amendment would permit. However, not only do the Commission's own conduct rules preclude such conduct, but the Commission's rules impute an individual attorney's disqualification to the entire law firm with which he or she is associated. Although waivers are routinely given from the disqualification imputed to the firm, they are only grant-

ed upon an assurance that the former employee will not aid and assist his colleagues.

Accordingly, this provision of H.R. 3325 does not reach the Commission's primary concern with section 207.

Finally, the interim regulations adopted today by the Office of Government Ethics are very constructive and serve to clarify somewhat the scope and effect of section 207.

For example, these regulations suggest that only a narrow class of senior employees will be designated as subject to the proscriptions of subsections (b)(ii) and (c). Moreover, the regulation would give those so designated until October 1, 1979, to make their final employment decisions. Unfortunately, since the regulations provide for large-scale designations of senior employees but offer the possibility of retroactive exemption for many, individuals will still labor under considerable uncertainty until action is taken on particular exemptive requests.

Further, the examples of the types of individuals who may be exempted are all of a staff rather than line responsibility, of which this agency has very few. To whomever they will apply, however, the regulations cannot provide specific substantive relief from the broad proscription of subsection 207(c)—the 1-year ban. All in all, therefore, the regulations do not adequately address the cause for our principal concern.

Subsection 207(c) was intended, we believe, to respond to a public perception that improper suasion necessarily results from contacts between a Government agency and its former employees. However, it not only prohibits those contacts with an agency which might give rise to some legitimate concern, but also bars contact even where the potential for the exertion of influence is very limited, or indeed, is virtually nonexistent.

For example, the provision as enacted prohibits involve-in matters not only before the Commission, but also in matters pending outside the agency in which the Commission has a substantial interest. Likewise, the act does not distinguish between private appearances and nonpublic communications, on the one hand, and appearances or communications that are made a matter of public record, on the other.

The 1-year bar fails to distinguish that, for example, the opportunity for the use of improper influence is negligible where a decision is rendered by an impartial jurist or where a communication with, or an appearance before, an agency is made a matter of public record. That distinction suggests a solution which would leave unimpaired the substantive and salutary public policy purposes of subsection 207(c) but avoid unnecessarily impacting a competing public policy interest by depleting the senior personnel resources of independent agencies such as the Securities and Exchange Commission.

Administration representatives indicate that they do not perceive subsection 207(c)'s 1-year ban as a serious problem for senior officials serving in executive departments and agencies. Moreover, we understand that the administration believes that remedying perceived abuses and enhancing the public's confidence in the integrity of Government outweigh any residual adverse impact the 1-

1-year ban may have on recruiting or maintaining senior officials in the executive branch.

We believe that individual abuses, both real and perceived, can be remedied and public confidence maintained by means more closely tailored and less drastic than those provided by 207(c) which would be applicable only to independent regulatory agencies. To this end, we are proposing a simple and straightforward amendment to 207(c). It provides that:

Subsection (c) of this section shall not apply to any formal or informal appearance before, or any oral or written communication to, any independent agency of the United States, provided that the appearance or communication is made a matter of public record.

This amendment, we believe, speaks directly to the problem of the Commission and other independent agencies, while preserving for the executive branch the prerogative to effect the policies that it believes most appropriate to its mission. Also, those independent agencies who choose to have self-imposed restrictions more rigorous than those required by the statute can do so—just as the SEC has done with respect to those former officials who seek to aid and assist others on matters formerly coming within their official responsibility.

The unfortunate impact of the 1-year bar on the Commission is not due to an unwillingness on the part of affected persons to subject themselves to appropriate ethical restraints, but rather because of a justifiable concern that, under the subsection, their ability to earn a livelihood in their chosen profession upon leaving the Government will be inordinately curtailed.

While we support fully the objectives of the Ethics Act, we question whether the present proscription imposed by section 207(c) appropriately consider the broader public interest in effective government that we are responsible to serve.

We believe the amendment we offer today strikes the proper balance between the public's legitimate expectation of honest government and an independent agency's need to attract and retain top quality personnel to administer its responsibilities. The law and regulations would fully protect the public against the fact of impropriety, and, by exposing postemployment contacts to sunshine, should serve to eliminate the appearance of impropriety and favoritism as well without diminishing our ability to serve. We would appreciate your consideration of our request.

I am authorized here to indicate to you this morning, Mr. Chairman, that personal support for the underlying intent and thrust of the amendment proposed does come from, I believe, Chairman Curtis, who I believe will be testifying before you today, of the Federal Energy Regulatory Commission; by Chairman SeEVERS, Acting Chairman, CFTC; by Chairman O'NEAL, Chairman of the ICC; and by the full NLRB and its independent General Counsel.

We would appreciate your consideration on our request.

Mr. DANIELSON. Thank you very much, Chairman Williams, for your presentation. It's certainly well thought out and well presented.

Your objections are several to the situation, but it seems to me the main thrust is subsection (c), the 1-year ban.

Mr. WILLIAMS. That's right, sir.

Mr. DANIELSON. And if I understand your statement correctly, your suggestion would be that we could cure this by simply providing that subsection (c) does not pose a ban so long as it's a matter of public record.

Mr. WILLIAMS. On the independent agencies.

Mr. DANIELSON. So that disclosure would be the remedy for any hazard that may exist within the communication. In other words, public disclosure having its own curative effect.

Mr. WILLIAMS. It's a discipline with which the Commission is quite familiar and which we believe works very effectively.

Mr. DANIELSON. As a matter of fact, it's a discipline you apply within your own matters within your jurisdiction, is not that correct?

Mr. WILLIAMS. That's correct.

Mr. DANIELSON. Disclosure. That, of course, is the theory behind the title II of the bill. You lost one of your key people who felt the financial disclosure was an invasion of the right of privacy, which I fully understand and tend to agree with.

Mr. WILLIAMS. I do too, sir. But that's beyond today's—

Mr. DANIELSON. We are now caught up in a situation where that seems to be the popular perception of how to run Government. We lost several very fine Members of the Congress last year who just did not choose to go through that particular bath. Being of humble means, the only problem that it poses for me is embarrassment. [Laughter.]

But you only have 45 people in the supergrade category.

Mr. WILLIAMS. That's right.

Mr. DANIELSON. Have you lost any of them, except for the financial disclosure person? Have you lost any of them so far?

Mr. WILLIAMS. We have had three of our senior people leave who attribute their reason for leaving, or certainly at least a reason for the timing, you might say, who attribute the pending bill as a major reason.

Mr. DANIELSON. And do you have any more who are at least indicating that they may leave before the 1st of July?

Mr. WILLIAMS. I have two more who I know to be actively in the market and who are very concerned.

Mr. DANIELSON. You did mention three or four people in your statement.

Mr. WILLIAMS. That's right.

Mr. DANIELSON. So you are talking about maybe seven or eight of the top-level group, assuming that these who have given you an indication do leave.

Mr. WILLIAMS. I have not polled my staff. I don't want to add to the anxiety, but that is a very conceivable number.

Mr. DANIELSON. If you don't alert them to it, they may not go.

Out of 45, you're talking about a fairly substantial fraction.

Mr. WILLIAMS. Yes, sir. I am more concerned, Mr. Chairman, with the very texture of the agency. When I came to the Commission, incidentally, with a personal commitment to the President that equals anything that's in the bill, so I'll have nothing to gain by modification of the bill. I was impressed that the SEC had been designated by the Oversight Subcommittee of the House as the most effective regulatory agency in the Federal Government.

My sense from my own background and very clear view of the agency is that that's a factor of people and the environment in which they work, and my very real concern at this point is that the impact of this legislation may very well be to adversely impact that dynamic—the quality of people able to attract and keep—and the whole fiber of that agency.

Mr. DANIELSON. Sir, in your Commission—I'm talking now about those people who reach policy level—what percentage of them come up through the ranks, starting off as a clerk, you know, the file room, and going on up; and what percentage comes in already having some accomplishment in the field of securities?

Mr. WILLIAMS. That would be a very rough cut at that. I would say of those who are now at that senior level, I would expect that a third of those came in from the outside with some substantial private sector experience.

Mr. DANIELSON. You have a very technical field. I don't imagine the Horatio Alger tradition, starting as office boy and going up to the top, is found too often in the SEC; is it?

Mr. WILLIAMS. We have the five key divisions of the Commission. I think three of those are now headed by people who came in essentially right out of school, and two by individuals who had rather extensive private sector experience.

Mr. DANIELSON. For recruitment, do you have to draw upon the established field of people who are knowledgeable in this subject?

Mr. WILLIAMS. For people who come to the Commission other than as fresh law school graduates, yes.

Mr. DANIELSON. What is the length of time that they would serve, normally? Do they make a career of it or do they come in for a few years and then leave?

Mr. WILLIAMS. A number of them will come in for a few years and then leave. If I were just to go around the horn at this point, in our Division of Market Regulation, the four senior people, I believe two—one is career, and the others are probably not career. But of those—of all of those, two of them came in essentially fresh out of school, and that's rather typical.

Mr. DANIELSON. Thank you.

To recap, because Mr. Moorhead and Mr. Harris were unable to be here. We're trying to get the Sohio pipeline for California. You know, we have several hearings going here at the same time.

But Commissioner Williams pointed out—and you can correct me, please, Mr. Williams, if I err—he pointed out that the amendments to the bill really do not solve the problems that confront his agency; that, so far as the amendments to be are concerned, most of these are already covered within his own agency regulations; that a person can't come back and represent someone other than a Government after leaving his agency; and to some extent they're governed by bar association rules of ethics anyway. But the one that bothers you most is the subsection (c).

Mr. WILLIAMS. That's right.

Mr. DANIELSON. Your people being specialists, when they leave Government, they very nearly have to stay in the field of securities. They can't get into the divorce or probate, et cetera, field. It's securities and the (c) imposes a burden.

Your recommendation was that an amendment should be that (c) would not—the restrictions of (c) would not apply, provided that the communication would be public or made a matter of public record by the agency. That in a sense was the point.

Mr. WILLIAMS. That our proposed amendment to (c) would be that it applies only to independent agencies and that only in circumstances in which the appearance is a matter of public record.

Mr. DANIELSON. To what? To only SEC?

Mr. WILLIAMS. No, to independent agencies.

Mr. DANIELSON. All right. Now I yield to the gentleman from Virginia. I recapped only to bring Mr. Harris up to date.

Mr. HARRIS. Thank you, Mr. Chairman.

What is the past history of the SEC with regard to the groups you spoke to? You made a reference to the fact that you thought about four were leaving and possibly three or four more.

Mr. WILLIAMS. That's right, sir.

Mr. HARRIS. But how does that compare to past years?

Mr. WILLIAMS. The Commission has always experienced a fairly significant amount of turnover.

Mr. HARRIS. That was my recollection.

Mr. WILLIAMS. And we do encourage it. That's, in my judgment, a very important part of the vibrant, dynamic fiber of the agency.

Mr. HARRIS. I want to know how it compares with past years.

Mr. WILLIAMS. I can't quantify it for you at the moment except to say that the recent losses have been attributed by individuals at least in significant part to the pending legislation.

Mr. HARRIS. I presume, for example, that if you got over this period, that the tendency would be not as many people leaving. Your turnover rate would be down, I take it, from your previous comments. This is not necessarily a good thing as far as you are concerned.

Mr. WILLIAMS. That's right.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. DANIELSON. Mr. Moorhead?

Mr. MOORHEAD. Thank you. I would like to ask the general counsel if you had an opportunity to see H.R. 2119?

Mr. FERRARA. Is that the bill that was originally passed?

Mr. MOORHEAD. Yes.

Mr. FERRARA. I have only the assertion as to little (i) and the 6-month extension, but I have not seen the bill.

Mr. MOORHEAD. No, no. That would take care of (c).

Mr. FERRARA. I have not seen that.

Mr. MOORHEAD. I would like to ask you to take a look at that bill and to give the committee a written communication as to whether it would meet the Commission's needs insofar as the changes concerned.

When we considered this matter in the last Congress, SEC urged that provision be included to permit waiver. Do you still view this as a possible solution?

Mr. WILLIAMS. From the Commission's standpoint, it still obviously would be a satisfactory solution. It clearly was not one that was perceived, and in the interest of recognizing the philosophy and in principle the importance of the ethics legislation, we come up with our proposal today, which is somewhat different.

Mr. MOORHEAD. Well, you have already testified about the numbers of people in your agency you might lose through the revolving door restrictions. I just wonder how many of those are dependent on a change in section (c). Would any of them be taken care of?

Mr. WILLIAMS. I'm confident in terms of individuals who are now deliberating the future, that the type of proposal that we offer as an amendment to subsection (c) would take care of their concerns.

Mr. MOORHEAD. Well, I want to commend the agency for coming up and your argument. Last year, when it was more important, when we were considering the legislation to begin with, you obviously were more farsighted than other agencies.

Mr. FERRARA. Mr. Moorhead, I have now a copy in front of me of H.R. 2119 and I am familiar with the bill, and I was not familiar with the number.

As I understand, it would delete subsection (c) from section 207 altogether. I believe your question was, would H.R. 2119, if enacted, cure the SEC's problems with existing legislation. It would.

I might add that H.R. 2119, of course, goes further even than the recommendation that we are making today.

Mr. MOORHEAD. In other words, what amendment do you recommend?

Mr. FERRARA. I think the amendment we recommended today in Chairman Williams' testimony would do it. That's subject to the philosophical predicate of sunshine and full disclosure for the apparent philosophical predicate of an absolute bar.

Mr. MOORHEAD. Thank you very much.

Mr. WILLIAMS. Might I add one or two comments, Mr. Chairman?

Mr. DANIELSON. Surely.

Mr. WILLIAMS. Earlier in the questions presented to the witnesses who testified before me, there seemed to be——

Mr. DANIELSON. Secretary Califano?

Mr. WILLIAMS. I believe it was in particular relation to Secretary Califano. There was an indication that one of the virtues of this legislation would be that it would get rid of some deadwood. I might suggest that it might have just the reverse effect, to the extent that mobility into Government and out of Government is constrained beyond that essential to convincing the public that we are indeed ethical in Government; that the impact would be greatest on those who are least marketable, and therefore the impact over time in reducing that mobility would work to perpetuate within the bureaucracy, if you will, the kind of people that are not entirely—there are some awfully good people in the agency and in the Government who will stay in any event, and some who would come in any event, but the mobility, the attractiveness, the willingness to come and the ability to leave would be severely impaired.

Mr. DANIELSON. I think what you're saying, if I may just try to state it in other words, to be sure I'm not misunderstanding, is that the probabilities are that those who would leave the Government before July 1, facing the impact of this bill, if the law is not changed, would more probably be those who would find an attractive position outside of the Government, rather than those who would be hard put to find a position outside of the Government.

Mr. WILLIAMS. That's right.

Mr. DANIELSON. The gentleman from Virginia.

Mr. HARRIS. I was just going to ask, Mr. Chairman, if I may, if they could provide the record with the turnover figures. That would give us a measurement of the increase in turnover this year as compared to last year.

Mr. WILLIAMS. Yes, we'd like to.

Mr. DANIELSON. Thank you very much, Commissioner. You have been very helpful. You have certainly raised—I had a hunch we'd find the point that hurts the most is (c).

Mr. WILLIAMS. It's (c).

Mr. DANIELSON. Thank you very much for bringing it into focus. I don't know what we're going to do with it, but we're aware of it. Thank you.

We have one more witness this morning: the Chairman of the Federal Energy Regulatory Commission, the Honorable Charles Curtis.

Mr. Williams, you have had someone with you. For the record, who was he?

Mr. WILLIAMS. Ralph Ferrara, General Counsel of the Commission.

TESTIMONY OF CHARLES B. CURTIS, CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION, ACCOMPANIED BY ROSS D. AIN, ASSOCIATE GENERAL COUNSEL, FERC

Mr. DANIELSON. Mr. Curtis, you are recognized. If you would like to file your statement with us, you may. Then you can proceed as though you were arguing this.

Mr. CURTIS. Thank you, Mr. Chairman. I most certainly appreciate the opportunity and your personal courtesy in sitting through what is already a long hearing.

I will, of course, submit my written statement and ask that it be printed in the record as if given.

Mr. DANIELSON. Without objection, it is admitted and received in the record.

[The complete statement follows:]

STATEMENT OF CHAIRMAN CHARLES B. CURTIS, FEDERAL ENERGY REGULATORY COMMISSION

Mr. Chairman, Members of the Subcommittee, my name is Charles B. Curtis. I am Chairman of the Federal Energy Regulatory Commission, a five-member independent regulatory agency within the Department of Energy. This Commission is generally responsible for the administration of several regulatory programs which impact directly and indirectly on virtually every aspect of the natural gas industry, the transmission and sale of electric energy, the interstate transportation of crude oil and petroleum products, and licensing hydroelectric installations. Our jurisdictional assignment is extremely broad; the people of this Nation have a substantial stake in our doing our job effectively and sensibly.

The Federal establishment has a critical need for technical and managerial talent, and for decision makers who have the knowledge and breadth of experience necessary to supervise the career civil service employees who, for the most part, compose Federal agencies. That need is particularly acute in our agency.

The people of this Nation have every right to expect and demand that the laws enacted for their benefit are administered effectively. They also have every right to insist upon the integrity of governmental processes and that their servants observe high and unquestionable ethical standards. Unfortunately, the public has not perceived that either of its rightful demands have been fulfilled by its government, at least at the Federal level.

Enactment of the Ethics in Government Act of 1978 was directed at the latter of these two perceived deficiencies in the workings of government. I believe all would concede that the Act embodies a strong ethical code governing post employment

conduct of senior level officials. It should go far in restoring public confidence in the fair and impartial administration of governmental activities. But the question is whether—by in our efforts to restore confidence in the integrity of government, we have impaired our ability to respond to the public's demand for an effective and better managed Federal establishment. It is my view that we have.

In this, as in so many other aspects of social and governmental relationships, balance is important. What is important to recognize is that there are trade-offs here. Many top level Federal officers and employees come to a Federal agency from outside the government. Generally, they serve for a limited term or at the pleasure of the agency head or the President. They do not intend, nor could they reasonably expect, to make a career in Federal service. It is fundamentally important, therefore, if we are to be able to convince senior, highly qualified individuals to contribute their talents to government that we preserve a reasonable opportunity that they will be able to continue to pursue their profession after they leave government. Moreover, it is equally important if we are to retain talented and experienced individuals in the Federal service, that we preserve a career option for them. Unless this is done, it is my firm belief, we are doomed to develop an inbred bureaucracy which will grow aloof from the people, ignorant of the practical and real world implications of its actions and ill-disposed to new ideas and self-criticism.

From all of this I am compelled to conclude that to close the "revolving door" firmly would deprive government of its lifeblood. Indeed, the appointive process and our system of government contemplate its use;—to be able to effectively manage the affairs of government requires that the door remain open.

I make this point not out of any desire to be labeled a heretic. Rather, it is because I believe that we must keep clearly in mind that with which we are dealing. The improper use of prior governmental position and the appearance or occurrence of undue influence being exercised over former colleagues must be protected against; the integrity of governmental processes must be assured. But that does not mean that the flow of talented individuals into and back out of government service must be stopped.

It is the label that I object to. And I am well aware that labels are important to the legislative process and to the public's perception of that which is being done. I raise this point because I think it would be extremely unfortunate if the Congress failed to correct the Ethics in Government Act to preclude it from having an unintended effect for fear that its actions would be labeled as a "softening" of ethical standards. Moreover, if the Congress were to conclude that substantive amendment was required in order to guard against a drain of talent from Federal service, I would hope that its actions would be perceived as a vote for better and more effective government, not as a "retreat" from insisting on high standards of conduct for Federal employees. As a participant and intimate observer of the workings of the Congress over the last ten years, I must confess that I have grown increasingly concerned with the strategic importance that attaches to the "buzz-words" used to describe legislative initiatives.

All of this is a somewhat lengthy prologue to the question at hand. Let me then turn to my specific concerns with the post-employment restrictions on the activities of former governmental officials and employees which were embodied in Title V of the Ethics in Government Act. My primary concern is with the restrictions introduced by Subsection (b)(ii). This is the so-called "aiding and assisting and representing" provision.

Here my comments can be brief. The Subcommittee has already heard from previous witnesses the difficulties with the legislative text. I can only add that this provision has concerned my colleagues on the Commission, current Commission employees and future candidates for appointment. Apparently, this all results from a drafting problem which the joint memorandum of Chairman Danielson, Congressman Moorhead, Chairman Ribicoff and Senator Percy points out. It requires legislative modification. The administration suggested amendments with a further technical change would appear to deal effectively with the problem and I commend those amendments to the Subcommittee for its favorable consideration. I would also ask the Subcommittee to act as expeditiously as practicable to effect this legislative change and to cloak its actions with a well considered and fully articulated legislative history.

The Congress must, of course, satisfy itself that the statute, as amended, reaches the intended result. If that cannot be accomplished within a relatively short time or if the Subcommittee wishes to consider more broadly targeted amendments to the statute, I would urge you to consider postponing the effective date from July 1 to some later time to allow conclusion of the legislative process. I would urge you to understand that time is of the essence, at least for executive level employees.

I hope my urgings for expeditious action, however, do not dissuade you from giving thoughtful consideration to the recommendations of the Securities and Exchange Commission with respect to Section 207(c). I should point out that our Commission and its supervisory employees are already subject to a similar, although somewhat differently worded, statutory one year bar. This appears in Section 605(a)(1) of the Department of Energy Organization Act. It is my personal view that the absolute bar is unnecessarily broad in its application to middle management employees. I find the recommendations of the SEC, therefore, to be both sensible and entirely in keeping with the objectives of the legislation. An absolute bar for Presidential appointees or perhaps even all executive level employees may be appropriate. These individuals may be presumed to have unusual or significant influence with their former colleagues or lower echelon employees. But I doubt that a GS-16, 17 or even 18 carries or may fairly be presumed to carry that much sway with their former co-employees with respect to matters which were not within their areas of official responsibility or with respect to matters with which they had no personal or substantial involvement. In these latter cases, it seems to me that so long as a public record of any communication or appearance is kept the integrity of the process can be adequately safeguarded.

Mr. Chairman, that concludes my remarks. Let me express my deep appreciation for your permitting me the opportunity to appear today. I shall, of course, be happy to respond to any questions.

Mr. CURTIS. However compelling I might feel the arguments presented to be in the form in which they are made, I think I can briefly summarize it, and the summary is rooted in your opening statement, Mr. Chairman.

The important thing to recognize is that we are dealing with tradeoffs here. The public has every right to expect and demand effective and good management of the Federal establishment. The public has an equal right to insist upon a fair administration of the law and the integrity of the governmental processes.

Unfortunately, the public has not perceived that either of its rightful demands are being met. The Ethics in Government Act was addressed to the latter of these two working deficiencies in Government. I believe people will generally concede the legislation was required and that it will go a long way to restoring public confidence in the integrity of governmental processes.

The question, however, is whether in our efforts to insure that integrity, we may have impaired the ability of Government to effectively carry out its responsibilities. In my opinion, section 207 as presently embodied in title V of the Ethics in Government Act does seriously impair our ability to call upon the talents and experience which Governments needs in high levels of management to have any opportunity to effectively carry out the responsibilities in the public's behalf.

The legislation which is submitted by the administration, I understand, is designed to conform the legislation more exactly to the intent of the Congress as it drafted and enacted this particular proposal. It is a technical fix which I heartily commend to the committee for its favorable consideration.

I would emphasize that it is important that the committee act promptly and make the fix as soon as is conceivable, within the practical considerations which confront you.

There have been a number of questions raised concerning the effect that the legislation is already having on Government. I would point out that managers in Government have gone to considerable lengths to try to convince people to stay. The promise has been held up that the implementing regulations will answer most

of their questions. Those implementing regulations are today available. Yesterday, they were not available.

Many governmental employees affected by this legislation have adopted a wait and see attitude. I believe they are earnestly and steadfastly committed to governmental service. They do not want to leave. But in many cases, they do not believe that they have the latitude to deny themselves and their families the career option to seek gainful employment in private life. I think the option is a very essential one to preserve. I think the option existing today is fundamentally important to our ability to recruit talent into the high levels of Government.

So, in short, the people that are still here are here because there has been a promise, a promise that the implementing regulations will deal effectively with the problems raised in the legislation and that the Congress will consider a fix of the drafting deficiencies that are embodied in the current statutory text.

If the fix is not made, I for one believe that we will suffer the type of talent drain that others have spoken to. It is almost impossible to give you certitude in this respect. We can only give you our best judgment. Judging from discussion with, in my case with colleagues on the Commission and with the employees affected by the legislation, like the SEC, we are a small Agency. Unlike the SEC, the Agency which I assumed the Chairmanship of derives from the Federal Power Commission, which was held in rather low regard in public perception of its competency in the engagement of its mission. I have to bring in talent to that Agency to manage it, to turn the processes around to conform them to the current needs of the 1970's in the important areas of energy delivery and supply.

I think the public has a great stake in the effectiveness of our action and in the success of this endeavor.

One last point I would like to make, Mr. Chairman, and that is, the Congress must be fully satisfied that the fix is in fact a fix that works and that the legislation as conformed comports fully with legislative purpose and intent. I think therefore it is critically important, as you work on this legislation, that a well detailed and fully articulated legislative history is constructed and attached to this legislation, so that room for doubt and uncertainty in the administration of a criminal statute does not exist. It is critically important that that uncertainty not exist if we are to be able to fairly administer this requirement.

In this regard, I would urge you that if your deliberations suggest that the legislative correction process cannot be concluded expeditiously, that you will consider an extension of the effective date. We cannot afford, in my opinion, legislation at the stroke of midnight, because career decisions will be made in advance of that, and the Government, I believe, will suffer an irreparable loss if those career decisions are precipitated in advance of your legislative intention.

I would also commend to your consideration the recommendation made by the Securities and Exchange Commission. I view it as essentially this: That while restrictions such as contained in 207(c) for an absolute 1-year bar may be appropriate for Presidential appointees and perhaps even the executive-level appointees who by their position may be presumed to have unusual influence with

their colleagues, or with lower-echelon employees which they previously supervised, I do not think that that same assumption or appearance of impropriety fairly attaches to the middle management levels, and I would suggest that we must keep in mind with respect to subsection (c), we are not talking about matters within their official responsibility. We are not talking about matters with respect to which these individuals had substantial and personal involvement.

They are the proscriptions that subsection (a) and subsection (b) would override. I do not believe that, at least for middle management people, provided it is a matter not within their area of official responsibility, and provided it is a matter with respect to which they had no substantial personal involvement, that an appearance of conflict or an actual conflict obtains.

To guard against this, I think it is a prudent suggestion that we assure that during the 1-year period with respect to these individuals any oral or written communication is reduced to a record and made publicly available, as of course would be required with respect to appearance before the agency. But I think through public record scrutiny, we may assure ourselves that the matter truly was not within the area of official responsibility, was truly not a matter in which the person was substantially and personally involved, and in that case, Mr. Chairman, I would suggest that the public's demand for assuring the integrity of the process is well preserved.

In short, I think the Securities and Exchange proposal which I endorse comports with the intent of the Congress, which is consistent with the congressional purpose and yet answers a very significant problem which I believe is genuinely held by the agency and its employees.

In this last respect, I might add just one addendum: If that change is made, the Federal Energy Regulatory Commission and its employees are not benefited, because we have a similar restriction existing in our generic act—through the Department of Energy Organization Act. So change would be required there, also.

But it is a change I believe helpful and one totally consistent with your objectives.

With that, Mr. Chairman, I thank you for your patience.

Mr. DANIELSON. Mr. Harris?

Mr. HARRIS. Thank you, Mr. Chairman.

My compliments. You memorized your statement very well.

I understand your main thrust is that you feel the general inclusion of appointive positions does not give you so much a problem as the general inclusion of competitive positions, is that correct?

Mr. CURTIS. Yes. I think that—and I'm speaking now only with respect to subsection (c), the 1-year ban, even with respect to matters within areas of official responsibility or personal or substantial involvement, I think middleman levels do not have the type of clout or presumed clout that the subsection is attempting to get at.

Mr. HARRIS. That observation may be particularly relevant, because I'm sure the committee will recall my attempted amendment to the bill last year that would allow flexibility as to which positions to designate or which not, with regard to the competitive service. And I think this may be one of the mistakes we did make. This was just trying too broad a sweep in all competitive services,

because we do run into those positions that don't really serve the purpose by having this inclusion.

I'm going to ask you, though, as a representative of the FERC whether you see a compelling need for this type of legislation and perhaps even these prohibitions as they apply to the Commissioners themselves?

Mr. CURTIS. I do feel that there is a compelling need to insure people, the general public, of our integrity, particularly so in energy regulatory matters, where public distrust is deep and pervasive.

Mr. HARRIS. Thank you, Mr. Chairman. That was a good answer.

Mr. DANIELSON. The bill, sir, would not—the bill as now drafted would not meet all of your concerns, then, I gather; the amendments in the bill that we have before us?

Mr. CURTIS. Mr. Chairman, I think that the amendments in the bill introduced by Chairman Rodino and suggested by the administration, with one minor technical change, of which your staff is familiar, would address the problems that I have and our agency has with the legislation. I believe, in addition to that, the committee should favorably consider the recommendations of the Securities and Exchange Commission. But I was just pointing out that, even if you do favorably consider and act upon these, that doesn't help the Commission out of the box, because we have the same restriction in the Department of Energy Organization Act. I would also recommend change of that.

Mr. DANIELSON. Right. You have lodged with the committee, you say, your proposed suggestion?

Mr. CURTIS. Yes, sir. There's a minor technical change in paragraph 3 of subsection (b).

Mr. DANIELSON. In addition to that, the impact of subsection (c) does not bother you too much, is that correct, in your agency?

Mr. CURTIS. It is something that I could not give the committee an honest measure of impact in our agency, primarily because it was contained in the Department of Energy Organization Act and I arrived too late to conduct exit interviews for people who may have left in anticipation of the provision in the creation of the Department of Energy Organization Act. But I would point out one thing: That all statistics are to be distrusted. But the Federal Power Commission, in the 6 months which preceded the organization of the Department of Energy, within which it was to be incorporated, suffered an attrition rate of in excess of 20 percent, which is roughly twice the average attrition rate of the Government overall.

Now, I did not conduct exit interviews in how important the restrictions were to the employment decisions, so I could not say. I'm sure many other things were involved.

Mr. DANIELSON. Do you have any other questions, Mr. Harris?

Mr. HARRIS. I have none.

Mr. DANIELSON. Thank you. And you're excused.

There will be at least one other session of the subcommittee with respect to this subject matter. At this moment I can't state when it will be, but it will be noticed in the ordinary, routine manner.

Thank you very much for your help, all of you. We are adjourned.

[Whereupon, at 1:05 p.m., the meeting was adjourned.]

RESTRICTIONS ON POSTEMPLOYMENT ACTIVITY OF FORMER FEDERAL OFFICERS AND EMPLOYEES

FRIDAY, APRIL 6, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:45 a.m., in room 2141, Rayburn House Office Building, the Hon. George E. Danielson (chairman of the subcommittee) presiding.

Present: Representatives Danielson, Mazzoli, Harris, McClory, Moorhead, and Kindness.

Staff present: William P. Shattuck, counsel; James H. Lauer, Jr., and Janet S. Potts, assistant counsel; Alan F. Coffey, Jr. associate counsel; and Florence McGrady, clerk.

Mr. DANIELSON. The hearing of the Subcommittee on Administrative Law and Governmental Relations will be in order.

Today we will discuss H.R. 3325 cover and companion bills, and amending the Ethics in Government Act of 1978,

I note that we have present this morning one of our distinguished colleagues, Bob Eckhardt of Texas. Will you not come forward, Mr. Eckhardt?

Mr. Eckhardt has played an important role in this subject matter for a long time, including last year in the 95th Congress when we passed the law. In fact, at that time he gave us some counsel which, if we had heeded it more carefully, might have obviated the need for the proceedings today.

Bob, if you have a written statement, it is received in the record without objection.

Mr. ECKHARDT. Thank you very much.

Mr. DANIELSON. So I would prefer if you just proceed in your own way and argue the points that you have to make.

Mr. ECKHARDT. Thank you, Mr. Chairman.

The other day, as I indicated to this committee on a previous appearance—

Mr. DANIELSON. Is your microphone on?

Mr. ECKHARDT. It was.

TESTIMONY OF HON. ROBERT ECKHARDT, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS

Mr. ECKHARDT. The other day, as I indicated to this subcommittee, we were to hold a hearing, a very informal hearing, in which persons affected by the ethics rule would be present.

We did hold that the other day. The Honorable Charles Curtis of the Federal Energy Regulatory Commission was chairman of it. The Honorable Donald Kennedy, Commissioner of the Food and Drug Administration, the Honorable Susan King of the Consumer Product Safety Commission, and the Honorable A. Daniel O'Neill—of the Interstate Commerce Commission—the Honorable Robert Potovsky—Commissioner of the Federal Trade Commission—the Honorable Harold Williams, Chairman of the Securities and Exchange Commission—appeared before us. Now, we did not have a formal hearing. We sat around a table, and each one presented problems with his or her agency concerning the ethics question. And we members of the subcommittee horned in where we could get a chance. But I think it was a very fine informal discussion, and it was done in the spirit of being of some aid to this subcommittee and in the spirit of trying to find out what the real problems concerning regulatory agencies and the so called question of the revolving door.

I think it was very helpful. But what I think we found out more than anything else is that each of these Agencies has a somewhat different problem. For instance, in the case of the Food and Drug Administration the problem was really that of scientists not wanting to be bought at some later time. It may, say, go to a university and being active in preparing a grant application that may go before an agency. They are not really litigants or lawyers appearing before an agency in the same sense that certain people are. Therefore, that Agency was quite satisfied with what has been called the Rodino amendment that goes pretty largely with limiting aid and abetting to personal participation in the proceeding.

But the trouble with putting—but eliminating personal appearance in a proceeding from your bar—the trouble with that is that it works very badly with respect to an agency like the SEC, not that it restricts SEC, but that it is too lenient. It is not as bad in my mind for personnel having worked for SEC to appear before a public tribunal and argue the case for a client, where it can be known what the argument is, and that the person may have been engaged in the Agency at an earlier time.

It is much worse. It seems to me for him to be in a position to sit somewhere back in counsel rooms and prepare a brief on the basis of the knowledge that he has, having worked for SEC and his law firm and the person who is actually before the SEC gets the advantage of "switching the sides" proposition, so that which may work for the Food and Drug—with respect to the scientist—and maybe a proper leniency to avoid driving off personnel in the Food and Drug may, on the other hand, be an undue weakening with respect to a representative in a more or less adjudicatory process in the nature of the SEC.

It seemed to us also that in some respects the statute, in limiting activity of persons formerly before an agency, was in fact too

lenient, and in discussing the matter with these various regulators, they agreed.

For instance, there is no reason why the kind of back room aiding and abetting with respect to a matter that has been engaged in by the counsel formerly of an agency, who is now representing the private interest in the same matter—there is no reason why he should not be barred from participating even by aiding and abetting, advising, or consulting, if he were actively engaged in that particular conduct of the agency.

There is no reason why he should not be barred permanently. It is not reasonable to say merely, if he comes out in front and represents his client, or if he seeks to do so, he is barred from doing so permanently. But he is only barred for 2 years under section B of the provision, if he is doing it behind closed doors in the office.

It would seem to me that that is not a reasonable distinction.

Another point that I found troublesome is that under C rulemaking is included. But under A and B rulemaking is not included.

Now, it is just as important; as a matter of fact, I think, more important—if one is concerned with the question of changing sides, so to speak, that is, gaining inside information and experience on one side of the case while working for the agency and then using that experience and that influence and that knowledge on the other side of the case, after one leaves the agency, it is just as important to prohibit that in rulemaking as it is with respect to more adjudicatory processes.

Mr. DANIELSON. Would the gentleman yield for just a moment?

Mr. ECKHARDT. Surely.

Mr. DANIELSON. Under C one of the types of conduct prescribed in subsection 2C, say in connection with any judicial rulemaking—

Mr. ECKHARDT. That is right. That is what I was saying. C covers it. C covers it for a year, but A and B do not cover rulemaking.

And if one has engaged in the rulemaking until that particular rule is completed, he should not be permitted to engage in it at all permanently, and A and B do not apply to rulemaking. That is the point. So—

Mr. DANIELSON. I would ask the gentleman's opinion on this. Among the prescribed conduct or actions in both A and B, a pretty broad one called for other particular matter, and that is subject to—in connection with any judicial or other procedure—application or request for a ruling or other determination, contract, controversy, investigation, charge, accusation, arrest, or other particular matter. It is just about as broad as it can be.

Mr. ECKHARDT. Well, that could be so, but I think the interpretation of the Office of Ethics has been that A and B do not apply to rulemaking.

Besides that, since the staff refers to rulemaking specifically in C, there would be an inclination, it seems to me, anyway, for the courts to say that the failure to mention rulemaking in A and B was not without the intent of leaving it out.

Mr. DANIELSON. Your point is very well taken, and it has registered. I think you have an extremely good point.

Mr. ECKHARDT. Now, may I say one other thing about this matter?

It seems to me that the administration, with all respect, is doing what every administration has done that I have encountered, except perhaps the Johnson administration has done—it has written what looks like a pretty stiff statute.

It provides language that is sweeping in effect, and then it has turned around and construed that language in a much more lenient manner than the language seems to me to justify.

It is a whole lot like we do, and I do not mean to merely criticize the administration. We do it on the floor every day. We have somebody get up and engage in a colloquy that relaxes what would otherwise be the spontaneous construction of language within a bill that we have on the floor. I think that is precisely what has been done in the administrative interpretation of this act. I think that is a mistake.

Mr. DANIELSON. Are you referring to the proposed rules that have been issued now by the Office of Government Ethics?

Mr. ECKHARDT. That is right.

Now, let me give you an example. According to the regulations, the following conduct is said to be acceptable: A former senior employee of the Internal Revenue Service—I am using one of the examples they gave—prepares and mails a tax return.

This is not a prohibited act. Should any controversy arise in connection with the tax return, the former employee may not represent the client, but may be called upon to state how the return was prepared.

Now, that is the end of that example. Yet how can the preparer of an income tax return communicate information to the IRS regarding the manner in which he prepared the return without in some way intending to influence the result?

He is a person who is engaged on behalf of the client. He is explaining why he did what he did, and it seems to me, under the language of the statute itself, he would be included.

Now, I suggest that with that in mind it would be far better for this subcommittee and for the committee and for Congress to try to write this language in such a way that the actual language of the statute takes care of the cases. And I would suggest that it can be done, and it can be done relatively simply.

I think that it is a mistake to get into the rather hazy question of the jurisdictional control of a person who is over some kind of staff or some group of employees.

I think it would be far better to limit the application of the first sections of the act. And I put them all in section A—to limit them all to activity in which the person had actually engaged.

The thing about it is a person who is in a supervisory capacity either has engaged in the activity or has not engaged in it. In most instances he would have engaged if it were an important matter before his staff and his people.

For instance, if he has assigned the counsel to work on it, and if he has reviewed the work product of his—of the people within the department, he is engaged.

And I think generally you can determine this as a factual matter. But the question—

A broad jurisdiction engagement is much more difficult to determine, and I think it is very appropriate to a criminal statute. So I would simply limit it to actual substantial participation in the activity itself. Leave out of it that other provision with respect to the board—to the permanent provision of not further engaging in this activity after he gets out.

I do not think that the question of time either has any significance. I think it ought to all be contained in one section that deals both with direct engagement and abetting, assisting, and consulting.

The way the time is cut off is by the conclusion of that particular process. For instance, if it is a rule, it commences when the notice of the promulgation of the rule appears in the Federal Register, and it ends when the rule is either adopted or a new rule is adopted.

If it is another type of proceeding, like a contract, it commences when the study of the contract commences, and it ends when the contract is made.

If it is a question involving representation in a quasi-judicial process, it is clear when that begins and when it ends.

But the processes in each of the cases that I have described may extend over 2 years, and a person who has engaged in that process, while it was before the agency, should still be bound not to aid and abet, even after the 2 years, just as he would be bound not to engage actively and personally after the 2 years.

So it seems to me that the whole question of barring it—what may be called the evil of changing sides—ought to be taken care of in one section, and actual participation and aiding and abetting should be treated the same. But I think it should be narrowed.

I do not think that it should extend to that hazy area in which one says that, because a person was at the head of a department, and somewhere down somewhere else in the department there was active participation in this particular adjudication or this particular contract, or what have you, that he is therefore barred.

I think it ought to rest on the fact of whether he materially participated in the process. And I think that takes out a whole lot of the problems that the scientists have when they say, "Just because I head up some kind of a broad research branch, I do not want to be barred from entering in later and advising a university with respect to a grant."

The other thing that I think is borne out in the discussion that we had with the agency heads was that section C, which is the most sweeping of all the provisions and virtually prevents any activity within the agencies' gamut during a period of 1 year, ought to be narrowed to only those persons who are in an executive position, those that are covered, I think, in the paragraph—is it not one of C, as I recall?

Mr. DANIELSON. We have a sub—

Mr. ECKHARDT. Subparagraph.

Mr. DANIELSON. Subparagraph D, which describes what you might call the supergrades.

Mr. ECKHARDT. Well, that is the—the group that constitutes, for instance, in most of the regulatory agencies only the commissioners. I think that we should limit C to that, those executive persons

who are described in the most limited definition in that section C. But there is a problem, and in some instances it should go beyond that.

Now, I would suggest that agencies are so different in character that what ought to be done is to permit that to be enlarged by the agency itself. After all, it has to do with participation before the agency. The agency itself is interested in being protected against undue influence by its ex-employees, who may come back as lawyers for a private interest.

And then I would provide that, when the agency itself wishes to enlarge that category, they should submit it to the Office of Ethics. And if the Office of Ethics approves that such notice be published in the Federal Register, and only after that time will such a person beyond the executive persons be included in the exclusion of C.

Now, I am told that that would satisfy all of the agencies with respect to what they consider to be too stringent a limitation of C.

But in conclusion, Mr. Chariman, I know I have been talking about extremely difficult and complex matters. I am not, in my own mind, satisfied that what I have suggested constitutes a final and well thought out procedure. I am convinced that the amendments that have been offered and amendments that have been described as a fix, which are supposed to protect persons and keep them from leaving the department—are not complete, do not answer the whole question. And some of them even create confusion.

I would not urge any committee to adopt either of those recommendations or my own at the present time. I would strongly suggest that you do—that you pass the bill that you yourself, Mr. Chariman, have introduced, giving about 6-months time. I am fully aware of the fact that it has been argued that the mere extension of time may not keep people from leaving the agencies.

I do not agree with that. I think that, as long as Congress is seriously considering recommending what seems to be a practical defect in this act, any employee of an agency who is worth his salt is going to take that chance. We are serious about this.

You and I know, and have discussed this for a long period of time. We have had questions about the—and we are sensitive to the question of the agencies' problems, and I think that most of the executive people know that.

Therefore, I do not think we have to hasten to do a halfway job, and I urge you, Mr. Chairman, that once we do something on this and pass it on into law, the likelihood of our ever going back to it and doing it in any more better—more complete way is very, very slight. You and I know that these things reach a peak of public interest. When that peak is passed the law stays on the books.

If it is too strict, it is ignored or it is—or perhaps imposed harshly. I think more frequently ignored.

If a law is to be put into effect and is to fit the agencies involved, we better write it in a very, very careful and proper way. I think particularly with respect to my recommendation on C, it is important to get the agencies involved, because if an ethics law is to continue to be enforced, it must be conceived by the agency to be fair to that agency and to fit its problems.

And if the agency is involved in any continual surveillance over the act and continual concerns about those persons who have left the agency coming back and representing it, the law will be enforced. Otherwise, it will simply be forgotten.

Thank you very much, Mr. Chairman.

Mr. DANIELSON. Thank you very much for a very valuable contribution.

I will yield to my ranking minority colleague, Mr. Moorhead of California.

Mr. MOORHEAD. I wish to congratulate you on the very strong position that you have taken all along on this legislation, and you are certainly—are taking basically the same position now that you did before. You were able to foresee the difficulties that we have run into and not just trying to correct them afterwards.

I gather from what you said, your present position is that you would not totally repeal 207(c), but you would repeal most of it under the condition that it could be reinstated by each agency if they felt it was necessary.

Mr. ECKHARDT. That is essentially correct, yes, sir.

Mr. MOORHEAD. Would you support an amendment to modify 207(c) so as to exempt persons going to work for State and local governments?

Mr. ECKHARDT. Well, I think that ought to be seriously considered, but I can see a situation in which a person, in which a state is in an adversary position with the Federal Government, and some instances in which a State and industry may be in an adversary position with the Federal Government, and I do not think this, per se, bad.

But I think it is a bad thing to permit one who has been on the outside of that issue to participate with the State or with anyone else on a different side if he was engaged in the activity before.

Mr. MOORHEAD. I came in just a tiny bit late on your testimony, and there was one point that I wanted to understand for sure.

Would you support the amendments suggested by the SEC, which would exempt appearances on the record before an independent regulatory agency?

Mr. ECKHARDT. I would support that in case we are not able to deal with the subject more sensitively. I would actually prefer to limit C to that first category, with respect to the SEC, which I think would only cover commissioners and then would give the SEC authority to submit to the Office of Ethics additional jobs which may be sensitive in this respect.

But failing that—

Mr. DANIELSON. Would you gentlemen yield there for just a moment?

In subsection (d), I believe it is, subsection (d)4, the Director of the Office of Government Ethics does have under this law we passed, authority to designate positions not otherwise described as falling under the proscriptions of the act.

He should do that in conjunction with and conferring with the agency heads. I think we have covered that. But I just respectfully invite the gentleman's attention to subsection (d), 4.

Mr. ECKHARDT. I am familiar with (d), subsection 4. The problems I have with it is I think that the agency ought to be in on the act,

and I think only the agency should be permitted to initiate the enlargement.

This would give the Office of Ethics absolute authority. And the problem with that is that many people who are working for, say, SEC would trust SEC to properly enlarge, but would not feel that the Office of Ethics would take into account the problem of maintaining personnel, say, in SEC.

Mr. DANIELSON. I understand the gentleman's position. I do not share the concern. Maybe I am wrong.

But as I read that full subsection (d)4, it itself contains—the last sentence, for example, “Departments and organizations shall cooperate to the fullest extent with the Director of the Office of Government Ethics in exercising his responsibilities.”

I respectfully submit that he must cooperate with them as well. Maybe we have not worded it as well as we should have, but I have an abiding faith in the cooperative nature of our various Government agency heads, and if desired, I think we could put into the committee report accompanying this bill that it is a two-way street. They are to cooperate with him, but he is also to cooperate with them.

I yield back my time, and I thank the gentleman. I will restrict myself.

Mr. ECKHARDT. The thing is, what I would do, I would provide only the department or agency in which he served as an officer or employee—wait a minute.

I would include only at a rate of pay specified to, in or fixed, according to subchapter II, chapter 53 of title 5.

You see, under this you also include in a position for which the basic rate of pay is equal to a greater basic rate of pay of the GS-17. I would leave that out, and I would alter four, so that the Director of the Office of Government Ethics cannot enter in and make the decision directly, but it must be initiated by the agency itself with the approval of the—that is the difference.

Mr. DANIELSON. Mr. Moorhead?

Mr. MOORHEAD. I have no further questions.

Mr. DANIELSON. Mr. McClory?

Mr. McCLORY. Thank you, Mr. Chairman.

I just want to ask this. In the consideration of the dilemma of the Securities and Exchange Commission, for instance, I am of the feeling that a securities lawyer who went with the Securities and Exchange Commission would be virtually barred from resuming his securities law practice following departure from the SEC for a period of a year under the existing provisions of section C.

However, I would judge that under your suggested amendment he would not be barred, providing that he was not making contact or trying to exert influence with respect to a former employee. Is that substantially right?

Mr. ECKHARDT. No.

I would leave it essentially as it is written, except to limit it to those employees described as subjected to subchapter II, chapter 53 of title V. I think that would limit it, however, to Commissioners themselves.

Mr. McCLORY. I see. So that it would not be any bar for anybody except Commissioners?

Mr. ECKHARDT. That is right, unless the agency decided that other persons—

Mr. McCLORY. Unless we wanted to make up for the other provisions—

Mr. ECKHARDT. That is right.

Mr. McCLORY. I think that would be a very healthy change, and would not bar from Government service the professionals and experts that we want to try to induce to come with the Government and where we can utilize their special services and experience.

Mr. ECKHARDT. And incidentally, the Commissioners that appeared at this meeting the other day all accepted the proposition that there was nothing wrong with barring them. The thing they were concerned about is their professionals.

Mr. McCLORY. Right. Thank you very much.

Mr. DANIELSON. Thank you, Mr. McClory.

There are no other members present at this moment.

You have answered my questions, Mr. Eckhardt, both here and on the floor, and we are deeply grateful to you for your assistance. Thank you very much.

Mr. ECKHARDT. Thank you very much.

[The complete statement follows:]

STATEMENT OF CONGRESSMAN ROBERT ECKHARDT

Mr. Chairman, I want to express my thanks for the opportunity to comment on pending attempts to modify the "revolving door" provisions of the Ethics in Government Act of 1978. To be blunt, I believe we have a fiasco on our hands that will not be solved in any meaningful way by the amendments I have seen.

The purpose of the revolving door provisions are threefold. First, they are intended to prohibit government employees from "switching sides." Clearly, public servants should not deal with a certain matter in government and then handle the same matter for a client in the private sector. Secondly, the provisions are designed to prevent former employees from exercising undue influence over their fellow colleagues. Finally, the provisions are expected to restore public confidence in governmental employees by eliminating any appearances of impropriety.

As I understand it, the specific problem that sparked these hearings relates to 18 U.S.C. 207(b)(ii). That section appears to prohibit any former employee from aiding or assisting a person in the private sector on particular matters which were pending under the employee's official responsibility when he was in government service. The scientific community points out that this would prohibit, for example, a former National Institutes of Health director who had become a college dean from counseling his faculty on grant applications in the research field where the dean had exercised executive duties.

That problem is not the most serious difficulty with new section 207, but it does deserve discussion. The conference report on the Ethics in Government Act indicates that "aiding and assisting" is not prohibited except for matters in which one was personally and substantially involved. Therefore, a legislative "fix" is proposed that involves inserting the phrase "as to subsection ii" into the middle of subsection b(3).

As a matter of statutory construction, such an amendment would merely make subparagraph b(ii) applicable to matters wherein one had been involved personally and substantially. It would not achieve its intended effect, which is to eliminate the applicability of subparagraph b(ii) to matters wherein one had exercised official responsibility. Put another way, the amendment would prohibit both actual representation and "aiding and assisting" with respect to official responsibility matters, but apply only the "aiding and assisting" bar to personal participation matters! This, it seems to me, is simply a drafting error, but it is typical of the hasty and incomplete analysis that has marred the whole revision of section 207.

I note that the Administration bill goes even beyond inserting a reference to subsection b(ii), and actually weakens the "aiding and assisting" prohibition by revising it to bar only activities that involve personal presence. This is nonsense. I agree that the "aiding and assisting" prohibitions should include personal participation matters, but the present prohibition itself is, if anything, too weak, and should

be extended into a permanent ban. The kind of backroom counsel at which present subparagraph b(ii) strikes is really more dangerous than direct personal representation, because the former does not take place in a public forum.

Some may argue that the problem is not as serious as I suggest, because the most troublesome sort of backroom consultation is the kind carried on by attorneys, and such activity with respect to personal participation matters is already barred by the canons of professional responsibility. However, if Watergate taught us anything, it is that canons of professional ethics should not be relied upon to control the activities of attorneys involved in policy formation. Further, there are some types of employees who are not covered by the canons.

Let me turn now to the other specific defects in section 207. In section 207, apparently neither subsection (a) nor subsection (b) cover rulemaking proceedings. While the exclusion appears to have been intentional, it results from a phrase referring to "particular matters involving a specific party or parties" and not from express statutory language. One must turn to an interpretative memorandum issued by the Attorney General and the legislative history of the pre-existing language of section 207 (as enacted in 1962) to reach a satisfactory conclusion on that point. This is an example of unnecessary subtlety.

In any event, the exclusion of rulemaking is unwise. It permits a former government employee to represent a private party in a rulemaking proceeding even though he had personally worked on the same proceeding while at the agency. The outcome of many rulemaking proceedings is of tremendous significance to particular parties in the private sector. The evil of switching sides is no less grave in a rulemaking proceeding than it is in an adjudication. I cannot imagine, for example, why we should allow a rotary lawn mower expert who was involved in the agency's work on mowers to leave the Consumer Product Safety Commission and assist a manufacturer in a rulemaking proceeding that will set safety standards for rotary lawn mowers.

Subsection c, which imposes a one year flat ban on contacts between a former employee and his agency, is also defective. It is defective, as a policy matter, because it sweeps too many people into its prohibitions. As drafted, the section fails to strike the proper balance between protecting against evil influences and the interest in assuring that government can attract the best people possible. As I have frequently argued, this is particularly true where a matter is involved which government extensively regulates and the skills in that field are not transferable to other matters. People, faced with the prospect of not effectively practicing their craft for one year will simply by-pass government entirely.

There are benefits to having free movement in and out of the private sector: people with specialized knowledge of an industry do a better job of regulating the industry; freedom of movement assures that the government has a greater pool of potential employees; and, an employee will be more willing to disagree with a superior on a matter which is important to the public interest when he is confident he can get a job elsewhere if necessary. A simple solution perhaps would be to limit mandatory subsection c coverage to executive schedule employees. If that is too narrow a reduction, then the agencies should, by rulemaking, include such other lower ranking employees as is necessary to prevent the exercise or appearance of undue influence. Section 207(c) is also too narrow in that it fails to bar indirect communications. Thus, although a former employee who is covered by the subsection cannot place a telephone call to the agency, he can get an associate to do so and can tell the associate to say that the former employee "sends his regards." This wields the influence almost as effectively as directly communication.

We have here a statute with criminal penalties that is applicable to public servants in the executive branch. These are people who are supposed to carry out the various legislative mandates of the Congress. They deserve a clear message from us as to what their duties are. Yet, no one can explain the law simply, and the prohibitions are couched in language that makes me wonder whether they could even survive a constitutional challenge based on undue vagueness.

The basic notions of due process require that a legislature clearly define the crimes it creates. The Supreme Court has frequently stated: the terms of a penal statute must be "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." "This is a well recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926). Your consideration of these "technical" amendments to state the intent of the statute, and the recent debate regarding the meaning of the Act's provisions demonstrate rather

vividly that men of common intelligence "must guess" and "do differ" as to the application of this law. Unfortunately, if the changes currently proposed by the Administration are adopted, the debate on the meaning of some of the Act's provisions will continue.

Out of a sense of fairness to Federal employees who will bear the brunt of the statute, I urge you to redraft and rethink the statute. As legislators, we are not required to do the impossible, but the Constitution does require that we use language which "marks boundaries sufficiently distinct for judges and juries to fairly administer the law in accordance with the will of Congress." (*United States v. Petrillo*, 332 U.S. 1 (1946)).

While the language is sufficiently imprecise to raise serious constitutional questions, it is by no means obvious that it would be stricken if challenged. Upon close examination the Court may, as it sometimes does, attach "strong presumptive validity" to the Act because it is an Act of Congress and may find some peg on which to rescue the statute: for example, there may well be a "bead sight indictment" which will cure the defects in the statute. Thus, a former Federal employee would be foolish to take the risk of having criminal sanctions imposed on the notion that once he were prosecuted, the statute will fail as unconstitutionally vague. Rather than take the risk, the employee will, I fear, simply not bother to work for the government.

The recently published regulations are described as "solving the problems." A quick examination raises questions regarding their faithfulness to the purposes of the statute and their usefulness in clarifying what conduct is statutorily prohibited. (Interim Regulations, 5 CFR 737, 44 Fed. Reg. 19974 (1979).)

Section 207(c) prohibits a former senior employee's contact with an agency for one year. Congressional Committees who recommended the prohibition expressed their concern with the "problem of unfair or undue influence by former officials over their former colleagues and subordinates." Yet the interim regulations seem to permit that type of influence to continue. For example, according to the regulations, a former senior employee may assume responsibility for the "direction of research" and "providing technical information" to an agency, as long as the former employee does not submit an application on behalf of an applicant for a research project or argue for its approval. Specifically, the regulations suggest the former employee's name can appear on the grant application as the principal investigator; he may sign assurances that he will be responsible for the technical direction of the project and he may talk to the agency staff as long as he does not argue for its approval. Technically, the person falls outside the statute because he is not acting as an agent or attorney nor is he communicating with the agency with an "intent to influence." Yet, here there is the potential for a subtle undue "influence"—the mere display of the name of a former colleague on applications, and that colleague's repeated contact with the agency, although not "representational," would seem to have some influence on his former colleagues in the decision to grant research funds.

Let me give you an example of the difficulty in judging the propriety of one's conduct. According to the regulations, the following conduct is acceptable:

A former Senior employee of the Internal Revenue Service prepares and mails a client's tax return. This is not a prohibited act. Should any controversy arise in connection with the tax return, the former employee may not represent the client, but may be called upon to state how the return was prepared.

Yet, how can the preparer of an income tax return communicate information to the IRS regarding the manner in which he prepared the return without in some way intending to influence the answer to the ultimate question of whether or not the return was properly prepared?

An example of the failure of the regulations to conform with the law is found in the implementation of section 207(b)(ii) (the two year ban on high level employees in aiding and assisting someone). The regulations state: "the statute does not prohibit a former Senior Employee's assistance to representatives which can be reasonably viewed as customary management activity; that is, assistance given by a former Senior Employee to associates or subordinates, in the performance of customary executive, administrative, or supervisory duties, as to the content of a program or project funded under his responsibility" funded by the Government.

This rule contemplates a manager communicating on matters related to the program to representatives of his new organization who deal with the government. As long as the employee does not make "unfair use" of his prior government position by assisting in the representation of another by giving *specific advice* (emphasis added) intended for use by the representatives, it is an acceptable communication. The language of the statute says nothing about "management assistance" nor is that notion suggested in Committee reports on the Act. A footnote acknowledges that this construction is not a literal interpretation of the statute, but

states that it "reflects the Attorney General's 'construction' in the exercise of prosecutorial discretion." But what happens when there is change in Attorney General?

Mr. Chairman, the various bills designed to fix section 207 either fail in their purpose or have other defects. They should not be passed. All we should do now is provide a six month extension to allow us time to do the job right.

I would suggest redrafting the language in the following manner: lifetime bans should be imposed on all employees' participation in or assistance with matters in which they were personally and substantially involved while in the Federal government. To protect against "undue influence," the one year, no contact ban should be applied to executive level employees. Further, an agency could be authorized by rulemaking to extend the prohibition to appearances before one's former subordinates, to protect against undue influence over one's former subordinates, but this designation should be made at the agency level to avoid unnecessarily broad application.

If you do not rethink Section 207, let me urge you to amend the Administration's proposal to incorporate the language suggested by Chairman Williams of the Securities and Exchange Commission. It provides that the one-year ban will not apply to communications or appearances made to any independent agency of the United States, provided that the appearance or communication is made a matter of public record. This narrowing of the restrictions with respect to independent agencies would ease many of the burdens which the legislation imposes on the regulatory agencies. Ample protection to the public is provided in that all communications will be on the record, subject to public scrutiny and challenge.

Let me conclude by sharing with you the comments made by one of the witnesses at the hearing held Tuesday by the Subcommittee on Oversight and Investigations of the House Interstate and Foreign Commerce Committee. In the midst of an extensive discussion on the meaning of the Act, Commissioner Donald Kennedy of the Food and Drug Administration said:

"I have to remind you that we scientists are simple folk . . . They regard it as a bore whether we can or cannot adequately narrow an "aids-or-assists" provision . . . My colleagues at Stanford, Cal Tech, Yale, and MIT do not really care to read eight pages about whether the Government is going to have them on the neather end of a criminal statute after they decide that maybe they have had enough of the Government. They are going to decide . . . if it is that complicated and confusing, thanks very much, they are probably going to try something else."

TESTIMONY OF SHELDON ELLIOT STEINBACH, GENERAL COUNSEL, AMERICAN COUNCIL ON EDUCATION, ACCOMPANIED BY ALFRED SUMBERG, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Mr. DANIELSON. Our next witness will be Mr. Sheldon Elliot Steinbach, general counsel, American Council on Education, accompanied by Dr. Alfred Sumberg, American Association of University Professors.

Will you gentlemen please come forward and identify yourselves for the purpose of the reporter there?

We do have, gentlemen, your two statements. They have been distributed to the members of the subcommittee, and without objection, they will be received in their entirety.

I request that you make your statements and not read them to us, but argue your points to us as effectively as you can. And I am sure that we will all make better progress.

Mr. STEINBACH. Fine. Thank you very much, Mr. Chairman.

I am Sheldon Steinbach, general counsel of the American Council on Education. I appear before you today on behalf of the Higher Education Association—as noted on the cover sheet of our testimony—to present our comments on the Ethics in Government Act of 1978, after the pending bills presently before this subcommittee.

The higher education community supports the purpose of the Ethics in Government Act and seeks to preserve and promote ethical standards among Federal employees—

Mr. DANIELSON. I believe, sir, I requested that you do not read your statement. I repeat that request at this moment. You are an attorney. I assume you know what is in the statement. I now direct you to argue the points.

Thank you.

Mr. STEINBACH. Basically, in order to conserve time, I would like to address initially the concern that we have with the 2-year bar on assisting in representing individuals following Government service.

It is our position that the technical amendments being offered in H.R. 3325 will substantially alleviate much of the concerns that we have with section 207(b). We have—I have made personal contact with numerous individuals within the administration, or former university administrators. They are aware of the situation and are reasonably comfortable with the changes that have been made in 207(b).

And as such we are supportive of this. Our sole concern, for purpose of this testimony, Mr. Chairman, relate to 207(c). There are aspects of this that we feel are unduly punitive and excessive in relation to the goals sought by the legislation. It is my feeling that there are other manners in which one could handle 207(c), and I would like to offer those alternatives to you today as possibilities for your consideration.

The 1 year no contact bar places a burden on senior academic officials who have gone into Government service when they return to their campuses. That is more stringent than I think is particularly necessary.

I would like to propose to you that perhaps one could have a system in which former—we could have the monitoring of former employee contacts with an agency, possibly by maintaining logs of telephone conversations for public inspection and by the announcement in advance of meetings to be held with one's former agency.

In addition we could require individuals appearing before an agency to file an affidavit regarding past employment. Such an affidavit would contain a brief description of matters worked on and would possibly refer that in given instances the individual was neither violating the confidences of the Government nor had unfair advantage over any other persons because of his or her former position.

Mr. DANIELSON. Sir, who would audit the log of telephone calls and the like? Who would be the one from the enforcement agency to roam about the campuses of America and examine the logs?

Mr. STEINBACH. No; I would think you could put the burden on the individual employee after they have left Government service to file with the General Accounting Office their—

Mr. DANIELSON. The General Accounting Office is rather burdened. You suggest they become the repository of logs of telephone calls from every former employee of the Government who may come within the purview of section C?

Mr. STEINBACH. Well, I think it might be a more effective mechanism for allowing individuals to continue to make reasonable contacts with their prior employers without having to have absolute burden of the 1-year bar. I am looking for a compromise in this situation.

Another alternative that came to mind in the latter part of this week, as I was thinking about the situation, was, as we look at the intent behind the passage of 207(c), it is seemingly designed to prevent individuals and their future employers from benefiting from information gained, contacts that resulted from the employees' Government service.

I think, as Secretary Califano mentioned in his comments, individuals who return to the college and university community or any other nonprofit entity are neither procuring large salaries, nor are the institutions benefitting in the terms contemplated by the drafters of 207(c), and I would like to suggest for your consideration the possibility that one might consider an amendment to 207(c) which would exempt individuals who returned to charitable, tax-exempt organizations or returned to State and local governments exempt under 115 of the Internal Revenue Code.

I believe in most instances—and perhaps not—if not in all of them, we will be in a situation where these individuals are not personally benefiting in any way, shape or form. Their salaries are often quite concurrent with what they made in the Federal Government.

And also if there is any benefit to the employer that might be in excess of what they might otherwise have, that benefit to a charitable entity or to a State or local government goes to the public at large and as such is really, should not be curtailed in the manner that 207(c) would provide.

Mr. DANIELSON. How do you support your statement that it occurs to the benefit of the public at large? Would you explain that, please?

Mr. STEINBACH. Surely.

If the individual employee has—as we all do in the course of our own employment—secures information or contacts, and that goes to the benefit of a college or university as they proceed in dealings with—

Let us take a hypothetical situation. Someone leaves HEW and goes back to the campus, and you have a problem involving your—goes back as senior administrator. You have a problem in the Vocational and Rehabilitation Act as it is enforced. The fact that someone may be able in that year to pick up the phone and say, "Here is the particular situation on our campus. We need to resolve this problem and may be able to have some personal access or information," based on what they have done in the past, in order to benefit the institution and to the people who are to be covered.

And there is no personal aggrandizement financially, which is what I think the focus of 207(c) was at the very outset. So that I do not see where the benefit that might accrue—however slight—would be something that 207(c) had at any time really contemplated.

I think that in terms of our interest we would like to—we feel that the principal objective of Congress and the executive branch should be to improve the quality of Government service by attracting bright, young people as well as experienced professionals to high-level policy positions.

The Ethics in Government Act, if unamended, will do precisely the opposite. The net result will be reduction in the attractiveness

of Government service, and consequently the effectiveness of Government itself.

Mr. DANIELSON. Thank you very much, Mr. Steinbach.
[The complete statement follows:]

SUMMARY OF TESTIMONY OF THE AMERICAN COUNCIL ON EDUCATION

1. The higher education community supports the Ethics in Government Act, however, there is concern that the law may severely hamper the ability of the federal government to attract highly qualified employees.

2. H.R. 3325 by liberalizing the two-year ban on representation would substantially alleviate higher education's concerns with section 207(b).

3. The one-year ban on contact with an employee's former agency (section 207(c)) is unduly punitive and excessive to accomplish the goals sought by the Act. We urge the substitution of a system for monitoring former employee contacts, or in the alternative, an exemption for individuals going into employment with 501(c)(3) charitable entities and instrumentalities of the state exempt under section 115 of the Internal Revenue Code.

4. We support the technical amendments contained in H.R. 2805 which would set a threshold of 61 days of paid employment before an individual has to meet the financial disclosure provisions.

TESTIMONY OF SHELDON ELLIOT STEINBACH, GENERAL COUNSEL, AMERICAN COUNCIL ON EDUCATION, FOR THE AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES, AMERICAN COUNCIL ON EDUCATION, ASSOCIATION OF AMERICAN UNIVERSITIES, ASSOCIATION OF CATHOLIC COLLEGES AND UNIVERSITIES, ASSOCIATION OF JESUIT COLLEGES AND UNIVERSITIES, COUNCIL FOR THE ADVANCEMENT AND SUPPORT OF EDUCATION, COUNCIL FOR THE ADVANCEMENT OF SMALL COLLEGES, NATIONAL ASSOCIATION OF COLLEGE AND UNIVERSITY BUSINESS OFFICERS, NATIONAL ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES, NATIONAL ASSOCIATION OF SCHOOLS AND COLLEGES OF THE UNITED METHODIST CHURCH, NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES

I am Sheldon Elliot Steinbach, general counsel of the American Council on Education. I appear before you today on behalf of the higher education associations noted on the cover sheet of our testimony to present our comments on the Ethics in Government Act of 1978, and the pending bills before the subcommittee.

The higher education community supports the purposes of the Ethics in Government Act, which seeks to preserve and promote ethical standards among federal employees. Such legislation is important to assure public confidence in government and to protect against improper influences. We are concerned, however, that the law may severely hamper the ability of the government to attract highly qualified employees by impairing the opportunity of these employees to find suitable positions after leaving government service.

The conflict of interest sections of the new ethics law, also referred to as "the revolving door provisions," provide, first, that a former government employee is prohibited for life from dealing with any case or policy matter with which he had a direct, personal, or substantial involvement while in government service. Secondly, the law provides that for a period of two years a former top-level official may not aid, assist, counsel, or advise in representing or dealing with his former agency or department on any matter for which he had direct or indirect responsibility. Lastly, the ethics law prohibits contact of any kind by a former employee for one year with his former agency or department and his former associates either in written or oral form. Our principal concerns are items two and three: the one-year contact ban and the two-year advisory ban.

THE RELATIONSHIP BETWEEN CAMPUSES AND FEDERAL GOVERNMENT EMPLOYMENT

The academic community is proud of its long history of service to the federal government and to society at large. Aside from educating generations of young Americans, and expanding the frontiers of knowledge and know-how, the academic community has long provided a pool of highly intelligent and skilled individuals who, from time to time, have entered government employment for limited tours of duty. They have done so not only to advance their own professional careers, sometimes at considerable short-run personal and financial sacrifice, but also to serve their country. In applying knowledge gained in the laboratory, the classroom or research library questions of public policy, they have in large part repaid the national investment in higher education, particularly at the graduate level.

Aside from policy questions, scholars and researchers on leave from academic institutions have contributed their expertise on highly technical subjects to federal agencies, especially in the regulatory field, which require such expertise not only to function efficiently and productively but to fulfill statutory mandates.

Moreover, individuals serving the government for limited periods have greater freedom to exercise their individual judgment, to challenge conventional wisdom, and to disagree with superiors on important public issues than do career civil servants. They are more apt to speak their own minds, secure in the knowledge they can readily find employment elsewhere if necessary, than are those whose security rides on continuous government employment and who thus may be reluctant to make waves.

A law that discourages members of the academic community from devoting time to government service will thus deprive the government of skills, expertise, experience, as well as fresh ideas and perspective that are vital to enlightened public policy and decision-making. It will also further isolate career bureaucrats from other citizens at a time when alienation between government and the tax-paying public is eroding faith in our national institutions. Colleges and universities would concurrently lose the insights gained by faculty and administration from their tour of federal service.

We believe that the Ethics in Government Act of 1978, if left intact, may deter many individuals in the academic community from entering government service. It will do so, principally, by dramatically reducing their employment options after such service.

For example, the Ethics in Government Act would mandate that if a former federal division head should become a university department chairman, he would be precluded from talking with government officials about grant or contract proposals previously pending before his former agency, or about any grant or contract already issued to his present institution. In some universities, agencies such as DOD, NASA, and DOE support continuing prime contracts. A university employer dependent upon a few large prime contracts or subcontracts from a federal agency would have a problem employing a former official with that agency because that person would be precluded from participating in the management of a long-term continuing project.

ONE-YEAR BAN ON CONTACT WITH FORMER AGENCY

We feel that the provision forbidding individuals from contacting their former agencies or departments for a period of one year after leaving government service on any matter is unduly punitive and excessive in relation to the goals sought by the legislation. This blanket restriction is imposed without any reference to the subject matter with which the contact is concerned and may bar the former government employee from reasonable employment opportunities. Surely there are few individuals in our society who could afford to take a year's vacation from work at the peak of their career. One would expect that individuals would think twice before entering higher level government employment if they anticipate jeopardizing their future employment options at the end of their tour of duty. This provision would punish individuals whose conduct is not unethical since the subject matter with which the former employee may want to deal could be a totally new issue, or could simply be a noncontroversial or uncontested matter.

TWO-YEAR BAR ON ASSISTING IN REPRESENTATION

We are also concerned about the breadth of the provision that would bar a former employee for a period of two years after leaving office from aiding, assisting, counselling, or advising in a representative capacity on any matter for which he may have had direct or indirect responsibility. We contend that this provision is vague and ambiguous and may deprive the government of valuable insight from former employees. We are cognizant of the potential for abuse by individuals in their postemployment capacity when assisting others in contact with their prior employer. It is our belief, however, that the goal of the Ethics in Government Act could be achieved by the enactment of the proposed technical amendments. H.R. 3325 would limit the coverage of section 207(b) to instances where the former senior government employee had actually participated in a particular matter and would solely bar personal presence in a representational capacity for a two-year period. These proposed technical amendments substantially relieve our concerns with section 207(b).

RECOMMENDATIONS

As noted above, we support a tightening of the language of section 207(b) along the lines of H.R. 3325.

We would urge this Committee to remove the one-year, no-contact rule and consider substituting in its place a system whereby there would be a monitoring of former employee contacts with an agency possibly by maintaining logs of telephone conversations for public inspection and by the announcement in advance of meetings to be held with that agency. In addition, we would suggest requiring individuals appearing before an agency to file an affidavit regarding past employment. Such an affidavit would contain a brief description of matters worked on and would aver that, in a given instance, the individual was neither violating the confidences of the government nor had any unfair advantage over other persons because of his or her former position.

Section 207(c) as passed is seemingly designed to prevent individuals or their future employers from unjustly enriching themselves as a result of the government service. Individuals who return to the college and university community or any other nonprofit entity are neither securing large salaries nor are their institutions benefitting in the terms contemplated by the drafters of 207(c). We, therefore, suggest, in the alternative, that the committee might consider an amendment which would exempt individuals who leave government service and are subsequently employed by 501(c)(3) charitable, tax exempt organizations or a state or local government exempt from taxation under section 115 of the Internal Revenue Code from coverage under section 207(c) of the Act.

FINANCIAL DISCLOSURE PROVISIONS

Although the focus of the present hearing is not directed to the issue of the executive personnel financial disclosure requirements, we would like to take this opportunity briefly to convey some of our concerns about Title II of the Ethics in Government Act.

Colleges and universities believe that financial disclosure is an important step in assuring the integrity of public service and is an effective deterrent to potential conflicts of interest. Allowing the public to have access to basic information regarding financial interests of public servants will enable citizens to determine for themselves whether or not such interests could possibly affect the judgments and actions of government officials. We also acknowledge that along with the duties and privileges of service as a high level public official comes some loss of personal privacy. The financial reporting requirement contained in the Act generates a loss of personal privacy to a great number of individuals who have but limited impact on the public welfare.

There are numerous college and university officials and faculty members who are appointed annually to various federal advisory boards and who are compensated at a per diem rate equal to GS-16 or above. Under the terms of the Act, these individuals would have to meet the extensive reporting requirements covering a listing of all outside income, gifts, debts, property transfers, spouse's income and holdings, and a host of other financial matters. Reports furnished would be a matter of public record. The implications for affected individuals are apparent. The burdensome reporting and public disclosure elements will undoubtedly constitute a substantial deterrent to individuals accepting positions in the future. We are informed that at least two nominees to a federal advisory board have asked to have their nominations withdrawn rather than comply with these impending disclosure requirements.

We believe that reporting requirements based on rate of pay and GS level are overboard and that any reporting requirements should be limited to those employees whose actual job duties both closely affect the public welfare and present a substantial possibility of conflict of interest. We support, therefore, the technical amendments to the Ethics in Government Act, H.R. 2085, which would set a threshold of 61 days of paid employment before an individual has to meet the financial disclosure provisions.

The principal objective of Congress and the executive branch should be to improve the quality of government service by attracting bright, young people, as well as experienced professionals to high-level policy positions. The Ethics in Government Act, if unamended, will do precisely the opposite: the net result will be a reduction in the attractiveness of government service, and consequently, in the effectiveness of government itself.

Mr. DANIELSON. And Dr. Sumberg, please?

Dr. SUMBERG. Mr. Chairman and members of the subcommittee, I am Alfred Sumberg, director of the American Association of University Professors.

In our statement we have reflected the views of a rather large number of people, our officers, chairman of our committee on professional ethics, our committee on government relations, several prominent law school professors and a very diverse group of faculty members currently engaged in government service or considering offers through the government agencies.

Unlike some of the members of this subcommittee, we have received numerous calls about the implications of title V, and the faculty members are concerned about what will happen on July 1, 1979.

In addition, I talked to the staff of the Intergovernmental Personnel Act mobility program, a program which we have encouraged for many years, and a program which brings faculty from public higher educational institutions, along with other people from public agencies, to Washington for a period of up to 4 years. And that staff reports receiving numerous calls from people currently in Government about their status as of July 1, 1979.

As you will see in our statement, Mr. Chairman, our analysis of title V led us to recommend its repeal before it has the opportunity to do serious damage to professional careers of many fine and highly qualified people.

We recognize that it is necessary to have—there should be ethical standards and ethical guidelines for people currently employed in Government.

We find it more difficult, however, to rationalize extensive broad and sometimes vague guidelines for people who have left Government service; nevertheless, we recognize that individual agencies, individual departments may require certain ethical standards for people who have formerly served on their staff.

Section 207(b) and to an extent 207(c) creates prohibitions which we believe are unrealistic and unproductive, and probably unnecessary. They create an unnecessary burden for faculty members whose professional reputations as teachers and scholars are based upon their continuous involvement in research and scholarly activity, much of which may be funded by the Federal agencies.

They frequently come and serve in Washington. It is perhaps unrealistic to expect a faculty member or academic administrator who spends time in a highly responsible position in a Federal agency to return to the campus and then do nothing for 1, possibly 2 years.

Mr. DANIELSON. To do nothing? Certainly there must be something for them to do on campuses.

Dr. SUMBERG. Do something that involves his or her agency, or involves the program in which he or she worked formerly. When I finish my statement, it comes out a little clearer.

The result is that prohibitions on aiding and assisting, prohibitions on communications, we think, have serious—represent serious deterrents to those who would consider coming to Government in the future.

In addition we would point out that the prohibitions may very well violate academic freedom and the principle of academic self regulation qualities which are highly prized in higher education. They could as well become a source of harrassment of faculty members who returned to the campus.

And we reject the presumption that the faculty will profit handsomely if they engage in the prohibited activities under section 207(b) and—or 207—

Mr. DANIELSON. Sir, if you will yield for a moment.

Have you read the bill 3325, which contains certain proposed changes in the law? And if so, would you comment as to what you feel would be the effect of adopting those changes which modify section B2?

Dr. SUMBERG. I am going to have to reflect what others have told me in that respect.

The law professors I ran into on the phone said it will still affect us as law professors, because they frequently do undertake legal work for a college or university. A former law professor perhaps works in the State Department and handles immigration issues and returns to his campus and then deals with the immigration issues affecting students on that campus, and he may very well have to appear before the proper authority on behalf of the institution and/or student.

So that was the response I received from a law professor who said that this does not take care of our problem, and we would still like to come to Washington and work in the various agencies.

It may resolve the problem, but it does not take care of the criminal penalties that are involved in aiding or abetting or aiding or assisting, and that leaves it pretty much to the discretion of the U.S. attorney to determine how that personal appearance occurs. If it occurs in a formal hearing—

Mr. DANIELSON. If the gentleman will yield—can you tell me how that hypothetical, maybe potentially real situation, would differ from the standard procedures followed today in which the U.S. attorney makes the ultimate decision on whether there will be a prosecution?

Dr. SUMBERG. Probably would not.

Mr. DANIELSON. Thank you.

Dr. SUMBERG. We are concerned, Mr. Chairman, about the harsh criminal penalties imposed under 207 and the broad disciplinary reaction which may be undertaken under 207(j).

We pointed out in our statement the nature of those concerns. One could only conclude from the legislation and the conversations that we have had over the past 2 or 3 weeks with people who have been in contact with us that the tendency of the faculty members will be to shun Federal service. We think this will be an unfortunate loss to the Government, to the Nation, because so many of these people have a great deal to contribute to the health and welfare of the society.

I think many of the faculty would like to come, would like to participate. They would not like to have the burden of proscribed activities under 207(b) or 207(c). They certainly do not want hanging over them the proposed criminal penalties if they inadvertently violate either one of those sections.

So we encourage the repeal of—

Mr. DANIELSON. I did not get the last sentence.

Dr. SUMBERG. We encourage the repeal of title V.

Mr. DANIELSON. Oh, you mean the entire section 207?

Dr. SUMBERG. Yes.

Mr. DANIELSON. Does the gentleman realize that has been on the books for several generations?

Dr. SUMBERG. Yes, I know.

Mr. DANIELSON. I recognize first the gentleman from Virginia.

Mr. HARRIS. Mr. Chairman, as we get into the rhetoric on this thing, did I hear you say that criminal penalties apply if someone inadvertently did this?

Dr. SUMBERG. I think there is a danger of faculty, who are unfamiliar with the law, may inadvertently violate the law by aiding and assisting their colleagues or institution under the law as it is presently written.

Mr. HARRIS. You have read it?

Dr. SUMBERG. Yes.

Mr. HARRIS. Well, how can you make a statement like that when the law clearly says it is necessary to establish willfully doing this? How can you ascribe that to an inadvertent act?

Dr. SUMBERG. Again, I would think that would be at the discretion of the U.S. attorney to determine.

Mr. HARRIS. I am amazed that you would think that. The law is carefully drawn, and this current—

Are you familiar how high a standard "willfully" is?

Dr. SUMBERG. No, I'm not.

Mr. HARRIS. Perhaps it may reflect some of the discussions that you have been in on. Let me suggest seriously that you and your group may want to get some legal advice with regard to the law and the high standard of "knowingly" being imposed here. I simply do not know how this could in any way, Mr. Chairman, apply to an inadvertent act.

Do I understand also, now, that you wish to repeal all of title V?

Dr. SUMBERG. That was the advice given to me by the people I talked to, sir.

Mr. HARRIS. I notice in most of your testimony that—quite understandably—you apply these restrictions to your particular field.

Dr. SUMBERG. Right.

Mr. HARRIS. I thought maybe I saw a little bit of retreat here, realizing that perhaps this would not apply to every field of conduct and that it does not necessarily make sense to have a general counsel of Exxon to come down and regulate oil for a year and go back and represent Exxon again. And you would recognize some need to curtail that sort of activity.

Dr. SUMBERG. I guess the answer in part is, if an agency has its own regulations, and those regulations are more stringent than any criteria that would normally exist in legislation, those would be more preferable, and that is where an agency does draw—and perhaps all agencies ought to draw—up their own codes of ethics, because, as Mr. Eckhardt pointed out, agencies differ sharply as to how to treat their employees.

Mr. HARRIS. Are you really saying that we should leave ethical conduct strictly up to the determination of each individual agency, and the Congress should not concern itself with this?

Dr. SUMBERG. I am suggesting that what you might do is consider basic criteria and then leave it to the agency to carry that out.

Mr. HARRIS. And if they do not?

Dr. SUMBERG. It may be that they do not need it within their own agency.

Mr. HARRIS. It is not a good idea to have them involved. In other words, I can see agencies who are supposed to be regulating the industry—

Let us hypothesize that there is a problem and nothing has been done about it. Would you still advocate that Congress sit back and do nothing?

Dr. SUMBERG. Of course not. I think that the process does exist, either through authorization legislation or appropriations legislation to encourage such an adoption of such regulations.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. DANIELSON. Mr. McClory?

Mr. McCLORY. Thank you, Mr. Chairman.

Let me point out for the benefit of my colleague from Virginia that we have had section 207 on the books since 1962. There are existing regulations which would affect the precise situation to which the gentleman makes reference.

There is a misapprehension that we have no legislation on the books at the present time. We do indeed.

Mr. HARRIS. Would you yield on that point?

Mr. McCLORY. I yield.

Mr. HARRIS. I was familiar with that act, and I knew the witnesses were. I understood the witnesses advocate that we in fact repeal all of title V, which would not leave anything on the books.

Mr. McCLORY. Well, I thought the gentleman—and I think what the witness is really advocating that we repeal what we did in 1978, the Ethics in Government Act, and not the other existing law. He means the law which has not yet taken effect and which will take effect on the 1st of July, unless we extend the time, unless we do something about it.

So there is—there seems to be general agreement in the executive branch and at least substantial agreement in the Congress that we have to make some changes, that we are being urged now to effect some technical amendments so that we can get this particular thing straightened out before we lose too many of our high level career people in Government.

I would note that just in the last couple of days there have been regulations issued—and including examples which are given—and one of the examples, I think, is directly applicable to the testimony you are giving. It is example number seven in the new regulations, which says, "A senior official of the Department of HEW leaves to take university position. The former official's new duties include various HEW contracts which the university holds, and she sometimes advises the lawyers who represent the university in dispute involving such contracts. Some of the contracts were awarded by a division within HEW which was under her responsibility."

And this is the—the whole restriction applies to those matters for which she had official responsibility. In other words, that woman would be barred from taking a position in which she was merely advising the university with regard to matters which she had expertise in, so far as HEW grants were concerned.

That is the type of concern which you have, is it not?

Dr. SUMBERG. That is right.

Mr. McCLORY. That is the existing rule. So we have got to do something about that.

I notice in the recent issue of Newsweek that Dr. Champion, Undersecretary of HEW, is considering returning to Harvard University, because otherwise he would be barred from taking a university job and employing his talents and expertise, at least for a year, maybe 2 years, maybe forever, unless he leaves now before the law becomes effective.

Now, in a sense what you are recommending, then, is, oh, the repeal, I guess, of part C, which would be the absolute bar for a period of a year against virtually everybody who occupies this kind of a high-level job, a salaried job, going into university work, going into local government, or working for a nonprofit organization or a profit organization, and you are likewise recommending the modification of parts A and B, sections A and B of 207, to substantially put it back the way it was before the 1978 act was passed.

Dr. SUMBERG. I might point out that we are talking about more than a handful of people in the Federal Government. We are talking about a very large number.

Mr. McCLORY. In this article Secretary Califano is talking about a hundred or more.

Dr. SUMBERG. I think we are talking about many more. I indicated in my statement that there are currently over 200 faculty members in the program this year alone, but there are others who are here for other purposes.

Mr. McCLORY. And you are thinking not just about getting people back into the university service. You are thinking about your Government getting the benefit of academicians, skilled, highly educated, talented people who can render a valuable service to the Federal Government, which otherwise the whole citizenry is being deprived of.

Dr. SUMBERG. A wide-ranging field.

Mr. McCLORY. I thank you very much. And I concur.

Mr. DANIELSON. Thank you very much, gentlemen, for bringing this information to us.

[The complete statement follows:]

SUMMARY

The testimony on Title V of the Ethics in Government Act of 1978 will be provided by Dr. Alfred D. Sumberg, Director of Government Relations of the American Association of University Professors.

The American Association of University Professors has had many years of experience of dealing with issues related to professional ethics among faculty members at colleges and universities.

The American Association of University Professors believes that section 207(b)(ii) ("aiding and assisting") and section 207(c) (one-year communications ban) include prohibitions which are burdensome to faculty members. The Association is also concerned that the criminal penalties provided under section 207(c) and the disciplinary penalties in section 207(j) are unduly harsh. The prohibitions and penalties will cause faculty members to be less receptive to offers of temporary government appointments.

The American Association of University Professors requests the repeal of Title V prior to July 1, 1979.

STATEMENT OF DR. ALFRED D. SUMBERG, DIRECTOR OF GOVERNMENT RELATIONS, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Mr. Chairman and Members of the Subcommittee, I appreciate this opportunity to appear before this Subcommittee in order to discuss the potential impact of Title V

of the Ethics in Government Act of 1978. Our statement is relatively brief because the primary concerns about Title V have already been presented. However, we have a slightly different perspective as representatives of faculty members who are confronted with the necessity of making difficult decisions about accepting employment in the Federal government and who carry an unusually heavy burden under this law. We are also inclined to ask for a much broader remedy than has yet been proposed for the problems created by Title V.

The American Association of University Professors has had many years of experience with questions related to professional ethics. In addition to formulating the basic statement on professional ethics for faculty members in colleges and universities, we developed in the mid-1960's, in conjunction with President Johnson's Science Advisor, the Federal Council of Science and Technology, and the American Council on Education, a statement of principles formulating ethical standards and guidelines in the area of government-sponsored research at universities. Our Committee on Professional Ethics, which was created in 1916, has carefully considered over the years diverse questions which have been brought to its attention. It is within the context of this long experience that we present our comments on Title V.

We have reviewed Title V in terms of its impact on the well-established practice among faculty members to enter government service on a temporary basis and then resume their academic careers. That practice has proved to be mutually beneficial to both government and the academic community. At the same time, we have attempted to assess the impact of Title V on the post-employment activities of the individual faculty member who accepts an appointment in a Federal department or agency. In reviewing Title V, we focused primarily on sections 207(b)(ii) and 207(c). We have also noted the criminal penalties imposed under section 207(c) and the disciplinary provisions in section 207(j).

The American Association of University Professors endorses the enactment of legislation that specifies ethical standards and guidelines for Federal employees during their term of employment. And the Association recognizes that under certain conditions there may be limitations imposed upon former employees' activities in matters related to grants and contracts. However, we have serious doubts about efforts to broadly restrict the post-employment activities of those employees particularly if they continue to engage in the type of professional activity which led to their initial appointment to the government position. For professionals in a wide range of disciplines, continuity of their scholarly work is vital. To ask them to interrupt their research and other professional activities in the name of potential conflicts of interest serves no one's best interest.

Furthermore, while we applaud the intention of Congress to prevent undue influence by former government employees on their former colleagues and former agencies, we respectfully submit that "influence" is both difficult to define and impossible to police. Title V addresses these two points by prohibiting varying degrees of direct or indirect contact between the former employees and his or her agency for periods ranging from one year to perpetuity. A new and more significant dimension is added under section 207(b)(ii) when the former employee is also prohibited for two years from aiding, counselling, advising, consulting, or assisting others who may have direct and formal contact with his or her former agency. This prohibition as well as the one-year communications prohibition under section 207(c) raise serious doubts about the efficacy of Title V.

The penalties which are provided in Title V are a matter of special concern. The criminal penalty for violating section 207 (a), (b), and (c) is a fine of not more than \$10,000 or imprisonment for not more than two years, or both. Not only are the criminal penalties unduly harsh but they become almost immediately a psychological barrier to those who otherwise would be willing to serve in government. Applied by a United States Attorney to cases involving the two-year ban on "aiding and assisting" or the one-year ban against communicating with the former agency, the former employee assumes a risk of prosecution for activities which are essential to the practice of his or her profession. It is inevitable that faculty members returning to the campus from a tour of government service will be involved in "aiding and assisting" their colleagues and their institution in matters related to their experiences and areas of expertise. It is similarly inevitable that in continuing their professional activities faculty members or academic administrators will from time to time have to be in communication with their former agencies about those programs which have a direct bearing on their research or administrative responsibilities. It is both unrealistic and unnecessary to impose criminal penalties upon those who are doing nothing more than carrying out their normal professional activities. No less importantly, if all who are offered government positions know in advance that they are liable to criminal penalties for even inadvertent violation of Title V after returning to the campus, they are most unlikely to accept government employment.

The disciplinary penalty provided in section 207(j) also appears to be unduly harsh. Besides the criminal penalty, which may also be imposed, the department or agency head has the right to prohibit the former employee from making informal or formal efforts to influence the agency for a period not to exceed five years. We take particular exception to the subsequent provision: "or may take other appropriate disciplinary action." This freedom of action by department or agency heads in imposing disciplinary action constitutes an assignment of arbitrary authority which we believe is inappropriate.

For members of the academic community, Title V represents an unnecessary burden. The prospect of accepting government positions encumbered by burdensome post-employment prohibitions accompanied by excessive criminal penalties will make offers of such employment substantially less attractive. In effect, Title V will deter highly-qualified, talented, and sensitive faculty from considering the type of mobility into and out of government which has worked so well in the past. If they should accept positions under such conditions, then they confront the risks arising from the two-year prohibition on "aiding and assisting" and the one-year communications ban. The alternatives to continuing their normal professional activities as faculty members are to consider alternative employment for two years, a reduction in the level and scope of their research, rejection of appointments as academic administrators, and the relinquishment of their present roles as qualified resource persons and experts in their respective disciplines. Frankly, we do not believe that faculty members will be willing to consider such alternatives. Instead, they will shun government service. This would be a tragic loss to the nation.

I want to emphasize that we are not talking about just a handful of academics in government. Throughout the agencies there are thousands of faculty members who come from academic institutions on a temporary basis to assume positions of responsibility. Since 1971, 2,667 academics have come from public higher education institutions alone to serve for periods of up to four years under the Intergovernmental Personnel Act Mobility Program. During the current fiscal year there are 211 academics, representing 50 percent of all the appointments made under this program, at all grade levels including GS-17 and GS-18. Whether they are economists, law professors, mathematicians, or nuclear physicists, they have every right to view the prospective implementation of Title V with grave concern. We believe this is a vital program which needs to be continued and encouraged.

We do not support any special exemption for academics from Title V. Nor do we favor delay of the effective date. Instead, we think Title V should be repealed before it becomes effective. Its ramifications go well beyond the concern of Congress over undue influence by former government employees on their former colleagues and former agencies. For faculty members and their academic institutions, Title V constitutes an invasion of academic freedom and academic self-regulation, qualities which are highly prized in higher education. Besides regulating the post-employment professional activities of faculty members who participate in public service willingly, it determines how they shall relate to their professional colleagues and institutions. In effect, it becomes the potential vehicle for the violation of personal and civil rights. It not only raises fundamental constitutional issues, including First Amendment issues, but also it serves to weaken confidence in government among those who for many years have made extraordinary contributions to improving the health and welfare of our citizens.

We urge immediate action by this Subcommittee to repeal Title V, a law which we believe is too broad, too vague, probably unworkable, and unnecessary.

[Reprinted from Spring 1969 AAUP Bulletin]

STATEMENT ON PROFESSIONAL ETHICS

(Endorsed by the Fifty-Second Annual Meeting)

INTRODUCTION

From its inception, the American Association of University Professors has recognized that membership in the academic profession carries with it special responsibilities. The Association has consistently affirmed these responsibilities in major policy statements, providing guidance to the professor in his utterances as a citizen, in the exercise of his responsibilities to students, and in his conduct when resigning from

his institution or when undertaking government-sponsored research.¹ The Statement on Professional Ethics that follows, necessarily presented in terms of the ideal, sets forth those general standards that serve as a reminder of the variety of obligations assumed by all members of the profession. For the purpose of more detailed guidance, the Association, through its Committee B on Professional Ethics, intends to issue from time to time supplemental statements on specific problems.

In the enforcement of ethical standards, the academic profession differs from those of law and medicine, whose associations act to assure the integrity of members engaged in private practice. In the academic profession the individual institution of higher learning provides this assurance and so should normally handle questions concerning propriety of conduct within its own framework by reference to a faculty group. The Association supports such local action and stands ready, through the General Secretary and Committee B, to counsel with any faculty member or administrator concerning questions of professional ethics and to inquire into complaints when local consideration is impossible or inappropriate. If the alleged offense is deemed sufficiently serious to raise the possibility of dismissal, the procedures should be in accordance with the 1940 *Statement of Principles on Academic Freedom and Tenure* and the 1958 *Statement on Procedural Standards in Faculty Dismissal Proceedings*.

THE STATEMENT

I. The professor, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek and to state the truth as he sees it. To this end he devotes his energies to developing and improving his scholarly competence. He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

II. As a teacher, the professor encourages the free pursuit of learning in his students. He holds before them the best scholarly standards of his discipline. He demonstrates respect for the student as an individual, and adheres to his proper role as intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of students reflects their true merit. He respects the confidential nature of the relationship between professor and student. He avoids any exploitation of students for his private advantage and acknowledges significant assistance from them. He protects their academic freedom.

III. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associates. In the exchange of criticism and ideas he shows due respect for the opinions of others. He acknowledges his academic debts and strives to be objective in his professional judgment of colleagues. He accepts his share of faculty responsibilities for the governance of his institution.

IV. As a member of his institution, the professor seeks above all to be an effective teacher and scholar. Although he observes the stated regulations of the institution, provided they do not contravene academic freedom, he maintains his right to criticize and seek revision. He determines the amount and character of the work he does outside his institution with due regard to his paramount responsibilities within it. When considering the interruption or termination of his service, he recognizes the effect of his decision upon the program of the institution and gives due notice of his intentions.

V. As a member of his community, the professor has the rights and obligations of any citizen. He measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Mr. DANIELSON. For your information, the question of whether or not any amendments should be made to exclude State and local

¹1964: Committee A—Statement on Extra-Mural Utterances (Clarification of sec. 1c of the 1940 Statement of Principles on Academic Freedom and Tenure).

1968: Joint Statement on Rights and Freedoms of Students.

1961: Statement on Recruitment and Resignation of Faculty Members.

1964: On Preventing Conflicts of Interest in Government-Sponsored Research.

1966: Statement on Government of Colleges and Universities.

governments or conceivably any extension thereof which might encompass the educational community are not being considered right at this moment, though we may do so later, and it is certainly not to be interpreted as any kind of an indication as to what may happen to those suggestions.

Thank you very much.

Dr. SUMBERG. Thank you very much, Mr. Chairman.

Mr. STEINBACH. Thank you very much.

Mr. DANIELSON. Our next witness will be Mr. Pete McCloskey, president, Electronics Industry Association.

Thank you, sir. We do have your statement and without objection it will be received in its entirety in the record. Would you please proceed to argue your case in whatever manner you wish?

**TESTIMONY OF PETER F. McCLOSKEY, PRESIDENT,
ELECTRONIC INDUSTRIES ASSOCIATION (EIA)**

Mr. McCLOSKEY. Thank you, Mr. Chairman. Good morning.

I think the major point that I would like to make is that the electronics industry itself is very concerned about the impact of these regulations. We see a very real need in government for the Government to have the expertise of people who have been in the industry, who understand the industry's problems and can relate to them to be as valuable technical assistance within the various governmental agencies that impact the industry.

We see that need as something that is essential for good rule and regulation-making. We see it in the Department of Defense. We see it in other areas. I can cite a personal example where I have on my staff a man who is president of an electronics company.

He took the job as a key official in NASA as primarily on the public relations side of NASA. He stayed there for several years and then left to join us as a vice president of the association. Our association concerns itself with a broad range of problems. We have almost incidental impact with NASA, but we do have some. We have some on the standard making process with which NASA participates.

We have some on the committees where there is some function. They come under his purview, and he would theoretically be prevented from coming with us, or we might prevent him from coming with us because our counsel would say that there are some criminal sanctions that are attached.

We have to be very guarded in what we do and to err on the side of caution rather than on the side of considering this talent that might be available to us.

So I think what has happened is you are going to put a very chilling effect on getting people like that to go into Government to make it a career.

They are going to the Government because they feel an obligation for public service. On the other hand, you are going to preclude or limit their options as they come out. And I do not see any possibility in our particular situation for a real conflict of interest, but I see a possibility for a technical violation where there would be some incidental contact with NASA in his case.

I see that all throughout this area, and I guess that is our main concern. We are aware of any number of people who are now

applying for jobs in our industry, so obviously this is triggering something. The applications are probably ten times as great as they ever have been at any time.

Mr. DANIELSON. Thank you very much. Mr. McClory?

Mr. McCLODY. Thank you, Mr. Chairman.

Mr. McCloskey, there is an exception in the statute at the present time which excepts scientific or technological information from being communicated by the—well, the exception from the prohibitions of sections A and B and C of title V with regard to the communication of scientific or technological information.

Do you feel that that exception does not go far enough or did not adequately protect the kind of people that you are?

Mr. McCLOSKEY. I think what we are really talking about, Mr. McClory, is not necessarily the scientists, but it is those who have managed technical programs. They themselves may not be scientists. So it is not necessarily the specific scientific information, but it is the ability to relate to the practices what is involved, what is possible, what is impossible, what is the potential impact, what is the cost.

Mr. McCLODY. Are you familiar with the proposed technical changes that we are considering, one of which would eliminate the word, "personally present," or "personally involved," or only serve as a bar where the person was personally involved or personally present and would not—would eliminate the words concerning or informal or formal meaning?

Mr. McCLOSKEY. I am aware of that, and I know from some of the specific concerns that have been related to me that that would help a great deal, but I am not sure that is the only answer.

Mr. McCLODY. You would rather that we just eliminate section C?

Mr. McCLOSKEY. Well, I think the existence of criminal penalties is such that the industry is more apt to err on the side of caution, and I think a number of people would be precluded from normal reentry possibilities by virtue of it.

Mr. McCLODY. There is a criminal penalty now. It is just by expanding the law the personnel would be more apt to be subject to the criminal penalties, and of course what is lawful and ethical now would be denominated criminal—

Mr. McCLOSKEY. I thought that the criminal portion now exists to any contact where—in other words, if someone just makes contact, and it is an intentional contact but has nothing to do with any conflict of interest, but it is not proscribed.

Mr. McCLODY. That is in the law that becomes effective the 1st of July.

Mr. McCLOSKEY. Oh, excuse me. I am concerned about that very much, and that is precisely the point.

Mr. McCLODY. What I mean is in the existing law which is now in effect there are criminal penalties for direct conflict of interest, you know, the exertion of undue influence, those things are already prohibited.

Mr. McCLOSKEY. Right. We have gone farther now, and it is only direct contact where there is no conflict of interest that is proscribed.

Mr. McCLODY. Yes. Right.

Well, thank you very much.

Mr. DANIELSON. Mr. Harris?

Mr. HARRIS. I have none.

Mr. DANIELSON. Mr. Moorhead?

Mr. MOORHEAD. I have no questions.

Mr. DANIELSON. I want to thank you, Mr. McCloskey. Along with your presentation, I have read your statement. I see what your concern is. I do not share your concern, though I recognize what it is; C only prevents representation or communications with the intent to influence. I do not think saying hello to someone in Garfinckel's when you are there to get your wife a valentine, anything of that nature, is going to invoke violation of C.

Mr. MCCLOSKEY. Well, let me try to amplify that point. It is not that it may or may not. It is just that the counsel for the companies that might hire these people are advising their companies that they run the risk of having that type of interpretation placed on it, even though there is no actual conflict of interest.

Mr. DANIELSON. Well, maybe the counsel for the companies are a little bit incestuous. Perhaps they ought to go out and get into the field, and they would forget some of those bogie men.

In the real world the U.S. attorneys do not cite people for just being human, smiling now and then. I do identify your concern, and I do appreciate it, but I am not convinced that the concern is justified. That is the point.

Mr. MCCLOSKEY. Let us assume that the concern is not justified, but in the real world management of those companies are not going to be hiring those people, and their job options then are restricted, and you are going to have fewer people willing to make the crossover to the Government sector for any public service if they feel that their managements are interpreting it that way.

Mr. DANIELSON. I do appreciate your very precise presentation, and you have made your point. Some of us may not share it, but you certainly made it well.

Mr. MOORHEAD. I agree with what Mr. Danielson has said. However, I would not advise you to take any chance with the law as it is written. There are people prosecuted on occasion, and I do not think we want to lead anyone on a path where they become one of those people. I think there is a danger there. I hope we can do something about it.

Thank you.

Mr. DANIELSON. Thank you very much, sir.

[The complete statement follows:]

STATEMENT OF PETER F. MCCLOSKEY, PRESIDENT, ELECTRONIC INDUSTRIES
ASSOCIATION

Mr. Chairman, Members of the Subcommittee, I am Peter F. McCloskey, President of the Electronic Industries Association (EIA).

The Electronic Industries Association is the major national trade association in the electronics field, representing over 290 high technology companies engaged in the manufacture of electronic products ranging from the smallest components to major defense systems.

I welcome this opportunity to speak candidly to you about the Ethics in Government Act of 1978, which has a direct impact upon our industry as well as this nation.

Our industry is concerned that the Ethics in Government Act can be a prime case of legislative overkill. It is readily apparent that it is causing a number of people currently in government to opt for early retirement so that they will not be

encumbered by the Act in their quest for employment in the private sector subsequent to their government service. It is equally apparent that it will be a strong deterrent upon attracting new blood into the government service. The end result is inevitably the creation of a more aloof inbred bureaucracy. One that has been deprived of interaction with the private sector. The inevitable result is that regulations will be written by government employees who have no appreciation derived from their private sector experience as to the practical effects of implementation.

While it is not necessary that all government employees have private sector experience, there can be no doubt that cross pollination that occurs by virtue of interchange has been useful. This interchange has not been "a revolving door". This is not a question of government workers on one side leaving and joining the private sector and then being on the other side. We are talking about people from the private sector, managers, scientists and doctors whose new blood and new ideas vitally connect government with the real world.

We are very much concerned about Section 207(b)(ii) which contains the restrictions on aiding and assisting in representing persons before the government. We are concerned that the "aids and assists in representing" language is very broad, quite vague, and presents great difficulties in drawing lines between legal and illegal conduct. This requires prudent people to refrain from a broad range of activities in order to avoid the few questionable activities Congress intended to reach.

I would also emphasize that Section 207(b)(ii) creates a felony violation that carries with it sanctions of a \$10,000 fine and two years in jail. No responsible person or company can take any chances. They will have to give wide berth to any conduct that creates any appreciable risk not only because of possible prosecutions but because of public criticism in the press or elsewhere that inevitably comes with allegations of criminal conduct.

While we realize that the regulations issued by the Office of Personnel Management earlier this week are of some value in clarifying the existing regulations, particularly in defining the exemption for scientific personnel, these amendments certainly do not clear up all the problems. In an invidious way they contribute to the aura of confusion surrounding this Act, further deepening the "need to leave" atmosphere existing with the government. Therefore, we strongly urge the implementation date of the Act be delayed for at least a six month period, while answers to the difficult balancing of interests are sought.

We believe that the final regulations in reflecting the legislative intent should balance a reasonable need to eliminate situations giving rise to obvious conflicts of interest with a concomitant need to assure that the government may continue to obtain the services of the best qualified individuals.

TESTIMONY OF HARVEY L. PITT, ESQ., FRIED, FRANK, HARRIS, SHRIVER & KAMPLEMAN

Mr. DANIELSON. Our next witness is Harvey Pitt, Esq. I believe he is representing himself. I am not sure.

Am I right?

Mr. PITT. Yes.

Mr. DANIELSON. Thank you. Please come forward.

I trust you are not going to unload that whole catalog case on us. But inasmuch as you have presented us with a statement, which has been received, and without objection will be reprinted in the record, you are free now to advocate.

Mr. PITT. Thank you, Mr. Chairman.

Corporate lawyers, I am told, are supposed to carry around big cases. It looks more impressive.

Mr. DANIELSON. I used to do the same, but I found that the ham sandwich got stale after a few years.

Mr. PITT. Mr. Chairman, members of the subcommittee, I will not repeat the prepared statement, in accordance with the chairman's suggestion. I would just like to briefly indicate that prior to joining my present law firm I was General Counsel of the Securities and Exchange Commission for 3 years and had the privilege and honor of testifying before this committee on a number of

occasions. And I am grateful for the opportunity to appear here again now that I am in private practice.

For the past 10 years I was an employee in an attorney capacity at the Securities and Exchange Commission, the last 3 years of which I—as I have indicated—I was General Counsel, and I left in September of 1978.

My concern basically is that the Ethics in Government Act, in my view, particularly 207, subsection (c)—is apt to have a debilitating effect on the capacity of Government to attract and maintain qualified corps of civil servants, and it is apt to induce certain employees to leave Government before obtaining policy-level positions.

My own career was affected by the Ethics in Government Act during the course of any number of years. Someone in Government service, particularly a position that is readily translatable into the private sector, receives a number of offers.

My experience in the Government was extremely rewarding and quite exciting. When I was approached from time to time, I was not basically interested in leaving. I knew that, if there ever came a time when I leave, free access into the private sector would be available.

And there was more that I thought I would do and learn in terms of experience. However, the Ethics in Government Act changed my perspective, and I realize that it is difficult to generalize from individual experiences, but I think it may be useful just to briefly review my own thought processes.

The concern that I had was that, if the act passed and became effective, as to me, my ability to leave the Government might be curtailed. Rather than jump to a hasty conclusion, I checked with any number of people whose opinions I respected in the private sector, who all advised me that that was probably a fair reading of that, that the impact of the act is probably less for a large firm.

And indeed, ironically, I wound up with a large firm where the impact of the act on someone like me may be less, but certainly for those firms the impact of the act would be detrimental.

It was simply not economic to ask someone with expertise to work up a problem in the law firm and then have somebody else present it to the SEC or another agency of Government, and in fact there is in addition a problem of client representation.

The person who spends all his time working on a project is the one most familiar with it and the one most capable of handling the matter before an agency.

I recognize that there are two major concerns that led to the so-called cooling off period; one, I think, is the so-called revolving door syndrome, and my views on that, I must confess, are slightly at odds with the underlying premise of the act.

As General Counsel of the SEC, I insisted that attorneys who applied for positions with me agreed to commit for a 3-year stay on the theory that it took some time to train people and that I did not believe that the Government should be in the practice of giving people a quick education, upon which they could readily capitalize, and then utilize that in the private sector.

I wanted to realize some of the fruits of the training that we provided for young attorneys. But on the other hand, we also

recognize that occurrences come up, people have to leave, personal problems arise, opportunities that do not come along every day. And so the 3-year rule was kind of a flexible rule. It was most often honored.

On occasion there were good reasons for not honoring it. The revolving door syndrome is, I think, overemphasized in the sense that the Government has benefited by the free interchange of people from the private sector coming into the Government and people from the Government going out into the private sector.

In my prepared statement I give some examples of how that has worked in the securities area. But the beneficial effects of that cannot be understated. The bill, even if the revolving door is a concern, is indiscriminate. Somebody who serves 10 years and somebody who serves 10 months are treated precisely the same; therefore, the bill does not deal with the problem—if it is a problem.

More importantly, I am concerned internally—having spent 10 years of my life at the SEC—with what the impact of 207(c) might do to the internal deliberations of the Agency.

One of the strengths of the SEC in particular—but it is certainly not necessarily contiguous to the SEC—is the fact that there is a strong staff of intellectual insubordination, if you will, in terms of giving the Commissioners and each other their views.

There is free debate on every issue, and I think that is one of the things that has made the SEC one of the best Agencies in the Government. One of the reasons why somebody like me, who came in at the lowest level and simply worked my way up, were able to take difficult positions at time is because there is always in the background the knowledge that, if something was so vehemently disagreed with that somebody asked me to leave, that that would not be a problem.

My independence was assured by virtue of the fact that I was not dependent upon currying the favor of my superiors. It did not mean I was obnoxious. It simply meant that it was important to get opposing points of view across.

Those are some of the reasons why I believe that an amendment to 207—I do not stress repeal at this juncture because I think, first of all, it may not be necessary. We should not overreact in either direction. But I think an amendment to 207(c) along the lines that were suggested by Chairman Williams on Monday would have a very beneficial effect and could reserve the underlying policies of this act without doing potential damage to what I think Government should be proudest of.

Mr. DANIELSON. I thank you, Mr. Pitt. You have presented your point very well.

Mr. Moorhead?

Mr. MOORHEAD. I have no questions, but I want to thank you for coming.

Mr. DANIELSON. Mr. Mazzoli?

Mr. MAZZOLI. I have no questions.

Mr. DANIELSON. Mr. Kindness?

Mr. KINDNESS. No questions.

Mr. DANIELSON. Mr. Harris?

Mr. HARRIS. I just have one question.

As an attorney for the SEC, if in fact a job offer were made from outside, would you at that time have felt it necessary to have told the prospective employer that you would be unable to represent him on cases that you were working on on behalf of the U.S. Government as a representative on the other side?

Mr. PITT. Absolutely.

First of all, one of my functions as General Counsel at the SEC was to administer the Commission's code of ethics, which in some respects are stronger than statutory requirements and also to interpret them. It would not be proper under the Commission's regulations, even to have a discussion with someone against who one was involved for the Government without first following certain steps in the Commission's regulations.

The first step is to notify your superior, and the second step is to be relieved of the job assignment. But if discussions were appropriate, it would be totally inappropriate for a Government employee, in my view, to represent someone in private practice with respect to a matter that he dealt with in the Government on the other side, if it is a specific matter, and there were parties as opposed to, say, a rulemaking situation.

Mr. HARRIS. What if a man has somewhat of a personal question with regard to this? In the sort of long-term perspective of your life you intended to leave the SEC at some point in time?

Mr. PITT. I guess I can answer that by saying I had. And it is interesting because I addressed the Federal Bar Association younger lawyers group on precisely this point.

I had no long-range plan when I came to the Government. When I went to the SEC, as opposed to, say, some clerkship, because there was something exciting about it, I stayed because it was exciting, rewarding and challenging.

When I left, I was as much enamored of what I was doing as when I first started, if not more so. I think there comes a point in time when turnover is good both for an individual—you can get stale in a job, and you may tend to develop too many institutional biases.

And second, I think that the agency benefits from an infusion of new talent, somebody with new ideas who is not used to the old ways of doing it.

I cannot tell you—in fact, I believe this to be the case, that when this particular offer that I ultimately accepted came along, that was an offer that was sufficiently attractive to me that it made sense in my career plans. I had never planned, and had that offer not come along, I might still be at the Government.

But I must say that the Ethics in Government Act was what changed my receptivity. Prior to that act I basically was still putting people off. "I am not ready to discuss employment because I am not thinking in those terms."

After the act came along, it occurred to me that I might face a point in time when I had no longer the option, when it might not be easy to make the switch.

Mr. HARRIS. Well, the act itself had not been passed?

Mr. PITT. That is correct. It was not passed.

Mr. HARRIS. But your best information was it was going to be?

Mr. PITT. Yes. As a matter of fact, I testified on a number of portions of the act prior to its passage as General Counsel of the SEC.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Pitt. You made a very fine contribution to our record, and we welcome you back, and hope to see you again. Good luck.

Mr. PITT. Thank you, Mr. Chairman.

[The complete statement follows:]

STATEMENT OF HARVEY L. PITT

Mr. Chairman; members of the subcommittee, I am Harvey Pitt, a partner in the Washington-New York-London law firm of Fried, Frank, Harris, Shriver & Kampelman. From 1968 through 1978, for more than ten years before joining my law firm, I was employed as an attorney by the Securities and Exchange Commission here in Washington. For the last three years of my government service, I was privileged to serve as the Commission's General Counsel. I left the Commission last September, about seven months ago.

In response to the Chairman's invitation, I am pleased to have the opportunity to present my personal views to you about the Ethics in Government Act of 1978. On Monday, the members of this Subcommittee received the views of several distinguished government managers. They expressed their concern about the likely effects of the Act. My perspective, as a former government employee now in private practice, is somewhat different from theirs. I was, but I am no longer, directly affected by the current statute. My recent career choices have been shaped, made and pursued, in large part, in the shadow of this Act. My views reflect experiences in both the public and private sectors; hopefully they may prove to be of some value to this Subcommittee in connection with its important deliberations.

My principal concern is that certain of the post-employment restriction provisions of the Ethics in Government Act, although properly motivated, may well impair both the effectiveness and the integrity of government service—a result wholly at odds with the legislation's stated goals. I am speaking primarily about new subsection (c) of Section 207 of Title 18 of the United States Code, which bars many former government employees who leave the government on or after July 1, 1979, from having any substantive contact with their former agencies for a full year.

Because this provision of the Act has not yet become effective, this Subcommittee has heard testimony from various government officials as to what they anticipate the effects of the bill will be. There may be a tendency to discount such testimony as mere speculation. And, I have heard it suggested that, if the Act in fact does engender its predicted adverse consequences, the Act can always be amended. These reactions, while understandable, do not reflect the actual effects of Section 207(c) that are already being felt. My experiences persuade me, and I hope ultimately will persuade each member of this Subcommittee, that the Act should be amended, and should be amended prior to its effective date.

At the outset, I think it is important to clarify the philosophical predicates upon which Section 207(c) was constructed. As I understand it, the Section was intended to fulfill two functions—(1) to curtail the so-called "revolving door" syndrome of government; and (2) to restore public confidence in the integrity of government by preventing former government officials from improperly influencing the government colleagues they leave behind. Even though both of these may be desirable goals, Section 207(c) as currently written, in my view, is not an appropriate vehicle for achieving them.

For one thing, Section 207(c) is not limited to so-called revolving door employees. Someone who has served ten years in the government, as I did, is as subject to the Act as someone who serves ten months. It surely cannot be claimed that longevity of government service is irrelevant in considering ways to reduce the revolving door. More importantly, in my view, stripping away pejorative epithets such as the "revolving door," a free interchange of personnel between the public and private sectors helps the government to accomplish its mission most effectively.

While a strong cadre of career civil servants is a necessary element of the government's work force, agencies like the Securities and Exchange Commission owe their excellence to a continuing infusion of private sector experience. Starting with Joseph Kennedy, and continuing today with Chairman Harold Williams, the Commission has been blessed with bright individuals who understand not just the federal securities laws and their underlying theory, but also the effects of these laws

and the practical consequences of government regulations upon those who must comply.

Government benefits by attracting employees from the private sector. These employees take deep pay cuts and assume increased burdens out of a desire to help shape governmental policy and to experience the rewards of serving the public. They bring to government practical experiences and pragmatic judgments. They offer an agency both diverse and comprehensive points of view—literally the lifeblood of the administrative process.

The converse is equally important. The Commission's effectiveness is, in large measure, attributable to the fact that many of its former employees, well-trained and conversant with the Commission's processes and perspectives, leave the agency to counsel clients subject to a labyrinth of Commission regulations. There is no doubt that, as a former SEC General Counsel, I have certain "advantages." But these advantages have nothing to do with influencing my former agency's activities. Rather, they relate to my ability to counsel clients on how to avoid conduct the Commission might deem in violation of the law. This "advantage" is properly one to be claimed by the Commission itself.

A graphic illustration of this aspect of the benefits of a free interchange between the public and private sectors can be found in the securities industry. As a result of various problems experienced by securities brokerage firms over a decade ago, the Commission persuaded most brokerage firms to appoint compliance officers to serve as internal regulators of their firms' securities activities. The performance of these internal compliance monitors has served to avoid major expenditures of both government and private sector resources, by nipping potentially unlawful conduct in the bud, and maintaining important and continuing contacts with various SEC staff officials. Although it was not designed to operate to the benefit of any particular attorneys, virtually all of these compliance officers ultimately came from the Commission's ranks.

Section 207(c) threatens these important interchanges between the public and private sectors. Even with the current interim regulations published this week, the Act has served, and will continue to serve, to deter high level government officials from staying in the government; and the Act will hinder public-service oriented private practitioners from entering government service. Even though the Act has not yet taken effect in this regard, there is already sufficient empirical evidence to justify my statements.

My own experiences may help make the point. My career at the Commission was most stimulating and rewarding. In particular, the opportunity to serve as General Counsel was extremely challenging. At the time I left, I did not do so out of a sense of dissatisfaction with my job. And financial considerations were not then, or now, paramount in my mind. Rather, my receptivity to unsolicited offers from the private sector was directly attributable to the pendency of what ultimately became the Ethics in Government Act. A number of private practitioners assured me that a one-year "cooling off" period would make me less attractive and useful—not because I would be unable to use improper influence with my former Commission colleagues, but because virtually every facet of a securities lawyer's work brings him or her in regular and continuous contact with the Commission.

From an economic as well as a pragmatic standpoint, I was told, and now have seen for myself, that it is not sensible to have a former government employee do all the work on a given project only to require yet another member of the firm, with little or no involvement in the project, to present it to the SEC. Yet that is what both Section 207(c) and the interim regulations just announced require. Moreover, the impact of smaller firms, which seek to compete with established larger firms can be devastating. In candor, my law firm can surely afford to employ me whether or not the Ethics Act applies to my activities. But smaller law firms, seeking to develop securities law expertise, simply could not afford to employ former government employees who could not function effectively for a year. It is one thing to talk about cooling off periods; it is quite another to freeze some law firms out of perfectly appropriate opportunities to compete. To the extent fears of improper influence motivated this Act, I am unaware of meaningful empirical data to support those fears. In my ten years of government, SEC alumni were treated as were non-alumni; they did not seek any improper benefits for their clients, and I am certain that, if they had, none would have been granted.

My own experiences coincide with those of many others. Not only have a number of SEC high level officials already left the agency, but at least a half dozen more have talked to me about their intention to leave if Section 207(c) is not amended. Friends in other agencies have expressed similar views.

But the effects of Section 207(c) can be even more pernicious than the loss of key personnel or the failure to attract to the government personnel from the private sector.

The SEC, for example, is an agency known for the intellectual insubordination of its staff. Staff officials at all levels are encouraged to express differing or opposing points of view—both with one another and with members of the Commission. For example, the Commission's General Counsel serves at the pleasure of the Commission's Chairman and the other Commissioners. I served three Chairmen during my years as General Counsel. I disagreed with each on any number of occasions, sometimes vehemently. I also disagreed with my colleagues on the SEC's staff, as they did with me.

I was not afraid to express my views, or to disagree with anyone, because I was fairly confident that no matter what occurred I could find satisfactory employment in the private sector. In short, the qualities of independence and intellectual integrity that are so vital to government are fostered by the knowledge that, if the going becomes too rough, there are always viable alternatives. If Section 207(c) has the effect of curtailing movement from government into the private sector, as I believe it does, it surely could produce a chilling effect on the quality and intellectual integrity of government.

Although the Administration now recognizes that the Ethics in Government Act may deter continued government service, and that such a result would be undesirable, neither H.R. 3325 nor the interim regulations adopted by the Office of Government Ethics are addressed to the concerns I have articulated. These efforts are constructive, but simply incomplete. What is needed is somewhat broader relief, along the lines suggested by Chairman Williams of the SEC.

The SEC has traditionally, and deservedly, been viewed as one of the best regulatory agencies in government. It is chronically understaffed, overworked, underpaid and overcrowded. Despite these impediments, the Commission has survived and prospered. It has prospered because, like other agencies, its mission is important, its work is exciting, and its training is translatable ultimately into private sector opportunities.

Of late, the government has had to shoulder additional burdens. The Ethics in Government Act post-employment restrictions, however, may impose more freight than government servants can bear.

Improving the performance and efficiency of civil servants, and imposing better quality controls on the government, are entirely appropriate goals. Preventing conflicts of interest and improper influence are certainly desirable ends. But if government service becomes so burdensome that the brightest people neither aspire to be promoted to important policy positions nor agree to serve in them, whom have we really helped in the name of regulatory reform?

Mr. Chairman, I appreciate the opportunity to share my views with you today, and I will be happy to respond to any questions the members of the Subcommittee may have.

Mr. DANIELSON. This concludes the taking of testimony from witnesses. There are a few matters that I wish to bring to the attention of the subcommittee. We have before us a memorandum, a letter dated April 5, 1979, from Common Cause, a copy of which has been distributed to each member of the committee.

In essence their position is, the last two paragraphs namely:

We support the three technical amendments that have been proposed by the Administration. We believe that these amendments clarify the intent of law and correct specific problems without changing the law's fundamental purpose. We urge you to adopt the Administration's technical amendments and strongly urge you to defeat any efforts to modify or strike the one year ban.

There are a number of other communications which we have received and which I believe have been distributed to all members of the committee as they have come in, and without objection I would like to include them in the record.

I will read them off. They are as follows: A letter from David A. Clarke of the District of Columbia, dated March 14, 1979; a letter of C. H. McKinley of Redstone Arsenal, March 16, 1979; a letter from John S. Irving, General Counsel of the National Labor Relations Board, dated March 20, 1979; a letter from John A. D. Cooper,

president of the Association of American Medical Colleges, two letters. One is dated March 22, 1979, and one dated March 30, 1979.

A letter from Harold L. Enarson, president of Ohio State University, dated March 28, 1979; a letter from Harlyn O. Halvorson, chairman of the Council of Scientific Society Presidents, dated March 29, 1979; and a letter from Phillip A. Millstone, Esq., of Millstone & Cannonson, dated April 2, 1979.

In addition there are newspaper articles from the Washington Post dated January 31, February 5 and March 24, 1979; and an article from Newsweek, March 5, 1979; clippings from the New York Times, March 8, March 16 and March 21, 1979; the Christian Science Monitor, March 9, 1979; the Washington Star, March 9 and March 15, 1979; the Los Angeles Times, March 20, 1979; and Congressional Quarterly of March 24, 1979.

One which I did not include in the list but wish to add is the letter from Common Cause dated April 5, 1979, to which I alluded just before reading off these articles.

Mr. MOORHEAD. On that same subject I think most of us got a letter from Harold Williams, Chairman of the Securities and Exchange Commission, in which he slightly changed his testimony from his April 2 visit before this committee and made some very constructive recommendations for changes in section 207C.

Mr. DANIELSON. These changes are appended to the letter.

Mr. MOORHEAD. Yes. I would ask that the letter and the changes be made a part of the record.

Mr. DANIELSON. Is there any objection?

Hearing none, it is so ordered, and all of these items are included in the record.

That concludes the making of the record in this case. We will now put on our other legal hat and move into the markup phase of the bill.

[Whereupon, at 11:15 a.m., the hearing was adjourned to go into executive session.]

ADDITIONAL MATERIAL

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., March 30, 1979.

To: Hon. George E. Danielson.

From: American Law Division.

Subject: Constitutionality of investing administrative agencies with authority to promulgate regulations describing more specifically conduct which Congress has made criminal in general terms.

This is in response to your request and will confirm our subsequent telephone conversation in which you inquired as to the constitutionality of investing an administrative agency with the authority to promulgate regulations describing more specifically conduct which Congress has made criminal in general terms. Recent case law suggests that such a delegation of authority is within the constitutional power of Congress under proper circumstances.

The federal constitution provides that "[A]ll legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives", United States Constitution, Art. I, § 1. Congress may not abdicate or transfer to others the essential legislative functions with which it is thus vested, *Schechter Corp. v. United States*, 295 U.S. 495 (1935); *Panama Refining Company v. Ryan*, 293 U.S. 388 (1935). On the other hand, the federal constitution does not deprive Congress of necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. *Panama Refining Company v. Ryan*, *supra*; *Schechter Corp. v. United States*, *supra*; 293 U.S. at 426. *United States v. Gordon*, 580 F.2d 827, 839 (5th Cir. 1978).

In recent cases, the courts have upheld the authority of Congress to (1) authorize the Attorney General to add or subtract particular drugs from the various schedules of the Drug Abuse Prevention and Control Act, 21 U.S.C. § 811, where the criminal penalties of the Act are defined in terms of those schedules, 21 U.S.C. §§ 841-843, *United States v. Davis*, 564 F.2d 840 (9th Cir. 1977); *United States v. Pastor*, 557 F.2d 930 (2d Cir. 1977); *United States v. Roy*, 574 F.2d 386 (7th Cir. 1978); *United States v. Gordon*, 580 F.2d 827 (5th Cir. 1978); (2) authorize the Secretary of the Interior to promulgate regulations for the use and management of National Park Service monuments, reservations and parks where violations were criminally punishable, *United States v. Brown*, 552 F.2d 817 (8th Cir. 1977) (regulation prohibiting possession of loaded firearms and hunting within a national park) and (3) authorize the Administrator of General Services Administration to promulgate needful rules and regulations for the government of federal property, 40 U.S.C. § 318a, subject to criminal penalties, *United States v. Crowthers*, 456 F.2d 1074 (4th Cir. 1972) (regulations prohibiting disturbances and the distribution of handbills on federal property).

CHARLES DOYLE,
Legislative Attorney.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., April 5, 1979.

HON. GEORGE E. DANIELSON,
U. S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DANIELSON: In my testimony on April 2 before the Subcommittee on Administrative Law and Governmental Relations which you chair, I proposed an amendment to the Ethics in Government Act of 1978. Since that time, we have had several inquiries concerning the amendment. I enclose a brief description for your information.

I appreciate your consideration.
Sincerely yours,

HAROLD M. WILLIAMS, *Chairman.*

Enclosure.

AMENDMENT TO SECTION 207 OF THE ETHICS IN GOVERNMENT ACT OF 1978¹ AS
PROPOSED BY HAROLD M. WILLIAMS, CHAIRMAN OF THE SECURITIES AND EXCHANGE
COMMISSION²

Proposed Amending Language: The proposed amendments would insert a new subsection 207(k) following present subsection 207(j), which would read as follows:
“(k) Except with respect to a former officer or employee covered by paragraph (1) of subsection (d) of this section, subsection (c) shall not apply to any formal or informal appearance before, or any oral or written communication to, any independent agency of the United States, provided that such appearance or communication is made a matter of public record.”

Present 207(c)

Under present Section 207(c), for one year after leaving Government employment, a former senior employee [as specified in Section 207(d)] may not represent another person or himself in attempting to influence his former agency on a matter pending before, or of substantial interest to, his former agency. This flat prohibition is in addition to, and goes considerably beyond, the permanent bar against any former employee's representing another person on a matter in which such employee participated personally and substantially while a Government employee [Section 207(a)] and the two-year bars against representing another person on a matter which was pending under any former employee's official responsibility in his last year of service [Section 207(b)(i)] or against assisting someone else in such representation applicable to senior employees [Section 207(b)(ii)].³ I reaches entirely new matters, even those not pending at the time the former employee left office and, thus, where there could not be any actual conflict of interest.

Effect of proposed amendment

The amendment set forth above as proposed by Chairman Williams would not disturb any of the protections provided by Sections 207(a) and 207(b). Nor would it modify the application of Section 207(c) to executive level appointments described in Section 207(d)(1) such as Chairman Williams and the other Commissioners at independent agencies. What it would do, in effect, would be to remove the Section 207(c) prohibition on contact by senior employees below the executive schedule level to permit contacts which are made a matter of public record. This would permit representation on matters in which the former employee had no previous responsibility for or involvement in, but only when such representation could be accomplished by contact with the agency which was made a matter of public record.

The Ethics Office would be responsible for implementing regulations.

This agency administers a number of securities laws which have at their heart the concept of “full disclosure” and which have proved the strong deterrent value of such disclosure. Because Section 207(c) is designed to reach activities involving the possible appearance of conflict of interest rather than a likelihood of actual conflict, we believe that it is particularly susceptible to a full disclosure approach such as already underlies title II of the Ethics in Government Act, the financial disclosure requirements applicable to executive personnel. Such an approach will, we believe, alleviate the fears of many of the officials now considering leaving government because of the Act, while assuring the public that real conflict of interest abuses involving conduct behind closed doors have been stopped.

¹ Section 207 of Title 18, United States Code, as amended by the Act of October 26, 1978 (Public Law 95-521, Section 501(a); 92 (Stat. 1864)).

² This amendment was proposed in testimony on April 2, 1979, before the Subcommittee on Administrative Law and Government Relations of the House Judiciary Committee and on April 3, 1979, before the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce.

³ In general, the combination of the Commission's own ethical rules and Bar Association's ethical rules are at least as stringent as subsections (a) and (b).

DEPARTMENT OF JUSTICE,
Washington, D.C., April 2, 1979.

Hon. GEORGE E. DANIELSON,
Congress of the United States,
U.S. House of Representatives, Washington, D.C.

DEAR MR. DANIELSON: The Attorney General has asked me to respond to your letter of March 27 in which you raise several questions concerning section 501(a) of the Ethics in Government Act of 1978, Public Law 95-521, 92 Stat. 1864. That section of the Act, as you know, amended 18 U.S.C. 207.

You question first whether there is constitutional infirmity in a statute which, like section 207 proscribes postemployment conduct by certain former government employees as criminal and permits an Executive branch official, by regulation, to designate some of the officials to whom the proscription applies. This identical question arose during consideration of the Ethics in Government Act. It was answered in a letter, a copy of which is attached, from Larry Hammond, Deputy Assistant Attorney General, Office of Legal Counsel to you as Chairman of the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary. Mr. Hammond concluded that Congress has the constitutional authority to delegate to the Executive branch the power to designate positions and thereby trigger the application of criminal sanctions. I agree with that conclusion. The letter, incidentally, is reproduced at page 709-10 of Financial Disclosure Act: Hearings on H.R. 1, H.R. 9, H.R. 6954, and Companion Bills Before the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary, House of Representatives, 95th Congress, 1st Session (Sept. 9 and 12, 1977) (Serial No. 11). I would note that other statutes currently on the books provide for criminal penalties and proscribed conduct while allowing both the details of the conduct and the persons to whom the proscription applies to be established by regulation. See, for example, Chapter 13 of 21 U.S.C. (Drug Abuse Prevention and Control), 21 U.S.C. 801 et seq. (1976).

You also raise three questions, or concerns, about subsection (j) of section 207. That subsection allows a department or agency head to "disbar" (I use the term loosely) from "practice" (again I use the term loosely) before the department or agency for a period not to exceed five years, a former employee of the department or agency found, "after notice and opportunity for a hearing," to have violated subsections (a) (b) or (c) of section 207. The agency or department head is also authorized to take "other appropriate disciplinary action." However, disciplinary action is subject to review in a United States District Court and must initially have been imposed in accordance with established procedures.

Your first concern about subsection (j) is that, since it provides for what is, in effect, a civil penalty, it should not be included in a criminal statute. You view its placement as "inappropriate." As you know subsection (j) originated in the Senate version of the Act. The House bill had no equivalent provision. The Administration's representatives supported the Senate version on this issue and in conference the Senate provision was adopted. (H. Conf. Rep. No. 95-1756, 95th Cong., 2d Sess. 77 (1978).) While I agree with you that the inclusion of an administrative remedy in what is primarily a criminal statute is unusual, I would hesitate to characterize it as inappropriate. As it is now placed, subsection (j) is appropriately linked with the criminal penalties so as to place former government employees on notice of the totality of the penalties (both criminal and civil) to which they are subject for conduct that violates section 207. Its placement within the statute and the Code does not affect its legality.

You are also concerned that because subsection (j) permits an agency head to "take other appropriate disciplinary action" it may violate due process as being too broad. I do not believe this to be the case. Although the language appears broad on its face, it must be interpreted in light of reason and the legislative history. Clearly it was not intended to and does not authorize administrative disciplinary action so extreme as to violate substantive due process. Rather, it authorizes only "appropriate" disciplinary action and must be understood to be limited to actions similar to the primary remedy, "disbarment" for a period not to exceed five years. See, Senate Report 95-170, 95th Congress, 1st Session 155 (1977) which defines "other appropriate disciplinary action" by example as "issuance of a formal reprimand." In the unlikely event that an agency head did attempt, pursuant to subsection (j), to impose unreasonable administrative discipline his action would be subject to review in federal court.

Your final concern over subsection (j) is that it permits administrative discipline only for violations of subsections (a), (b) and (c) of section 207. Thus, it does not authorize such discipline with respect to those who violate subsection (g) (the partnership provision). I am not familiar with the rationale for the distinction between

subsection (g) and the other provisions to which you refer and am not currently in a position to express a reasoned opinion on the subject.

Sincerely,

JOHN M. HARMON,
Assistant Attorney General,
Office of Legal Counsel.

Attachment.

DEPARTMENT OF JUSTICE,
Washington, D.C.

Hon. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: You have raised a question about the method of determining which former Government officials will be subject to certain of the post-Federal-service restrictions contained in the Administration's proposed revision of 18 U.S.C. 207 submitted to the Committee on the Judiciary on October 3.

Under the Administration proposal, those persons who occupied "political" positions—i.e., Executive Level and Non-Career Executive (Schedule C above GS-15) positions—and top-ranking military officers would automatically be covered by a new one-year prohibition against representing another party before their former agencies. The Director of the Office of Government Ethics would then be instructed to designate additional positions in the departments and agencies occupied by officials having a role in the formulation of policy that is substantially similar to that of officials automatically covered by the provision. Occupants of these specially designated positions, when they leave Government service, would then also be subject to the new one-year bar against appearing before their former agencies.

We do not see any constitutional problems in Congress' delegating the Director of the Office of Government Ethics the power to determine which additional positions will be covered. As the Supreme Court has said,

We have always recognized that legislation must often be adapted to conditions involving details with which it is impracticable for the legislature to deal directly. We have said that—"The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. . . ." *Panama Refining Co. v. Ryan*, [293 U.S. 388, 421]. In such cases "a general provision may be made, and power given to those who are to act under such general provisions to fill up the details." *Wayman v. Southard*, 10 Wheat. 1, 43. *Currin v. Wallace*, 306 U.S. 1 (1939).

In the present situation, the Director is merely asked to "fill up the details" of designating the specific positions to be covered by the special post-Federal-service restrictions, based on the policy-making nature of the duties involved.

In *Currin v. Wallace*, the Secretary of Agriculture was given the authority to designate certain tobacco markets where tobacco moves in interstate commerce, and all transactions at such markets were to be subject to inspection and certification by representatives of the Secretary. Criminal sanctions were applicable to anyone who purchased or sold tobacco at designated markets without the necessary inspection and certification. Thus, the case is directly analogous to the procedure in the Administration proposal, under which an Executive Branch appointee will designate positions under a broad standard established by the Congress, and the occupants of such positions will then be subject to special restrictions on their activities after they leave Government service. See also *Yakus v. United States*, 321 U.S. 414, 423-427 (1944).

In our view, these cases establish ample precedent for the constitutional authority of the Congress to delegate to the Executive Branch the power to designate positions and thereby trigger the application of criminal sanctions.

Sincerely,

LARRY A. HAMMOND,
Deputy Assistant Attorney General.

[From The Washington Post, Jan. 31, 1979]

STIFFENED FEDERAL ETHICS LAW MAY MAKE OFFICIALS QUIT

(By Joanne Omang, Washington Post Staff Writer)

Hundreds of government officials—scientists, educators and researchers—may resign this spring to avoid coming under a stringent new code of ethics aimed at curbing conflicts of interest.

The 1978 Ethics in Government Act requires detailed financial disclosure statements and puts stiff limits on what high-ranking officials may do in the private sector after they leave government.

Several affected officials say the limits in the law may leave them virtually unemployable outside the government after the act takes effect on July 1.

"Under this law, I couldn't go back and do most of the things I have spent a good part of my life doing," said Hale Champion, undersecretary of health, education and welfare. "I have to consider resigning if the implications are as grave as they look."

Others who said they could be similarly affected include Richard Atkinson, director of the National Science Foundation; William J. Perry, director of research and engineering in the Department of Defense, and Donald S. Fredrickson, director of the National Institutes of Health.

They are typical of hundreds of executives, professors, scientists and others who join government for a few years, intending to return eventually to their old jobs or to others like them. Often these jobs are at nonprofit or academic institutions having extensive government research grants; others are at private companies with large federal contracts.

"The higher up in the decision-making you are, the more difficult it becomes," said Champion, who was formerly vice president for finance at Harvard University. "You then have official responsibility for lots of things you don't deal with personally . . . it could come down to meaning you can't participate in the governance of any institution that has anything to do with the government."

The new law covers all federal employees at grade GS16 or above or earning more than \$42,500, which includes nearly everyone in a policy-making position. It also covers judges, members of Congress and senior congressional staff members, as well as political appointees: in all, about 15,000 persons.

Passed in the wake of the Korean influence-buying scandal, the measure requires listing outside income, gifts, debts, property transfers, spouse's income and holdings and other financial matters beginning May 15.

It also tightens existing lifetime bans on representing outsiders before the government on issues in which the official had "personal and substantial" dealings while in government. And it extends from one year to two the ban on acting for a private party in issues that were under the policymaker's "official responsibility" in the year before leaving public office.

These provisions, effective July 1, are not considered particularly troublesome to scientists and academics, although Atkinson criticized the requirement that even those who serve on advisory boards for as little as 20 days annually must file disclosure statements.

Far more troubling, according to those concerned, is the provision that says a former government official shall not "aid, assist, counsel, advise nor assist in representing" before the government a private organization on any matter under the official's former jurisdiction. "He can't talk about anything he knows anything about," summed up an HEW official.

This could mean, said Fredrickson of NIH, "that quite possibly I would be barred from my old job" as president of the National Academy of Sciences Institute of Medicine. It involved handling government contracts and studies which concerned NIH, he said.

Another 50 persons now at NIH—"the people who run the institute, the key administrators"—would be affected, he said. "The law might mean that our usual movement from medical schools and the academic world and back would be severely impaired."

Perry of the Defense Department was formerly president of an electronics firm in Sunnyvale Calif. "I don't believe I could return to that job under this as I read it," he said, "and I would certainly like to have that option."

Perry added that many DOD engineers who oversee research and acquisition programs have told him they are considering resigning before July 1. "We may so completely limit the ability of a technical manager to return to industry that we may not be able to hire them away from industry in the future," he said.

At the National Science Foundation, Atkinson said that under the provisions of the law as outlined by a reporter, "I would probably never have come here in the

first place" since he would probably be unable to return to Stanford University, where he is on a leave of absence. "If that is the case, I would think twice about whether I'd have to resign" from NSF, he said.

HEW Secretary Joseph A. Califano Jr. said that he and Defense Secretary Harold Brown had "expressed serious concern" about the matter to President Carter. "We suggested that the thing to do is to postpone the effective date of the law and have some hearings on it," Califano said. "We would hope the law could be amended."

Carter, he said, had asked aide Jack Watson to look into the matter.

Jim Graham, staff counsel to the Senate Governmental Affairs Committee that drafted the new law, said there is "a severe lack of information" among those affected. "We do think the bill is reasonable. One of the ways scientists make a living is through consulting and there is at least the same potential for abuse as there is with lawyers," he said.

He and others suggested that an exception in the law permitting "scientific and technical communications" with the government might be adapted in forthcoming regulations to solve some of the problem, although new legislation might also be necessary.

At the moment, all eyes are on Bernard Wruble, 36, who is drafting those regulations in his first week on the job at the brand new Office of Government Ethics. The post was established by the act within the Office of Personnel Management (the old Civil Service Commission) to come up with rules on application and enforcement of Ethics in Government.

"We are aware of the scientists' problem," he said. "We feel we have an obligation to settle the problem well in advance of the time when people will have to act on it"

[From the Washington Post, Feb. 5, 1979]

THOU SHALT NOT—WHAT?

The good news is that people in Congress and the executive branch have, over the past several years, got rid of the defective notion that conflict-of-interest is something a person might be afflicted with on the way *into* government, but not on the way out. For it used to be that almost no mind was paid to what a person did by way of exploiting his government connection once he had gone on to the private afterlife, just as long as he had been more or less stripped of relevant assets—and dignity and privacy—before taking federal office. Now that is different. A great deal of attention is paid to the manner in which people depart government service and how they behave once gone. And that brings us to the bad news: As seems to be the American way in these matters, the nation has evidently once again overdone it, crafting a statute governing the post-governmental life of federal officials that is punitive and misguided to a degree almost bound to cause an exodus of decent and valuable people from office.

We are not using the word "punitive" metaphorically here. Three punishable crimes are established in the statute (the Ethics in Government Act of 1978) whose labyrinthine terms are only now beginning to become clear to the wide variety of individuals who will come under its jurisdiction. Roughly, these involve: 1) a strengthening of the terms of a lifetime ban (already in effect) against almost any federal employee's representing outside interests in cases before government concerning matters with which he had had a substantial personal connection while in office; 2) a sort of year-long limbo for top-level executive branch officials and military officers who will be barred from having any professional dealings with their former agencies or place of work for the first 12 months after they have left office; and, 3) a provision that these same top officials may not, for two years after leaving office, "aid, assist, counsel, advise or assist in representing" anyone before the government on a matter for which he had responsibility, even indirectly.

This last one is the big potential troublemaker. It does not just require that a person avoid fishy or even remotely questionable contact with government himself after leaving office. Practically speaking, for many people this could also cut off for two years the opportunity to work for almost anyone who had almost anything to do with their former employer. Hale Champion, the undersecretary of HEW, observed the other day that this would pretty much cut him off from any reasonable employment opportunities when he leaves office, and the same is probably true for countless others—especially scientists, educators and technicians.

The big furor in government about this now concerns the fact that unless individuals have left office by July 1 of this year, they will come under the new act's terms. So there is considerable heaving and going about what to do to tame the trouble. Naturally, by way of making the thing "reasonable"—this is always what happens—the legislators put in certain explanations and refinements and excep-

tions which, as always, only have made matters more complicated. What is it exactly that thou shalt not do, if thou happens to be an affected GS-17? No one can be entirely sure. An Office of Government Ethics (Orwell would surely have called it the Ministry of Virtue) has been established to sort matters out. Presumably in the regulations it is scheduled to issue, the ethics office can in some measure modify the harshness of the law. But felonies—two years and \$10,000—are felonies. And bad law is bad law. We think the administration and Congress should start urging a rational and generous interpretation of the “regs” on this law as an immediate step—and that Congress, with administration support, should start cranking out some amendments to undo the over-reactive and under-intelligent aspects of the law itself—and fast.

[From the Washington Post, Mar. 24, 1979]

NEW ETHICS LAW MAY COST U.S. ANOTHER HIGH-RANKING OFFICIAL

(By Helen Dewar, Washington Post Staff Writer)

John S. Irving, general counsel of the National Labor Relations Board, has joined the ranks of high government officials who may resign because of new ethics legislation that takes effect July 1.

Irving, a 14-year veteran of the NLRB and the Labor Department, indicated that he may leave his government post in a letter to Rep. George E. Danielson (D-Calif.), in which he endorsed a bill Danielson introduced recently to postpone the effective date of the new ethics law.

“I believe that public servants who have acted in complete good faith and at great personal sacrifices are being unfairly and unnecessarily penalized,” Irving wrote Danielson. He said that “at the very least . . . it is unjust to impose on current federal employes post-employment restrictions harsher than existed at the time they agreed to serve the government.”

Along with tightening existing ethics rules, the new law bans former government officials from dealings with the government on behalf of a private organization on any matter under the official's former jurisdiction.

Irving said he took the \$50,000 general counsel's job in 1975 because of a “desire to serve the public in an agency whose mission I deeply believe in,” although existing ethics rules posed some post-employment restrictions, and attorneys, he said, can earn more in private practice.

“My decision might have been different if I had known that my ability to pursue gainful employment in the private sector would be substantially impaired . . .,” he added.

Irving noted a Washington Post report that several other government officials have said they may resign if the new rules take effect as scheduled; and said he, too, “must decide whether or not I will leave the federal service before July 1.”

Among the officials who have issued similar warnings are Under-secretary of Health, Education and Welfare Hale Champion and Dr. Donald S. Fredrickson, director of the National Institutes of Health.

[From Newsweek, Mar. 5, 1979]

A FEDERAL BRAIN DRAIN

Donald Fredrickson, director of the National Institutes of Health, is thinking about leaving the government soon. So is Hale Champion, Under Secretary of Health, Education and Welfare. Ernest Boyer, commissioner of education, who planned to resign next year, may quit much sooner. Already, two Securities and Exchange Commission officials have resigned, and Joseph Califano has warned that 100 top staffers in HEW alone might follow. The reason: a tough new conflict-of-interest law set to go into effect July 1 that will restrict what public servants can do after they leave Uncle Sam's employ. “Companies and law firms are saying, ‘This is the last train out,’” complains one top agency official. “After July 1, we're all pariahs.”

For decades, government service has been a “revolving door.” Hundreds of talented people are recruited every year from businesses, law firms and universities for stints in Federal agencies, and later return to the private sector in high-paying jobs. All too often, critics charge, they pull their regulatory punches out of fear of offending prospective employers. Once out of government, they may use their public know-how and know-who for private ends. They know where the loopholes are and

can pull strings in their old agencies. Watchdog groups have long warned that the revolving door poses possible conflicts of interest, and candidate Jimmy Carter vowed to break up the "sweetheart arrangements" between the regulators and the industries they regulate.

REBELLION

Last year, at Carter's urging, Congress passed the Ethics in Government Act to prevent former government employees from turning their public service to private advantage. But two provisions in that law seem so strict that they have sparked a rebellion in the Federal ranks. The new law states that for two years after leaving office, former high-ranking bureaucrats may not "aide, assist, counsel, advise or aide in representing" anyone on any governmental matter that they had responsibility for in office. And for one year, those ex-officials can have virtually no contact with their former agencies at all. Penalties range up to a \$10,000 fine and two years in prison, and the ex-bureaucrat and his new employer can be blacklisted from further dealings with the government.

Some Federal officials charge that the new law punishes them simply for having served in the government. And nonprofit institutions may be especially hard hit since they are so dependent on government grants. "Because of the 'cooling off' period, I wouldn't be able to go back to my old job and even informally assist someone in a research grant," says Fredrickson, who was president of the National Academy of Science's Institute of Medicine before joining NIH. "I'd have to stay in liquid nitrogen for two years." Some agency heads worry that the restrictions will discourage top people from accepting government posts, leaving the agencies strapped for technical experts. "This probably would have deterred me from joining the SEC," says Albert Sommer, a former commissioner who now practices securities law. "You will see a substantial exodus from the SEC."

ETHICS?

Califano and Defense Secretary Harold Brown—who have both made round trips through the revolving door—have objected to Carter. "The law with respect to the nonprofit world should be changed or postponed until Congress can think it through," says Califano. "I don't think it was intended to kick off a major brain drain." Even some congressmen are having second thoughts. "I think it had much more in it than we realized," says Sen. Daniel Moynihan of New York. "In the name of ethics in government, we are making service to government impossible for ethical people."

Much depends on the handiwork of one bureaucrat—Bernhardt Wruble, director of the new Office of Government Ethics, who is translating the law into specific regulations. He contends that once the regulations are issued, many fears will prove unfounded. "People will be able to return to top-ranking positions and function," he says. "But the law will prevent them from giving someone the scoop on Joe Jones, head of research grants." Counters one agency official: "Who wants to keep five pages of regulations in his desk drawer for easy reference every time he has to make a decision?" In the end, the regulations may be so finely drawn they will catch few influence-peddling ex-officials, but make life after government frustrating for the rest.

[From the New York Times, Mar. 8, 1979]

SCORES MAY QUIT HIGH U.S. POSTS OVER ETHICS LAW

(By Richard D. Lyons)

WASHINGTON, Mar. 7.—Scores of top-level Federal executives are considering resigning within the next four months to escape provisions of a new law that forbids former employees to do business with the Government for two years after leaving their public jobs.

The exact number that might take part in such an exodus is not known, but Joseph A. Califano Jr., the Secretary of Health, Education and Welfare, said today that it could be "the greatest brain drain of talent in the history of Federal service."

He said that in his department alone a dozen top people were considering resigning, including the Under Secretary and the heads of the Office of Education, the National Institute of Education, the National Institutes of Health, the National Cancer Institute and the Food and Drug Administration.

PROBLEM CALLED SERIOUS

Officials at the Departments of Defense, Energy, Transportation and Commerce, the Federal Communications Commission and the Securities and Exchange Commission said, in response to inquiries, that they considered the problem to be "serious."

However, the president of Common Cause, the public affairs lobby that supported the ethics bill, said that objections to it were being overstated and that similar laws had been found to work "very well at the state level."

The problem involves the fine print of the Federal Ethics in Government Act, which President Carter signed into law Oct. 26.

Among other things, the act states that after next July 1 supervisory and administrative personnel who leave the Government will be forbidden for two years to "aid, assist, counsel, advise or aid in representing" future employers in dealings with Federal agencies.

"The wording is so strict that I couldn't even engage in character assassination back at the Harvard faculty club," said Hale Champion, the Under Secretary of H.E.W. who joined the department from an administrative position at Harvard.

Mr. Champion said that much of his work at Harvard entailed dealings with the Federal Government in research grants, student assistance and educational support, and that it would be virtually impossible for him to divorce Federal from non-Federal affairs.

"You could live the rest of your years in the slammer if people wanted to attribute wrong motivations to what you were doing," he added.

David Cohen, president of Common Cause, took issue with this position and accused Mr. Califano and Mr. Champion of engaging in "irresponsible scare tactics."

"The whole focus is to make sure that abuses against conflict of interest don't occur," he said, but added, "I think there are a lot of people who are going to quit."

LOS ANGELES LAWYER QUILTS

One who has already quit is Gerald Boltz, a lawyer in Los Angeles, who recently resigned a position with the Security and Exchange Commission in part because of the act.

"I'm not a divorce lawyer or a labor lawyer," he said. "I'm a securities lawyer, and anyone who has problems in this area has problems with the Federal Government."

Mr. Boltz said that he believed the act would deter people "from going back into Government," and Mr. Califano said that he felt it would keep some professional people "from ever getting involved in Federal service at all."

Speaking at a breakfast meeting with reporters, Mr. Califano said that "the problem is so serious that it has come up at the last two Cabinet meetings." Mr. Califano, who has been in and out of Federal service himself, said that he had no plans to resign because of the new law.

He said that Harold Brown and James R. Schlesinger, the Secretaries of Defense and Energy, were "seriously concerned" about the implications of the new law because many scientists and administrators in their departments shuttled back and forth between the Federal Government and private industry and the universities, which rely heavily on Government research and development funds.

"There are a lot of rumblings around the people in the Pentagon," said one lawyer on the staff of the Defense Department's general counsel.

He and other Federal lawyers said that many people were "waiting on the sidelines" to find out the wording of the regulations that are to carry out the intent of the new law. These are being drafted by the Office of Personnel Management.

AMENDMENT IS CONSIDERED

Yet Mr. Califano insisted that regulations were insufficient in dealing with the problems posed by the new law, and that White House aides and several Congressmen were seeking to determine how the problems might be modified by an amendment.

The new law covers 15,000 people, including senior officials making more than \$42,500 a year; judges, Congressmen and political appointees. Included in the new act are provisions that call for disclosure of personal assets and income.

[From the New York Times, Mar. 16, 1979]

ETHICAL EXITS FROM A COZY SHUTTLE

There is much talk in Washington these days about an impending "brain drain." It is caused by a new Federal law that aims to prevent alumni of Government from

exploiting their recent positions and subordinates for private gain in private jobs. Large numbers of high officials are rumored to be looking for the exits before the law takes effect on July 1. No such stampede is likely to occur and certainly Congress should not be stampeded into abandoning a worthy measure. But the law is loosely worded and could use clarification.

The shuttle by top Washington lawyers between Government and private practice is fabled. They move back and forth, alternately serving public and self. Other professionals shuttle freely among Federal agencies and their defense contractors, think tanks, consulting firms, universities, and state and city agencies. The cozy ties between these former (and future) officials and their erstwhile colleagues are a troubling reality of capital life. The new ethics law tried to address the worst abuses.

It was proposed largely by President Carter, as he had promised in his campaign talk against "sweetheart arrangements between regulatory agencies and regulated industries." The measure, passed last fall, extended from one year to two the time during which former officials are barred from representing anyone in matters over which they once had jurisdiction. For one year, it also barred Cabinet officers and top-level officials from any business contact with their former agencies. Congress on its own added a further barrier, prohibiting for two years any effort by a former high official to assist others in matters over which he once had jurisdiction.

The officials who now cry foul make one good point. The rules against business contacts and against helping others are fuzzy. Do they apply to deans of medical schools whose faculty members seek Government research grants? Or to administrators of local welfare programs whose "clients" are the poor, seeking Federal assistance? Given the vagueness of the law, the threat of criminal prosecution is understandably nettling to officials who plan to return to professions related to their Government duties.

The Senate Governmental Affairs Committee and the Office of Government Ethics hope to allay some of the concern with clarifying memorandums and regulations. More helpful still would be a six-month delay, proposed by Representative George Danielson of California, to give Congress a chance to legislate more precisely. Still, if they were listening to their leader's campaign pledges, Mr. Carter's appointees should have known what to expect.

[From the New York Times, Mar. 21, 1979]

HOW TO DEPRIVE THE U.S. OF TOP-FLIGHT TALENT

To the EDITOR:

Swept along by an election-year fervor in which few would vote against "ethics," the 95th Congress enacted, at the President's insistence, legislation which will severely impair Government's ability to attract top-flight talent: the Ethics in Government Act of 1978. The act deals in part with a perceived evil often called "the revolving door"—people leaving a Government agency to work in the portion of the private sector affected by the agency, and vice versa.

I am not so concerned about the revolving door, the one at the front of the building, where one can see who goes in and out. Rather, it is the back door, out of public view, that should be watched.

A long list of people with integrity and ability have gone through "the revolving door." Our economy is essentially an enterprise system in which government must know something about business and business something about government. An interplay between the two is not an evil, and overly to restrict this interplay stultifies both government and business.

Let me point out an example: The act prohibits high-level Government employees leaving an agency from appearing before that agency on behalf of any other person for a period of one year. The very reason for the existence of many agencies today is to deal with highly technical, rapidly developing subject matter. Persons trained to deal with such subject matter are necessarily specialists who find employment either with a Government agency or as advocates for others who must be in frequent contact with the Government agency. If such a person is prohibited for a period of one year from appearing before the agency or making any contact whatsoever with such agency, that person is essentially not employable, except possibly in an advisory capacity to others who are much less knowledgeable.

There are few professionals today who can afford to take a holiday for a year from employment at their full capacity. Therefore, one must look long and hard before taking governmental employment in the first place if such impairment of earning capacity is in prospect.

Failing to eliminate the provision entirely, I proposed to allow an agency through rulemaking to narrow the sweep of the post-employment prohibitions by establishing categories of communications with an agency that would not be prohibited by the act. This provision was adopted, over the objection of the Administration, but unfortunately it was eliminated in the conference committee.

Now we are reading headlines like "Scores May Quit High U.S. Posts Over Ethics Law," and there has been a spate of articles posing questions regarding the ethics act. Your March 8 article raised concern about the impact of certain provisions which were not fully explored when the legislation was enacted. But where was the support when it was needed? My friend and colleague Barbara Jordan was there. She warned that "we need to be careful that in the passage of this bill we do not codify mediocrity . . ."

It is late. The provisions are now law. The Office of Government Ethics has some small discretion not to widen the scope of coverage, and it is hoped that it will act judiciously. However, it is important that public sentiment in favor of a rational approach to dealing with potential conflict-of-interest problems grow and that the Congress respond by amending some of the most onerous provisions of the law.

BOB ECKHARDT,

Member of Congress, 8th District, Texas.

WASHINGTON, MARCH 10, 1979.

[From the Christian Science Monitor, Mar. 9, 1979]

WASHINGTON'S BRAIN DRAIN AND THE "REVOLVING DOOR"

To find competent, skilled specialists to fill top policymaking posts the federal government traditionally has drawn upon business executives, lawyers and other professionals from the private sector. But the government also needs these crucial positions filled by persons who will not exploit their government experience and contacts for personal gain upon their return to private industry. And reconciling these two needs is proving more difficult than Congress may have imagined when it included in the Federal Ethics in Government Act a restriction barring supervisory or administrative personnel who leave government service from doing business with the federal government for two years after their departure from public work.

Reports out of Washington say scores of top-level executives may resign when the new provision takes effect July 1. HEW Secretary Califano warns of "the greatest brain drain of talent in the history of federal service." There are what in some cases seem legitimate complaints that the two-year prohibition is too broad in scope. Even devout defenders of the law feel there could be some refining of the provision that no departing employee "aid, assist, counsel, advise, or aid in representing" future employers in dealings with federal agencies. The intent of the law is to limit the restriction to areas in which former federal workers were personally involved. And this may need further clarification.

Nonetheless, much of the vocal opposition coming from high in the federal agencies seems unduly exaggerated. There will be ample opportunity for sorting out bona fide conflict-of-interest abuses—in which, say, departing public servants take jobs in private industry where their primary responsibility is lobbying and handling contacts with their former employer—from those where a case can be made for alloting some federal contact.

Regulations implementing the law must still be written by the Office of Personnel Management, and they should make it possible to accommodate exceptional cases. Experience in 39 states that have enacted similar restrictions shows fears of mass exoduses have proven baseless. HEW Secretary Califano and other high-level officials making alarming predictions would do better to focus their efforts on making the law work. Public confidence in government is too low—as evident in low voter turnouts and as reflected in opinion polls—to risk having this vital protection against conflicts of interest watered down by needless amendments and changes.

[From the Washington Star, Mar. 9, 1979]

AN ETHICAL EXODUS?

No little of each year's new legislation entails what might be called the Depth Charge Syndrome: There is an interval of quiet after the device has been heaved into the water, followed by an explosion that often astounds those who triggered the charge.

That may be the case with the Federal Ethics in Government Act, signed by President Carter last October. The measure reflected the president's campaign pledge to bar the "revolving door" through which people travel between government jobs and employment with private firms dealing with the federal establishment. To the detriment, allegedly and usually, of the public interest.

Regulations defining the limitations of crossing over and back now are being drafted. But, Joseph Califano, secretary of Health, Wealth and Happiness, is singing the lead in a chorus of alarm—and he has a point.

Mr. Califano is warning that the law's strict limitations could trigger "an unprecedented brain drain of talent" from government. He says that in his duchy alone more than a dozen top officials are contemplating getting out before the regulations take effect in July. His concern is shared elsewhere in the federal establishment.

The law covers 15,000 policy-making jobs, including federal executives making more than \$42,500 a year, judges, members of Congress, senior congressional staff members and political employees. The new law also requires extensive financial disclosure statements and constrains post-government employment. The restriction causing greatest anxiety is the provision that for two years after leaving government a former official shall not "aid, assist, counsel, advise or assist in representing" before the federal government a private organization on any matter under the official's former purview.

For those who perceive a governmental world full of things that go bump in the night, the prohibition has a wonderful symmetry. However, it strikes us as unreasonably inclusive. After all, there is a mutuality of responsible interest between the public and the private sectors; to make the burning of one's private bridges a condition of government service is a curious way of attracting competence to a bureaucratic tour of duty.

A case in point is Gerald Boltz, a Los Angeles lawyer who recently resigned from a job with the Securities and Exchange Commission, in part because of the new law. "I'm not a divorce lawyer or a labor lawyer," he told *The New York Times*. "I'm a securities lawyer, and anyone who has problems in this area has problems with the federal government." His sentiment extends beyond the lawyerly calling.

Possibly the regulations will not be so alarming as Mr. Califano fears. Bernard Wruble, the director of the new Office of Government Ethics, contends that the HEW secretary has been "insufficiently informed" on the chilling effects of the law. He is working on the regulations that are to be published in mid-month and which, he said, "will totally solve this situation." Maybe so.

But this trend toward rigid codification of public ethical standards risks becoming a *reductio ad absurdum*. It reminds us of Macaulay's observation, as applicable perhaps to late 20th Century America as to mid-19th Century Britain: "We know no spectacle so ridiculous as the British public in one of its periodical fits of morality."

[From the *Washington Star*, Mar. 15, 1979]

ETHICS LAW MAY TRIGGER EXODUS FROM GOVERNMENT

(By Lance Gay, *Washington Star* staff writer)

A tough new federal ethics law that will become effective in July has prompted several high-level political appointees and longtime government officials to launch an unprecedented round of job-hunting trips.

Officials in several agencies say the problem is potentially "very serious" and some agencies worry that they are on the verge of losing some of their smartest and most experienced people.

"A lot of people are talking and we are very seriously concerned," said a Pentagon official.

"We're very concerned about it," added an official of the Federal Aviation Administration.

Other agency attorneys who have been studying the new law say much of the flurry of job-hunting has come from misunderstanding the regulations, which have yet to be written.

"I can't say if the misunderstanding is real or not, but I know that the exodus is real," said a high administration source.

And last week, in a breakfast session with reporters, HEW Secretary Joseph Califano warned that the bureaucracy is on the verge of "the greatest brain drain in the history of federal service."

The cause celebre for all the activity is the new Federal Ethics in Government Act, which President Carter signed into law Oct. 26.

It was designed to put new brakes on the decades-old "revolving door" between government and private industry. For years, high-ranking government officials have taken well-paid jobs in the industries they previously regulated.

The law, which goes into effect July 1, made three significant changes in existing ethics laws that:

Extend the ban on high-ranking government officials—above GS-17 levels and political appointees—representing private parties before their former agencies from one to two years.

Forbid these officials in that two-year period from giving "aid, assistance or counsel" to anyone on any governmental matter they had responsibility for while in office.

Bars government officials from contacting for one year anyone in their previous agency with the intent of influencing them.

The new law carries penalties of up to a \$10,000 fine and two years in prison.

Most of the concern comes over the provision barring former government officials from aiding non-governmental clients—and exactly how this will apply will be spelled out in regulations being written by the new Office of Government Ethics.

Those regulations are expected within the next few weeks, but in the meantime some bureaucrats are not waiting.

Already gone is HEW Undersecretary Hale Champion and two attorneys for the Securities and Exchange Commission. And almost all federal agencies and commissions report rumblings from people looking for jobs or preparing to resign before the July 1 deadline.

Attorney General Griffin Bell also has told aides that he's seriously considering moving up the date of his leaving because of the law. "He's concerned about it—particularly that clause that says you can't counsel. What he's worried about is blindly stumbling into a felony because of this," said the aide.

Bell already has said he plans to leave the Justice Department this year to return to private practice, but the aide said the new law may change his timing.

So serious has the problem become that it reportedly has been twice discussed at Cabinet meetings with Energy Secretary James Schlesinger, Defense Secretary Harold Brown and Califano leading the chorus of complaints about the effect the law is having on their departments.

And this week Rep. George Danielson, D-Calif. introduced legislation to postpone the effective date of the new law and said he plans to hold hearings before the Judiciary subcommittee he heads.

But it is not only the threat of losing some here, but the worry that top-flight people will no longer come into the government, said one high administration official.

"I couldn't run my office without first-rate scholars that we are now attracting," said the official, who currently has 50 academics working on specialized programs in her office.

A Pentagon attorney said those who seem most concerned about the new law are academicians and technological people—"the lawyers seem to understand this because it's already in their ethics codes, it's the laymen that are playing lawyer and seeing trouble here."

He said there are two provisions of the law that could be broadened by the regulations to allow for the continued work of academics and those with specialized trades. One provision exempts anyone who is communicating scientific information to the public.

A second provision of the new law allows a government agency to seek a specific exemption for a person by going through the relatively cumbersome procedure of printing a notice in the Federal Register stating why this person's expertise is needed.

This, the Pentagon attorney said, could solve the problem of allowing high-level research and development personnel to keep contacts with agencies after they leave the government.

[From the Los Angeles Times, Mar. 20, 1979]

THE ETHICAL APPROACH

In matters of ethical conduct, the federal government is at that awkward stage. Its top officials are neither all so virtuous that they can function without guidance nor so corrupt that guidance is futile.

Thus a clear code of ethics is indicated, if only to have an alternative to horse-whipping as a way to greet a former federal official who has, say, drafted criteria

for a new weapons system, left public service, and turned up in the waiting room of his old agency peddling a weapons system that fits the criteria perfectly.

But recognizing the need for a strict code of conduct is easier than writing one—as Congress and President Carter are beginning to appreciate—particularly one that says what it means, no more and no less.

A new Ethics in Government Act, signed last October and designed—among many other things—to tighten up old codes of ethics as they apply to conflicts of interest during and after federal service, seems to say things that it does not mean.

The revised code was proposed by the President and enacted by Congress for a variety of purposes—including more strict enforcement of the laws already on the books. In all but one narrow respect, it is a code that we supported, one that is not only fair but more effective than the old set of ethical codes.

The exception has to do with an effort to stop civil servants from writing regulations and later hiring out to a business to show it how to get around them, or writing a federal grant program and then showing clients how to get funds.

Some top officials, particularly in the Department of Health, Education and Welfare, say the language goes further than that. They argue that, even if the law does not apply to them, the language is so vague that it might; that, even if they are not actually indicted, they could be harassed.

For example, they say, an official high in the National Institutes of Health who returned to his former post as dean of a medical school might be challenged for accepting research grants under a program that he once supervised, even generally.

That is, of course, putting the law in the worst possible light. The new Office of Government Ethics, which will administer the code, says those kinds of incidents are unlikely because it will be enforced under "the rule of reason."

They could both be right. And in a case like that we think Rep. George E. Danielson (D-Calif.), who helped draft the ethics code, has the right attitude. Any doubts about a law that makes violation a felony and carries a maximum sentence of two years in prison and a \$10,000 fine ought to be clarified, he says.

Danielson will hold hearings next week on a technical amendment that would make it clear that the law should apply only to cases in which a former federal official was personally involved in writing contracts or drafting regulations.

If it appears that his amendment cannot be steered through Congress quickly, he will ask for a six-month extension of the effective date to provide more time to clarify the law.

We think Congress and the White House should support the Danielson effort, for two reasons:

First, as long as there is the slightest chance that the law could be used against someone acting in good faith, it will put up one more barrier to the federal government's efforts to draw temporarily on the experience of top people in business, science and the other professions.

Second, that sort of doubt could weaken the fabric of the rest of the government's code of ethics, and that should not be permitted, either—not so long as the government is at that awkward stage.

[From the Congressional Quarterly, Mar. 24, 1979]

NEW ETHICS LAW MAY PROMPT HIGH-LEVEL RESIGNATIONS

A number of high-level federal managers have talked of leaving the government because of concerns about the restrictions on post-government employment scheduled to take effect July 1. Among them:

Attorney General Griffin B. Bell. Before his friend, President Carter, named him head of the Justice Department in 1977, Bell had been a federal judge on the 5th U.S. Circuit Court of Appeals for 16 years. Bell, 60, has publicly stated he would leave the government before the 1980 election, most likely sometime late this year. The new ethics law may speed up his timing.

Before President Kennedy named him a judge—he was Kennedy's 1960 Georgia campaign manager—Bell was a partner in the prestigious Atlanta law firm of King and Spalding. He has expressed a desire to return to private practice and has told associates he fears the new law would restrict his ability to handle federal legal matters, in which he has acquired a tremendous expertise over the years. In a law firm, he stands to earn far more than his present \$66,000 a year.

HEW Under Secretary Hale Champion. Before landing the No. 2 post at HEW, Champion, 56, was vice president for finance at Harvard University. By returning to a money-manager's job in academia, Champion feels he runs the risk of a conflict of interest because he would be dealing with federal education grants over which he now has jurisdiction at HEW.

Champion's loss would be lamented at the White House, where he is regarded as a good administrator. Last year, he was considered for appointment as commissioner of the Social Security Administration, technically a lower-level position than under secretary but thought to be actually more important.

National Institutes of Health Director Donald S. Fredrickson. The NIH distributes federal research grants to medical schools and, should Fredrickson, 54, join a university faculty, he may run into a conflict problem. Previously, he was president of the Institute of Medicine, part of the private National Academy of Sciences, which periodically receives NIH money.

Fredrickson's leaving his \$44,200-per-year position would be seen as a loss to NIH because he is popular in Congress and is adept at securing appropriations from the Hill.

Also, the administration would experience a setback in its efforts to stop high-level personnel turnover at the NIH. Fredrickson first was named to his post by President Ford in 1975, and Carter won widespread praise for keeping him on. The previous two directors had been fired under Republican administrations for what many saw as political reasons.

Defense Under Secretary for Research and Engineering William J. Perry. Perry, 51, was president of ESL Inc., a California defense contractor, before coming to the Pentagon in 1977. At ESL, he made far more than his present yearly income of \$52,500. Although he divested himself of all his ESL stock upon joining the government, he likely would return to the defense industry.

Defense observers say his loss to the government would be twofold. First, he is an effective manager of the Defense Department's \$11-billion-per-year research activity. Second, he has the ear of several key senators the administration will need for ratification of the Strategic Arms Limitation Treaty (SALT).

COUNCIL OF THE DISTRICT OF COLUMBIA,
Washington, D.C., March 14, 1979.

HON. GEORGE E. DANIELSON,
*Chairman, Subcommittee on Administrative Law and Governmental Relations of the
Committee on Judiciary, U.S. House of Representatives, Rayburn House Office
Building, Washington, D. C.*

DEAR MR. CHAIRMAN: As Chairperson of the Committee on the Judiciary of the Council of the District of Columbia, I would like to bring to your attention certain problems which may result from the recently enacted Ethics in Government Act of 1978 (Public Law 95-521). Title V of this legislation, in addition to governing post-employment conflicts of interest by officers and employees of the executive branch of the United States government and independent federal agencies, also applies to officers and employees of the District of Columbia government. Basically, Title V prohibits such persons from representing, after their employment has terminated, anyone other than the United States in connection with a matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which he or she participated personally and substantially for the government. This title, which takes effect on July 1, 1979, may have an adverse impact upon the functioning of our local government.

The prohibitions contained in Title V exclude the legislative and judicial branches of the federal government. In my opinion, this is a wise limitation given the nature of the work performed by these two branches. Unfortunately, not only were District officials and employees included but, given their inclusion, no similar limitation was placed upon the application of this title to them. Therefore, I have requested an official opinion from the Attorney General concerning the effect of this title on the District government, a copy of which is attached.

I suggest to you that it would be advisable to delete any reference to the District of Columbia in the subject federal legislation. I believe that Congress created a precedent for such a deletion when it enacted the Reorganization Act of 1977 (Public Law 95-17) which deleted any reference to the District of Columbia in chapter nine of Title 5 of the U.S. Code. The rationale for Public Law 95-17 was stated as follows: "The bill deletes all reference to the Government of the District of Columbia inasmuch as the home rule legislation changed its status as an agency of the Federal Government. Thus, the Government of the District of Columbia is no longer subject to reorganization under this [5 USC 901 et seq.] authority." House Report 95-105, p. 9 (March 22, 1977). In addition to the significance of home rule in the District, there is another reason to delete reference to the District of Columbia in the Ethics in Government Act in that the Council has enacted a conflict of interest law specifically for the District of Columbia officers and employees in the District of

Columbia Campaign Finance Reform Act, as amended, D.C. Code sec. 1-1121 et seq. (1973 Ed., Supp. V).

If you do not find it advisable to eliminate the District entirely, I suggest that its legislative and judicial officers and employees be excluded as are their federal counterparts. As a legislator, you are well aware of the myriad of issues that are considered in a legislative forum. During the four years since the advent of home rule for the District of Columbia, there are few areas of our local law that have not been the subject of proposed or enacted local legislation. If, as the language of this title may suggest, officers and employees of the Council may be precluded in the future from representing clients in areas that have been the subject of Council legislation, this will create a serious impediment to the Council's ability to attract and retain qualified members and personnel. The local courts of the District of Columbia may face similar personnel hardships.

The application of Title V to the District's executive agencies and independent agencies also differs from the treatment accorded to their federal counterparts. Pursuant to Title V, officers and employees are permitted to represent the United States, following termination of their employment, on a matter in which either the United States or the District is a party. However, there is no provision that permits such officers and employees to represent the District of Columbia following the termination of their employment. Thus, for example, if an attorney was employed by the Office of the Corporation Counsel and was representing the District in a suit filed against the District and the United States, that person, following the termination of his or her employment, could be employed by the federal government and continue work on the case but could not be reemployed by the Office of the Corporation Counsel for that purpose. As another example, an attorney employed by a federal agency who participated in a joint project between the District and the federal government, of which there are many, could later use his or her expertise in that area to defend civil suits regarding that project for the Justice Department but not for the Office of the Corporation Counsel.

As you can see, there is a great disparity in the treatment of the District of Columbia under this title. The language of Title V, regarding those officers and employees who fall within its scope, identical to the language of the previous conflict of interest law (Public Law 87-849, 18 U.S.C., sec. 207), which was enacted eleven years prior to the passage of the Home Rule Act.

Given the fine working relationship that has been established between the federal and District governments, I am convinced that it was not Congress' intention to bring about the above-described discrimination against the District of Columbia by virtue of the Ethics in Government Act.

Therefore, I am bringing this matter to your attention in the hope that an appropriate amendment can be made to Title V that would exempt the District from its coverage or at least apply the same restrictions to the District as are imposed upon federal officers and employees. I regret that I was not aware of these provisions of the Ethics in Government Act during its consideration by Congress and therefore could not offer this suggestion before its passage. Thank you.

Sincerely,

DAVID A. CLARKE,
Chairperson, Committee on the Judiciary.

Enclosure.

COUNCIL OF THE DISTRICT OF COLUMBIA,
Washington, D.C., February 28, 1979.

HON. GRIFFIN B. BELL,
*Attorney General of the United States,
Department of Justice, Washington, D.C.*

DEAR SIR: It has recently come to my attention that Title V of the Ethics and Government Act of 1978 (Public Law 95-521), regarding post employment conflict of interest, is applicable to the entire District of Columbia government. I would like to request an official interpretation of the impact of this title upon persons who serve in the legislative and judicial branches of the District of Columbia government.

As a member of the Council of the District of Columbia, I vote regularly on a wide variety of legislation pertaining to the District. Last year alone, the Council enacted legislation in such areas as rent control, cooperative and condominium conversion, gun control, traffic infraction definition and adjudication, unemployment compensation and consumer rights, to name a few.

The Committee on the Judiciary, which I chair, also has a wide range of responsibility:

" . . . [A]ll matters affecting the judiciary and judicial procedure which are within the authority of the Council, all matters affecting decedents' estates and fiduciary affairs, all matters affecting administrative law and procedure, all legislative matters reflecting the Council's responsibility for providing for the codification of the laws of the District of Columbia, all matters affecting criminal law and procedure, all matters arising from or pertaining to the police and fire regulations of the District of Columbia, all other matters related to police protection, correctional institutions, fire prevention, and civil defense."

During the last Council period, the Committee on the Judiciary acted on legislation concerning reforms of the local drug laws, the laws relating to child abuse and neglect, the confidentiality of mental health records, the Freedom of Information Act, the regulation of firearms, the processing of traffic offenses and the composition of the Board of Trustees of the Public Defender Service, to name a few. Matters now pending before the committee include reform of the District's probate laws and tort claims procedures and the development of legislation on privacy and occupational health and safety. In addition, due to a recent transfer of jurisdiction, the committee will be considering a proposed revision of the local criminal code.

Section 501 of the Ethics and Government Act of 1978 provides, in part, that:

Whoever, having been an officer or employee of the . . . District of Columbia . . . after his employment has ceased, knowingly acts as an agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

(1) any department, agency, court, court-material, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; . . .

shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

While there is an opinion from your office construing the meaning of the phrase "particular matter" in the prior conflict of interest law¹⁴ the applicability of this opinion to the current law and the relevance of this opinion to actions by, rather than before, a legislative body are not apparent. Consequently, the impact of this title upon the officers and employees of the Council of the District of Columbia is unclear. For example, if the Council enacted legislation amending the Rental Housing Act, would this action preclude a former councilmember from representing clients before the Rental Accommodations Commission? Would it preclude a former councilmember from representing a client in any real estate proceeding in which the provisions of the Rental Housing Act may be raised as a claim or defense or may be cited as legal authority? Would the same prohibitions, if any, apply to a councilmember's executive assistant or a staff member of the Committee on Housing if that executive assistant or staff member rendered advice to a council member regarding this legislation? In connection with the Council's recent assumption of jurisdiction over the local criminal law, will all council members be barred in the future from the private practice of criminal law if the Council enacts a revised criminal code? Would this prohibition, if any, apply to any staff member who assisted a councilmember or the Council during the Council's deliberations on a revised criminal code? Would it apply to all of the members and staff of the D.C. Law Revision Commission? Moreover, would the scope of this prohibition, if any, vary according to whether the former councilmember drafted the legislation, sponsored or cosponsored the legislation, proposed amendments in committee or on the floor, voted in favor of the legislation, voted against the legislation or was in office but was not present during one or more votes on the legislation?

I am also deeply concerned regarding the impact of this title upon the operations of the local courts. For example, if a law clerk assisted a local judge in a decision redefining the applicable rules of evidence in rape cases, would that judge and law

¹⁴The opinion dated July 14, 1969 by Assistant Attorney General Rehnquist, appearing on page 282 of the Hearings before the Senate Committee on Interior and Insular Affairs on August 7 and 8, 1969.

clerk be precluded from later representing criminal defendants charged with rape? With any criminal offense? What if the opinion rendered did not redefine the rules of evidence but simply relied upon those rules in reaching a decision?

The potential disruption of both the legislative and judicial branches of the District of Columbia government which could be caused by the application of this legislation to judicial and legislative officers and employees of the District of Columbia is apparent. The functioning of our local government depends upon our ability to attract and retain qualified officers and employees. Since this title of the Ethics and Government Act of 1978 takes effect on July 1, 1979, I would very much appreciate a response to this inquiry. Any assistance that I or my staff can provide in this regard will be made available to you at your request. Thank you.

Sincerely yours,

DAVID A. CLARKE,
Chairperson, Committee on the Judiciary.

DEPARTMENT OF THE ARMY,
U.S. ARMY MISSILE RESEARCH AND DEVELOPMENT COMMAND,
Redstone Arsenal, Ala., March 16, 1979.

Hon. GEORGE E. DANIELSON,
*House of Representatives,
Rayburn House Office Building, Washington, D.C.*

DEAR MR. DANIELSON: I have been the Technical Director of the U.S. Army Missile Research and Development Command for one year. It is, in my opinion, the best job in the Army and I have thoroughly enjoyed this assignment. I have not accomplished the goals I set for myself as Technical Director, but I am pleased that considerable progress has been made toward those goals. While I would prefer to stay until my goals are achieved, the restrictions of Public Law 95-521 on post-government employment do not make this practical and I have tendered my resignation.

Per our conversation with Major Warren Taylor, I am sending this letter to provide details regarding my concern about Public Law 95-521, Ethics in Government. I would like to go on record by stating my full support for what I believe is the intent of the Bill, the avoidance of conflict of interest situations wherein a person is deeply involved in an area for the Government and then becomes deeply involved for industry in the same area. I am concerned, however, that in its present form the Bill can be interpreted so that the intended results will not be achieved and the Bill will have an adverse impact on the Government's ability to perform its functions.

Industry is the storehouse of knowledge which the Government has historically drawn upon to perform its functions. The adoption of this legislation must inevitably make it more difficult for the Government to secure the caliber of personnel it requires. It could also result in the loss of considerable expertise, much of which was developed at government expense, due to early retirements brought on by the harshness of the Bill. The Bill will also make it impracticable for industry to hire qualified individuals who, for whatever reason, have decided to leave Government service. In the past, the Government has been able to attract qualified people from industry to serve in such jobs as Assistant Secretaries for Research and Development, even though these positions paid roughly half of the equivalent industry salary. Under the present law, the Government will, in addition to offering the individual less money, be telling that individual that upon completion of Government service he cannot return to the industry from which he came.

Again, I must state that I support the intent to preclude direct conflict of interest. Some highly publicized incidents notwithstanding, I do not believe such conflict is prevalent in the defense industry. It has been my experience that the use of influence has rarely been attempted and I do not believe that is the reason most aerospace companies hire people from the Defense Department. The industry's primary interest is to hire individuals for their competence, professional knowledge, and experience and to utilize their background where possible to better understand the Government's requirements in long term plans and projections.

I would like now to speak to some specifics in the law which cause me some concern. Title V, Section 501, Paragraph (a) contains lifetime restrictions on an "officer or employee of the Executive Branch of the United States Government" who "knowingly acts as agent or attorney for, or otherwise represents" in any proceeding before the government on an issue "in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise." This restriction would permanently bar a former employee from aiding or assisting a private

party, even informally. As Technical Director of the U.S. Army Missile Research and Development Command, I am deeply involved in all technical activities for decision, approval, disapproval, and the rendering of advice. If this portion of the law is applied equally to advanced development concepts and major development programs, it would have the effect of denying my working on Army missiles which have not yet been conceived but might utilize the results of advanced development efforts. There are many competitive technology programs now evolving in the laboratories. Some will take ten years or more to develop and to place such a preclusion on a major system development in that timeframe because of my involvement with the technology today seems excessive. I do not believe that any personal knowledge or contacts that I have now would be of any significance to me in that time frame. I believe such restrictions should only be applied to those programs which are in the major stages of development at the time of the former employee's employment.

Title V, Section 501, Paragraph (b) states that within two years after his employment has ceased, the employee may not knowingly represent or aid, counsel, advise, consult, or assist in representing. This ban applies to any matter actually pending under one's official responsibility, during the last year of employment, regardless of the extent of personal involvement. Unlike Paragraph (a) this paragraph would allow the former employee to aid and assist a private party, provided he does not participate in the proceedings through written or oral communication. This extension of the former one year ban to two years regardless of the degree of involvement seems particularly onerous.

As far as the one year constraint is concerned, I believe there should be a cooling off period after Government employment. Even though my resignation will not be effective under Public Law 95-521, I fully intend to abide by this restriction and will make no contact whatsoever with the Army for a period of one year. In terms of the scientific and technical exclusions, I interpret that such exclusions would not apply to me since I'm not a nationally recognized technical expert. My primary strength is management. It would be helpful if the exclusion for scientific and technical information could be expanded to include those whose primary capability is in technical and scientific management.

Mr. Danielson, as you noted in our conversations, I am not a lawyer. I have talked to a number of lawyers and while there is some room for maneuvering, I have elected to safe-side the issue and submit my resignation to avoid any potential conflicts with the new law. I have gotten legal advice saying such a move was unnecessary but this serves only to lessen the risk of any adverse action after leaving the Government. I would hope that it is not the intent of the law to restrict the availability of talent to the Government. I support your efforts to insure this. Please accept my best wishes for your continued success.

Sincerely yours,

C. H. MCKINLEY,
Technical Director.

MARCH 20, 1979.

HON. GEORGE DANIELSON,
Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN DANIELSON: I am writing to you because of your recent introduction of legislation which would postpone the effective date of the post-employment conflict of interest provisions of the Ethics in Government Act of 1978, Public Law 95-521, as reported in the Washington Post on March 14, 1979 (article attached).

I agree with the concerns expressed by other governmental officials in this article. I have worked for the federal government in a variety of capacities since 1965, and was appointed NLRB General Counsel in 1975.

The NLRB has internal regulations which forbid former headquarters employees from becoming involved in any case which was pending anywhere in the country during their employment whether they were involved with the case or not. There is no restriction on involvement in new cases. In addition, I was aware of the restrictions contained in 18 U.S.C. 207 which barred for one year participation in cases pending under one's official responsibility in the last year of employment.

Even aside from questions concerning the merits of certain aspects of the Ethics Act, I believe at the very least that it is unjust to impose on current federal employees post-employment restrictions harsher than existed at the time they agreed to serve the government. Contrary to what many believe, salaries for attorneys in the federal government are much less than those of comparable attorney

positions in the public sector. When I was appointed to my current position, I was aware of this disparity but accepted it because of my desire to serve the public in an agency whose mission I deeply believe in. My decision might have been different if I had known that my ability to pursue gainful employment in the private sector would be substantially impaired by Section 207(b)(ii) and 207(c) of the new Ethics Act.

From the article in the Post I know that I am not the only one in this position and I, too, must decide whether or not I will leave the Federal Service before July 1, 1979. I believe that public servants who have acted in complete good faith and at great personal sacrifice are being unfairly and unnecessarily penalized. I hope your colleagues in the House and Senate will join you in reconsidering portions of this statute or, at the least, postponing the effective date of the most onerous post employment provisions.

Sincerely,

JOHN S. IRVING,
General Counsel.

Attachment.

ASSOCIATION OF AMERICAN MEDICAL COLLEGES,
Washington, D.C., March 22, 1979.

HON. GEORGE E. DANIELSON,
House of Representatives,
Rayburn House Office Building, Washington, D.C.

DEAR MR. DANIELSON: On behalf of the officers and members of the Association of American Medical Colleges, I am writing to urge your support for prompt and reasonable but vigorous efforts to clarify and modify if necessary the intent and scope of the Ethics in Government Act (Public Law 95-521).

The Association, formed in 1878 to work for reforms in medical colleges, has broadened its activities over the years, so that today it represents the whole complex of individuals, organizations and institutions charged with the undergraduate and graduate education of physicians. It serves as a national voice for all of the 124 accredited U.S. medical schools and their students, more than 400 of the major teaching hospitals, and 69 learned academic societies whose members are engaged in medical education, biomedical research and the delivery of health care. Through its members, the concerns of the Association range far beyond medical education itself and include the total health and well-being of the American people.

We have awaited with interest what has been promised in the way of clarifications either in the form of regulations or possible legislative modification so as to avoid what could be a calamitous effect on numerous individuals presently serving in high government positions or contemplating federal employment in the immediate future. As yet, that clarification has not occurred and as the effective date of July 1, 1979 approaches, we are aware that more and more individuals, lacking assurance as to a reasonable outcome, are making plans to leave government at a time when their services are most urgently needed. We recognize the fundamental objective of this legislation and concur in efforts to reduce the "revolving-door" type of personnel changes between public and private sectors which prompted it. But we cannot believe that the intent of the authors and of the Congress was to deprive the public of the scientific, technical and administrative skills of many individuals whose only recourse, given the present uncertainties, would be to leave government prior to July 1 or to decline to enter government following that date. The former course of action seems rather unrealistic for many individuals and, therefore, it would appear that those unable on short notice to make arrangements in the private sector would become rapidly demoralized as the limitations on outside employment ensue.

It seems almost certain that the potential adverse impact on academic medical centers/federal agency relationships would include:

1. A deterioration and the competence of federal officials responsible for the administration of programs vital to academic medical centers as a consequence of premature resignations of able and experienced current officials coupled with recruitment difficulties occasioned by diminution in the attractiveness of federal employment; and

2. The long-term consequence to the universities of losing a pool of talent from which to recruit for both senior academic and administrative positions and the possibility, should it be ruled that part-time consultants fall within the purview of the statute, of a massive and irreversible collapse in the system of external committees to advise government on both technical and policy issues.

We urge then that you and your colleagues in concert with those in the other branch of government move cooperatively and quickly to resolve the uncertainties in this situation in both the public interest and those of those individuals thus affected.

Sincerely,

JOHN A. D. COOPER, M.D.,
President.

ASSOCIATION OF AMERICAN MEDICAL COLLEGES,
Washington, D.C., March 30, 1979.

HON. GEORGE DANIELSON,
*Chairman, Subcommittee on Administrative Law and Governmental Relations,
Cannon House Office Building, Washington, D.C.*

DEAR MR. DANIELSON: On March 22 I wrote to you on behalf of the Association of American Medical Colleges to convey our concern about the possible consequences of the Ethics in Government Act and the need to take such action as necessary to avoid the probable loss of numerous high government officials.

We have continued to follow this subject with a high level of interest and are gratified to learn that you are proposing amendments to the Act (Public Law 95-521) and pleased that you are holding hearings on this situation on April 2. We strongly support your proposal to clarify by a technical amendment the so-called "aiding and assisting" clause. We have been assured that if that modification is made and in timely fashion, this will largely allay the fears of many individuals who would be so adversely and unnecessarily affected by the present language of the Act.

If I or members of my staff can be of assistance in this matter, please do not hesitate to call on us.

Sincerely,

JOHN A. D. COOPER, M.D.

THE OHIO STATE UNIVERSITY,
OFFICE OF THE PRESIDENT,
Columbus, Ohio, March 28, 1979.

HON. GEORGE E. DANIELSON,
*Rayburn House Office Building,
Washington, D.C.*

DEAR CONGRESSMAN DANIELSON: I am writing to add my concern to that which you are hearing from others about the negative impact, however unintended, of the Ethics in Government Act which takes effect July 1.

Undeniably, conflict of interest is a serious problem for those in public life. There's no question on that point. The efforts of Congress to deal with the problem are to be commended.

However, the new law includes provisions which will force able persons out of government service and prevent others from coming in. I refer to persons who are drawn from the academic community, the professions, and other sectors.

If the law is not amended, the federal government will have cut itself off from access to many of the nation's most talented persons in science, health, and other fields, persons who otherwise would consider a period of federal service. Indeed, the success of many federal programs in NSF, NIH, DOD, NASA, and other agencies has been due to the effective partnership which has been built between the federal government and leading scholars, scientists, and administrators from universities and other fields.

I know that you are familiar with the problem, and I do not want to belabor it. I am extremely concerned, however, that steps be taken quickly to correct this inadvertent problem created by the new law.

My recommendation is that the effective date of the new law be delayed at least six months to allow careful review of its unintended consequences and to develop amendments which would not hamper the basic objectives of the law but would avoid the negative side effects it will have in its present form. I hope you will lend your efforts to a postponement of the effective date and to such other changes as may be needed.

Sincerely,

HAROLD L. ENARSON,
President.

COUNCIL OF SCIENTIFIC SOCIETY PRESIDENTS,
Washington, D.C., March 29, 1979.

Hon. GEORGE E. DANIELSON,
*Rayburn House Office Building,
 Washington, D.C.*

DEAR REPRESENTATIVE DANIELSON: I want to congratulate you on the introduction of H.R. 2843. The Council of Scientific Society Presidents has been deeply concerned over legislation that would diminish the service of scientists in the government.

If our system is to work properly we will need the choice of the best possible advisors and employees and our restrictions should not only protect the interests of the government but also the employment of its experts.

Sincerely yours,

HARLYN O. HALVORSON,
*Chairman,
 Council of Scientific Society Presidents.*

MILLSTONE & KANNENSOHN,
Youngstown, Ohio, April 2, 1979.

Representative GEORGE DANIELSON,
Congressman, Washington, D.C.

DEAR SIR: The Ethics in Government Law needs careful review as it is grossly unfair to able people now in government service. The law as now written would force competent and dedicated employees to resign their positions. Please use your good offices to correct this situation.

Very truly yours,

P. A. MILLSTONE.

COMMON CAUSE,
Washington, D.C., April 5, 1979.

Hon. GEORGE E. DANIELSON,
*Rayburn House Office Building,
 Washington, D.C.*

DEAR REPRESENTATIVE: On April 6th, the Administrative Law Subcommittee is scheduled to consider the important issue of the revolving door provisions in the Ethics in Government Act.

The heart of the revolving door provisions is 207(c), the ban on top level government officials contacting their former agency or department for one year. This provision is now in effect for Presidential appointees who have voluntarily agreed to abide by the one year ban. The one year ban is also already in effect in some agencies and departments.

This ban will not prevent young lawyers or professionals from moving in and out of government since it applies only to senior employees. In addition, President Carter—who has required his appointees to voluntarily agree to the one year ban—has not had problems finding skilled and qualified people for appointive positions.

We strongly oppose any efforts to weaken or modify the one year ban and oppose any move to exempt out any category of the government from coverage. Under the Ethics Act as enacted by Congress, the one year ban applies to the Executive Branch, including departments and independent agencies. Any effort to change this should be rejected.

We support the three technical amendments that have been proposed by the Administration. We believe that these amendments clarify the intent of the law and correct specific problems without changing the law's fundamental purpose.

We urge you to adopt the Administration's technical amendments and strongly urge you to defeat any efforts to modify or strike the one year ban.

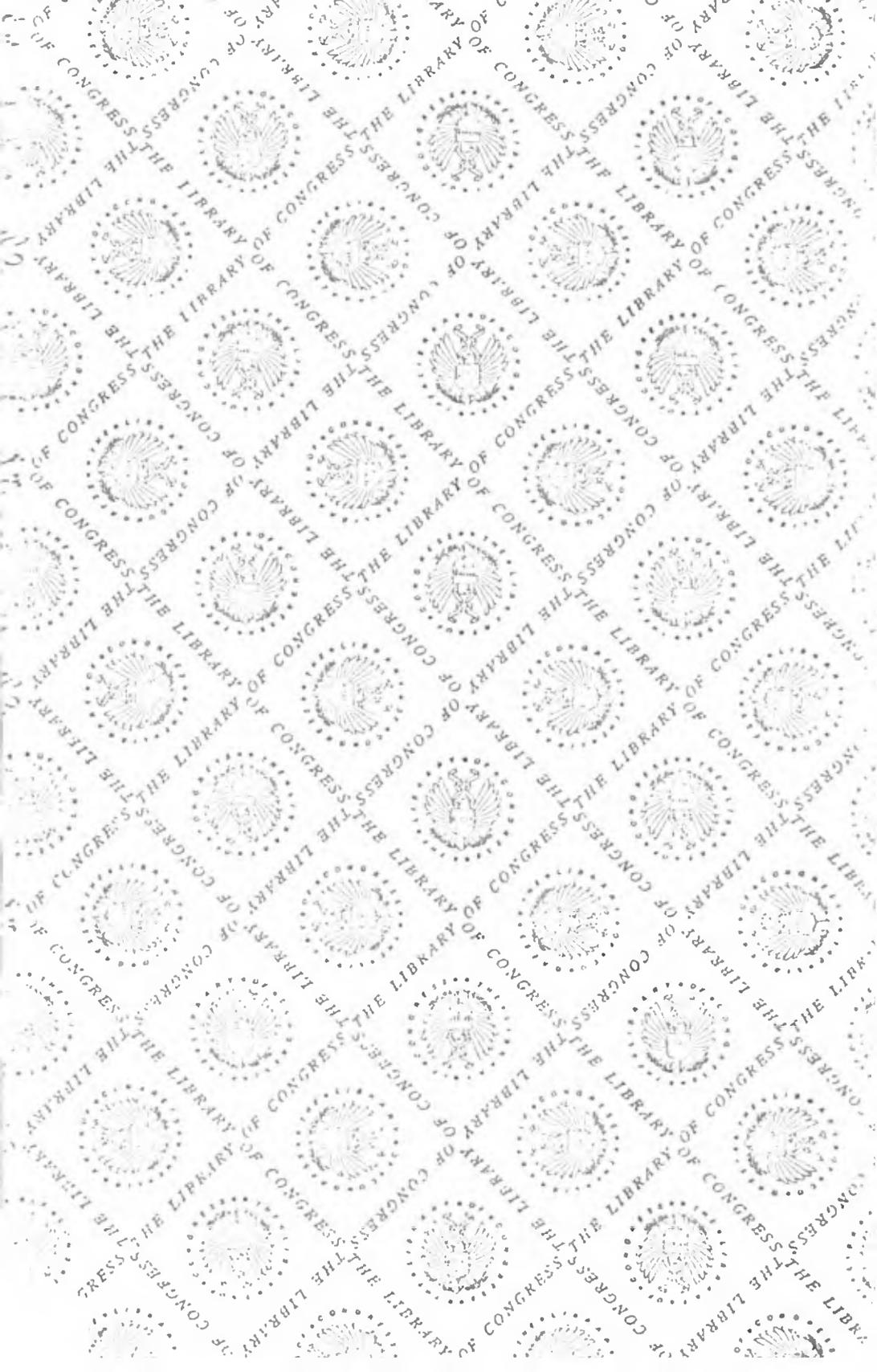
Sincerely,

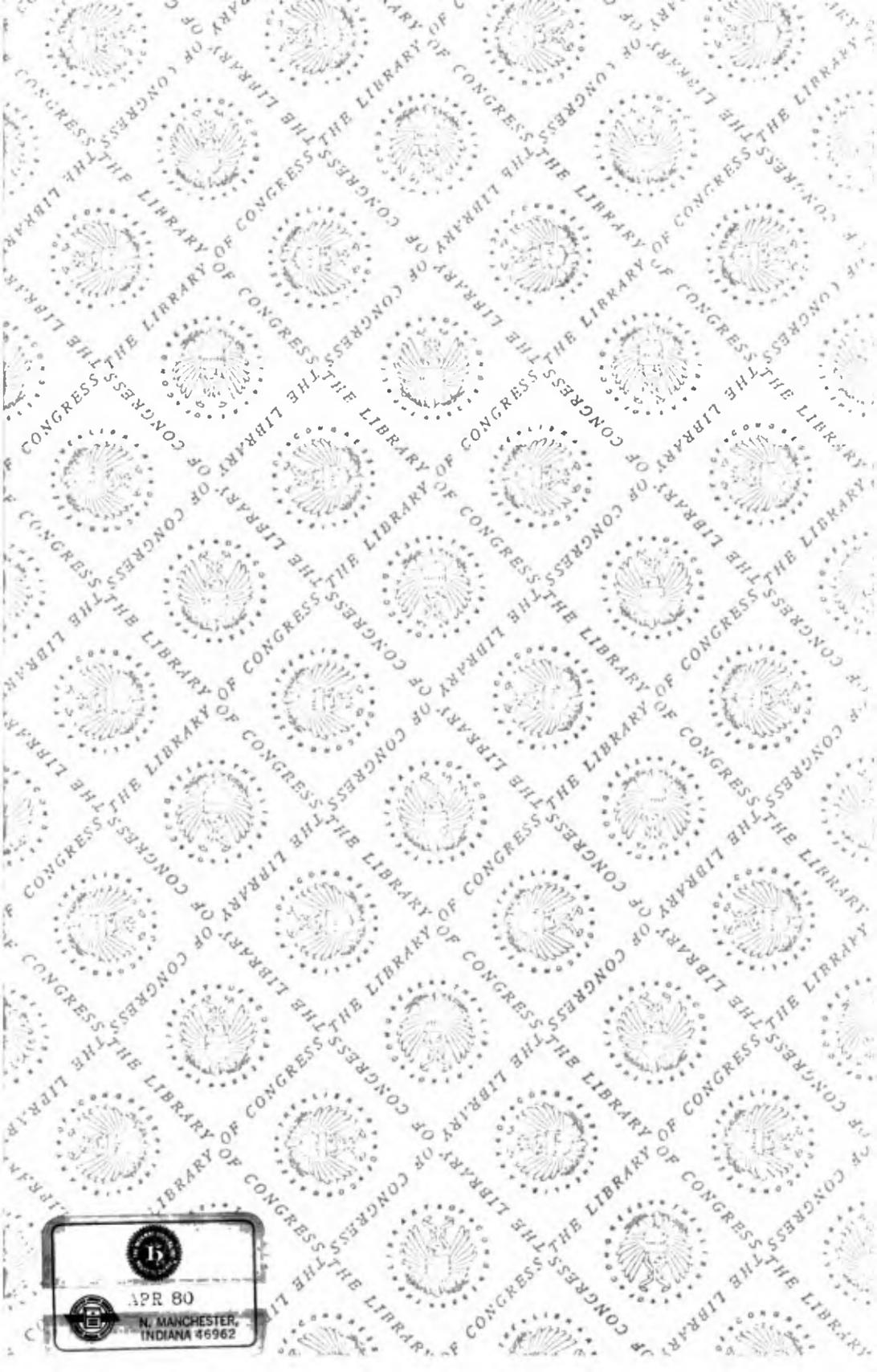
DAVID COHEN,
President.



H 143 80







APR 80

N. MANCHESTER,
INDIANA 46962

LIBRARY OF CONGRESS



0 018 387 370 2