ABUSES OF CORPORATE POWER

HEARINGS

BEFORE THE

SUBCOMMITTEE ON PRIORITIES AND ECONOMY IN GOVERNMENT

OF THE

JOINT ECONOMIC COMMITTEE

CONGRESS OF THE UNITED STATES

NINETY-FOURTH CONGRESS

FIRST AND SECOND SESSIONS

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ABUSES OF CORPORATE POWER

WEDNESDAY, JANUARY 14, 1976

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON PRIORITIES AND
ECONOMY IN GOVERNMENT OF THE
JOINT ECONOMIC COMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 1318, Dirksen Senate Office Building, Hon. William Proxmire (chairman of the subcommittee) presiding.

Present: Senator Proxmire.

Also present: Richard F. Kaufman, general counsel; Loughlin F. McHugh, professional staff member; George D. Krumbhaar, Jr., minority counsel; and M. Catherine Miller, minority economist.

OPENING STATEMENT OF CHAIRMAN PROXMIRE

Chairman PROXMIRE. The subcommittee will come to order.

Good morning, Mr. Hills. We are happy to have you here.

Today we begin the first in what I expect will be an extended series of hearings on the subject of abuses of corporate power. The focus will be on official corporate crimes and improper behavior: Bribes, kickbacks, illegal campaign contributions, and other improper uses of corporate funds.

I use the phrase, "official corporate crimes," to draw an important distinction. We are not talking about petty theft or embezzlement within the firm, an official who steals money from the corporation. That is something we know about and something that we all deplore and something that of course crops up at any time under any circumstances. We are talking about something else other than what is generally referred to as white-collar crime.

We intend to concentrate on cases where corporations have wrongfully used their funds as a matter of policy, with the approval and active participation of top corporate management.

The numerous disclosures that have been made so far—involving some of the largest and most prestigious firms in America—suggest that at least an important part of the private sector is a house of marked cards, composed of kings of corruption, jacks of all illicit trades, and aces of political influence.

We need look no further to understand the loss of consumer confidence than the companies that have been involved in these kinds of excesses. Private enterprise seems unable to monitor itself. Instead, it is undermining itself.

In the hearings we will ask the following questions:

One, what is the extent and seriousness of corporate abuses? Are the cases isolated and exceptional or do they indicate pervasive, deep-rooted problems?

Two, how seriously is economic policy being distorted to serve the demands of private companies?

Three, what are the estimated costs of corporate abuses to the taxpayer, the consumer and the shareholder?

Four, are new solutions, including new legislation, needed to deal with these problems?

If corporate abuses of power have become pervasive, then all of us need to consider, where do we go from here?

Our first witness is Hon. Roderick M. Hills, Chairman of the Securities and Exchange Commission.

Mr. Hills, we are very happy to have you here. You have a very interesting statement. Go right ahead.

STATEMENT OF HON. RODERICK M. HILLS, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION, ACCOMPANIED BY STANLEY SPORKIN, DIRECTOR, DIVISION OF ENFORCEMENT

Mr. HILLS. Thank you, Mr. Chairman. I am particularly pleased to be before this subcommittee on this subject. Based on the 60 plus days I have served at the Commission, I am pleased to say, on behalf of all the Commissioners, that nothing makes us quite so proud as the efforts of a relatively small number of people in this area. The effects they have had on American business I think will prove to be a major asset to American business.

We don't know the answers to all your questions, Senator. We do know that our program is progressing, and I hope that in my testimony which I shall give in large part this morning, and in my prepared statement, we can say something that is relevant to those questions.

I will attempt to describe our voluntary program, that is our effort to elicit from corporations throughout the country a willingness to come in and tell us they will give us answers to many of the questions you have asked. I think it is instructive, as sad as we may be about some of the practices that have been uncovered, to see how the corporate apparatus will react once it faces up to the problems of the past. The very distinguished lawyer from New York, John J. McCloy, in his report of the Special Review Committee to the board of directors of a major oil company faced with many of these problems, has provided a text for future corporate behavior. We are pleased to see this morning, in a press release from that company, a statement from the board saying that it will set up a permanent committee on business principles to establish a code of corporate ethics for its employees throughout the world.

My own judgment is that American business has too often catered to pressures and interests, not recognizing its own strengths and not recognizing its own responsibilities.

I do not intend, Senator, to speak entirely verbatim from my statement which was previously submitted to the subcommittee. Further, as

the Senator knows, we have provided the staff with a large number of documents, including all the complaints and various reports that we have received. I should like, however, to spend some time on what we believe to be the more important features of the Commission's enforcement and disclosure programs today.

The Commission's enforcement program has focused on companies which have maintained secret funds outside the normal financial accountability system, and on cases in which companies have engaged in various illegal practices. It is important, as the Senator has pointed out, to note that in each case there was direct involvement and participation by senior management officials. In each case there was a distortion, either by misstatement or omission, of the real purposes for which corporate funds were spent.

The practices uncovered in the course of these investigations revealed problems of serious magnitude—bonuses to selected corporate employees which were rebated for use in making illegal domestic political contributions by such corporations; use of an offshore corporate subsidiary as "cover" for a revolving cash fund for distributing diverted corporate funds for both domestic and foreign political activities, all of which were illegal in the place where paid; anonymous foreign bearer stock corporations used as depositories for secret illegal kickbacks offered in this country; payments to foreign consultants which were redirected to management and used for illegal domestic political contributions and commercial bribery; overt corporate payments to foreign government officials in return for favorable business concessions; and tens of millions of dollars paid to consultants, the payments used allegedly to bribe foreign government officials in order to procure business.

But I must say, Mr. Chairman, that in many of these cases, we are dealing with the allegations of the corporate officials as to where the money went. We must say to this subcommittee we do not now have proof as to where these funds did go in many cases. In other words, we do have corporate officials telling us that these moneys went to foreign governmental officials. As yet, however, some of the accountings that have been ordered, either by settlement or by court decree, in Commission enforcement actions, have not been completed. Accordingly, there are still large amounts of money unaccounted for.

The Commission has brought civil actions, injunctive actions, in various U.S. district courts against nine corporations, including, of course, some of this Nation's largest, with sales ranging from approximately $100 million to $18 billion. Corporate officers and directors have been included as defendants in practically all of the cases. In all but two of the cases the Commission has charged violations of the proxy solicitation provisions of the Securities Exchange Act. In three of the actions the Commission charged violations of the antifraud provisions of the act. In all but one it was alleged that senior management officials, often the chief executive officer, participated in the violative activities.

Chairman PROXMIRE. Could I ask you—I am going to ask you as we go along here—to identify the firms. But in view of the fact that you say, "In all but one of the cases it was alleged that senior management officials participated in the violative activities," what was the firm

in which there was no evidence that senior management officials participated? Can you recall that?

Mr. HILLS. Stan, do you know the name of that company?

Senator, I have not done so in the testimony that I prepared, but I can identify the companies, if the Senator wishes, as we go along.

Chairman PROXMIRE. All right. Will you do that?

Mr. HILLS. Yes. And we can have——

Chairman PROXMIRE. Could you have your man come forward?

Mr. HILLS. Yes. We have the information, and we will do it.

Chairman PROXMIRE. Go right ahead.

Mr. HILLS. I should note again the problem in each situation, the violative conditions alleged were facilitated by the maintenance of false and inadequate corporate books and records.

Senator, as you well know, I am pleased to introduce Mr. Sporkin who is Director of the Enforcement Division of the SEC.

Chairman PROXMIRE. Very happy to have you. We know of your outstanding reputation.

Mr. HILLS. It should be noted that, while some of these cases involved domestic payments only and some involved foreign payments only, in fact, most of them involved both.

The Commission's first case involved the allegation that a major marine construction company——

Chairman PROXMIRE. What was the name of that concern?

Mr. HILLS. That, Senator, was United Brands.

Chairman PROXMIRE. United Brands.

Mr. HILLS. That a major marine construction company and its chief—I am so sorry. That is quite incorrect. That is American Shipbuilding.

Chairman PROXMIRE. Is that American Shipbuilding?

Mr. HILLS. That is American Shipbuilding. It involved the allegation that a major marine construction company and its chief executive officer represented that $120,000 in payments had been made to employees and others as compensation when, in fact, those payments were the means by which the corporation made political contributions.

In a subsequent domestic case, the Commission alleged that a major manufacturing company and three of its officers and directors——

Chairman PROXMIRE. What was that, 3M?

Mr. HILLS. That is 3M Corp. It placed over $630,000 into a secret cash fund created by false entries in the corporate books and records purportedly for insurance and legal expenses. Almost $500,000 of this fund was allegedly used for unlawful political contributions. This case also involved as a defendant the company's chief executive officer.

A third domestic case was brought against a major municipal servicing organization, Sanitas Service Corp——

Chairman PROXMIRE. What corporation?

Mr. HILLS. Sanitas. S-a-n-i-t-a-s. The complaint charged the company and officers, including a former chairman of the board, with paying over $1,200,000 to a corporation, wholly owned by a former executive vice President, for the purpose of using these funds for illegal political payments, bribes, and kickbacks. The Commission further alleged that the former board chairman and two of the other defendants had concealed the true nature of these payments in periodic re-

ports and proxy materials file with the Commission and disseminated to the company's shareholders.

The first foreign case was brought against a major food products concern. This is United Brands. The company had advised shareholders in a current report on form 8-K of a reduction in an export tax imposed by a Central American country on the company. The Commission charged that this report should also have revealed that the company had allegedly agreed to pay $2.5 million to high government officials of that country in exchange for a government decision to reduce the export tax, and that $1.25 million was, in fact, paid to certain officials. The complaint also alleged that the company's books and records were falsified to conceal the disbursement of these funds, and that the defendant had made additional cash payments of about $750,000 to officials of a European government to secure favorable business opportunities for the company.

Chairman PROXMIRE. That was United Brands.

Mr. HILLS. Yes, Senator.

A second foreign suit charged a major industrial products company, General Refractories, its chairman of the board, and its executive vice president with making undisclosed payments of about $400,000 to officials of two European governments without properly accounting for this sum on the corporate books and records.

Chairman PROXMIRE. That was General Refractories?

Mr. HILLS. General Refractories.

The remaining cases brought by the Commission involve both domestic and foreign payments. One suit against a major multinational oil company, Phillips Petroleum, and its top officers alleged that over $2.8 million in corporate funds had been disbursed to two foreign corporations by means of false entries on the corporate books and records, and that most of this sum was returned to the United States largely for illegal political contributions and related expenses. The complaint further alleged that the balance was distributed overseas in cash.

Another major oil company—this is Gulf Oil—and a former company vice president were charged with creating a secret fund for unlawful political contributions and for other purposes. The complaint alleged that, by means of false entries on the corporate books and records, $10 million in corporate funds were given to a foreign subsidiary, and other company subsidiaries, of which about $5.4 million was returned to the United States and used largely for making illegal political contributions. In addition, it was alleged that the balance of the money was disbursed overseas in cash.

Senator, if I may point out again, in this case it was the report of the special review committee headed by John J. McCloy that can give all of us some hope that when brought to light, when forced to face the consequences of this type of investigation, companies can cause major structural changes to occur in how they do business.

In another case, against a major defense contractor and its top officers——

Chairman PROXMIRE. What was that firm?

Mr. HILLS. Northrup Corp., Senator. It was alleged that a secret fund of over $475,000 was generated from recycling of purportedly bona fide payments to a European consultant and was utilized for

unlawful political contributions, as well as for other purposes. Further, the Commission alleged that approximately $30 million of corporate funds had been disbursed to various consultants and others, a portion of which was disbursed without adequate controls to insure that the funds were used for the purposes indicated.

In a case against a large independent oil company, Ashland Oil Corp., its chief executive and other officers, the Commission alleged that $780,000 of corporate moneys had been diverted to a secret fund maintained largely for illegal political contributions. The complaint also alleged that over $4 million in cash was transferred or disbursed to individuals overseas without adequate records to insure that the funds were used for the purposes indicated.

Settlements have been reached with all of the defendants in five cases; the rest are in litigation as to all or some of the defendants. In those instances where settlements have been reached, final judgments of permanent injunction by consent have been entered by the court, with the settling defendants neither admitting nor denying the allegations of the Commission's complaint. These judgments enjoin the defendants from further violations of the Federal securities laws as alleged in the complaint, and provide for certain ancillary, and we think important, relief.

In addition to these actions, the Commission has also filed subpena enforcement actions in the Federal courts against two very large corporations seeking to compel them to comply with investigative subpenas calling for the production of documents and testimony necessary for Commission investigations. In both cases, after hearings, the court ordered the defendants to comply with the Commission's subpenas. In one case, involving a major defense contractor, the court ordered that, except in dealings with agencies with law enforcement responsibilities, the Commission give the defendant and interested agencies of the U.S. Government advance notice before releasing the subpenaed documents to any third party, other than a grand jury. In so providing, however, the court expressly stated that nothing in the order was to limit the investigative or enforcement efforts of the Commission. In the second case, the court's order requiring compliance with the investigative subpena also called for similar protection against premature disclosure of the subpenaed documents.

Chairman PROXMIRE. What was the second case?

Mr. HILLS. Occidental Petroleum.

The Commission currently has a number of active investigations pending involving major U.S. corporations. Certain of these investigations have been disclosed, either in the context of Commission actions seeking judicial enforcement of our investigatory subpenas, or by the corporations under investigation.

In those actions where defendants have consented to the entry of final judgments of permanent injunction, we are satisfied, Senator, that the Commission has obtained the relief it is expressly authorized to seek under the Federal securities laws. These final orders of permanent injunction are, of course, enforceable by criminal contempt proceedings in the event of further violations. In addition, important ancillary relief—and by that we mean relief not specifically provided in the Federal securities laws but which a court of equity may, in the

exercise of its discretion, grant in the interest of justice—has been obtained.

Typically, these final orders have required the subject company to establish a special committee, generally comprised of independent members of its board of directors, in order to conduct a full investigation of the irregularities alleged in the Commission's complaint. The committees have generally utilized outside legal counsel and independent auditors, and have conducted detailed inquiries into the company's books and records, and its past and present management and corporate operations. After the conclusion of an investigation, the special committee submits a complete report of the investigation to the board of directors, which, of course, has the ultimate responsibility for reviewing and implementing any recommendations contained in the report.

Again I direct the subcommittee's attention to the report of the Special Review Committee to the board of directors of Gulf Oil Corp. for the subcommittee's interest.

These inquiries by outside directors have served two most important functions. First, they have provided the corporation and its shareholders with a mechanism, independent of the management that may have been responsible for the alleged wrongdoing, to determine the extent and nature of the problems involved, and to determine whether restitution should be sought on behalf of the corporation or other action initiated against past or present management. In short, this form of ancillary relief has provided for a new governance of the corporation, to protect the interests of the stockholders.

Our action in this regard has been consistent with the longstanding Commission policy of advocating a greater role for independent directors in the affairs of publicly held companies. As early as 1940, following the McKesson-Robbins investigation, the Commission urged the formatioin of committees of nonofficer directors to participate in arranging the details of corporate audits. In March 1972, the Commission again endorsed the establishment of audit committees composed of outside directors for all publicly held companies to afford the greatest possible protection to investors who rely upon the financial statements of such companies.

Again, in December 1974, the Commission urged registrants to create audit committees of the board in order to provide more effective communication between independent accountants and outside directors, and required proxy statement disclosure of the existence of, or the absence of, such a committee.

Second, the special committees that have resulted from the Commission's enforcement actions have served the equally important function of communicating important information concerning past management activities to public shareholders. Thus, the investigative reports prepared by the outside directors have been filed, as required by the final orders entered, with the court as part of the record in the action, and with the Commission as an exhibit to a form 8–K current report.

The investigative reports for six corporate defendants have been filed. These reports have substantially verified the substance of the Commission's allegations in each case, and in certain instances, revealed

additional instances of domestic and foreign payments. Five of the reports recommended that the subject companies adopt remedial procedures designed to prevent recurrence of the practices in question. Additionally, as a result of Commission enforcement actions, the activities of the Watergate special prosecutor, shareholder actions, and for other reasons, certain management defendants and others have made restitution in excess of $1 million to the corporations.

In six of these actions, the companies consented to court ordered prohibitions against further illegal political contributions, the maintenance of off-the-books cash funds, or further falsifying any corporate books and records. In each case, the Commission has retained the right to seek further relief if it is not satisfied that the company has fully complied with the terms of its undertakings and the final judgment entered by the court.

I would like now to turn to a discussion of the Commission's voluntary disclosure program. The primary allegations, if I may say again in each of the cases brought, relate to the maintenance of funds outside the normal financial accountability system for purposes of making, among other things, illegal domestic political contributions. The criminal indictments of several of these corporations and their executives for such illegal activities led the Commission to publish a public statement expressing the view of its Division of Corporation Finance concerning disclosure of these matters in filings with the Commission. That statement appears in Securities Act release No. 5466, March 8, 1974. Generally, the disclosures about domestic contributions in response to that release have been detailed, and have included information on the method of freeing the money from normal corporate controls, and information concerning those involved both in making and receiving payments. Copies of the relevant portions of filings containing these disclosures have, of course, been submitted to your staff.

The secret funds that were maintained by some of those companies were apparently used for a variety of purposes, including, in some instances, foreign payments in connection with business abroad. One effect of the Commission's actions alleging failure to disclose the maintenance of these secret funds has been increased awareness of this problem by other registrants. Last summer there was widespread publicity given to the Commission's actions, as well as to information obtained through congressional inquiries relating to foreign payments. Questions were raised about the types of disclosure that would be appropriate under the Federal securities laws and about the actions that companies could take "to clear the board" of past activities of this type.

Commissioner Loomis, in testimony before the House of Representatives Subcommittee on International Economic Policy of the Committee on International Relations, July 17, 1975 and September 30, 1975, suggested that companies concerned about this problem might proceed in the following manner:

One, make a careful investigation of the facts, conducted by persons not involved in the activities in question, such as independent directors;

Two, if the investigation discloses that a problem does exist, the board of directors then should decide, in consultation with their professional advisers, what types of disclosure seem to be called for; and

Three, discuss the matter with the staff of the SEC prior to filing a document, and fully inform the staff as to the facts.

Commissioner Loomis also stated that the procedures set forth could lessen the need for enforcement action in particular cases, especially where the Commission was informed in advance that a company, not then under investigation, would proceed in such a fashion.

The first company to accept this invitation for voluntary disclosure was a major oil company which came to our staff last summer. Its representatives described——

Chairman PROXMIRE. What was that firm?

Mr. HILLS. That was Cities Service Corp., Senator, that came forward, and as I said earlier, came forward voluntarily. As the Senator appreciates, where we have people coming forth voluntarily there may be some matters that are easy to speak about and others in which some residual possibility of enforcement action may be present. Accordingly, if an investigation is presently pending, there are some matters that we may come upon which may be inappropriate to speak about. So far, of course, we have touched on none of these problems.

Chairman PROXMIRE. Simply just let us know in those cases.

Mr. HILLS. Of course. Thank you.

In the case I was mentioning, company representatives described in detail their concerns over foreign activities that had come to the attention of top management, and consulted with the staff on the appropriate method of disclosing and stopping such activities. These discussions led to the filing of a current report on form 8–K, a form used to report the occurrence of certain material events, describing the program that the company intended to undertake. Again, a copy of that filing is with your staff.

The type of voluntary program undertaken by that company can be adopted, with appropriate modification, to any company involved in payments of doubtful legality and in maintaining inaccurate books and records relating to such transactions. Any such company should first conduct an internal inquiry to determine the extent of such problems. The company may then enter the "voluntary program" if the board of directors, one, declares an end to all such practices and, two, authorizes a complete investigation, both of all matters that have been discovered, as well as of any similar activities involving the company, within or outside the United States, within the previous 5 years. Five years, in our judgment, is a sensible cutoff point since that is usually the time covered by the financial statements required to be included in filings with the Commission. That does not mean, of course, that there may not be different terms than 5 years depending upon the nature of the matter.

The exact wording of the action to be taken by the board of directors, including the declaration to end such practices, will depend on the discoveries that they have made. The policies adopted by the board of directors of the previously mentioned company are instructive. Their policies are as follows:

One, the use of corporate or subsidiary funds or assets for any lawful or improper purpose is strictly prohibited.

Two, no undisclosed or unrecorded fund or asset of the corporation or any subsidiary shall be established for any purpose.

Three, no false or artificial entries shall be made in the books and records of the corporation or its subsidiaries for any reason, and no employee shall engage in any arrangement that results in such prohibited act.

Four, no payment on behalf of the corporation or any of its subsidiaries shall be approved or made with the intention or understanding that any part of such payment is to be used for a purpose other than that described by the documents supporting the payment.

Five, any employee having information or knowledge of any unrecorded fund or asset or any prohibited act shall promptly report such matter to the auditor general of the company.

Six, all managers shall be responsible for the enforcement of, and compliance with, this policy including necessary distribution to insure employee knowledge and compliance.

Seven, appropriate employees will periodically be required to certify compliance with this policy.

Eight, this policy is applicable to the corporation and all its domestic and foreign subsidiaries.

In addition to declaring an end to such practices, the board should authorize a thorough investigation by a committee consisting of independent directors. That committee should be authorized to employ counsel and independent accountants if deemed appropriate by the committee. Obviously, in many cases the independent accountant who regularly audits the corporation is the appropriate firm to be used unless, of course, circumstances suggest otherwise.

Under the voluntary program, the company will file a report on form 8–K with the Commission. The report will set forth the facts as the company then knew them, describe the investigation underway, including progress to date, and the declaration of policy to end such practices. In addition, the company should, whenever appropriate, file a form 8–K to report on the progress of the investigation, and file, at the time of the completion of the investigation, a copy of the report that the independent committee submits to the board of directors. Generally, the report should contain a description of the transactions involved including the amounts, the purposes of the transactions, the role of management, the tax consequences, the accounting treatment, and the effect on income, revenues and assets, or business operations of a cessation of such payments.

It must be understood that the staff of the Commission will have access to any information that is discovered or developed during the investigation. Further, the company will also be expected to describe the facts as then known in any registration statement or, if appropriate, in a proxy statement. That disclosure, of course, need not await the outcome of the final report, but should be made on the basis of current knowledge.

This procedure has been adapted to other situations, but the general structure, including internal investigation and discussions with the staff, is common to all. At this date approximately 15 companies have met with the staff to discuss questions in this area, and a number of these companies have filed reports or regisration statements describing questionable foreign payments and the maintenance of improper books and records in connection therewith. These were not all the re-

sult of participation in the "voluntary program," but the types of disclosure made, assuming there is no court action, are generally similar whether the company is in the "voluntary program" or not.

It is difficult, Senator to summarize the types of disclosure that have been made because, to a very large extent, the disclosure depends on the particular facts and circumstances of each case. The types of foreign transactions that have been disclosed are generally similar to those alleged in the enforcement actions I have previously described, and include large, apparently disproportionate, payments made as "commissions" to "agents" who are in fact Government officials, for their help in obtaining contracts or business, and payments to political parties for Government favors. Some payments have been made to Government employees performing ministerial duties in order to expedite the company's business transactions, and some have been part of a program to evade taxes or currency control laws. These payments are usually disguised by the maintenance of incomplete or false books and records with little or no supporting documentation.

Although these voluntary disclosures are generally similar in nature to those resulting from enforcement action, I must point out that the disclosures that we have seen in the filings of companies which have either come in voluntarily or which have contacted and cooperated with the staff, are less detailed than those which have resulted from court orders. Of course, since we have no final reports yet submitted pursuant to the voluntary program, adequacy of the disclosures to date has not yet been determined.

We had one instance which involved a corporation which was private at the time of the transaction in question. As described in my prepared statement, we determined, in that instance, that no disclosure was necessary.

The committee has asked for our views as to the adequacy and effectiveness of the present laws and regulations and any recommendations we may have for improving them. As the committee knows, a primary purpose of the Federal securities laws and the Commission's regulations is to protect investors by requiring issuers of securities to make full and fair disclosure of material facts. In my opinion, these statutes provide the Commission adequate authority to require appropriate disclosure about the matters I have been discussing in order to protect stockholders. And as the Senator knows, we are in the midst of the voluntary disclosure program, and it is not possible at this stage to answer the four questions the Senator has posed in any complete fashion.

Chairman PROXMIRE. How long will it take before you feel you will be able to answer those questions?

Mr. HILLS. The questions that the Senator has presented to us have considerable relevance to the documents we have provided your staff, the voluntary disclosure reports and other evidence. It is difficult for me to tell how much additional information you may wish to have. You obviously will have access to considerably more material as our program goes forward. The judgment as to when we have enough information to answer the questions in detail is, of course, problematic. I have no doubt that we can provide very material evidence on those questions in the near future.

Chairman PROXMIRE. You mean within a couple of months you would be able to give us some kind of estimate?

Mr. HILLS. Senator——

Chairman PROXMIRE. You can qualify your estimates any way you wish.

Mr. HILLS. Of course. We will undertake, Senator, to provide within 60 days an answer to the four questions based upon the information that we have from a number of sources.

Chairman PROXMIRE. Thank you.

Mr. HILLS. Where possible, of course, where no investigation is underway, we will do it in the fullest possible fashion and we will have to decide at that time how good a job we can do. We do, however, have a very large sampling of the American business world coming forward voluntarily with the voluntary disclosure program.

Chairman PROXMIRE. We should have this by mid-March then.

Mr. HILLS. We will undertake to have it to you by March 15.

There are two additional points to be made. First, our enforcement actions to date, generally speaking, have been based upon alleged transactions involving the payments of large amounts of money which were caused to be inaccurately stated on the company's books and records by top corporate officials. They were concealed from the company's board of directors in most cases, as far as we can tell, and often from its auditors. The ancillary relief that we have obtained in most of these actions has had the effect of providing a new governance for those corporations by requiring that the board of directors be provided with adequate information so that appropriate action can be taken to protect the stockholders of that company.

In my view, an effective system of corporate accountability requires that the facts pertaining to illegal payments not be concealed from a corporation's independent accountants or its board of directors. This is the key point. The system of government regulation of business disclosure by the Securities and Exchange Commission will not work unless the books and records are kept in good faith.

Second, we are aware that many commentators have said that too much uncertainty exists, and they have asked the Commission to formulate guidelines. There are two points to be made in response to that. As the Senator will appreciate on the basis of the testimony that I have gone through, not much uncertainty exists within the corporations involved as to what apparently happened, and no uncertainty should exist as to the need for the Securities and Exchange Commission to pursue those matters for the purpose of corporate accountability. Now, it is unlikely, in my judgment, that we shall ever be able to provide a guideline with any kind of simple mathematical formula to help corporations decide what is in the interests of the stockholders of that company. It is my personal hope that we will, however, be able to provide some better guidance in the near future.

Senator, as I said at the outset, as a newcomer to the Securities and Exchange Commission I am particularly proud of the SEC's efforts in this area, spearheaded, of course, by the Enforcement Division with its 200 people in Commission headquarters. Our Division of Corporation Finance, and our General Counsel's office have also all had a major impact on the business world, and I am more than pleased to appear before this subcommittee to say so.

[The prepared statement of Mr. Hills follows:]

PREPARED STATEMENT OF HON. RODERICK M. HILLS

Mr. Chairman, members of the subcommittee: I appreciate the opportunity to testify before this Subcommittee on the subject of "Abuses of Corporate Power, Bribes, Kickbacks, Political Contributions and Other Improper Payments."

I understand that the Subcommittee is primarily interested in all relevant actions taken by the Securities and Exchange Commission during the past two years to investigate violations of the federal securities laws related to such activities, and in our views as to the adequacy and effectiveness of the federal securities laws for these purposes. Accordingly, I will first discuss the enforcement actions brought in this area, and the disclosure contained in documents filed with the Commission.

INTRODUCTION

For approximately eighteen months, one aspect of the Commission's enforcement program has focused on companies which have maintained secret funds outside the normal financial accountability system and engaged in a variety of illegal practices which were facilitated by the maintenance of false or inadequate corporate books and records. In each case, there was direct involvement and participation by senior management officials coupled with, in most cases, a concealment of the practices from the full board of directors and outside auditors.

As the Watergate Special Prosecutor's Office began to obtain convictions against some of America's largest public companies for violations of the Federal Corrupt Practices Act, it became clear that the Commission should commence its own investigation of management misuse of corporate funds. The practices uncovered in the course of these investigations revealed problems of a serious magnitude:

(1) Bonuses to selected corporate employees which were rebated for use in making illegal domestic political contributions by such corporations;

(2) Use of an offshore corporate subsidiary as "cover" for a revolving cash fund for distributing diverted corporate funds for both domestic and foreign political activities, all of which were illegal in the place where paid;

(3) Anonymous foreign bearer stock corporations, used as depositories for secret illegal "kickbacks" on purchase or sales contracts;

(4) Payments to foreign consultants which were diverted to management and used for illegal domestic political contributions and commercial bribery;

(5) Direct, corporate payments to foreign government officials in return for favorable business concessions; and

(6) Payments, aggregating tens of millions of dollars, to consultants or commission agents, made with accounting procedures, controls and records which, if existent at all, were insufficient to document whether any services were even rendered by such consultants or agents, or whether such services were commensurate with the amounts paid. In some cases the parties involved have stated that the payments were used to bribe foreign government officials in order to procure business. No foreign official has, however, yet confirmed the receipt of such monies for such purposes, and there still are large amounts of such payments for which no accounting has been made.

ACTIONS FILED

To date, the Commission has brought civil injunctive actions in various United States District Courts against nine corporations including some of this nation's largest public corporations with annual sales ranging from approximately $100 million to $18 billion. In eight of these cases corporate officers and directors have also been included as defendants.

Each case involves differing fact situations, but they are similar in significant respects. In each the Commission has alleged that the defendants violated the reporting provisions of the Securities Exchange Act of 1934 by filing periodic reports with the Commission which omitted or misstated material information. In all but two of these cases, the Commission also charged violations of the proxy solicitation provisions of that Act. In three of the actions, the Commission charged violations of the antifraud provisions of that Act. In all but one of the cases it was alleged that senior management officials participated in the violative activities, and those individuals were also named as defendants.

I should note again that in each of these nine cases, the violative conduct alleged was facilitated by the maintenance of false or inadequate corporate books and records. It should also be noted that, while some cases involved domestic payments only, and others involved foreign payments only, the majority involved both domestic and foreign payments.

The Commission's first case included the allegation that a major marine construction company and its chief executive officer represented that $120,000 in payments had been made to employees and others as compensation when, in fact, those payments were the means by which the corporation made political contributions.

In a subsequent domestic case, the Commission alleged that a major manufacturing company and three of its officers and directors placed over $630,000 into a secret cash fund created by false entries in the corporate books and records purportedly for insurance and legal expenses. Almost $500,000 of this fund was allegedly used for unlawful political contributions. This case also involved as a defendant the company's chief executive officer.

A third domestic case was brought against a major municipal servicing organization charging the company and officers, including a former chairman of the board, with paying over $1,200,000 to a corporation wholly owned by the former executive vice-president for the purpose of using these funds for illegal political payments, bribes and kickbacks. The Commission further charged the former board chairman and two of the other defendants with concealing the true nature of these payments in periodic reports and proxy materials filed with the Commission and disseminated to the company's shareholders.

The first foreign case was brought on April 9, 1975, against a major food products concern. The company had advised shareholders in a current report on Form 8–K of a reduction in an export tax imposed by a Central American country on the company. The Commission charged that this report should also have revealed that the company had allegedly agreed to pay $2.5 million to high government officials of the country in exchange for a government decision to reduce an export tax, and that $1.25 million was paid to certain officials. Furthermore, the complaint alleged the company's books and records were falsified to conceal the disbursement of these funds and that the defendant had made additional cash payments of about $750,000 to officials of a European government to secure favorable business opportunities for the company.

A second foreign suit charged a major industrial products company, its chairman of the board, and its executive vice-president with making undisclosed payments of about $400,000 to officials of two European governments without properly accounting for this sum on the corporate books and records.

The remaining cases brought by the Commission involve both domestic and foreign payments. One suit against a major multinational oil company and its top officers alleged that over $2.8 million in corporate funds had been disbursed to two foreign corporations by means of false entries on the corporate books and records and that most of this sum was returned to the United States largely for illegal political contributions and related expenses. The complaint further alleged that the balance was distributed overseas in cash.

Another major oil company and a former company vice-president were charged with creating a secret fund for unlawful political contributions and for other purposes. The complaint alleged that, by means of false entries on the corporate books and records, $10 million in corporate funds were given to a foreign subsidiary, and other company subsidiaries, of which about $5.4 million was returned to the United States and used largely for making illegal political contributions. In addition it was alleged that the balance of the money was disbursed overseas in cash.

On another case, against a major defense contractor and its top officers, the Commission charged that a secret fund of over $475,000 was generated from recycling of purportedly bona fide payments to a European consultant and was utilized for unlawful political contributions, as well as for other purposes. Further, the Commission alleged that approximately $30 million of corporate funds had been disbursed to various consultants and others, a portion of which was disbursed without adequate controls to insure that the funds were used for the purposes indicated.

In a case against a large independent oil company, its chief executive and other officers, the Commission alleged that $780,000 of corporate moneys had been diverted to a secret fund maintained largely for illegal political contributions. The complaint also alleged that over $4 million in cash was transferred or dis-

bursed to individuals overseas without adequate records to insure that the funds were used for the purposes indicated.

Settlements have been reached with all of the defendants in five cases; the rest are in litigation as to all or some defendants.

In those instances where settlements have been reached, final judgments of permanent injunction by consent have been entered by the Court, with the settling defendants neither admitting nor denying the allegations of the Commission's complaint. These judgments enjoin the defendants from further violations of the federal securities laws as alleged in the complaint, and provide for certain ancillary relief.

In addition to these actions, the Commission has also filed subpoena enforcement actions in the federal courts against two very large corporations seeking to compel them to comply with investigative subpoenas calling for the production of documents and testimony necessary for Commission investigations. In both cases, after hearings, the court ordered the defendants to comply with the Commission's subpoenas. In one case involving a major defense contractor, however, the Court ordered that, except in dealings with agencies with law enforcement responsibilities, the Commission give the defendant and interested agencies of the United States Government advance notice before releasing the subpoenaed documents to any third party, other than a grand jury. In so providing the Court expressly stated that nothing in the order was to limit the investigative or enforcement efforts of the Commission. In the second case, the Court's order requiring compliance with the investigative subpoena called for similar protection against premature disclosure of the subpoenaed documents.

The Commission currently has a number of active investigations pending involving major U.S. corporations. Certain of these investigations have been disclosed either in the context of Commission actions seeking judicial enforcement of Commission investigatory subpoenas or by the corporations currently under investigation.

ANCILLARY RELIEF

In those actions where defendants have consented to the entry of final judgments of permanent injunction, the Commission has obtained the relief it is expressly authorized to seek under the federal securities laws. These final orders of permanent injunction are, of course, enforceable by criminal contempt proceedings in the event of further violations. In addition, important ancillary relief—that is, relief not specifically provided in the federal securities laws but which a court of equity may, in the exercise of its discretion, grant in the interest of justice—has been obtained.

Typically, these final orders have required the subject company to establish a special committee generally comprised of independent members of its board of directors, in order to conduct a full investigation of the irregularities alleged in the Commission's complaint. The committees have generally utilized outside legal counsel and independent auditors and have conducted detailed inquiries into the company's books and records, its past and present management and corporate operations. Upon the conclusion of an investigation, such special committees submit a complete report of the investigation to the board of directors, which, of course, has the ultimate responsibility for reviewing and implementing any recommendations contained in the report.

These inquiries by outside directors have served two important functions. First, they have provided the corporation and its shareholders with a mechanism, independent of the management that may have been responsible for the alleged wrongdoing, to determine the extent and nature of the problems involved, and whether restitution should be sought on behalf of the corporation or other action initiated against past or present management.

This action is consistent with the longstanding Commission policy of advocating a greater role for independent directors in the affairs of publicly held corporations. As early as 1940, following the McKesson-Robbins investigation, the Commission urged the formation of committees on non-officer directors to participate in arranging the details of corporate audits. In March 1972, the Commission endorsed the establishment of audit committees composed of outside directors for all publicly held companies to afford the greatest possible protection to investors who rely upon the financial statements of such companies. Again, in December 1974, the Commission urged registrants to create audit committees of the board in order to provide more effective communication between

independent accountants and outside directors and required proxy statement disclosure of the existence or absence of such a committee.

Second, the special committees that have resulted from the Commission's enforcement actions have served the equally important function of communicating important information concerning management's activities to public shareholders. Thus, the investigative reports prepared by the outside directors have been filed, as required by the final orders entered, with the Court as part of the record in the action, and with the Commission as an exhibit to a Form 8–K current report.

The investigative reports for six corporate defendants have been filed. These reports have substantially verified the substance of the Commission's allegations in each case and, in certain instances, revealed additional instances of domestic and foreign payments. Five of the reports recommended that the subject companies adopt remedial procedures designed to prevent recurrence of the practices in question. Additionally, as a result of Commission enforcement actions, the activities of the Watergate Special Prosecutor, shareholder actions, and for other reasons, certain management defendants and others have made restitution in excess of $1 million to the corporations.

In six of these actions, the companies consented to court ordered prohibitions against further illegal political contributions, the maintenance of off-the-books cash funds, or further falsifying any corporate books and records. Further, in each case, the Commission has retained the right to seek further relief if it is not satisfied that the company has fully complied with the terms of its undertakings and the final judgment entered by the court.

DISCLOSURE

The primary allegations in each of the cases brought relate to the maintenance of funds outside the normal financial accountability system for purposes of making, among other things, illegal domestic political contributions. The criminal indictments of several of these corporations and their executives for such illegal actvities led the Commission to publish a public statement expressing the view of its Division of Corporation Finance concerning disclosure of these matters in filings with the Commission (Securities Act Release No. 5466, March 8, 1974). Generally, the disclosures about domestic contributions in response to that release have been detailed, and have included information on the method of freeing the money from normal corporate controls, and information concerning those involved both in making and receiving payments. Copies of the relevant portions of filings containing these disclosures have already been submitted to the committee's staff.

The secret funds that were maintained by some of those companies were apparently used for a variety of purposes, including, in some instances, foreign payments in connection with business abroad. One effect of the Commission's actions alleging failure to disclose the maintenance of these secret funds has been increased awareness of this problem by other registrants. Last summer, there was widespread publicity given to the Commission's actions, as well as to information obtained through Congressional inquiries relating to foreign payments. Questions were raised about the types of disclosure that would be appropriate under the federal securities laws and about the actions that companies could take to "clear the board" of past activities of this type.

In this context, Commissioner Loomis, in testimony before the House of Representatives Subcommittee on International Economic Policy of the Committee on International Relations (July 17, 1975 and September 30, 1975), suggested that companies concerned about the problem might proceed in the following manner:

(1) Make a careful investigation of the facts, conducted by persons not involved in the activities in question, such as independent directors;

(2) If the investigation discloses that a problem does exist, the Board of Directors should decide, in consultation with their professional advisers, what types of disclosure seem to be called for; and

(3) Discuss the matter with the Commission staff prior to filing a document and fully inform the staff as to the facts.

He also indicated that the procedures set forth could lessen the need for enforcement action in particular cases, especially where the Commission was informed in advance that a company, not then under investigation, would proceed in such a manner.

The first company to accept this invitation for voluntary disclosure was a major oil company which came to our staff last summer. Its representatives described in detail their concerns over foreign activities that had come to the attention of top management, and consulted with the staff on the appropriate method of disclosing and stopping such activities. These discussions led to the filing of a current report on Form 8–K, a form used to report the occurrence of certain material events, describing the program that the company intended to undertake. A copy of that filing has been provided to your staff.

The type of voluntary program undertaken by that company can be adopted with appropriate modification, to any company which has been involved in payments of doubtful legality and in maintaining inaccurate books and records relating to such transactions. Any such company should first conduct an internal inquiry to determine the extent of such problems. The company may then enter the "voluntary programs" if the board of directors (1) declares an end to all such practices and (2) authorizes a complete investigation, both of all matters that have been discovered as well as of any similar activities involving the company (within or outside the United States) within the previous five years. Five years is a sensible cut off point since that is usually the time covered by the financial statements required to be included in filings with the Commission. Of course, events prior to that time may also be material if part of a continuing program or related to existing material contracts or business operations.

The exact wording of the action to be taken by the board of directors, including the declaration to end such practices, will depend on the activities discovered. The policies adopted by the board of directors of the previously mentioned company are instructive:

(1) The use of corporate or subsidiary funds or assets for any unlawful or improper purpose is strictly prohibited.

(2) No undisclosed or unrecorded fund or asset of the corporation or any subsidiary shall be established for any purpose.

(3) No false or artificial entries shall be made in the books and records of the corporation or its subsidiaries for any reason, and no employee shall engage in any arrangement that results in such prohibited act.

(4) No payment on behalf of the corporation or any of its subsidiaries shall be approved or made with the intention or understanding that any part of such payment is to be used for a purpose other than that described by the documents supporting the payment.

(5) Any employee having information or knowledge of any unrecorded fund or asset or any prohibited act shall promptly report such matter to the auditor general of the company.

(6) All managers shall be responsible for the enforcement of, and compliance with, this policy including necessary distribution to ensure employee knowledge and compliance.

(7) Appropriate employees will periodically be required to certify compliance with this policy.

(8) This policy is applicable to the corporation and all its domestic and foreign subsidiaries.

In addition to declaring an end to such practices, the board should authorize a thorough investigation by a committee consisting of independent directors. That committee should be authorized to employ counsel and independent accountants if deemed appropriate by the committee. Normally, the independent accountants who regularly audit the corporation would be used unless circumstances suggested otherwise.

Under the voluntary program, the company will file a report on Form 8–K with the Commission. The report will set forth the facts as the company then knew them, describe the investigation underway, including progress to date, and the declaration of policy to end such practices. In addition, the company should, whenever appropriate, file a Form 8–K to report on the progress of the investigation, and file, at the time of the completion of the investigation, a copy of the report that the independent committee submits to the board of directors. Generally, the report should contain a description of the transactions involved including the amounts, the purposes of the transactions, the role of management, the tax consequences, the accounting treatment, and the effect on income, revenues, and assets or business operations of a cessation of such payments.

It must be understood that the staff of the Commission will have access to any information that is discovered or developed during the investigation. Fur-

ther, the company will also be expected to describe the facts as then known in any registration statement or, if appropriate, in a proxy statement. This disclosure need not await the outcome of the final report, but should be made on the basis of current knowledge.

This procedure has been adapted to other situations, but the general structure, including internal investigation and discussions with the staff, is common to all. Approximately fifteen companies have met with the staff to discuss questions in this area and a number of these companies have filed reports or registration statements describing questionable foreign payments and the maintenance of improper books and records in connection therewith. These were not all the result of participation in the "voluntary program", but the types of disclosure made, assuming there is no court action, are generally similar whether the company is in the "voluntary program" or not.

It is difficult to summarize the types of disclosure that have been made because, to a large extent, the disclosure depends on the particular facts and circumstances of each case. The types of foreign transactions that have been disclosed are generally similar to those alleged in the enforcement actions I have previously described, and include large, apparently disproportionate, payments made as "commissions" to "agents" to aid in obtaining contracts or business; payments to "agents", who are in fact government officials, for their help in obtaining contracts or business; and payments to political parties for government favors. Some payments have been made to government employees performing ministerial duties in order to expedite the company's business transactions, and some have been part of a program to evade taxes or currency control laws.

These payments are usually disguised by the maintenance of incomplete or false books and records with little or no supporting documentation. Although these voluntary disclosures are generally similar in nature to those resulting from enforcement action, I must point out that the disclosures that we have seen in the filings of companies which have either come in voluntarily or which have contacted and cooperated with the staff, are less detailed than those which have resulted from court orders. Of course, since no final reports have yet been submitted pursuant to the voluntary program, the adequacy of the disclosures to date have not yet been determined.

In at least one instance, however, after discussion with the staff and Commission it was determined that no disclosure was necessary. In that case, the company had been private at the time of the transactions, the transactions involved small amounts of money used basically for gifts to minor foreign government employees, top management was not involved in the practice, and accounts were kept reflecting such payments. The company nevertheless adopted a policy prohibiting such practices in the future.

LEGISLATIVE RECOMMENDATIONS

You have asked for our views as to the adequacy and effectiveness of the present laws and regulations and any recommendations we may have for improving them. As you know, a primary purpose of the federal securities laws and the Commission's regulations is to protect investors by requiring issuers of securities to make full and fair disclosure of material facts. In my opinion, these statutes provide the Commission adequate authority to require appropriate disclosure about the matters I have been discussing in order to protect stockholders.

There are a few additional points I would like to make. First, our enforcement actions filed to date have, generally speaking, been based on alleged transactions that involved payments of large amounts of money which were caused to be inaccurately stated on the companies' books and records by top corporate officers. Thus, they were concealed from the companies' boards of directors and often its auditors. The ancillary relief obtained in most of these actions has had an effect on the "governance of the corporations" by requiring that the boards of directors be provided with adequate information so that appropriate action can be taken to protect the interests of public investors. In my view, an effective system of corporate accountability requires that facts pertaining to illegal payments not be concealed from a corporation's independent accountants or its board of directors. This is a key point. Nothing else in the system will work unless the books and records are kept in good faith.

Second, many commentators have suggested that too much uncertainty exists in this area and ask that the Commission formulate guidelines. While it is unlikely that we can promulgate rules with any simple mathematical formulas, it

is my personal hope that we will soon be in a position to provide more guidance.

Finally, we at the Commission are proud of what our staff of 2,000 employees—and enforcement staff of some 200—have accomplished. We are confident that our future actions will continue to promote the public interest in this difficult and important area.

Chairman PROXMIRE. Well, thank you very much, Mr. Hills, for a very, very interesting and provocative and helpful statement.

I would like to start off with a partial solution, and I think you would agree it is only a partial solution, to the very, very serious problem that confronts us. The voluntary program, as you suggested, is designed to, in effect, have corporations do a far more adequate job than they have in the past in becoming responsible for their own deeds and to provide full information for directors, and so on.

You say in the course of your remarks, that the disclosures we have seen in the filings of companies that have either come in voluntarily or which have contacted, and cooperated with the staff are less detailed than those which have resulted from court orders. And this is at the heart of our problem. Can you really expect these corporations to police themselves effectively under any circumstances?

Mr. HILLS. Well, Senator, we also said that we at the SEC have not seen the final reports that we have required, and that we can't make a judgment as to the adequacy of the independent investigation until we see those final reports. But we will have access to those final reports, and we will have a continuing regulatory responsibility with respect to these corporations. Therefore, the question of the adequacy and the independence of the investigation are judgments that our staff will have to make, and then make recommendations to the Commission from time to time as the program progresses.

I would say at the present time we are encouraged to believe that these corporations recognize the seriousness of the problem and will proceed accordingly. Obviously, if we are not satisfied that a program of a voluntary nature has progressed satisfactorily we will have to take whatever enforcement action is appropriate.

Chairman PROXMIRE. What assurance do we have that that action will be taken? The SEC as you say has an excellent record. We are very cognizant of the ability and of the determination of Mr. Sporkin and other outstanding members you have on your staff, but you have a limited staff. You have about 200 people in the Enforcement Division, isn't that right?

Mr. HILLS. Well, we of course have the regions which add another 200 people to the enforcement efforts.

Chairman PROXMIRE. You have what altogether, 400 altogether?

Mr. HILLS. Four hundred enforcement, and, in the voluntary program, we are talking about the Division of Corporation Finance.

Chairman PROXMIRE. But we do have a lot of corporations in this country and this may simply be the suggestion of the extent of this problem. We don't know as yet, you can't tell us as yet, how widespread this is. That is what you are going to tell us, I take it, on March 15.

Mr. HILLS. Senator, it is obviously sufficiently widespread for the SEC to be considerably concerned about it and for the Government to take an interest in it. The question of the regulation of corporations generally is a matter transcending disclosure of records to the investing public and to the SEC. Any corporation that is not willing to ac-

cept its responsibilities runs the risk of serious litigation. The corporations and the efforts of the SEC are aided by both the accounting world, independent public accountants, and the professional obligations of lawyers who represent these companies and must establish their own relationship with the auditors to make certain that the corporations come forward.

The staff of the SEC has been greatly aided by its capacity to secure settlements involving, for example, the preparation of a so-called McCloy report. Obviously, if we were unable to get this form of settlement and this form of report, we would have come to the Senate, and to the House and ask for a very greatly expanded staff.

Chairman PROXMIRE. Well, that may or may not be a good one. How do you know whether that is a complete report, and whether other corporations may or may not be able to report that way? I agree with you that John McCloy is a remarkable man, of great integrity and ability, but I just wonder how many John McCloys we have, and if every corporation has one. You see, one of the things that really bothers me a great deal is, in spite of these very startling and dramatic disclosures that you have made to us this morning, there is not a record of many resignations or firings. It is true just this morning that Gulf fired some of their top officials, but this is the exception. In many cases there doesn't seem to be any action on the part of these corporations against these people who have engaged in violations of the law and in bribery and kickbacks, and even admitted it is part of their operations. There doesn't seem to be any corrective action. The one kind we understand is when they get rid of the management that has done that, fire them.

Mr. HILLS. Senator, the question that you raise involves, of course, a number of related matters. First, has the criminal process, the criminal prosecutorial activities of the Federal Government worked adequately? I have no reason to think that it is not working adequately. Will these corporations in the governance of themselves take the actions that this form of disclosure suggests are appropriate? This country fortunately is one that relies upon disclosure and in forcing these companies to say openly what they are doing.

As we said earlier, the long-standing position of the Securities and Exchange Commission has been that independent directors should form an audit committee to meet with the outside auditors. The question of whether or not a company has such an outside committee is itself a subject of which we require disclosure.

Chairman PROXMIRE. Well, obviously the system hasn't worked so far. That is why we are in this difficulty. You see——

Mr. HILLS. Senator, the question of when——

Chairman PROXMIRE. The problem with me, as you know as a man who has been in business and has been very successful and has a fine reputation, you know how business so often operates. The people who work in the corporations are each other's friends and supporters. The directors are chosen very often by the officers on the basis of their friendships and their knowledge of each other. That is an understandable tendency. There is nothing criminal in it. It is just human, to protect each other, and not to be vindictive, and to be as tolerant as possible and to try to get along and to help each other. So I am con-

cerned with relying too much on this kind of discipline even though there may be an unusual situation where it will work, and work well.

I realize you have a limited staff and we can't have all of this done by Government personnel. That would be a mistake, too, I am just wondering if we can find a way of making this effective enough so that we are more definitely assured that we won't have this kind of recurrence in the future.

Mr. HILLS. Senator, I am——

Chairman PROXMIRE. Could I ask Mr. Sporkin do you want—I beg your pardon.

Mr. HILLS. I am as concerned as the Senator is about the problem he has described. It cannot be understated, and I don't mean to suggest that it should be. But I am equally confident, not only from my experience with the SEC, but from years that I have spent both in business and in the practice of law, in the strength and capacity of management to resist, in most cases, these pressures, and confident that the industrial world, for the most part, is sound.

I am also confident that that world is reacting to the problem in much the same way the Senator and the SEC have reacted. We met only recently, in the past few weeks, with a committee of the independent auditors and a committee of the bar association to discuss ways in which those independent professional people will have to accept both professional responsibility and, of course, resultant civil liability for failure to perform their professional obligations. One important aspect of these obligations is the professional responsibility to come forward when they see that the company that they represent is not making the disclosures required of them by the law.

I am confident that major progress has been made, and I am confident that the professional world, both in the business community and in the community of independent counsel and independent auditors, will make the kind of progress that the Senator hopes for. It is necessary that that world respond in that fashion.

Chairman PROXMIRE. You see, the problem is that it is obvious that some have come forward, and have come forward probably because they recognize they may get easier treatment if they come forward voluntarily, but the tough question is how do we determine how pervasive and widespread this is. We have much evidence that it is widespread. We have the chairman of the board of Lockheed saying that all the aerospace companies are doing this, and some of them coming in and confessing they do—Northrup and Grumman. We have the same kind of statement from the oil corporations saying we do it but so does everybody else. And some of them coming in and admitting that they have done it. It seems to be something that is extremely serious, extremely widespread, a very tough problem, and one in which I think we need vigorous followup and some kind of evidence like the resignation or firing of the people who have been responsible for this kind of activity.

Mr. HILLS. It would be instructive I believe, Senator, for the subcommittee to have, and I am sure your staff has considerable material on this topic, information concerning what the independent accounting firms have done in response to this problem and the procedure they follow. They are different from the ones they have employed in the

past. My own observations are that major changes have been made in auditing practice.

Chairman PROXMIRE. Let me just say the staff informs me that so far what we have been told by the information we have is that the accounting procedures have been totally inadequate either to determine what has been going on or to assure us that they can prevent it in the future.

Mr. HILLS. Senator, in the cases that we have referred to this morning, there is no doubt that the accounting procedures either were inadequate or inadequately carried through. I have no doubt that major strengthening has to be made and is being made. But are the accounting procedures of the United States entirely inadequate? I think not. I think, there again, we are quite proud of the work that has been done by the accounting staff of the SEC over recent years under the leadership of former Professor Burton in providing new accounting rules, new stimuli, to the accounting profession.

My own experience with a troubled company in which we needed a major accounting firm to help us was that I was quite proud of the job the accountants did, and even pleased to pay the bill for the results we received. So this is an area of concern, but I think we should not fail to recognize that the profession is responding.

Chairman PROXMIRE. But none of these violations were disclosed by the private firms, by the private accountants or auditing firms. They were discovered either by the Watergate prosecutor, by the SEC——

Mr. HILLS. That is correct.

Chairman PROXMIRE. So that procedures so far have failed us.

Mr. HILLS. I said I thought that there is no question that the procedures in these cases were either woefully inadequate or woefully and inadequately carried out.

Chairman PROXMIRE. So all we really know is that they are woefully inadequate.

Mr. HILLS. And I think it is a proper area of inquiry to determine what changes have been made by accounting firms to remedy this matter. I think the Sentor will see progress.

Chairman PROXMIRE. Can you tell us what is the total number of large corporations against which the SEC has filed civil suits or which are under active investigation or which have made voluntary admissions of improper payments?

Mr. HILLS. There are nine civil suits—the total number of companies under investigation today is, Senator, something like 30.

Chairman PROXMIRE. And how many have made voluntary admissions of improper payments?

Mr. HILLS. We have 15 coming forward in some voluntary fashion or other.

Chairman PROXMIRE. Are they all under investigation?

Mr. HILLS. Well, the fact that they are coming forward means obviously that that is a form of investigation. The voluntary——

Chairman PROXMIRE. Not necessarily.

Mr. HILLS. The administration of the voluntary disclosures program is performed by the staff of the Division of Corporation Finance, and the degree of investigation is something that is worked out on a case-by-case basis.

Chairman PROXMIRE. Are those 15 included in the 30 or not?

Mr. SPORKIN. Not necessarily.

Chairman PROXMIRE. Not necessarily? Can you tell us, Mr. Sporkin, the extent to which they are?

Mr. SPORKIN. I would say the large majority would not be included. I think it is important, Senator, if I can explain a little bit more about the voluntary program. One of the key elements of the voluntary program is that there be an immediate declaration of cessation of activites. That is really the crux of the program. So that means that at least, Senator, in the future the conduct must stop. Now the reason that I say that they are not under investigation is that these——

Chairman PROXMIRE. Let me just interrupt there, Mr. Sporkin. As I say, you know the admiration and respect I have for you and I don't mean to compare the SEC with the Comptroller of the Currency's Office but Mr. Smith got a cease and desist order in 1962 against U.S. National Bank in San Diego and yet for 10 years they went right on doing exactly what they were doing before and nobody did anything about it. They really made no attempt to enforce the cease and desist order and that was a formal court order.

What assurance do we have, because you have moved in the way you have, that we are going to get compliance?

Mr. SPORKIN. Well, in that regard, the thing that the program has as a key part is that, once you have a cessation and you have the voluntary steps being taken as mentioned by Chairman Hills, when the final report comes in, we will have access to both the report and the underlying data. It is our intention to review that report quite carefully to see what is involved. And I think that that is extremely important. It will be monitored very closely, but the key point here is that, since these firms have come in voluntarily, I don't think you would want to start up an investigation right away. I think it would be counterproductive, and I don't think we would get the kind of voluntarism that we need in this kind of program.

Mr. HILLS. Senator, I think it is terribly important to consider that the decision as to when an investigation is going to be undertaken is based in large part on the judgment of the staff and the Commission. In these cases, the staff will come to the Commission and make their recommendations. A judgment has to be made as to the integrity and the capacity of the people that are undertaking the investigation on behalf of the company.

Chairman PROXMIRE. Doesn't it also depend on whether or not you have adequate staff to do the job?

Mr. HILLS. No, Senator.

Chairman PROXMIRE. The investigation?

Mr. HILLS. I think that, in my judgment, without question, where we see a corporation willing to hire people of integrity, a John McCloy, and provide him with counsel, staff, and auditing effort, and further provide him with an outside committee of the board of directors, that we can be satisfied that that investigation will be a better investigation than we could provide if our staff was three times as large.

Chairman PROXMIRE. I am talking about the fact that you have 30 active investigations going on now in this area alone.

Mr. HILLS. Yes.

Chairman PROXMIRE. I wonder how many you can conduct effectively with the limited staff that you have.

Mr. HILLS. Mr. Sporkin and his staff, Mr. Leverson and his staff have, in my judgment, done an absolutely masterful job, although I can say to the chairman that we are strained. We have to consider how best to allocate our resources, but at the present time I am satisfied, and I trust that Mr. Sporkin is satisfied, that we have the staff to continue the investigations that we want to continue. Obviously——

Chairman PROXMIRE. May I ask, Mr. Sporkin, are you satisfied?

Mr. SPORKIN. Well, I am never satisfied, but what can you do? You are never going to have enough people, and I think this is part of the system. You are never going to have enough policemen in this country to cut out——

Chairman PROXMIRE. No. I recognize that and I certainly don't mean you ought to have a very big staff. I am just wondering if you have enough to do the job now in view of what obviously confronts us, and what I think is on a shocking and very serious scale.

Mr. SPORKIN. Senator, the way I try to approach a problem is to try to size up the problem and determine how we can deal with that problem with the resources that we have. That is why we have developed the concept of involving the private sector here. What I am saying to you, is that with the staff that we have, we are going to be stretched thin. I believe, however, that, if all the things fall into place, we can continue to get the McCloy's and the Manny Cohen's and people of that caliber to do this kind of work, I think we will be all right.

I must add one thing to the Chairman's statement. In the Ashland case, if you recall, they had a private counsel, Charles Queenan, Jr., of Pittsburgh, who prepared the report. He prepared a report that was a very factual and elaborate report, but the full report wasn't submitted.

Now, the Commission backed that person up 100 percent, and said that we wanted the entire report. So you are having people of tremendous caliber, such as the McCloy's and what have you. So I am relatively comfortable.

Certainly as we get stretched thinner and thinner—we have discussed it with the Chairman and the Chairman has discussed it with us—problems arise concerning how we are going to reallocate people within the Commission to be able to deal with these matters. In other words, when we have a priority in my operation we will probably get some more people down from other operations that don't have the same kind of priority. But we are going to attempt to handle these within the confines of the resources that we have.

Mr. HILLS. Senator, I think that is a good point. We have tried, in these past weeks, to identify those areas which are not critical to enforcement activities, to find out where we have surplus people, to shift them into enforcement if necessary. All I can say, of course, is that today, this month, we can do the job. Whether or not we will have to come and seek additional assistance, either because of enforcement activities or other responsibilities given to us by Congress, is a matter for the future.

Chairman PROXMIRE. Let me be blunt, Mr. Chairman, and say that I understand there is a split within the Commission that could impede these investigations. Some members feel the SEC is going too far, that the Justice Department should investigate illegal payments. One

Commissioner, A. A. Sommer, suggested in a speech on December 8 of last year that the SEC should pull back and restrain itself in future cases.

Now, you are a new man, and you may be a swing vote. What I want to know is, what is your position? Will you support——

Mr. HILLS. Senator——

Chairman PROXMIRE. Will you support a continued vigorous role for the SEC, pushing forward, even intensifying these investigations?

Mr. HILLS. Senator, I am not familiar with the speech you mention, but I can tell you with some strong feeling that neither Commissioner Sommer nor any other SEC Commissioner has in any way restrained the efforts of the enforcement division. Issues of how to provide for accounting disclosures, and how to do so many other things, obviously provide a lively debate from time to time. But I will tell you with complete certainty that in the area of investigation, this Commission will do whatever has to be done to provide the resources to do the investigations properly.

Chairman PROXMIRE. Disclosures are really the essence of this thing and the Commission itself has to support making these disclosures public, sometimes by a vote, I presume.

Mr. HILLS. Concerning disclosures of corporate activity in the cases to date, we are relying as Mr. Sporkin said, in large part of the investigations undertaken by the special counsel and by the outside auditors. Those reports have been made public and have been filed with the Commission. In each case, the question of what the disclosure may or may not be is a matter of concern, but in no case of which I am aware, certainly no case since I have been here, is this a matter of any considerable debate. In other words, in these kinds of cases where the top corporate management of a corporation has deliberately falsified records, and where illegal activities have been made, the reports have been detailed and precise.

Chairman PROXMIRE. All right, sir.

Now, let me ask you this. You say five of the nine cases have been settled by consent. Will you tell us the names of the companies whose cases have been settled, and indicate what the settlements provide.

Mr. SPORKIN. You want the names, Senator, of the cases that have been settled? Yes; I can give you those right away.

Northrop, Ashland, Phillips, Gulf, 3M, American Ship. They have been——

Chairman PROXMIRE. Six.

Mr. SPORKIN. Six cases have been settled. I'm sorry.

Chairman PROXMIRE. I understood there have been five.

Mr. HILLS. Six corporate cases have been settled. There are some cases going forward.

Chairman PROXMIRE. Tell us in each case very briefly what were the settlements. What do the settlements provide?

Mr. SPORKIN. Each of them——

Mr. HILLS. I think my prepared statement, Senator, tried to articulate that we have had this ancillary relief. I will be happy to go back over it but in each case we have had injunctions prohibiting future conduct of this kind, and an ancillary program for an investigation.

Chairman PROXMIRE. Were there any firings or dismissals as a result of these? Or any fines?

Mr. SPORKIN. Well, we cannot fine, Senator, and the firings——

Chairman PROXMIRE. I know you can't fire but——

Mr. SPORKIN. Fine. Fine. I'm sorry.

Chairman PROXMIRE. But first as a result of your action, was the corporation taking action?

Mr. SPORKIN. My answer, Senator—I'm sorry—is that we cannot fine.

Chairman PROXMIRE. Cannot fine. The courts can fine, however.

Mr. SPORKIN. Not under actions we bring.

Chairman PROXMIRE. I see.

Mr. SPORKIN. There have been some very stiff actions taken. If you will recall, in the 3M matter they cleaned house. As a matter of fact, that might have been an over-reaction but as the allegations in that case were only of about $\$1/2$ million or $600,000. I do share your concern with respect to the others, other than what happened today, and other than in the 3M case.

Chairman PROXMIRE. Other than the 3M case and the Gulf case, there haven't been dismissals or firings as a result of this?

Mr. SPORKIN. Not that I can——

Mr. HILLS. Senator, if I may interject, we can surmize a number of things, but it would be wrong, I think, for our agency to make a judgment as to why any given individual left a company or was fired. Our effort has been, however, to make certain that there was a new form of governance capable of conducting the type of investigation that we are dealing with. And that has been, in terms of the ancillary relief. The principal capacity of the Commission in this respect is the capacity to produce a report, such as in the Gulf case.

Chairmana PROXMIRE. See, here the way it looks to us is that nothing is happening. True, you have got a new governance. It may work. We hope so. You are getting reports. But nobody has been punished, nobody has been fined. Well, there have been some fines. Getting off scot-free. In most of these companies there is no discipline.

Mr. HILLS. We would not want to comment on any pending criminal investigations or criminal prosecutions, but if a criminal activity has occurred, Senator, we have to rely upon the prosecutorial powers of our State and Federal Governments to take care of that. That cannot, of course, be the responsibility of the Securities and Exchange Commission, although as the Senator is aware, the resources of our Commission are used by Federal prosecutors in the course of their investigations.

Chairman PROXMIRE. All right. Let's get into that, then. You mentioned some criminal indictments in your prepared statement. Were all or most of the indictments as a result of the investigations of the Watergate prosecutor?

Mr. SPORKIN. I would say virtually all of them; yes, sir.

Chairman PROXMIRE. How many indictments have been as a result of SEC investigations, any?

Mr. SPORKIN. None so far, sir.

Chairman PROXMIRE. Well, you see, the Watergate prosecutor has followed up, hasn't he, so that the guardian that has given us results here is no longer around.

Mr. HILLS. Senator, this is obviously an area in which we have to be careful, but we begun our first civil action in 1974. Was it in April?

Chairman PROXMIRE. It seems to us as if Justice is letting SEC do it all because you can't fine. There is no punishment when you handle it.

Mr. HILLS. All I am saying is our first case was brought in the middle of 1974. We have a long and close relationship with the respective U.S. attorneys around the country. I would hope that the U.S. attorneys would be responsive to any evidence we might have in our files that does involve criminal conduct.

Chairman PROXMIRE. That is 18 months and there has been no prosecution.

Mr. SPORKIN. Let me explain what the problem is, Senator. In a way, what has happened here shows you how good the system is and how it works. We picked up this area as a result of the Watergate special prosecutor's work. Now, what has happened is, as you know, he brought actions in those cases, and most of the cases that I mentioned here today were the result of those actions. Therefore, as far as I can see right now, there would be no real question as to whether we could bring additional criminal actions in those cases.

In other words, there were settlements in those cases. What we do, however, is to pick up the information because what the prosecutor's office disclosed was only the tip of the iceberg and we, on our own, picked it up and have now exposed the entire iceberg.

Now, with respect to cases that were not picked up by the prosecutor, of course there is going to be a timelag until all these matters get fully——

Chairman PROXMIRE. I am wondering about that timelag. It seems to me it is a pretty long timelag. We have got 18 months.

Mr. HILLS. This was since the first case prosecuted, American Shipbuilding.

Chairman PROXMIRE. I assume you kept Justice informed.

Mr. HILLS. Senator, yes, we have such a responsibility.

Chairman PROXMIRE. Has Justice expressed interest in what you are doing?

Mr. HILLS. It is very difficult to talk about whether there has or has not been a criminal referral. I am satisfied. We spent a lot of time with our staff, that is historically, and currently our staff alerts the Justice Department to matters involving alleged or possible criminal conduct.

Chairman PROXMIRE. Well, I want to ask you, does it appear to you that Justice is vigorously investigating and prosecuting, where appropriate, in all cases where criminal laws appear to have been violated, or is it dragging its feet?

Mr. HILLS. Senator, I am not capable of, nor do I think it is proper to comment on that.

Chairman PROXMIRE. Well I think it is. I would disagree with you, Mr. Chairman, on that. After all, you're an individual agency and you are the ones who are responsible. I was outraged when your predecessor wasn't prosecuted by Justice for perjury when he appeared before our committee and lied to us, went up to New York and admitted under oath that he had lied twice, and they wouldn't take

any action. It seems to me it would be proper in our case, and proper in your case where you have referred the matters to their attention, and there doesn't seem to be any——

Mr. HILLS. There was a comma there when I paused to breathe. I cannot comment on how good a job Justice does, what its resources are broadly, or whether it has sufficient money to investigate this area. I indicated before that when we are involved in some matter involving possible criminal violations, we alert Justice. I can say generally that the Senator can be satisfied we would follow the same practice in all cases. We make referrals to Justice and normally provide manpower from our staff to assist in the investigation. I know of no case involving what we are talking about right now in which we have reason to believe Justice fell down. Let me assure the Senator this. Where there is a case where we have reason, where the enforcement division comes to this Commission and says it feels there has not been proper criminal followup, I shall refer the matter to the Justice Department, speak to the Attorney General about it, and call our feelings to his attention.

Chairman PROXMIRE. Do you know of any effort—is Justice doing anything on any of these cases?

Mr. SPORKIN. Yes; they are, Senator.

Chairman PROXMIRE. Yes?

Mr. SPORKIN. I think it would be inappropriate to discuss this and I must reaffirm what the chairman said. I know of no instance where Justice in any of these cases is dragging its feet.

Chairman PROXMIRE. Well, we are suspicious because there is not a very reassuring record under either party—I don't mean to be partisan about it—of Justice prosecuting top officials of corporations or, for that matter, top officials in government. They seem to be allergic to that kind of action.

Mr. HILLS. Senator, if I may make one comment, which I am sure the Senator appreciates, but I am sure it is helpful in the context of my testimony. We do have a system based upon the need for stockholders to know the quality of their management. We do have a proxy system and a disclosure system. It is our job to make sure that stockholders know the kind of management they have in this respect, and the system is such that there is no way that we can require a given board of directors to fire or hire anyone. We can insist, as a matter of enforcement, as we have so often, that an independent capacity be generated to do some of these investigations so that the proxy material will reveal this. That is the system. We, of course, can comment or not as to whether somebody should have beeen fired, but that really, in the final analysis, has to be left to the stockholders. All we can do in this system is display that for the stockholders' observation.

Chairman PROXMIRE. Did Justice take any position in enforcing the subpena in the Lockheed case?

Mr. HILLS. I'm sorry.

Chairman PROXMIRE. Did Justice take any position in enforcing the subpena in the Lockheed case?

Mr. HILLS. The Lockheed case, Senator, involves no policy position on the part of the Justice Department. That is the simple answer. But although the Justice Department itself took no policy position with respect to the subpena, the Justice Department representing its client, the State Department, took a position in the Lockheed case.

Chairman PROXMIRE. What position was that?

Mr. HILLS. The State Department, before I came to the Commission, had indicated an interest generally in matters involved in the Lockheed files. At a later date, when I was at the Commission, the Justice Department informed us that the Secretary of State on behalf of the State Department wanted to express a concern that there could be materials in the files of Lockheed that would be detrimental to the national interest of the United States.

Chairman PROXMIRE. So the only record we have of the Justice Department position, and as you say it is not a policy position on their part, reflects the State Department's cover-up, suppression, not disclosing, because the Secretary of State thought it might have unfortunate foreign policy implications.

Mr. HILLS. Senator, if I may finish, the conclusion will speak for itself, the State Department simply asks the Justice Department to express to the court a concern. On behalf of the Securities and Exchange Commission, I asked that the degree of concern be articulated in some fashion. We were worried lest the expression of concern be interpreted by the court as interferring with our capacity to prosecute that case. With the great cooperation of the Justice Department we were able to secure the cooperation of the State Department. The State Department people assured me, and agreed with me, that they did not intend in any way to interfere with our investigation and they, at our request, provided the court with their view of what a satisfactory order would be. We insisted that, in view of this expression of interest, an expressed proviso be put in the order providing that nothing in the court's order would interfere with the capacity of the Securities and Exchange Commission to have that material in its hand and to use it in any way necessary for the jurisdiction of the SEC. So that, while the Justice Department expression of interest on behalf of State might have been construed as interference with the SEC, we are satisfied that the order which issued does not in any way interfere with our capacity.

Chairman PROXMIRE. Let me ask you about those subpena enforcement actions. You mentioned two subpena enforcement actions. Is it correct to say that SEC had to go to court to enforce the subpenas because the companies refused to obey them?

Mr. HILLS. We only have two at the present time, Senator; yes.

Chairman PROXMIRE. And you had to go to court?

Mr. SPORKIN. Absolutely.

Chairman PROXMIRE. And that is Lockheed and Occidental.

Mr. SPORKIN. Correct.

Chairman PROXMIRE. How much delay in weeks or months have been caused by the defiance of the subpenas in these cases?

Mr. SPORKIN. Too long.

Chairman PROXMIRE. What?

Mr. SPORKIN. Too long.

Chairman PROXMIRE. But you cannot tell us.

Mr. SPORKIN. I cannot precisely, but it has been months, Senator.

Chairman PROXMIRE. Six months?

Mr. SPORKIN. I don't know whether it is that long, but at least 3 to 4 months.

Chairman PROXMIRE. Can you briefly summarize the violative conduct these two corporations committed or were suspected of having committed?

Mr. SPORKIN. Senator, I think it inappropriate to do that because at the investigative stage we are attempting to go find the facts. No allegations actually have been made, and while I did argue the *Lockheed* case, my knowledge on the other case is limited.

Chairman PROXMIRE. Lockheed admitted to another committee which I was chairing that they had made kickbacks. They didn't call them bribes. They called them kickbacks. They admitted that publicly.

Mr. SPORKIN. That is correct.

Chairman PROXMIRE. It is correct that Lockheed has refused to disclose many of the details of the improper or questionable payments it has made, and that the effect of the court's ruling is to withhold these details from public disclosure?

Mr. HILLS. Senator, granted that the delay has been much too long, but to my knowledge we now have at the SEC control over those documents.

Chairman PROXMIRE. I am sorry. I missed that last.

Mr. HILLS. We now have control over the documents which would reveal the information, if it exists, on this subject.

Chairman PROXMIRE. Well, do you as an agency have a position on whether or not these documents should be publicly disclosed?

Mr. HILLS. We couldn't possibly make a decision now, Senator, until we have thoroughly investigated that case. I think it is instructive to look at what has happened in the nine cases before. It is very difficult for us to do anything more than say that the process in the cases that we have brought has resulted in a thorough investigation by independent counsel and independent members of the boards of directors. That in turn, has resulted in a report which was filed and made public containing all of the information the Senator has made reference to.

Chairman PROXMIRE. Let me see if we understand the same thing by a thorough investigation. Are you satisfied that the agency has all the details of the Lockheed payments including the names of all recipients, the amounts, the purposes for which they were made, and the names of the foreign governments?

Mr. HILLS. We are only satisfied that we have a court order that will give us that information.

Chairman PROXMIRE. You don't have that information?

Mr. HILLS. It is massive documents that are in the possession——

Mr. SPORKIN. We will never be able to give you that assurance even after——

Chairman PROXMIRE. When do you expect to—what is the likelihood that SEC will file a civil suit?

Mr. SPORKIN. Of course, the Commission will have to determine that. I think the investigation will be completed within the next 3 to 4 months.

Chairman PROXMIRE. Now, can you tell us whether or not you agree with the position taken by State and Justice in the subpena enforcement action against Lockheed?

Mr. HILLS. That we agree?

Chairman PROXMIRE. Do you agree or disagree or is your position, like Justice which is apparently a no policy position?

Mr. HILLS. Senator, we intend to investigate thoroughly these matters. We have responsibility, of course, under the securities laws of the United States to do so, and we shall perform that responsibility.

Chairman PROXMIRE. Well, do you agree or disagree with the State Department? State Department wants to suppress this information.

Mr. HILLS. Senator, I would not characterize the State Department action in any other way than I have, namely, as an expression of interest. The specific information is not before me and is not in our possession at the present time.

Chairman PROXMIRE. So you still don't have the details of those bribes.

Mr. SPORKIN. We truthfully have nothing more than a court order that, if complied with, will give us that information if it exists.

Chairman PROXMIRE. You are waiting for compliance on the part of Lockheed?

Mr. HILLS. Excuse me. We have, naturally, in the course of the investigation, gathered other information in addition to what we have sought from Lockheed.

Chairman PROXMIRE. That order was issued several weeks ago, and you don't have the details as yet, is that right?

Mr. SPORKIN. Senator, I think we do have the details of certain transactions from other sources. At this stage, we are in the process of getting control of the records. These records have been made available to us. We had our people out there. The question was whether we could take them back with us. That has been the issue. What we want is to have them here in Washington so we can evaluate them and use them in furtherance of our investigation. So we do have information, but what I am saying is we cannot say here that—all the documents from Lockheed, I am now told, are in-house.

Chairman PROXMIRE. All the what, sir?

Mr. SPORKIN. Are in-house.

Chairman PROXMIRE. You have them now?

Mr. SPORKIN. Yes, sir.

Chairman PROXMIRE. All right. Has State or Justice intervened in any other SEC case?

Mr. HILLS. You mean in the history of the Commission?

Chairman PROXMIRE. Well, in recent years?

Mr. HILLS. Let me say I would not characterize it as an intervention. I would characterize it as an expression of interest and, of course, many Government agencies from time to time express an interest in something the SEC is doing. That part is not unusual.

Chairman PROXMIRE. Well, may I ask, what do you think that expression of interest was designed to do if not to suppress the data and prevent disclosure?

Mr. HILLS. Well, Senator——

Chairman PROXMIRE. That was its purpose, wasn't it?

Mr. HILLS. Senator, it did not interfere with our capacity to get the evidence. When I asked for a more explicit understanding of what precisely the letter meant, the Justice Department provided us with their form of proviso so that there could be no misunderstanding of what the real intention was.

Chairman PROXMIRE. Does the court order in this case bar you from providing the committee with the information contained in the subpenaed documents?

Mr. HILLS. Does it bar us from providing the information to this committee?

Chairman PROXMIRE. Yes.

Mr. HILLS. The order provides a form of continuing jurisdiction by the court.

Chairman PROXMIRE. Yes, but you can get the information?

Mr. HILLS. We can get the information.

Chairman PROXMIRE. Could you then disclose it to this committee, and would you do it?

Mr. HILLS. We can provide it if any other law enforcement agency of the Government, or another agency of Government with law enforcement responsibilities, or a grand jury asks us for documents. We must notify the courts of that inquiry.

Chairman PROXMIRE. Well, we want that information.

Mr. HILLS. Well, Senator, of course, there are several issues here. We have had a long and a good relationship with Congress. At the present time, we are in the course of an investigation. And I would hope that nothing this or any other subcommittee needed would cause an interference with the course of the investigation. Obviously, the judgment is largely that of the Division of Enforcement reflected in its recommendations to our Commission. So, from our standpoint, at the present time, with the matter actively under investigation, we would hope that no one else would want certain of that information. If the subcommittee does wish it, we, of course, will have to comply with the terms of the subpena order by notifying the court.

Chairman PROXMIRE. You see, this isn't just a matter of our being curious for ourselves. I feel very strongly that the most effective way to deter corporations from committing abuses of this kind is to disclose this. Once we know the names of people being bribed I think that would have by far the most effective results in discouraging bribery in the future.

Mr. HILLS. Senator, we can only ask that the subcommittee look at the records in the cases that we have completed. I would hope that the subcommittee would consider those cases successfully completed.

Chairman PROXMIRE. Well, could you assure this committee that at the time the SEC completes its case against Lockheed, or enters into a consent agreement, that the details of all the illegal or improper payments will be fully disclosed?

Mr. HILLS. Senator, I can assure the subcommittee that we will follow the same procedure with full vigor in Lockheed as we have in the other cases including a very careful documentation of what has happened.

Chairman PROXMIRE. There is something quite different here, though. The State Department doesn't want it released.

Mr. HILLS. Concerning the State Department, Senator, the Federal Reserve Board, and Department of Commerce, we will be interested in anything they wish to say to us. But they will not, as they never have in the past nor, can I assure the subcommittee, will they in the future, interfere with our completing our investigation. And I think

it is very important to focus on the subpena, which goes to some lengths to spell out the responsibilities.

Chairman PROXMIRE. The question remains. We want the investigation completed, but how about disclosing the facts? Will they be disclosed or not?

Mr. HILLS. Senator, of course, I cannot make any judgment at this time as to what should or should not be disclosed, but you can be absolutely certain that, if the same types of circumstances arise in Lockheed, or any other case as have arisen in previous cases, the SEC will pursue the same course of action as it has in the past. I have no way of knowing, first of all, whether we will get a settlement, which, if we did, would include the same form of requirements for investigation we have had in other cases. If we don't get a settlement, I have no way, of course, of knowing what the court will order, but the SEC will take what steps we think are necessary to make relevant facts available to the stockholders of the Lockheed Corp. I have no doubt, Senator, that we will accomplish that objective if the facts that are uncovered are of the same nature as in the cases we have brought to date.

Chairman PROXMIRE. Now, you stress the fact that in all nine of the SEC cases the corporate abuses were accompanied by false or inadequate corporate books and records and that most of the cases involved illegal or improper domestic and foreign payments. Does such falsification of corporate books and records constitute a violation of SEC's laws or regulations and do they constitute criminal violations?

Mr. HILLS. I can't say in all cases.

Mr. SPORKIN. There is no provision that prohibits just what you stated, Senator. However, we have taken the position——

Chairman PROXMIRE. I am sorry. I missed that. No provision——

Mr. SPORKIN. There is no provision that provides, with respect to the kinds of companies we are talking about, that that could be a violation of the law.

Mr. HILLS. Let me say, Senator, of course, we do not enforce or interpret the criminal laws of the Federal Government, and whether it is or is not, is a matter for the U.S. Department of Justice to decide.

Chairman PROXMIRE. Well, then, it would seem to me that maybe we ought to consider, as the legislative body for our Government, making it a violation of the law. How would you feel about that?

Mr. HILLS. That, I think, Senator, is a matter that the people in charge of enforcing the criminal laws must have the primary responsibility for.

Chairman PROXMIRE. Well, you have responsibilities, too.

Mr. HILLS. I don't know——

Chairman PROXMIRE. Wouldn't it assist you if you knew that you could prosecute for violation of the law when people—when there was a falsification of corporate books?

Mr. HILLS. We prosecute falsification of the books in the sense that we bring civil injunctive actions and we seek and secure the remedies we need to get the information.

Chairman PROXMIRE. But those are slaps on the wrist, not even any fines, no dismissals. They can do it and if they get caught they say they will be good boys, but there is no punishment.

Mr. HILLS. But that, Senator, is a matter for criminal jurisprudence. Whether or not what they have done should constitute a crime, be prosecuted by the Department of Justice, is a matter that will not either aid or abet us.

Chairman PROXMIRE. Couldn't it aid and abet you if it were a crime so you would have more compliance? Obviously you can give us a long list of falsification of records and books and we have been successful in getting the important leads we need in getting the documents. If the question is statements by public officials, I think the question is not whether it would help us get the information. I think the question is whether or not making something a crime or not would keep it from happening. That is an entirely different issue. It seems to me it would help. Of course, people will commit crimes. They have throughout history and they will continue to do it, but it just seems to me they are less likely to do so if they know it is a crime, subject to being punished, fined, picked up, obviously jailed.

Mr. HILLS. I guess if you were a behavioral scientist you might say that a man would be less likely to give evidence if it showed his actions were a crime, but that is not a concern of ours.

Mr. SPORKIN. Senator, if I may, I don't want to leave the record incomplete. We have alleged that false books and records were a part of the violative act. We have also alleged in our cases that, in order for a company to provide adequate financial information, it must have adequate books and records. So we are picking up the fact that there are inadequate books and records in the types of cases that we bring.

You must remember, Senator, that in order for us to bring a case, we have to allege a violation, and a violation of our act can be a civil act as well as a criminal act. So in my mind there would be no additional deference if a criminal action could be piggybacked on the basis of the allegations that we made assuming that you have the requisite criminal intent. That is what the Chairman is speaking about. That determination must be made by the Department of Justice. But I think the fact that there can be a violation is clear in my mind.

Chairman PROXMIRE. Let me ask you about something else. You say the SEC has a number of other active investigations. In fact, you said there were 30 investigations——

Mr. SPORKIN. Approximately.

Chairman PROXMIRE [continuing]. Being conducted right now against major corporations. Do these investigations involve the same kinds of bribes, kickbacks, political contributions, and other illegal improper contributions as the ones we have discussed so far?

Mr. SPORKIN. They involve that and there are also some different wrinkles. As the Chairman mentioned, each case is pretty much its own textbook on how to do these kinds of things. There are others——

Chairman PROXMIRE. But they do then involve bribes, kickbacks, in many cases political contributions.

Mr. SPORKIN. Yes; that is correct.

Chairman PROXMIRE. What are some of the——

Mr. HILLS. You have to say "allegations" at the present time.

Chairman PROXMIRE. Yes, sir. What are some of the other allegations—you are correct—some of the other wrinkles you refer to?

Mr. SPORKIN. There are, and again these are allegations, matters under investigation involving so-called domestic bribery. That is bribery that is not to foreign governments.

Chairman PROXMIRE. In this country?

Mr. SPORKIN. In this country. These are problems that are alluded to in the testimony, including payments with respect to exchange rates, under currency controls, and tax evasion in foreign countries. These are the little wrinkles that we have seen, but I must tell you that every time I pick up one we find another wrinkle.

Chairman PROXMIRE. When you say commercial bribery, you are talking about bribery of the Government officials?

Mr. SPORKIN. No.

Chairman PROXMIRE. Bribery of other corporate officials in order to get a sale?

Mr. SPORKIN. No. Commercial bribery is a bribery of somebody, a private person to insure profit. In other words, let's assume a company wants to sell its products in an area, and it generates a slush fund and uses the money out of there in order to say to customers, "We want you to use our product and not use our competitor's product."

Chairman PROXMIRE. What I am getting at, is one corporation selling another. A bribe to the procurement official of the other corporation.

Mr. SPORKIN. That is the kind of thing I am talking about, Senator.

Chairman PROXMIRE. How many of these cases are being actively investigated?

Mr. SPORKIN. I would think it is under 10. I will have to get the figure and correct the testimony.

Chairman PROXMIRE. Will you give us the names of the major corporations currently being actively investigated?

Mr. SPORKIN. Not on a public basis, Senator. I think that would be wrong.

Chairman PROXMIRE. You said that some have already been named in the press and in court actions. Can you give us those?

Mr. HILLS. We have, Senator, either because we brought actions or because they have made voluntary disclosure. Lockheed, of course, Occidental, of course, both of which I mentioned earlier, are instances on which I can make comments. There are public statements by officials of various companies—Exxon, McDonnell Douglas, American Airlines, and Braniff—and I only make references to those statements without wishing to add to them.

Chairman PROXMIRE. How does the SEC decide when to open such an investigation? Do you have written guidelines and to what extent does the limited number of your staff influence your decision to begin investigation?

Mr. HILLS. Well, Senator, the Director of the Division of Enforcement has broad authority to begin informal investigations. His guidelines to his people and the judgments they use are obviously in a large measure the product of experience. Let me make two distinctions. An investigation has two stages. The Division of Enforcement must obviously look into something, and at some stage it decides it needs a formal order of investigation based upon its desire to pro-

ceed to a more formal level. At the first level, the Division of Enforcement must act on its own. When it decides it needs a formal order of investigation, it comes to the Commission and presents a written submission that carefully describes the facts as alleged. We listen to staff recommendations, and then we decide whether or not to grant a formal order of investigation.

Chairman PROXMIRE. Mr. Sporkin is head of the Enforcement Division.

Mr. HILLS. Mr. Sporkin is the head of the Division of Enforcement.

Chairman PROXMIRE. Let me ask Mr. Sporkin, you say you have 30 investigations underway now?

Mr. SPORKIN. Thirty in certain areas, Senator.

Chairman PROXMIRE. Certain areas. I beg your pardon.

How do you decide that just those 30 will be investigated, not 60, 100, 300? Obviously you have a limit on what you can do because of the size of your staff, isn't that correct?

Mr. SPORKIN. Yes, Senator, but I know of no case involving matters of this kind that we are not looking at.

Chairman PROXMIRE. You feel you are investigating every single case on which you feel there is evidence that would warrant an investigation regardless of—even if you had a much bigger staff.

Mr. SPORKIN. The way you phrased it the answer would be no. I can't say that we are investigating every single case. For example, as the chairman mentioned in his testimony in one instance some payments were made by a private corporation but were cleaned up before the corporation became public. In that case, the facts didn't amount to much and we dropped it.

Chairman PROXMIRE. Yes. Of course there are many cases that you wouldn't investigate. No question about that. What I am saying is. Are there cases that you would investigate if you had the staff capacity to do so?

Mr. SPORKIN. In this area, I know of no such case.

Chairman PROXMIRE. When you say "this area" you mean what?

Mr. SPORKIN. I am talking about the way you have defined it and the chairman has defined it—bribes, kickbacks.

Mr. HILLS. The subject of this inquiry.

Mr. SPORKIN. This inquiry. This is too sensitive an area and it is an area that concerns me. There have been instances where there have been questions raised as to whether there is—there is disclosure required or not, and those matters will all be brought with recommendations to the Commission.

Chairman PROXMIRE. Now, as you know, a number of corporations have voluntarily admitted making illegal or improper payments since your investigation began including Exxon, Merck, Cities Service, Public Service Co. of New Mexico. Will you tell us whether they are some of the ones under active investigation?

Mr. HILLS. No, Senator. I think it is inappropriate for us to comment on any investigation. It involves not just the corporation, of course, but it involves individuals, members of the public, so it would be quite contrary to our policy to talk about investigations.

Chairman PROXMIRE. In recent weeks, McDonnell Douglas and Grumman have made public admissions of illegal improper payments.

Mr. HILLS. I misspoke myself slightly. Obviously we will be engaged in discussions with any company that comes forward under our voluntary program.

Chairman PROXMIRE. I think your statement is proper. Are these two firms, McDonnell and Grumman, which made public admission of illegal payments, are they being actively investigated?

Mr. HILLS. They are in contact with the SEC. Obviously, they have said things that are public admissions. They are involved with the Commission.

Chairman PROXMIRE. I thought you said McDonnell Douglas was under investigation.

Mr. HILLS. I think I very carefully have not stated anything about anything or anyone under investigation.

Chairman PROXMIRE. You stated something about some things. I hope you have. Otherwise I have certainly wasted the last 2 hours.

McDonnell Douglas admitted making payments of $2½ million to persons who might be legally considered officials of foreign governments. It also claims no false accounting entries were utilized and that none of the questionable payments involved the sale of military products. Yet I asked Chairman Garrett last spring to examine the filings of each of the top 25 defense contractors to determine whether any of them made such questionable payments, and I was later told that none could be detected from the filings. Doesn't this indicate that at least McDonnell Douglas Corp., failed to disclose its payments and, therefore, violated SEC's disclosure requirements?

Mr. HILLS. Senator, I think the comments you made speak for themselves.

Chairman PROXMIRE. What you are saying is they did, correct?

Mr. SPORKIN. Senator, would you allow us discretion?

I think an inquiry will have to be made and I am not saying there is one in this area, but there has to be an inquiry before you can make any determination such as that. I don't think it would be appropriate for us to sit here and say that a corporation did or did not violate the law without getting all the facts.

Mr. HILLS. We have taken note obviously of the comments made publicly.

Chairman PROXMIRE. Well, as we mentioned earlier, in each of the nine cases filed by the SEC, the illegal or improper payments were facilitated by false or inadequate corporate books and records. Can you tell us whether McDonnell Douglas maintained false and inadequate books and records that facilitated the payments of $2½ million, or do their records show that the moneys were paid to officials of foreign governments?

Mr. HILLS. I cannot comment on that, Senator.

Chairman PROXMIRE. Mr. Chairman, would you like to add anything? I am just about to conclude the hearing.

Mr. HILLS. No, Senator. I would simply say two things. First, we did welcome the chance to testify. Second, I should say, and I am reminded by Mr. Sporkin, that we do have, obviously, in any case we bring, the right to seek receiverships for grievous violations of the law. Thus, there are cases that can be so serious that we do, in effect,

have the power to cause a change in management. We use it very seldom.

Chairman PROXMIRE. I would like to conclude by saying that the SEC is an outstanding agency and I think your performance this morning has been very, very cooperative, helpful, constructive, and I commend you. If all agencies were as diligent as you are, and as competent as you are, and as concerned with the public interest and with ethical conduct by American business, we wouldn't have the problems we have. I think you have done an excellent job, and have been most responsive and I am very grateful to you.

The subcommittee will stand in recess until tomorrow morning at 10 o'clock.

[Whereupon, at 11:45 a.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, January 15, 1976.]

ABUSES OF CORPORATE POWER

THURSDAY, JANUARY 15, 1976

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON PRIORITIES AND
ECONOMY IN GOVERNMENT OF THE
JOINT ECONOMIC COMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 1318, Dirksen Senate Office Building, Hon. William Proxmire (chairman of the subcommittee) presiding.

Present: Senator Proxmire and Representative Rousselot.

Also present: Richard F. Kaufman, general counsel; George D. Krumbhaar, Jr., minority counsel; and M. Catherine Miller, minority economist.

OPENING STATEMENT OF CHAIRMAN PROXMIRE

Chairman PROXMIRE. The subcommittee will come to order.

The American people are being bombarded with a steady drumfire of disclosures of criminal and improper activities by many of our largest and most prestigious corporations.

Yesterday we learned as many as 50 major corporations have been sued or are under investigation by the SEC or have voluntarily admitted being involved in illegal or improper payments.

These revelations, coming after the shocks of Vietnam, our most unwanted wa[r] Watergate, and the CIA and FBI scandals, are unwelcome and d[is]heartening news.

But we must face the facts. The abuse of corporate power is a high priority issue and one that meirts extensive public debate and discussion.

While the extent and pervasiveness of this problem remains to be seen its seriousness is readily apparent.

Yet the response of the Federal Government has been disappointing.

Except for the SEC, most other Government agencies seem to be sitting on their hands or aiding and abetting the payment of bribes and kickbacks.

I have seen no signs of activity by the FBI, Justice Department, or IRS. The State Department's actions have not been helpful.

I might say, Mr. Gutmann, that as I understand it, this report that you have here should be put in perspective. And you tell me if I am wrong, correct me on how your investigation was made on which much of this report is based. But you didn't investigate, follow up on lead

or tips or suggestions or requests to investigate particular companies because they were alleged to have violated the law; as I understand it, you simply selected two contractors at random, Bell Helicopter and Martin Marietta, to see if the same pattern of corporate abuse existed there as was alleged to have existed in other areas, you walked in without any previous tips of wrongdoing and began investigating. Is that roughly a picture of the basis on which you developed this report?

Mr. GUTMANN. That is correct, yes, sir.

Chairman PROXMIRE. The reason I stress that is because I think that some of what you report—and I am glad that you give the detail—but some of the detail indicates a sort of petty action which most people would regard as not being serious. But I think when the whole thing is put in perspective, this being something that was just discovered on the basis of walking into what I would say would be a typical operation of the contractor, we get a better picture of the kind of operation which may be going among the contractors for our Government.

I understand, Mr. Gutmann, you are testifying for GAO in place of Robert Keller who is ill. You are the Director of Procurement and Systems Acquisition Division of GAO?

Mr. GUTMANN. Yes, sir.

Chairman PROXMIRE. And the report you are reporting on was prepared under your jurisdiction, is that correct?

Mr. GUTMANN. Yes, indeed.

Chairman PROXMIRE. Would you identify the gentlemen with you and then proceed?

STATEMENT OF RICHARD W. GUTMANN, DIRECTOR, PROCUREMENT AND SYSTEMS ACQUISITION DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JOHN F. FLYNN, DEPUTY DIRECTOR; ROBERT H. HUNTER, JR., OFFICE OF GENERAL COUNSEL; AND FRANCIS M. DOYAL, FIELD OPERATIONS DIVISION

Mr. GUTMANN. Thank you, sir. I would like to first express Mr. Keller's regrets at his being unable to attend here this morning.[1] He has a mild case of the flu that he is doctoring. We hope to see him back to work within a week or so.

To my far right is Marvin Doyal, from our Field Operations Division, who is one of the site supervisors on this work.

To my immediate right is John Flynn, who is a Deputy Director of the Division. He is the man who programs work in the general area of contracts, contract pricing, and contract administration.

To my left is Robert Hunter, from our Office of General Counsel, who helps us when we deal with legal matters.

I do have a short statement to present, Mr. Chairman.

Chairman PROXMIRE. All right, sir. And if you summarize it, the entire statement will be printed in full in the record.

Mr. GUTMANN. It is an honor and a privilege to represent Mr. Staats and Mr. Keller this morning on what is indeed an extremely important subject, one that must be of concern to everybody.

[1] See Mr. Keller's prepared statement, with an attachment, beginning on p. 59.

We all have read in recent years the illustrations of corporate abuse of power. And GAO, of course, is seeking some way in which we can contribute to the deterrence of such abuses.

My statement covers some of our prior and more recent work on several procurement matters, particularly the relationship between selected prime contractors and their subcontractors.

Previously, in November 1973, we testified before your subcommittee on review of allegations that officers and employees of Litton Industries, Ingalls Shipbuilding Division, Pascagoula, Miss., engaged in improper activities with subcontractors.

As you may recall, our review showed that procurement practices had been questionable, but the data we obtained did not indicate payments of fees or kickbacks. We did not have a basis, therefore, for recovery actions under the Antikickback Act.

Under the act—41 U.S.C. 51–54—payment either directly by or on behalf of a subcontractor to a prime contractor holding a negotiated Government contract, or to its employees, or to a higher tier subcontractor, or to its officers and employees, either as inducement for the award of a subcontract, or as an acknowledgment of a subcontract or purchase order previously awarded, is prohibited.

Also under this act, it is conclusively presumed that the kickbacks are ultimately borne by the Government, and prime contractors are required to withhold from subcontractors, upon the direction of the contracting agency or the GAO, the amount of any kickback. In addition, the act provides for both civil recovery and criminal prosecution.

Now, to deal quickly here with the status of the cases that we have referred to, the Department of Justice, they are, of course, responsible for investigating violations of criminal laws, except in certain specialized areas where the responsibility is assigned to other Government agencies. Therefore, we follow the policy of referring to the appropriate criminal law enforcement agency, generally the FBI, all information concerning criminal law violations arising in our work.

Skipping now to some of the specific cases that we referred——

Chairman PROXMIRE. Before you do that, I think I might just as well question you as we go along before you get into specific questions.

First, I want to ask about the referrals of earlier cases to the Justice Department. You mention referrals of matters to Justice on five different occasions, from October 1973 to March of 1975. How many different cases were included in those referrals and what kind of possible law violations were involved?

Mr. GUTMANN. Well, we referred Ingalls—a total of 12.

Chairman PROXMIRE. There were 12 cases referred to Justice?

Mr. GUTMANN. Yes, approximately that number. And in each case we felt that there was enough evidence for GAO to withdraw from the case because there was evidence of violation of Federal criminal or civil law.

Whenever we have some indication that there may be a violation of a criminal law, or an illegality that is not within the province of GAO to resolve, we are obliged to refer those cases to the Department of Justice for consideration. In these cases we did have some indications that violations of criminal law could be involved.

Now, I emphasize that they could have been involved, because we in agreement with the Department of Justice do not go far enough in a case to fully develop a convincing or proven case of illegality.

Chairman PROXMIRE. I understand. But what I would like to get is, first what kind of cases were referred?

Mr. GUTMANN. Well, in many cases there was indeed an indication that there had been kickbacks made.

Chairman PROXMIRE. Was that the most common violation?

Mr. GUTMANN. Yes; in those 12, that was the most common violation that we referred.

Chairman PROXMIRE. As I understand it, you say that you don't of course make the determination as to whether that should be followed up by the Justice Department, and at the same time you don't refer these matters to Justice lightly. As I understand it, any referral is carefully scrutinized by your Legal Department and personally reviewed by the Comptroller General, is it not?

Mr. GUTMANN. It certainly is scrutinized by our Legal Department, yes, sir. Our General Counsel advises us as to whether or not we should proceed further with development of the case or refer it to the FBI.

Chairman PROXMIRE. And when you refer it to the FBI and the Justice Department you do so because you think it may merit prosecution?

Mr. GUTMANN. Yes. And of course we don't have assurance of that because we have not used any of the normal investigative type of practices that the FBI is authorized to use.

Chairman PROXMIRE. But what you are telling us is that in each of those cases the Justice Department simply didn't go along with the General Accounting Office, it refused to prosecute any of them, and in some cases refused even to investigate, is that correct?

Mr. GUTMANN. That is correct.

Chairman PROXMIRE. All right, sir.

Mr. GUTMANN. We might turn now then to the most recent work. The attached report, the appendix to our prepared statement——

Chairman PROXMIRE. And you are working from your prepared statement this morning?

Mr. GUTMANN. Yes, sir.

Chairman PROXMIRE. I beg your pardon. Go right ahead.

Mr. GUTMANN. Referring to the report that we gave you of November 19, in three instances described in the attached report, we contacted Justice personnel on possible violations of Federal law.

First, on October 24, 1974, our Dallas field office briefed Dallas FBI agents on the sale of surplus materials by a subcontractor. This is example 1, on page 12 of the attached report. The next day we were advised that the U.S. attorney could not identify a breach of Federal criminal law and had decided not to investigate the matter further.

Second, on January 17, 1975, we referred the matter of the purchase of an airplane ticket by a subcontractor for a prime contractor employee—example 1, page 9 of the attached report—to the FBI office in Dallas. Prosecution of this case was declined by the U.S. attorney, Fort Worth, Tex.

We referred another case in March of 1975. And this case was declined for prosecution by the U.S. attorney in California.

We did additional work, as you recall, in response to your request. In the additional work that we started in spring of 1974, we took two approaches. First, we were concerned primarily with whether or not there were violations of the Anti-Kickback Act. This work was performed in two prime contractor locations in order to determine the feasibility and practicability of performing audits without benefit of allegations as you mentioned in your opening remarks.

The second review was concerned primarily with the overall effectiveness of prime contractors' purchasing and subcontracting procedures, and the Government surveillance over such activities. Here of course we were concerned with the question of whether or not the contractors' procurement management, procurement procedures, and practices were such as to deter and make difficult the payment of kickbacks.

We summarized our work, in our report to you entitled "Subcontracting by the Department of Defense Prime Contractors: Integrity, Pricing, and Surveillance," the report that I mentioned is attached. We can talk a little bit about the kickbacks that we found, and possible existence of kickbacks. For example, we found where subcontractors had presented gifts to and had frequently entertained prime contractor employees who were in positions to influence purchasing decisions. Prime contractor employees were involved in apparent conflicts of interest. Purchases had been made through sales agents for no apparent reason and the prices had been increased to cover the sales agent's fees. Transactions and relationships between the various contractor and subcontractor employees were questionable.

Those examples are described in detail in the attached report and I would like to discuss them later. Mr. Doyal is very familiar with them.

Chairman PROXMIRE. At this point let me say that your report on defense contracting deletes the names of the corporations involved in the investigation. And it was my determination that we fill the names in. And we have accomplished this by keying the report that you have and indicating the names of the contractors involved in each case.

I understand that is available to the press, and is the basis for the specific examples that you are going through within the attached report.

Now, let me get into these specific cases, at least to some extent.

The first example involves frequent gifts, gratuities and entertainment by subcontractors to prime contractors. The prime contractor of course is the firm that gets the contract from the Defense Department. The subcontractor is the one that does part of the work for the prime contractor. Your first example is based on the case described on page 9 of the GAO report, which involves its subcontractor, Trio Manufacturing, Inc., and B. & M. Machine Co., doing business with Bell Helicopter, the prime contractor, is that correct?

Mr. GUTMANN. Yes, sir.

Chairman PROXMIRE. Will you give us the details of this case, indicating why you question them?

Mr. GUTMANN. All right, sir.

I believe it would be desirable at this point to ask Mr. Doyal to run through this case for you. He is the one most familiar with the details and can get into any questions you might like to ask.

Mr. Doyal, will you talk about that?

Mr. DOYAL. The reason we reported these two matters was that over 90 percent of the business by these two firms was with the prime contractor. The people who were being entertained were those persons at the prime contractor's plant who made procurement decisions whether or not to award to these firms.

One of the subcontractors was a small local machine shop. As of March 29, 1974, it had about 400 outstanding open purchase orders with the prime contractor.

During calendar year 1973 the purchasing agent responsible for making awards to the company had been entertained 10 times, the buying group supervisor, the next lower in line of authority at the prime contractor's plant, had been entertained 31 times, and the buyer, who did quite a bit of the work in making the purchases, had been entertained 24 times by this firm.

This entertainment generally consisted of meals and drinks, and on occasions it cost less than $25.

The company that we are talking about——

Chairman PROXMIRE. $25 on each occasion?

Mr. DOYAL. On each occasion; yes, sir.

The company we are talking about had been established in 1964 by a former employee of Bell Helicopter.

The firm's unaudited financial statements covering the most recent fiscal year shows sales in the range of about $1.2 million.

The president told us that over 90 percent of his business had been made from Bell Helicopter.

While the amount of the entertainment expense doesn't appear too significant, we found that a majority of this entertainment, as I stated earlier, had been provided to the prime contractor employees who made the decisions to award subcontracts to his firm.

The second company that we discuss in the first example is another machine shop. The firm's sales are about $3 million a year. We were notified that 95 percent of this firm's sales are to Bell Helicopter and their entertainment expense for the most recent year was about $32,000.

Again, they entertained the people who were in authority to award contracts to them. The purchasing agent was entertained 14 times during the calendar year 1973, the buying group supervisor 19 times, and the buyer one time, and 43 other occasions of entertainment were granted to Bell Helicopter employees.

It is interesting to note that the purchasing agent, buying group supervisor and buyer that we talk about in both cases are the same persons. It is the same purchasing agent, the same buying group supervisor, and the same buyer.

In addition, our review at this second firm uncovered the gift of an airline ticket. To find out what that airline ticket represented we contacted the subcontractor and looked at the records and asked what it was about.

According to his records, entertainment was provided the buying group supervisor, we have mentioned before, between May 25 and 28, 1973, a Memorial Day weekend and it was reported in the company president's travel expense book in the following manner. May 25, airport entertainment, and tips, $10.75, May 26, the Hungry Tiger—

that is a restaurant located near Palm Springs, Calif.—dinner, entertainment and tips.

May 27, Reno's and Trader Vic's Restaurants, lunch, dinner, and tips, $44.25.

May 28, airport entertainment and tips, $8.80.

On May 25, 1973, the company's president purchased an airline ticket—I have the number—for one round trip from Dallas to Palm Springs.

Now, a rental car invoice was also among their records for $68.04, showing a car was checked out on May 25 at the Palm Springs airport and returned on May 29.

We then went to the airline company and checked their records and found out that on May 25, 1973, the airline ticket we mentioned earlier was issued to the buying group supervisor's secretary.

On May 27, 1973, the return portion of the ticket was exchanged for another ticket in Los Angeles for a return flight to Dallas.

We looked at the prime contractor's record to trace the buying group supervisor and his secretary to see where they were and what they were doing at this time. And we found that the buying group supervisor was on a business trip to Seattle and Los Angeles between May 23 and 25. According to the prime contractor's record he departed Dallas on the morning of May 23 for Seattle, and later that day flew to Los Angeles.

His expense report showed that he returned to Dallas May 25. He claimed taxi fare from the airport to his residence.

And his expense report shows that he departed Dallas for Nashville on the morning of May 29 and proceeded to other locations on the east coast.

On May 25, 1973, the buying group supervisor's secretary picked up his cash advance and airline tickets for the trip to Nashville and on to the east coast. The payroll records show that she signed out at noon for four hours of sick leave on the same day.

The personnel records show the secretary later married the buying group supervisor September 23 and subsequently was transferred to the contractor's quality assurance department.

We began to interview the people involved and other interviews of the prime contractor employees were conducted by a security official and by a Federal law enforcement official on February 10, 1975. These interviews disclosed that the buying group supervisor did not return to Dallas as indicated on his expense report, but rather drove from Los Angeles to Palm Springs with the subcontractor's corporate secretary treasurer.

Chairman PROXMIRE. I think you have given us a flavor of this. Then I wish you would insert the rest of it for the record, if there is something of great substance that would add to it.

[The following information was subsequently supplied for the record:]

The president of the subcontractor firm, his wife, and the buying group supervisor's secretary flew from Dallas to Palm Springs on May 25, 1973. They were met at the Palm Springs airport by the supervisor and the secretary/treasurer.

The buying group supervisor's secretary (now his wife) acknowledged that her airline ticket had been paid for by the subcontractor and that the fare had not been repaid.

Interviews also disclosed that the five people spent the weekend in Palm Springs at the vacation home of the secretary/treasurer. Contrary to the entertainment expenses shown in the subcontractor records, the individuals dined at the secretary/treasurer's vacation home the entire time they were at Palm Springs. The secretary/treasurer had driven the supervisor and his secretay from Palm Springs to Los Angeles on May 27, 1973, for their return flight to Dallas.

Chairman PROXMIRE. Does that cover it fairly well and give us an idea of what is going on?

Mr. DOYAL. Yes, sir.

Chairman PROXMIRE. Your report contains similar cases does it not, involving Bell Helicopter, Martin Marietta and other large contractors and a number of other smaller firms?

Mr. DOYAL. Yes, sir.

Chairman PROXMIRE. You make the point in your prepared statement that such gifts and gratuities are tax deductible as business expenses under the Internal Revenue Code. Would you agree that the tax laws are an incentive to business firms to make these kinds of gifts, and to some extent the laws encouraging unethical and perhaps illogical conduct?

Mr. GUTMANN. Yes, I think the fact that these kinds of expenses are deductible makes it easier at the very least for contractors to make payments, because they can recover a significant portion of the costs they have incurred.

Chairman PROXMIRE. Why wouldn't it be desirable to eliminate or at least to modify their tax deductible provision in order to eliminate the incentive? Couldn't an argument be made that frequent gifts, gratuities and entertainment could be employed to evade the Anti-Kickback Act?

Mr. GUTMANN. Yes, I think that argument could be made. Certainly if the expenditures were nondeductible for tax purposes, the people doing the entertainment would be somewhat more inhibited, although the costs in all likelihood would still be included in the price they charged their customer. Now, such costs are unallowable when dealing with the Government under the armed services procurement regulations. And presumably——

Chairman PROXMIRE. That is another point. So that the taxpayer is affected in the first place because it is a deduction from the taxes that otherwise would be paid, but second, he is hit most directly and emphatically by the fact that this is a charge to the Defense Department, and therefore to the expenditures of the Federal Government, for the entire cost of entertainment, or the entire cost of whatever is done on behalf of the procurement official of the prime contractor; isn't that correct?

Mr. GUTMANN. No, the entertainment costs are nonallowable under negotiated contracts awarded by the Government, even though they may be deductible for income tax purposes.

Chairman PROXMIRE. These costs that were described here are not reimbursable expenses on defense contracts?

Mr. GUTMANN. That is correct. The costs of lunches, and so on, are expressly unallowable by the armed services procurement regulations under negotiated contracts. Now, where contracts are advertised, or where there is some degree of competition, in those situations entertainment costs are included.

Chairman PROXMIRE. In this particular case, the one we have been discussing here, was it allowable as a reimbursement expense?

Mr. GUTMANN. Did we check that out?

Mr. DOYAL. These were not cost type contracts, they were fixed price contracts. The subcontractor was held to a fixed price. And this would be a part of the way he determines the price for his product.

Chairman PROXMIRE. Now, has this been true throughout the investigations that you made? Was this the case in every instance, that it was not reimbursable, not payable by the Defense Department, were these all fixed-price contracts?

Mr. DOYAL. Subcontracts; yes, sir.

Mr. GUTMANN. It really could have been included in the price charged.

Chairman PROXMIRE. Let me go back again. They are not reimbursable. But they might very well be incorporated, and they would be incorporated, that all likelihood, in the price, I would think, because any kind of a sensible subcontractor would take that into account as anticipated costs, including entertainment costs, in making his bid and establishing the price, would he not?

Mr. GUTMANN. Yes. But it depends, Mr. Chairman, on the nature of the contract that we are dealing with. If it is a firm fixed price contract where the prices are arrived at through negotiation, based upon the best data available with respect to prior costs of producing the item, et cetera, the entertainment costs are not specifically identified. So you don't know whether the proposing contractor has some entertainment costs in there or not. When we are dealing with a noncompetitive situation or in a cost type product, that is, where the final price is based upon actual incurred costs, the entertainment costs are supposed to be deleted from the contractors price proposal. And—DCAA has the responsibility for auditing those proposals.

Chairman PROXMIRE. Are you satisfied, Mr. Gutmann, that this was done in this particular case?

Mr. GUTMANN. No, sir. In these particular cases, now, we are dealing with subcontracts for the most part, where it is reasonable to assume that entertainment costs were passed on to the prime contractor and ultimately borne by the Government.

Chairman PROXMIRE. That is exactly the point I have been trying to make. I wanted to know which it was. And now you tell us that in these cases these entertainment costs were passed on to the prime contractor, you say, and borne ultimately by the taxpayer?

Mr. GUTMANN. That is right. Because here we are dealing with subs that are firm fixed price. And of course before I could be a little broader in terms——

Chairman PROXMIRE. Somehow I have failed to communicate to you my question. I want to know whether or not the taxpayer is ultimately paying for this entertainment cost. And now you tell me that he is.

Mr. GUTMANN. In this particular case; yes. In many other cases; no.

Chairman PROXMIRE. But in this particular case; yes?

Mr. GUTMANN. Yes.

Chairman PROXMIRE. Now, the second example you gave us, contained on page 11 of the GAO report, involves a sales agent G. F. Bohman Associates, a subcontractor, Applied Resources Corp.; and a

prime contractor, Martin Marietta. Can you describe briefly what happened in this case?

Mr. DOYAL. Yes, sir. I will be a little brief on this one.

In March of 1973 the subcontractor we are dealing with here Applied Resources, Inc., offered to sell to Martin Marietta a certain kind of switch at a set price. The subcontractor, Applied Resources, was referred to the manufacturer's representative, G. F. Bohman Associates, by prime contractor employees. The reasons for the referral are disputed. We couldn't identify them. The subcontractor then entered into an agreement with the manufacturer's representative to pay a 5-percent commission on all sales, and a new proposal was prepared to Martin Marietta where the price being offered was increased by 5 percent to cover the cost of the commission.

We asked the president of Applied Resources why he had entered into an agreement with the manufacturer's representative rather than going directly to Martin Marietta.

In response to our question he told us that he had gone at the suggestion of a prime contractor employee to borrow a calculator. The representative, the manufacturer's representative had provided the calculator, and then there ensued a discussion regarding the sales agreement. They then entered into the sales agreement and prepared the new proposal for Martin Marietta with the increase of 5 percent.

He said that the representative's service, the manufacturer's representative service probably weren't necessary for the sale to Martin Marietta, and that the commission he was paying was for the representative to generate additional business at a later date.

The manufacturer's representative told us that the prime contractor had not forced the subcontractor to make a contract with him or to enter into a sales agreement with him. He said that the prime contractor's buyer had telephoned him and informed him that the man needed a calculator and directed him to his hotel room where the discussion which resulted in the sales agreement occurred. He said that he was paid a commission to develop business in the future for Applied Resources.

In this case we couldn't identify the benefit to the prime contractor from the 5 percent commission on the sale of those switches.

Chairman PROXMIRE. Now, is it fair to say, then, that in this case the sales agent got a percentage or a $28,500 commission from the subcontractor under a general agreement to drum up business for the subcontractor?

Mr. DOYAL. Business in the future; yes, sir.

Chairman PROXMIRE. Business in the future, not related to the particular product to which the $28,500 was added, is that right?

Mr. DOYAL. Not related to the product sold to Martin Marietta; yes.

Chairman PROXMIRE. So the entire commission was simply taxed onto the price paid to Martin Marietta, by the subcontractor?

Mr. DOYAL. Yes, sir.

Chairman PROXMIRE. And that in turn would be paid for by the Federal Government and the Federal taxpayers.

Mr. GUTMANN. Yes, sir.

Chairman PROXMIRE. So that the taxpayer ultimately had to pay the commission in full, just as the taxpayer pays for the gifts and entertainment, is that correct?

Mr. DOYAL. Yes, sir.

Chairman PROXMIRE. Now, the second example on page 11 of the report is a variation of the scheme. I would like for you to explain what happened there.

Mr. DOYAL. This is an example dealing with a sales broker who has no plant or equipment. In fact, he is an employee of a subcontractor. So we have moved down really one level in the scheme of contracting, from prime contractor first-tier subcontractor to second-tier subcontractor. In this instance a contract was awarded by the prime contractor to a first-tier subcontractor, who subcontracted the entire order to one of his employees, who was acting as a subcontractor. And this gent in turn subcontracted even lower to another firm. When we started back up the ladder with cost, after having gone down with the contract paper, we find that the actual producer's cost for the item—there were several thousand of these items—was a $1.25 per unit. The Government, through the prime contractor, ultimately wound up paying $3.49 per unit.

Chairman PROXMIRE. In other words, Martin Marietta gave a subcontract to a subcontractor, B. & M. Machine Co.?

Mr. DOYAL. Bell Helicopter, sir.

Chairman PROXMIRE. It wasn't Martin Marietta but Bell Helicopter?

Mr. DOYAL. Yes.

Chairman PROXMIRE. And B. & M. turned the job over to a sales broker, J. & J. Sales.

Mr. DOYAL. Yes, sir.

Chairman PROXMIRE. And J. & J. has no plant and equipment, it it strictly a broker?

Mr. DOYAL. Yes, sir.

Chairman PROXMIRE. And he then turned the job over to K Products Co.?

Mr. DOYAL. Right.

Chairman PROXMIRE. Which actually does the work. So both J. & J., who did no work, and B. & M., who did no work; attached their fees to the cost of the job, and Bell Helicopter ends up paying much more.

Mr. DOYAL. $3.49 versus $1.25.

Chairman PROXMIRE. They paid more than three times the actual price charged by the guy at the bottom of the totem pole who did the work, is that correct?

Mr. DOYAL. Yes, sir.

Chairman PROXMIRE. Now, let's turn to example 1 on page 12 of the GAO report. Will you summarize what happened in that case?

Mr. DOYAL. This deals with the sale of surplus parts by a first-tier subcontractor to a surplus parts dealer. The parts were manufactured to the specification of the prime contractor. They were accumulated in a way that we do not know, we don't know how they were accumulated. They were sold for $1,950. And we checked with the prime contractor to see what their present value was. And he told us it was about $190,000. The two people in the first-tier subcon-

tractor's plant who handled the sales and were responsible for the sale of the parts as surplus later received as consultant fees $6,500 from the purchaser. The purchaser of the parts is now selling them, some of them, back to the other first-tier subcontractors, and they are being delivered to the prime contractor, and ultimately to the Government.

Chairman PROXMIRE. In other words, in this case it was OSM?

Mr. DOYAL. Yes, sir. It stands for old scrap metal.

Chairman PROXMIRE. They paid two employees of the subcontractor, Murdock Machine & Engineering, the sum of $6,500 for the privilege of purchasing a load of surplus parts from the Bell Helicopter?

Mr. DOYAL. No; they were parts that had been manufactured by Murdock Machine & Engineering to Bell Helicopter's specifications, but they were still at the Murdock plant.

Chairman PROXMIRE. And they paid Murdock?

Mr. DOYAL. No; the scrap metal dealer paid $1,900 for them, and then later paid these two Murdock employees $6,500.

Chairman PROXMIRE. The parts had a current market value of $190,000?

Mr. DOYAL. Yes, sir.

Chairman PROXMIRE. Which means Bell probably paid more than that for the parts as they were built to Bell's specifications, is that right?

Mr. DOYAL. The parts cost more than that to Bell, yes, sir.

Chairman PROXMIRE. OSM paid less than $2,000 to Bell, less than a third of what it paid to Murdock which acted as a broker in this case, is that correct?

Mr. DOYAL. No, sir. Murdock recovered $1,900. It is its two employees. The $6,500 that the two employees received wasn't for Murdock, that was for their own personal use. They controlled the sale.

Chairman PROXMIRE. OSM paid $2,000?

Mr. DOYAL. Yes, sir, to Murdock for the parts.

Chairman PROXMIRE. For which they got parts that had cost in excess of $190,000?

Mr. DOYAL. Yes, sir.

Chairman PROXMIRE. They paid $2,000 for something which cost $190,000, they paid approximately a penny on the dollar.

Mr. DOYAL. About that, yes, sir.

Chairman PROXMIRE. Would you say that the original price for the part paid by Bell was charged off on one of its defense contracts to the Pentagon, and that therefore the taxpayer paid for them.

Mr. DOYAL. We couldn't trace it, sir, we tried and could not.

Chairman PROXMIRE. Somehow that $190,000 was made available for only $2,000, and if the taxpayer didn't pay for it, who did?

Mr. DOYAL. We don't know who did.

Chairman PROXMIRE. How can anyone else pay it? Will you explain it?

Mr. DOYAL. The manufacturer, Bell Helicopter, makes more than just helicopters for the Government, they also make helicopters for commercial use.

Chairman PROXMIRE. What would be a reasonable conclusion? What are the options, if you don't want to be too precise about it, what would be the possibilities here? There is a possibility, is there not, that the taxpayer had to pay the entire payment?

Mr. DOYAL. Yes, sir, there is a possibility.

Chairman PROXMIRE. Is that a likelihood?

Mr. DOYAL. Yes, sir, I think it is likely.

Chairman PROXMIRE. There is also the possibility, you say, that Bell somehow just assumed that, and it reduced their profit by that much?

Mr. DOYAL. There is a possibility that Murdock may have.

Chairman PROXMIRE. Has GAO found a tendency on the part of the prime contractor to not award their subcontracts competitively? Is it possible that the giving of gifts and other arrangements discouraged competition?

Maybe I should ask Mr. Gutmann on that.

Mr. GUTMANN. We have found a variety of practices when we look at the prime contractors' procurement procedures. They do indeed contain a lot of competition. We have on the other hand found instances where, when an initial buy from a supplier was competitive, subsequent buys were noncompetitive. And we have seen situations where the prices for the same item subsequently paid on a noncompetitive basis tended to rise.

We have recommended that the prime contractors' procurement activities take into consideration the possibility of changing circumstances, where they may be buying in greater quantities than the first competitive buy, which would tend to depress the price. The costs might have gone down, the costs to the supplier may have gone down as a result of improvements in his manufacturing process, or simply proceeding down the slope of the learning curve.

It is as a result, difficult for us to generalize. We find some contractors procurement activities are pretty good. And many of them can be improved.

Chairman PROXMIRE. Then in the GAO report you say these are the four prime contractors you examined, about 100 procurement transactions totaling almost $50 million, for which $7 million were for subcontracts for less than $100,000. "Our sampling showed that about 61 percent of the subcontracts had been awarded—83 percent of the dollars—noncompetitively."

So that the evidence is that most of the awards, more than 80 percent in dollar terms were noncompetitive.

Mr. GUTMANN. Yes.

It is a little bit dangerous to generalize from those statistics too, because in some cases the contractors would be buying standard off the shelf items where the prices had been set at the competitive market price. It may be a catalog item, in other words.

Chairman PROXMIRE. I think it should be reiterated that these examples and many others contained in the GAO report were uncovered almost at random. GAO just selected two prime contractors, went to their facilities, and began examining books and asking questions to see whether the situation previously revealed in an earlier investigation at Litton Industries was general, as a result of specific information about improper payment that we got in the *Litton* case. Your findings, together with what you learned in interviews with employees and officials, suggest that these practices are common and perhaps widespread?

Mr. GUTMANN. Yes, sir. We think they probably were widespread. As you indicated earlier, they seem to be rather small. But the im-

portant thing, it seems to me, is that they tend to reflect an attitude of top management in the corporations. We have seen situations, such as at GE, where there was a very strong program to discourage the acceptance of gratuities and entertainment. There was an investigative staff who periodically looked at this procurement procedure. So I would not want to generalize on the basis of my findings, because we did find some situations that were fairly clean.

I think what it points up is that the top management of these corporations have to be encouraged, and indeed perhaps required where the Government is involved, to have a strong program that discourages the kind of abuses that this committee has been concerned about.

Chairman PROXMIRE. That is very helpful. And I am also glad that you mentioned—say G.E., General Electric?

Mr. GUTMANN. Yes.

Chairman PROXMIRE. You said they have a strong policy, a good policy of discouraging acceptance of gratuities?

Mr. GUTMANN. Yes, they do.

Chairman PROXMIRE. We ought to compliment them and highlight that. I think it is good to hear. But you seem to indicate that that may be the exception, or at least there is no additional evidence that you have that there are other firms that have taken that kind of an issue—or do you have it?

Mr. GUTMANN. Yes, we have other indications.

Chairman PROXMIRE.—All right, let's hear it.

Mr. GUTMANN. Lockheed, for example, has a strong internal security force that polices the procurement activity from the standpoint—including the standpoint of the possibility of kickbacks, and acceptance of gratuities and entertainment, et cetera, by the procurement people.

Chairman PROXMIRE. That is very interesting in view of the fact that Chairman Houghton testified to us that they did engage as a matter of corporate policy in kickbacks. And he identified it when he testified before the Banking Committee. He said exactly that. But yet they have a policy of discouraging kickbacks with respect to their subcontractors. And that part is commendable.

Mr. GUTMANN. Yes, it is.

Chairman PROXMIRE. It is interesting to have that division, though, isn't it?

Mr. GUTMANN. The problem here is, of course, when top management is involved, that tends to supervise the activities of any internal activity.

Chairman PROXMIRE. Supposing we proceed, then, if you can summarize the rest of your presentation. And I don't want to be unfair to Mr. Rousselot if he has any questions as we go along.

Representative ROUSSELOT. I appreciate that. I am still listening.

Chairman PROXMIRE. Go ahead and summarize the remainder of your prepared statement, and then I have some other questions.

Mr. GUTMANN. I think I might highlight this point, our recommendation that appears in the prepared statement, and also is in the report that is attached.

We recommend that, to foster public policy against such improper or questionable practices, to deter such practices, and to increase the

integrity of the Federal procurement process, the Secretary of Defense amend the armed services procurement regulation to require that each negotiated Government contract include a clause specifically prohibiting payment of gratuities by subcontractors to higher tier contractors. We included a proposed clause in our report.

And this would prohibit the payment of gifts and gratuities regardless of whether direct relationship between the payment and the specific contract award can be established.

Incidentally, that is one of the stumbling blocks that we have found with respect to the Anti-Kickback Act. Lawyers tell us that we have to develop a direct relationship between the payment in a specific contract before we can consider it a kickback of some kind.

The clause we recommend would also prohibit payments by subcontractors to higher tier contractors similar to those we noted during our review, since the proposed clause does not require that it be shown that payments were made as an inducement for or as an acknowledgment of contract awards. Additionally, the clause would provide for contract termination—a remedy which is not included in the Anti-Kickback Act but which would further public policy against favoritism in awarding Government contracts and subcontracts. Finally, the clause would require that violations or suspected violations of the Anti-Kickback Act be brought to the attention of appropriate Government officials.

In addition, the Congress may want to consider action amending 41 U.S.C. 51–54 to prohibit such payments as those addressed by the clause or amending the Internal Revenue Code to prohibit deducting such payments as business expenses when paid by a subcontractor to a higher tier Government contractor.

We have covered the fact that there is a possibility that these expenses have been included in overhead charged to Government contracts, despite the fact that they are unallowable. The DCAA does indeed review the reasonablenes of costs, overhead type costs, that are incurred.

And in those cases the specific cost center has what they call a cost rating, that is CWAS. And it means the contractors weighted average share in cost risk. The theory here is sound. It simply means that if a contractor's business is predominantly commercial, or fixed price in nature, he has an incentive to hold his costs to a reasonable level.

Our concern with that, of course, in the Department of Defense and this committee is that it is possible to inadvertently relax when a contractor has a CWAS rating, relax to the extent that some unallowable costs are in there that shouldn't be.

We are reviewing the application of CWAS now to determine whether or not that has been abused.

The Government surveillance of the contractors purchasing system is done in a variety of ways, through contractor procurement system reviews, on-going surveillance by administering contracting officers, and periodic audits by Defense contract auditors.

Government Procurement Systems reviews are generally made by the DCAS. If the system, the procurement system, is approved as a result of these reviews, in most cases the need for the Government review and approval of individual subcontracts is eliminated.

The Government surveillance on kickbacks was limited to determine the——

Chairman PROXMIRE. In other words, after the system is approved there is very little direct surveillance by the Government, is that correct?

Mr. GUTMANN. Yes, except for certain types of subcontracts that are above a certain level, and where there is a clear absence of competition, the Government does not necessarily bind itself.

Chairman PROXMIRE. Generally we don't know what is going on in the subcontracting area, and these resolutions you have made today in your report seem to me to underline that generally.

Mr. GUTMANN. Again, Mr. Chairman, it is very difficult to generalize in this area. Thre are a lot of reviews made. There are annual reviews of specific contractors by contractor purchases, they examine into the extent to which the competition is obtained, and so on.

Nevertheless, where people are not predisposed to conform to good procurement practices, no matter what his government is going to do, they are going to find a way to get around it. To the extent they are predisposed to avoid good procurement practices, it is going to be very difficult for DCAA or anyone else to keep them straight.

Representative ROUSSELOT. On the basis of their study, how often does that happen, where they got around them?

Mr. GUTMANN. How often does what happen?

Representative ROUSSELOT. On the whole procurement process how often would that occur on a percentage basis?

Mr. GUTMANN. I am unable to give you a figure on that, a percentage.

Representative ROUSSELOT. What is your guess?

Mr GUTMANN. You are looking for the percentage that the prime contractors procurement processes are inadequate?

I have no basis for speculating on that. There are just so many of them, there are tens of thousands of them. And I really don't know.

Again, in this whole area of corporate abuse of power the success in diminishing it goes to one thing I mentioned before, and that is top management level concern and the interest in this subject, and the example that they set with respect to it. And the other is a strong, credible deterrent that there is indeed going to be severe punishment for abuses that are uncovered.

Chairman PROXMIRE. That certainly isn't present. Here we have case after case after case referred to the Justice Department, and no action taken.

Mr. GUTMANN. That is true.

Chairman PROXMIRE. In almost all of these cases the additional costs are just passed onto Uncle Sam, and he pays it. So it just seems to me that there is no effective deterrent, either economic deterrent, or enforcing the law. I know of no effective enforcement.

Mr. GUTMANN. I think that is true to a degree, Mr. Chairman. And I don't want to appear to be defending the Department of Justice, they are capable of doing that themselves. But as you said at the outset, the cases that we are talking about here are rather small in relation to the magnitude of things that the Securities and Exchange Commission and the FBI——

Chairman PROXMIRE. We had the Chairman of the Securities and Exchange Commission before us yesterday. And they had gotten absolutely no action out of the Justice Department on anything. There were no fines, there were no criminal action of any sort. And there was case after case after case of violation. But I would agree that we need more testimony, this is just the beginning, before we can come to a conclusion. And we certainly want the Justice Department to have its day in court. And it hasn't appeared.

Go ahead.

Mr. GUTMANN. We found that Government surveillance on kickbacks was limited to determining the acceptability of the contractor's written policies on gifts and gratuities and ascertaining, through discussions with purchasing management, that the provisions of the Anti-Kickback Act had been made known to the purchasing organization and the vendor community.

Having said that, I am not sure what else we could reasonably expect them to do. Because as I have said, the contractors own stated and reinforced policy is the best way of getting this current situation cleared up. It really is very difficult to do from the outside, if people in an organization are determined to conceal from Government auditors and examiners and investigators what it is that they are doing, and DCAA, like GAO, does not have the kind of investigatory talent or responsibility or authority to get in and find these things. It is really the Department of Justice.

That pretty much concludes the comments we had about our kickback work.

Turning now to the Lockheed situation, if you wish——

Chairman PROXMIRE. Will you summarize as quickly as you can on Lockheed? I have a number of questions on the Lockheed situation. And Mr. Rousselot may have some also.

Mr. GUTMANN. As you know, we got into this subject last summer, and we asked for information last summer. And they declined to give it to us. I wrote to them and asked them for all of the information, and they declined to give it to us. And subsequently the Securities and Exchange Commission went to court to get similar kinds of information you asked us to get. And so we have not pursued it after receiving Lockheed's denial of my request for access.

Now, at the moment—and I would ask Mr. Hunter to fill this in from a legal standpoint and correct me if I'm getting off—the court has ruled that the information concerning the recipients of the commissions is and/or bribes or illegal or improper payments, however they are going to be characterized, to foreign officials, and the names of those people, have not been made available to date. The court, while releasing the information provided by Lockheed to SEC, has retained jurisdiction over that information, and anybody else that wants it must go back to the court to get it.

In other words, there is some recognition here that disclosure of names may not be in the best interest of either Lockheed or the Government.

Now, Mr. Hunter might want to elaborate on the legal situation here. But that is as I understand it today.

Mr. HUNTER. I think that is a good statement.

Chairman PROXMIRE. Then I will proceed with some questions I have.

With respect to the Lockheed payment of bribes to foreign government officials, the Loan Guarantee Act requires mandates, directs the GAO to audit the books, records and transactions of any borrower under the act. And of course Lockheed is the only borrower under the act. My question is, Were such audits performed by the General Accounting Office where mandated by law, and if so, why didn't they reveal the illegal and improper practices Lockheed was engaged in before they were disclosed last year?

Mr. GUTMANN. Yes, sir, GAO has made audits periodically, as required under the Loan Guarantee Act. The question of the nature, intensity and extent of detail of that audit is, I think, what is at issue here.

We have construed our responsibilities under that act to mean that we should be concerned with Lockheed's ability to repay the loans that the Government has guaranteed. We talked originally to the framers of that legislation, the Loan Guarantee Act, as to what they meant by an audit. And they did not mean a detailed audit of the nature that might disclose and might not disclose the payments in question here.

Again a special kind of examination and investigation is necessary to disclose payments——

Chairman PROXMIRE. I call your attention to the law. It is one thing to talk to the author of the amendment—and the author of the amendment in the House was a very able man and he knows his own intent—but the language of the law, it seems to me, is governing and not the intent of author. This is what the law says:

> The General Accounting Office shall make a detailed audit of all accounts, books, records and transactions of any borrower with respect to which an application for a loan guarantee is made under this act. The General Accounting Office shall report the results of such audit to the Board and to the Congress.

No such detailed audit, it seems to me, was conducted. If it had been I think we would have been aware of this and might have been able to prevent some of this action.

Mr. GUTMANN. Well, we might have been and we might not have. Normal audit techniques by and large would not disclose these kinds of things. Where you have separate bank accounts established, and where money is laundered, this just simply does not show up in the records.

Now, as far as the making of a detailed audit is concerned, if we are to report annually on Lockheed's ability to repay the loan under the Guaranteed Loan Act, in the first place, we couldn't make a detailed audit in 1 year. A really detailed audit in one sense of the term means examining every document and tracing original documentation, checks that are written, invoices that are at issue, material——

Chairman PROXMIRE. With an enormous corporation like Lockheed it could take a long time, even with an organization the size of GAO. But it seems to me that you could find on some kind of a spot basis, some kind of an investigative basis to determine whether this kind of activity was being undertaken or not; that is, the bribe, the kickback, the laundering of funds, the using of bank accounts abroad. You tell me that you would have to have a comprehensive audit taking years in order to uncover that kind of thing?

Mr. GUTMANN. No; I am saying that we would have to use investigative techniques with which by and large we are not familiar, because we have not done that kind of work, and we do not have the authority for it, and indeed when we find something, even the indication that something might be illegal, that either criminal or civil fraud might be involved, we are required to withdraw from the case and turn it over to the Department of Justice.

Chairman PROXMIRE. After last year's disclosure I asked the GAO to investigate the payments that were illegal, and report back to Congress with details, including names of recipients, amounts, purposes of the payment, and the foreign governments involved. Now, what you are saying here is that you have not been able to do this because Lockheed has refused to give you access to its books and records. And have you reported this fact to the Loan Guarantee Board and the Secretary of the Treasury who was Chairman of the Board? And if so, what was the Board's reaction?

Mr. GUTMANN. We have not reported it to this date. We would expect to report that in a report we now have in final stages of processing which I expect to be issued here in January, our normal report on our work under the Guarantee Loan Act.

Chairman PROXMIRE. Has Mr. Staats talked to Secretary Simon, the Chairman of the Board about this?

Mr. GUTMANN. I don't know whether he has or not.

Chairman PROXMIRE. It seems to me that this is such a serious rebuff, and makes it so difficult for you to carry out the intent of the law, that it is a matter that should have been discussed with him.

Mr. GUTMANN. The intent of the law, again, we think goes to the question of, are Lockheed's assets adequate to satisfy, to pay off those loans. And beyond that, to get into the details of their various transactions, it just doesn't seem practical for us to do it.

Now, as far as the specific records that you are talking about, and the question of whether or not the information with respect to the names of the people and the countries involved is concerned, there is a very real question as to whether or not it is necessary for us to have that information in order for us to satisfy ourselves as to whether or not it appears at a given point in time that Lockheed is going to be able to repay their borrowings.

Chairman PROXMIRE. I wonder if that is up to your judgment. Isn't that something for Congress to determine? Congress directed you to make the audit. You state in your testimony that access to the information has not been pursued pending the outcome of Securities and Exchange Commission litigation to obtain the same information. I am not sure why you awaited the outcome of that litigation. But in any event it was completed several weeks ago. And the court ruled that SEC was entitled to obtain the data. Yesterday we were told by the Chairman of the Securities and Exchange Commission when he testified before the committee that they have all the documents in their possession. So will you now proceed to get the information I requested?

Mr. GUTMANN. Sir, this would require us to go to court and make a case that it is necessary for us to discharge our responsibilities. We are of the opinion, sir, that Congress and this committee would be much more likely to be successful in such an endeavor than the GAO would.

Chairman PROXMIRE. In other words, you are telling us that you won't do it?

Mr. GUTMANN. Well, sir, I really can't say that on behalf of the Comptroller General of the United States. If he is asked to do it or directed to do it I am sure he would do it. At the present time, as I say, we have a real question as to whether or not it is necessary for us to discharge our responsibility. And we think that there is a good chance that we would be turned down, whereas you would not be turned down.

Chairman PROXMIRE. You also state that the Defense Audit Agency, DCAA, has not been able to obtain information because Lockheed refused to give it access to its commercial banks and records. Do you know whether DCAA or the Pentagon has pursued this matter further and then taken steps to get access and determine whether Lockheed paid any bribes in connection with foreign sales of military weapons or aircraft.

Mr. GUTMANN. They are working on it, I understand. They haven't obtained access. One of them is the same problem we have. What is involved there is a commission transaction. The Federal Government is not involved other than as a guarantor of the loan.

Chairman PROXMIRE. That is a pretty big involvement, and involvement of over $200 million.

Mr. GUTMANN. Yes; and if one concedes that that is the extent of our involvement, then you get to the question, is it likely that Lockheed is going to be able to pay off this loan. And we come up with the answer, yes, it is likely.

Chairman PROXMIRE. Maybe one of the ways they will be able to pay off the loans is that this helps their work to the point where they will be able to sell their planes. If they do that they will be able to develop such sales and you have revenue so that they can have the profits and the income to pay off the loan.

Mr. GUTMANN. Well, that is unfortunately true. And we get back to the question of whether or not the deterrents for this kind of action are adequate to offset the potential gain by those who take these actions. Now, we certainly do not condone——

Chairman PROXMIRE. I don't mean to blame you or the GAO, but it looks as if this Government is somehow getting into the position, because we have guaranteed a Lockheed loan, and because of Lockheed's financial weakness, they think—and I think we are suckered into taking a position which is unsound—their financial position may depend on whether or not they can use bribes and other illegal activity to secure sales. Then we are put in the position of, if not condoning it, at least not taking any action to stop it, with a notion that the Federal Government won't have to come in with the funds.

Mr. GUTMANN. This is exactly the position Lockheed has taken. And I agree with you 100 percent, it puts the——

Chairman PROXMIRE. It certainly isn't a position that the Federal Government can take. If I were chairman of Lockheed I hope I wouldn't take that position, but I might. But I can't understand how the Federal Government can take that position. Secretary Simon has spoken out directly against bribes, he spoke against them in the Banking Committee. He thought it was a counterproductive, vicious

kind of act on the part of the people engaging in it and we should do everything to discourage it. But I get the impression, however, that we aren't taking the kind of action that we could take to stop it. The best thing we could do is expose the people who are getting the bribes. That would be the end of it. I realize it would have an adverse effect on Lockheed, perhaps, and perhaps on the guarantee. It is a price that the Government ought to be willing to pay, if Lockheed isn't.

Mr. GUTMANN. As you say, that is indeed a position that Lockheed has taken.

Chairman PROXMIRE. Mr. Rousselot.

Representative ROUSSELOT. Mr. Gutmann, is it possible that under the Renegotiation Act which we have extended for a brief time, which deals simply with the procurement contracts by a firm, that we could amend that act to provide for civil penalty in kickback cases?

Mr. GUTMANN. Well, sir, I would say it certainly can be done. But we would have to give it some thought. If you were to ask me, would it be a practicable, feasible thing to do, I don't know how it would be enforced by the Renegotiation Board, for example, with the relatively small staff they have, the limitations on the number of detailed audits that they can make. The big problem again is finding a kickback, taking action offsetting the amount. And holding it from the prime contractor and subcontractor that are involved is not as hard as finding it in line. Once it is found you can get the money back. I don't know how the Renegotiation Board would necessarily improve the situation that we have got today.

Representative ROUSSELOT. Thank you, Mr. Chairman.

Chairman PROXMIRE. Thank you, gentleman, very much. We appreciate your investigation and your report. And we appreciate your appearance. I hope you will give my regards to Mr. Keller. And I hope that he will recover promptly.

[The prepared statement of Mr. Keller, with an attachment, follows:]

PREPARED STATEMENT OF HON. ROBERT F. KELLER, DEPUTY COMPTROLLER GENERAL OF THE UNITED STATES

Mr. Chairman and members of the subcommittee, I am pleased to appear before your Subcommittee today. My statement covers some of our prior and more recent work on Federal procurement matters, particularly the relationships between selected prime contractors and their subcontractors.

PRIOR WORK BY GAO IN THE AREA OF PRIME CONTRACTORS' PROCUREMENT ACTIVITIES

On November 14, 1973, we testified before your Subcommittee on our review of allegations that officers and employees of Litton Industries, Ingalls Shipbuilding Division, Pascagoula, Mississippi, engaged in improper activities with subcontractors.

As you may recall, our review showed that procurement practices had been questionable, but the data we obtained did not indicate payments of fees or kickbacks. We did not have a basis, therefore, for recovery actions under the Anti-Kickback Act.

The Anti-Kickback Act (41 U.S.C. 51–54) prohibits payments either directly or indirectly by or on behalf of a subcontractor (1) to a prime contractor holding a negotiated Government contract or to its officers and employees or (2) to a higher tier subcontractor or to its officers and employees, either as

inducement for the award of a subcontract or purchase order or as an acknowledgment of a subcontract or purchase order previously awarded. Under this act, it is conclusively presumed that kickbacks are ultimately borne by the Government, and prime contractors are required to withhold from subcontractors, upon the direction of the contracting agency or the GAO, the amount of any kickback. In addition, the act provides for both civil recovery and criminal prosecution.

STATUS OF CASES REFERRED BY GAO TO DEPARTMENT OF JUSTICE

The Department of Justice is responsible for investigating violations of criminal laws, except in certain specialized areas where the responsibility is assigned to other Government agencies. Therefore, we follow the policy of referring to the appropriate criminal law-enforcement agency, generally the FBI, all information concerning criminal law violations arising in our work. In most cases no further audit or investigative action is taken by the GAO on matters directly relating to the criminal aspects. Where the cases involve GAO's civil and administrative responsibilities, however, an understanding is reached as to how the cognizant criminal law-enforcement agency and GAO are to discharge their respective responsibilities.

On October 23, 1973, we sent the Attorney General our report on selected subcontracts awarded by Ingalls Shipbuilding Division of Litton Industries, Inc., because the facts presented in the report seemed to indicate violations of Federal criminal law.

We were recently told that the U.S. attorney declined to prosecute the matters in this case because the FBI had not found sufficient evidence to bring the matter to trial. The case was closed in September 1975.

On January 11, 1974, we sent to the Department of Justice several other allegations on matters disclosed by a consultant to the Joint Economic Committee. The Department decided that the evidence in these cases was not considered sufficiently indicative of violations of Federal criminal law to warrant transmittal to the FBI.

In three instances described in the attached report, we contacted Justice personnel on possible violations of Federal law.

(1) On October 24, 1974, our Dallas field office briefed Dallas FBI agents on the sale of surplus materials by a subcontractor. (This is example 1, on page 12 of the attached report.) The next day we were advised that the U.S. attorney could not identify a breach of Federal criminal law and had decided not to investigate the matter further.

(2) On January 17, 1975, we referred the matter of the purchase of an airline ticket by a subcontractor for a prime contractor employee (example 1, page 9 of the attached report) to the FBI office in Dallas. Prosecution of this case was declined by the U.S. attorney, Fort Worth, Texas.

(3) On March 6, 1975, we referred another case to the Dallas FBI office. (This is example 3, page 16 of the attached report.) This case was declined for prosecution by the U.S. attorney, Central District of California.

RECENT WORK BY GAO IN THE AREA OF PRIME CONTRACTORS' PROCUREMENT ACTIVITIES

Our letter to you dated February 6, 1974, described our additional reviews of prime contractors' procurement and subcontracting activities. We took two basic approaches. The first was a review concerned primarily with whether or not there were violations of the Anti-Kickback Act. This review was performed at two prime contractor locations in order to determine the feasibility and practicability of performing audits of this type without benefit of allegations of wrongdoing. The second was a review concerned primarily with the overall effectiveness of prime contractors' purchasing and subcontracting procedures and the Government surveillance over such activities. This work was performed at four prime contractor locations.

We summarized our recent work in our report to you titled "Subcontracting By Department of Defense Prime Contractors: Integrity, Pricing, and Surveillance" dated November 19, 1975 (Copy Attached). First, I would like to recap briefly what we found when we inquired into the possible existence of kickbacks at the two prime contractor locations. Then, I will discuss the results of our reviews of the four prime contractor procurement systems.

ANTI-KICKBACK ACT AND PRIME CONTRACTOR-SUBCONTRACTOR RELATIONSHIPS

In reviewing records at the prime contractors' plants and at selected subcontractor plants, we noted a number of transactions and relationships which we considered questionable because they involved the payment of gratuities or because they otherwise violated good procurement practices. For example, we found instances where:

(1) Subcontractors had presented gifts to, and had frequently entertained, prime contractor employees who were in positions to influence purchasing decisions.

(2) Prime contractor employees were involved in apparent conflicts of interest.

(3) Purchases had been made through sales agents for no apparent reason, and the prices had been increased to cover the sales agents' fees.

(4) Transactions and relationships between various prime contractor and subcontractor employees were questionable.

These examples are described in detail in the attached report. As mentioned earlier, we discussed with law enforcement officials those transactions where the facts and circumstances indicated possible violations of the Anti-Kickback Act.

One subcontractor told us that gifts and gratuities of the type noted during our review were tax deductible as business expenses. Generally, entertainment expenses are deductible under the Internal Revenue Code when incurred in connection with the production of income. Gifts and gratuities are also deductible as business expenses with the limitation that they not exceed $25 a person. Illegal payments, however, are not allowable business expenses. Since it is difficult to prove that small-dollar-value gifts and gratuities, such as we noted, have influenced the award of subcontracts, and therefore violated the Anti-Kickback Act, it appears that such gifts and gratuities could be claimed as business expenses for income tax purposes.

We recommend that, to foster public policy against such improper or questionable practices, to deter such practices, and to increase the integrity of the Federal procurement process, the Secretary of Defense amend the Armed Services Procurement Regulation to require that each negotiated Government contract include a clause specifically prohibiting payment of gratuities by subcontractors to higher tier contractors. We included a proposed clause in our report.

The proposed clause would prohibit the payment of gifts and gratuities, regardless of whether a direct relationship between the payment and the specific contract award can be established. It would also prohibit payments by subcontractors to higher tier contractors similar to those we noted during our review, since the proposed clause does not require that it be shown that payments were made as an inducement for or as an acknowledgement of contract awards. Additionally, the clause would provide for contract termination—a remedy which is not included in the Anti-Kickback Act but which would further public policy against favoritism in awarding Government contracts and subcontracts. Finally, the clause would require that violations or suspected violations of the Anti-Kickback Act be brought to the attention of appropriate Government officials.

In addition, the Congress may want to consider action amending 41 U.S.C. 51–54 to prohibit such payments as those addressed by the clause or amending the Internal Revenue Code to prohibit deducting such payments as business expenses when paid by a subcontractor to a higher tier Government contractor.

REVIEWS OF DEFENSE CONTRACT COSTS

It is possible that the improper or questionable expenses that we have been discussing would be included in overhead charged to Government contracts. In pricing negotiated defense contracts, reviews are made by the Defense Contract Audit Agency (DCAA) to determine the reasonableness of costs proposed. Reviews are also made by DCAA to determine the reasonableness of general and administrative expenses and other overhead costs incurred by contractors and allocated to Government contracts. The test of reasonableness for many cost elements is excluded from the DCAA scope of work when a contractor's business is predominately commercial or of a fixed-price nature, on the theory that the contractor has a built-in incentive to minimize costs. This concept is referred to by the Department of Defense as contractor weighted average share in cost risk or CWAS.

The primary responsibility for reviewing contractor costs is with DCAA. We have the responsibility for evaluating how DCAA is performing its assigned responsibilities, and we are making reviews for this purpose on a continuing basis.

OVERALL EFFECTIVENESS OF PRIME CONTRACTOR PROCUREMENT SYSTEM

Our review of the procurement systems of four other prime contractors generally showed their purchasing policies, procedures, and internal controls were based on sound procurement principles. However, several areas needed attention. For example: (1) contractors generally considered past prices to evaluate the reasonableness of current prices for noncompetitive awards valued under $100,000 although conditions which could affect prices had changed since the past prices were established and (2) other weaknesses in procurement procedures and internal controls at individual contractors' plants, such as failure to consolidate purchase of low-dollar-value items, weakness in bid control procedures, and lack of controls over purchase orders. These areas are discussed in detail in our report.

GOVERNMENT SURVEILLANCE

Government surveillance of contractors' purchasing systems is done through contractor procurement system reviews, ongoing surveillance by administrative contracting officers, and periodic audits by defense contract auditors.

The Government's procurement system reviews are generally made by the Defense Contract Administration Service for the administrative contracting officer to insure that the contractor's procurement system continues to warrant an form with applicable laws, Government procurement regulations, contract clauses, and sound industrial practices, and adequately protect the Government's interests. A favorable determination results in system approval and, in most cases, elimination of the need for Government review and approval of individual subcontracts. Government procurement regulations require cognizant administrative contracting officers to maintain an adequate level of surveillance to insure that the contractor's procurement system continues to warrant an approved status.

Government surveillance on kickbacks was limited to determining the acceptability of the contractor's written policies on gifts and gratuities and ascertaining, through discussions with purchasing management, that the provisions of the Anti-Kickback Act had been made known to the purchasing organization and the vendor community. If Government representatives detect or suspect a violation of the Anti-Kickback Act, they are to refer the matter to higher headquarters for a decision on action to be taken, in accordance with procurement regulations.

In evaluating the overall surveillance of procurement activities at the four contractor plants, we found that the contractors' system had been reviewed and approved on the basis of procurement system reviews. Ongoing surveillance was generally restricted to required review and consent to specific types of subcontracts, and annual procurement system reviews were relied on to identify system weaknesses.

The weaknesses we noted had not been identified by either the ongoing surveillance or the periodic procurement system reviews.

We recommend that the Secretary of Defense direct procurement review teams, during their reviews of contractor procurement systems, to give greater attention to determining whether contractors are conducting adequate price-cost analysis for procurements under $100,000.

STATUS OF WORK ON LOCKHEED PAYMENTS TO FOREIGN OFFICIALS

On August 28, 1975, you requested us to determine the amounts of payments made by Lockheed Corporation to foreign officials in order to consummate sales to foreign countries, as well as the names of the officials involved. We requested this information from Lockheed on September 8, 1975, and as of this date they have not given us access to any of the information except for records relating to the amount of payments that may have been charged to general overhead allocable to Government contracts. We advised you of Lockheed's position on October 20, 1975. The Loan Guarantee Agreement provides access to all books and

records which in our discretion we determine necessary or appropriate in connection with the loan agreements, including matters which may bear upon Lockheed's ability to repay the loans on time. Access to the information has not been pursued by us pending the outcome of Securities and Exchange Commission litigation to obtain the same information.

We have, however, examined DCAA's reports on Lockheed's overhead for fiscal years 1969 through 1973. To date DCAA has not found any of the questionable payments included in the overhead costs borne by the Government. DCAA is presently reexamining Lockheed records to determine whether any questionable payments were included in overhead accounts for the 5½-year period ended June 30, 1975. We have requested DCAA to furnish its workpapers to us for review as soon as their work is complete. DCAA is also attempting to expand its review to include several commercial divisions. Lockheed, however, has denied DCAA access to records relating to its commercial work.

This concludes my statement Mr. Chairman. We will be glad to answer questions you or the other members of the Subcommittee may have.

Attachment:

REPORT TO THE SUBCOMMITTEE ON PRIORITIES AND ECONOMY IN GOVERNMENT JOINT ECONOMIC COMMITTEE

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

Subcontracting By Department Of Defense Prime Contractors: Integrity, Pricing, And Surveillance

A discussion of subcontracting kickbacks and related transactions, pricing subcontracts valued at less than $100,000, and the surveillance of contractor purchasing systems.

PSAD-76-23

NOV. 19, 1975

LIST OF CONTRACTORS DISCUSSED IN
[illegible] AD 0-23
DATED [illegible] EMBER 19, 1975

B-177748

Alphabetic Key	Name and location of contractor
A	Bell Helicoptor Company Fort Worth, Texas
B	Martin Marietta Corporation Orlando, Florida
C	International Telephone and Telegraph Corporation Defense Communications Division Nutley, New Jersey
D	LTV-Aerospace Corporation Michigan Division Sterling Heights, Michigan
E	McDonnell Douglas Corporation McDonnell Aircraft Company St. Louis, Missouri
F	TRW Systems Group Redondo Beach, California
G	General Electric Company Aircraft Engine Group Evendale, Ohio
H	Ladish Company, Ladish Pacific Division Los Angeles, California
I	Trio Manufacturing, Inc. Euless, Texas
J	B & M Machine Company Hurst, Texas
K	G. F. Bohman Associates Orlando, Florida

Alphabetic Key	Name and location of contractor
L	Applied Resources Corporation Fairfield, New Jersey
M	Jones Brothers Orlando, Florida
N	J & J Sales Fort Worth, Texas
O	K Products Company Fort Worth, Texas
P	Murdock Machine and Engineering Company Irving, Texas
Q	OSM Grand Prairie, Texas
R	Shellcast Foundries, Inc. Montreal, Canada
S	Hemet Casting Company Hemet, California
T	Florida Testing and Research Company Orlando, Florida
U	QED Incorporated Orlando, Florida
V	Hydraulic Research and Manufacturing Co. Valencia, California
W	Larco Engineering Company Dallas, Texas
X	Tri-Tech St. Petersburg, Florida
Y	Beckman Manufacturing Company Centerville, Ohio

Alphabetic Key	Name and location of contractor
Z	R. C. Engineering Simivalley, California
AA	B & L Products North Ridge, California
BB	Aeroquip Marman Jackson, Michigan
CC	Anaren Microwave Syracuse, New York
DD	Tomkins-Johnson Company Jackson, Michigan

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-177748

NOV 10 1975

The Honorable William Proxmire
Chairman, Subcommittee on Priorities
and Economy in Government
Joint Economic Committee
Congress of the United States

Dear Mr. Chairman:

In response to your request, we have summarized our recent work in evaluating Department of Defense prime contractor and subcontractor procurement activities. We also were concerned with whether any prime contractor-subcontractor relationships violated the Anti-Kickback Act (41 U.S.C. 51-54). A

At two prime contractor locations, we inquired into the possible existence of kickbacks without any previous indication that such activities were occurring at these locations. B

At four other prime contractor locations, we looked into the overall effectiveness of the purchasing and subcontracting systems, including the Government's surveillance of system operations. C D E F

ANTI-KICKBACK ACT AND PRIME CONTRACTOR-SUBCONTRACTOR RELATIONSHIPS

The Anti-Kickback Act prohibits the payment of any fee or gratuity by a subcontractor to a prime contractor or higher tier subcontractor as an inducement for award of a subcontract. This law applies to negotiated contracts and provides for criminal penalties and recovery by the Government of the amount of the fee. There is, however, no specific contract clause now in use to preclude such payments as those addressed by the act or those which tend to promote favoritism in the award of subcontracts.

In reviewing records at two prime contractors' plants and at selected subcontractor plants, we noted a number of transactions and relationships which we considered questionable because they involved the payment of gratuities or because they otherwise violated good procurement practices. For example: A B

1. Some subcontractors had given gifts to and had frequently entertained prime contractor employees who were in positions where they could influence purchasing decisions.

2. Some prime contractor employees were involved in apparent conflict-of-interest situations.

3. Some purchases had been made through sales agents for no apparent reason, and the prices had been increased to cover the sales agents' fees.

4. Other situations involved questionable transactions and relationships. These examples are described in detail in appendix I.

We discussed with appropriate law enforcement officials those transactions developed during our review where the facts and circumstances indicated possible violations of the Anti-Kickback Act. We understand that the Internal Revenue Service and/or the Department of Justice is currently investigating some of these transactions.

The Department of Justice officials told us in informal discussions that the exchange of low-dollar-value gratuities, such as we found, would not generally be important enough to warrant investigation and prosecution.

Appendix II discusses three kickback cases which were reported to the Department of Justice, independent of our review. Two of these cases are currently under investigation and one--involving kickbacks paid before 1968--resulted in a conviction.

Both prime contractors we reviewed had a policy which discouraged their employees from accepting entertainment, gifts, or other gratuities when such activities were considered unusual or when they might influence, or be thought to influence, employees' judgment in making a purchase or other type business decision. Neither of the two prime contractors, however, had defined what constituted unusual entertainment, and therefore accepting or rejecting offers was left to the employee's subjective judgment. The possible range of acceptable activity is illustrated by the following statements. A B

--The procurement department manager of one of the two prime contractors said that accepting entertainment from local subcontractors more than two or three times a year was unjustified. A

--The security department officials of the same contractor believed that nominal entertainment (e.g. meals and drinks costing from $5 to $7.50) received as often as 20 to 30 times a year was not as important as one major entertainment costing from $100 to $150. A

In contrast to the prime contractors' policies discussed above, another major Defense prime contractor's policy is to prohibit the employees' accepting gratuities. For example, the prime contractor's policy statement provides that each employee must: G

--Decline any entertainment, gift, gratuity, compensation, or favor offered by suppliers and promptly report such offer to his immediate supervisor.

--Promptly report to his immediate supervisor any gift, gratuity, compensation, or favor received by him from suppliers and then return it to the sender or otherwise dispose of it as directed by his supervisor.

Also each November the prime contractor sends a letter to all active vendors reminding them of the company's policy on gratuities. The letter includes the following statement. G

"All * * * personnel are prohibited from accepting any gifts or favors and are required to return anything and everything they receive, whether it be received at work or at home. The value of the gift is not a criterion and all gratuities will be returned to the sender."

Officials of the prime contractor discussed above believe their program is effective because the gift offerings by vendors has almost stopped over the last 10 years, and they cited two examples of buyers who were alleged to have been receiving gratuities and whose employment was terminated. G

One of the subcontractors we contacted told us that gifts and gratuities of the type we noted during our review were tax deductible as business expenses. Generally entertainment expenses are deductible under the Internal Revenue Code when incurred in connection with or related to the production of income. Gifts and gratuities are also deductible as business expenses with the limitation that they not exceed $25 a person. Illegal payments, however, are not allowable business expenses under the Internal Revenue Code. Since it is difficult to prove that small-dollar-value gifts and gratuities such as we noted had influenced the award of subcontracts and therefore violated the Anti-Kickback Act, it appears that such gifts and gratuities could be claimed as business expenses for income tax purposes. H

CONCLUSION

We are concerned about gifts and gratuities that have been given to contractor and subcontractor employees who were in positions where they could influence contract awards to lower tier contractors. Because it is difficult to prove that the small-dollar-value gifts or gratuities we noted were given to influence the award of subcontracts, we plan to take no recoupment action under the Anti-Kickback Act. Nevertheless such gifts or gratuities, in our opinion, should be discouraged because they tend to promote favoritism in awarding Government subcontracts, particularly when a pattern of repeated gratuities or entertainment has been established, even though each individual instance may be of small value.

RECOMMENDATION

We recommend that, as a means of fostering public policy against improper or questionable practices, such as those discussed in this report; as a deterrent to such practices; and as a means of increasing the integrity of the Federal procurement process, the Secretary of Defense amend the Armed Services Procurement Regulation to require that in each negotiated Government contract a clause be included specifically prohibiting payments of gratuities by subcontractors to higher tier contractors involved in Government contracting.

The clause is intended to prohibit the payment of gifts and gratuities, regardless of whether a direct relationship between the payment and the specific contract award can be established. It is intended also to prohibit payments by subcontractors to higher tier contractors similar to those we noted during our review, since the clause does not require that it be shown that payments were made as an inducement for or as an acknowledgment of contract awards. Additionally the clause will provide for contract termination--a remedy which is not included in the Anti-Kickback Act but which is in furtherance of public policy against favoritism in awarding Government contracts and subcontracts. Finally the clause will require that violations or suspected violations of the Anti-Kickback Act be brought to the attention of appropriate Government officials.

We suggest that the clause be worded along the following lines, similar to the present contract clause prohibiting giving gratuities to Government employees.

PRIME CONTRACTOR-SUBCONTRACTOR GRATUITIES

"(a) No officer, partner, employee, or agent of the contractor or any tier subcontractor holding a contract, agreement, or purchase order to perform all or any part of the work required under a negotiated Government contract shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, fee, commission, or any other thing of monetary value from any officer, employee, or agent of a subcontractor at any tier which obtained, or is seeking to obtain, work under or related to Government contracts with the contractor or any higher tier subcontractor.

"(b) The Government may, by written notice to the contractor, terminate the right of the contractor to proceed under this contract if it is found, after notice and hearing, that gratuities, as described in paragraph (a) hereof, have been solicited or accepted.

"(c) If this contract is terminated as provided in paragraph (b) hereof, the Government can pursue the same remedies against the contractor as it could pursue if there were a breach of the contract by the contractor.

"(d) If the contractor has information of violations or suspected violations of this clause or of 41 U.S.C. 51, the contractor shall report the facts and circumstances to the appropriate Government contracting officials.

"(e) The contractor shall insert a similar clause establishing the right of the prime contractor or any subcontractor hereunder at any tier to terminate lower tier subcontracts if gratuities as defined in this clause are solicited or accepted."

Since the above clause does not make the payment of gratuities illegal and since it is difficult to prove such payments violate the Anti-Kickback Act or other laws, the Congress may want to consider action to make such payments clearly illegal by amending 41 U.S.C. 51-54 to prohibit such payments as those addressed by the clause or amending the Internal Revenue Code to prohibit deducting such

payments as business expenses when paid by a subcontractor to a higher tier Government contractor.

OVERALL EFFECTIVENESS OF PRIME CONTRACTOR PROCUREMENT SYSTEM

Our review of the procurement systems of four other prime contractors generally showed their purchasing policies, procedures, and internal controls were based on sound procurement principles. However, several areas needed attention. For example: (1) contractors generally compared past and current prices to measure the reasonableness of current prices for noncompetitive awards valued under $100,000 although conditions which could affect prices had changed since the past prices were established and (2) other weaknesses in procurement procedures and internal controls at individual contractors' plants, such as failure to consolidate purchase of low-dollar-value items, weakness in bid control procedures, and lack of controls over purchase orders. These areas are discussed in detail in appendix III.

GOVERNMENT SURVEILLANCE

Government surveillance of contractors' purchasing systems is done through annual contractor procurement system reviews, ongoing surveillance by administrative contracting officers, and periodic audits by defense contract auditors.

The Government's annual procurement system reviews are made for the administrative contracting officer to determine whether the contractor's procurement system and practices conform with applicable laws, Government procurement regulations, contract clauses, and sound industrial practices and adequately protect the Government's interests. A favorable determination results in system approval and, in most cases, elimination of the need for Government review and approval of individual subcontractors. Government procurement regulations require cognizant administrative contracting officers to maintain an adequate level of surveillance to insure that the contractor's procurement system continues to warrant an approved status.

Government surveillance regarding kickbacks was limited to determining the acceptability of the contractor's written policies on gifts and gratuities and ascertaining, through discussions with purchasing management, that the policy and the provisions of the Anti-Kickback Act had been made known to the purchasing organization and the vendor community.

If Government representatives detect a violation or suspect a violation of the Anti-Kickback Act, they are to refer the matter to higher headquarters for a decision on action to be taken, in accordance with procurement regulations.

In evaluating the overall surveillance of procurement activities at four contractor plants, we found that the contractors' systems had been reviewed and approved on the basis of recent procurement system reviews. Ongoing surveillance was generally restricted to required review and consent to specific types of subcontracts, and annual procurement system reviews were relied on to identify system weaknesses. C D E F

The weaknesses we noted had not been identified by either the ongoing surveillance or the periodic procurement system reviews.

RECOMMENDATION

We recommend that the Secretary of Defense direct procurement review teams, during their reviews of contractor procurement systems, to give greater attention to determining whether contractors are conducting adequate price-cost analysis for procurements under $100,000.

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We have discussed the matters presented in this report with local contractor and agency officials but, as your office requested, we have not submitted this report to the Department of Defense for formal written comment.

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made

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more than 60 days after the date of the report. We will be in touch with your office in the near future to arrange for copies of this report to be sent to the Secretary of Defense and the four other Committees to set in motion the requirements of section 236.

Sincerely yours,

Comptroller General
of the United States

APPENDIX I

APPENDIX I

PRIME CONTRACTOR-SUBCONTRACTOR RELATIONSHIPS

In reviewing the subcontracting activities of two prime contractors, where special attention was given to possible kickbacks, we found several questionable transactions and relationships.

PRIME CONTRACTOR EMPLOYEES PROVIDED GIFTS AND FREQUENT ENTERTAINMENT BY SUBCONTRACTORS

Following are examples of situations where subcontractors gave gifts or favors to the prime contractor employees.

Example 1

Two local subcontractors that made over 90 percent of their sales to a Government prime contractor frequently entertained selected employees of the prime contractor. Prime contractor records as of March 29, 1974, showed that these two subcontractors each held over 400 outstanding subcontracts, many more than most other subcontractors. The majority of the subcontracts had been awarded by buyers supervised by procurement employees who had been most frequently entertained. One subcontractor entertained three of the prime contractor's employees a total of 65 times in 1 year. The entertainment generally consisted of meals and drinks costing less than $25 each time.

The other subcontractor's records showed that the prime contractor's employees had been entertained 189 times during the 2-year period ended September 30, 1974. This entertainment, according to subcontractor records, generally consisted of meals and drinks. However, we found that this subcontractor also had (1) purchased an airline ticket that was used by a prime contractor employee and (2) loaned credit cards and a television set to a buying-group supervisor.

Example 2

A large subcontractor paid over $200 for gifts and gratuities for a prime contractor's buyer. The gifts and gratuities ranged from golf balls and green fees to an autographed football. During 1972 and 1973 the subcontractor was awarded subcontracts totaling more than $200,000 by this prime contractor.

The subcontractor told us that its policies and procedures on granting gifts and gratuities conformed to the Internal Revenue Service regulations. One Internal Revenue Service rule (regulation 1.274-3) allows firms to deduct the cost of business gifts to individuals not in excess of $25 a year. Regulations 1.274-2(c) and 1.274-2(d) allows firms to deduct the cost of entertainment directly related to or associated with the active conduct of a trade or business and directly before or after a bona fide business discussion when the purpose represents an active effort by the taxpayer to obtain income or some other business benefit.

Example 3

A subcontractor's sales representative entertained 13 employees of a prime contractor at a total cost of $431. Those entertained included the former and current directors of material, the manager of central procurement, a buyer, and an expediter. The entertainment included a night at a dinner theater for three employees and their wives and meals and drinks at various clubs and parties for them and for other employees.

Example 4

In February 1973 a prime contractor procurement official purchased a used tractor from the subcontractor providing groundskeeping services. He paid $450 for the tractor and other equipment. The tractor's needed repairs were made at a cost of $175, which brought his total investment to about $625.

Local farm implement dealers told us that the market value of a tractor in like condition was between $1,000 and $1,200 and one in good condition was about $1,700. Another official of the prime contractor told us that he did not believe there was a conflict of interest because the procurement official did not get a very good deal on the tractor and there was no indication that favoritism was shown in approving the 1973-74 award to the subcontractor.

RELATIONSHIP BETWEEN SUBCONTRACTORS AND SALES AGENTS

There are manufacturers' representatives, sales brokers, and engineering firms throughout the subcontracting structure, and generally they can provide good and valuable services to prime contractors and subcontractors.

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Armed Services Procurement Regulation 15-205.37 dated April 16, 1973, recognizes that selling costs arise in the marketing of the contractor's products and that these costs include sales promotions, negotiation, liaison between Government representatives and contractor's personnel, and other related activities.

The regulation states that the costs are allowable to the extent that they are reasonable and allocable to Government business. Allocability is to be determined in the light of reasonable benefit to the Government from such activities as technical, consulting, demonstration, and other services which are for such purposes as application or adaptation of the contractor's product to Government use.

We identified the following relationships between subcontractors to Department of Defense (DOD) prime contractors and sales agents that did not appear to benefit the prime contractor or DOD.

Example 1

A manufacturer's representative received $28,500 in commissions from a subcontractor on sales to a DOD prime contractor. The subcontractor increased the price it offered the prime contractor by an amount equal to the commission. Subcontractor officials told us that the commission was not for obtaining business solely with the prime contractor. The commission had been paid under an agreement with the manufacturer's representative who was to develop business for the subcontractor. Because the representative had not developed any business for the subcontractor except that with the prime contractor, the agreement had been terminated.

Example 2

A sales broker who had no plant or equipment had received subcontracts from first-tier subcontractors of a DOD prime contractor. For the one subcontract we were able to fully trace, the sales broker had immediately resubcontracted the entire order to an unqualified producer. The sales broker charged the first-tier subcontractor twice the actual producer's price, and the DOD prime contractor paid almost three times the actual producer's price.

OTHER QUESTIONABLE TRANSACTIONS AND RELATIONSHIPS

In reviewing prime contractor and subcontractor activities, we found a number of other questionable transactions and relationships.

Example 1

Two employees of a first-tier subcontractor to a Government prime contractor received about $6,500 in consultant fees from a surplus-parts dealer. The payments were made after a sale to the surplus dealer that was handled by one of the two employees. The sale involved surplus parts built to the prime contractor's specification. The sale price was $1,950 for parts having a current market value of about $190,000.

Neither the prime contractor nor the first-tier subcontractor has acknowledged that the sale resulted in a financial loss. However, the subcontractor dismissed the two employees shortly after we reported this matter to the subcontractor's management.

Example 2

A contract for servicing prime contractor vehicles was awarded without competition to a sales firm that represents a number of the prime contractor's suppliers. An official of the firm also owned and operated a service station.

The sales firm official said that he had contacted one of his friends, a procurement official of the prime contractor, about getting some vehicle maintenance business. This official referred him to a buyer who, in turn, referred him to the manager of transportation material. The sales firm official later received the contract.

The sales firm official later purchased jewelry having a catalog value of $80 at a 50-percent discount for the manager of transportation, the employee who approved most of the sales firm's vehicle maintenance. The employee reimbursed the sales firm for its cost of the jewelry.

This official is the same one mentioned in example 3 under "Prime Contractor Employees Provided Gifts and Frequent Entertainment by Subcontractors" on page 10 and in example 1 under "Relationship Between Subcontractors and Sales Agents" on page 11.

Example 3

A subcontractor, who had previously produced castings and who held the tooling under an earlier subcontract, had its low bid rejected on a follow-on requirement. Instead an award was made to another source whose price was about $14,000 higher.

The original subcontractor had tooling in its plant from the previous order and proposed to use this tooling to produce under the new order. The prime contractor's buyer told the original subcontractor that company engineers had said that the tooling in the subcontractor's plant could not be used and that he had therefore rejected the subcontractor's offer.

The subcontractor submitted a memorandum to the prime contractor's management concerning the award to another source. Following investigation of the matter by contractor employees, the award to the second source was terminated and an award was made to the original subcontractor. The subcontractor delivered the castings on schedule, and the prime contractor accepted them.

An official of the original subcontractor told us that he believed the buyer and an engineer had conspired to place the award with the other source because of a possible kickback. We do not, however, have any facts that indicate that prime contractor employees benefited from the award to the second source.

Example 4

A prime contractor's quality control official responsible for accepting material from suppliers established a company to test the hardness of metal fasteners purchased by his employer from these suppliers. This employee-owned company has been operating since 1969 and has earned about $58,000, most of which was generated from testing done for prime contractor suppliers. No lot of items tested by this company had ever been rejected by the prime contractor.

At the time this employee-owned company was established, the employee consulted management and they found no conflict of interest.

Example 5

In 1972 five subcontracts totaling $2,951 were awarded to a company whose principal stockholders were prime contractor employees. Four of these awards showed that company as the only suggested source; the awards were initiated in the department where two stockholders worked. The buyer who placed the orders told us that he had been unaware that prime contractor employees were stockholders in that company.

The prime contractor's legal counsel told us that the conflict of interest committee reviewed the above matter and ruled that the three employees had a conflict of interest. As a result the committee directed that these employees dispose of their interests in the supplier company. The disposal action was delayed because of financial problems, and it had not been completed at the close of our review.

KICKBACK CASES

One of the two prime contractors in this portion of our review acknowledged that it had been the victim of a kickback scheme some years earlier. The second contractor told us that it had recently referred a kickback allegation to the Department of Justice. During our review a major subcontractor developed evidence that it too had been the victim of a major kickback scheme. Brief synopses of these three cases follow.

CASE 1

A 1968 investigation by a prime contractor's security group and the Department of Justice developed allegations that 10 of the prime contractor's employees had received entertainment, gifts, transportation, and/or money from 12 subcontractor firms. One employee admitted receiving a total of about $6,037 in cash from three subcontractors; other employees admitted receiving tickets to sporting events, trips to resort areas, moving expenses, and frequent entertainment.

The employee who admitted receiving $6,037 and one of the presidents of a subcontractor firm who paid about $4,125 to him were later convicted of violations of the Anti-Kickback Act. The employee was fined $5,000; the subcontractor official was placed on probation for 13 months. Five prime contractor employees, including the one convicted, resigned or had their employment terminated. One of these is now employed by a subcontractor to the prime contractor.

In this case the subcontractor made payment to a fictitious firm established in the employee's wife's maiden name. These costs were passed on to the prime contractor as a part of the subcontractor's total price. Reportedly, the scheme was disclosed during bankruptcy proceedings for one of the subcontractors.

CASE 2

During 1973 a second-tier subcontractor to a Government prime contractor had been asked by a first-tier subcontractor to create a fund to be used to pay kickbacks to a prime contractor employee. The fund was to be created by increasing the amount of the second-tier subcontract by $5,000. The second-tier subcontractor refused to do so and reported the matter to the prime contractor.

Before we started our review, prime contractor officials had referred the case to the Department of Justice for investigation. The prime contractor's internal audit staff also investigated other subcontract awards to the first-tier subcontractor but did not make the results of its investigation available to us.

CASE 3

Late in 1974 an affiliate of a Government prime contractor serving as a first-tier subcontractor discovered that, of about $151,000 billed by and paid to a second-tier subcontractor, $125,000 represented duplicate billings. Another second-tier subcontractor was paying a 20-percent commission on sales made to the same affiliate. About one-half, or about $20,000, of the commission was paid to the affiliate's manager of subcontracts. The affiliate, dismissed nine employees who were directly or indirectly involved.

This matter was discovered as the result of an oral report to the affiliate's management by an informant and was later confirmed by one of the affiliate's cost accountants. This case had been referred to the Department of Justice, and it was actively investigating this case at the close of our review.

OVERALL EFFECTIVENESS OF

PRIME CONTRACTORS' PURCHASING SYSTEMS

SUBCONTRACTING VOLUME AND EXTENT OF COMPETITION

The amount of DOD procurement dollars awarded to prime contractors, which ultimately are passed on to subcontractors, is important. The ratio of subcontracting volume to total sales for the four DOD prime contractors whose subcontracting activities we examined during this review ranged from about 20 to 55 percent. In 1973 these prime contractors awarded subcontracts totaling approximately $540 million, including $210 million in subcontracts of less than $100,000 each. C D E F

At each of the four prime contractors, we examined about 100 procurement transactions totaling almost $50 million, of which $7 million worth were under subcontracts of less than $100,000. Our sampling showed that about 61 percent of the subcontracts had been awarded--83 percent of the dollars--noncompetitively. C D E F

EXTENT OF PRICE OR COST ANALYSIS
AT FOUR CONTRACTORS REVIEWED

Effective price competition assures that the prices obtained are fair and reasonable. However, in a noncompetitive environment other methods must be used to insure fairness and reasonableness of subcontract prices. The methods contractors use most often are price analysis and cost analysis. In certain situations, however, no analysis is deemed necessary because subcontractors are offering goods or services to the Government at the same prices they are offered to the public.

Price analysis involves examining and evaluating a prospective price without evaluating the separate cost elements and proposed profit of the prospective supplier whose price is being evaluated. In contrast cost analysis is much more thorough and involves reviewing and evaluating a contractor's cost or pricing data and the judgmental factors applied in projecting from the data to the estimated cost to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.

For subcontracts between $10,000 and $100,000, prime contractors generally used price analysis to measure reasonableness. The following table compares noncompetitive awards sampled at the four contractors and the methods used to analyze the prices.

Analysis	Number of orders	Total
Price	62	$2,579,381
Cost	6	268,246
None	39	1,229,320
Total	107	$4,076,947

For about half of the transactions, all that the prime contractors did in analyzing prices was compare proposed prices with previous prices. Further, in five instances the price analyses were made after the subcontracts were awarded--these analyses seem to have been a waste of time since in most cases the prices were already established. In the remaining sample of subcontracts where price analyses were made, the methods used for evaluating the reasonableness of proposed prices included comparison of proposed prices with competitive prices and with in-house technical or engineering estimates and comparisons based on buyers' or requesters' knowledge.

EXAMPLES OF POOR PRICE ANALYSES

A valid indication of the fairness and reasonableness of a proposed price can be obtained by comparing the proposed price with past prices when

--past prices were based on competition or were properly tested for reasonableness;

--other conditions affecting price, such as quality, quantity, and schedule, either remain unchanged or can be reasonably well identified and projected; and

--economic conditions remain stable.

When any of these three conditions is not met, additional price or cost information should be obtained to insure the reasonableness of the proposed price. Many subcontracts valued at less than $100,000 were awarded although these conditions were not met, and the only work done was a comparison between past and proposed prices.

Past price not based on competition

On August 13, 1973, a prime contractor awarded a noncompetitive purchase order totaling $60,815.65 for four different proprietary items, as shown below.

Description	Unit price
Coupling, half	$28.81
Coupling	24.61
Coupling	32.09
Coupling	34.90

The purchase order folio showed that, in evaluating the reasonableness of the quoted prices, the buyer considered the prices previously paid for four previous purchases of coupling halves and three previous purchases of couplings. We determined that the previous buys used in the comparison were also noncompetitive purchases from the same supplier. Detailed cost and pricing data was not requested for the August 1973 purchase. The buyer could not give us any additional factors he had considered in analyzing prices for this purchase. The prices were accepted without negotiation.

Quality, quantity, or schedule requirements changed

For a September 1973 procurement totaling $83,153, a prime contractor compared the unit prices of production hardware with prices paid in June 1973 for engineering hardware, as shown below.

Proposed procurement		Previous procurement	
Quantity	Unit price	Quantity	Unit price
11	$680	1	$405
6	605	2	322
7	605	2	322
19	233	4	50
19	510	3	239
16	510	6	239

In addition, the proposed procurement included $45,531 for testing and data costs for production hardware compared with $15,670 for a previous procurement of engineering hardware. The buyer did not evaluate the difference in prices. Increasing the quantity and moving into production from engineering development generally should result in a reduced unit price. The prices in this case, however, were higher than the engineering hardware prices.

Changed economic conditions

On September 11, 1973, a $38,855 noncompetitive, sole source purchase order for actuator cylinders was awarded to a supplier which was the only established, qualified source.

The price analysis consisted of comparing the proposed price with previous prices. This comparison showed the proposed unit price of $1,850.23 to be more than double the latest purchase price of $922.74. The supplier justified the increase on the basis that negotiations in 1966 were based on large lot runs and that the actual orders received had been in lots of one, five, etc. The supplier concluded that actual cost data showed the part had been a source of profit erosion and that it was necessary to raise the price. There were no negotiations, and the price was accepted.

The purchase history record of this item showed no attempts to analyze the reasonableness of the price increase.

No price-cost analysis before subcontract award F

At one contractor location, we identified 19 noncompetitive procurements totaling $1,001,000, for which required analyses were not made before contract negotiations and award. In 7 cases no analyses were made; in 12 cases analyses were made after negotiations and award. These procurements were identified through random and judgmental selections of procurements.

We compared the negotiation records for the 19 procurements with the sample procurements over $100,000 whose prices were analyzed before award and found that subcontract prices over $100,000 had been reduced by more than 10 percent and the 19 awards by only 0.1 percent.

	Results of negotiation	
	With price-cost analysis (over $100,000)	Without price-cost analysis ($10,000 to $100,000)
Proposed price	$8,049,878	$1,002,068
Negotiated price	7,220,792	1,000,937
Negotiated reduction	$ 829,086	$ 1,131
Percent reduction	10.3	0.1

One explanation for the greater negotiation success with contracts over $100,000 was the contractors' obtaining certified cost data from subcontractors and determining reasonableness of price through cost analysis.

OTHER WEAKNESSES IN CONTRACTORS' PURCHASING SYSTEMS

Certain other matters needed attention for improved purchasing efficiency and control.

Failure to consolidate buys of low-dollar-value items

The procedures used at two contractor locations did not encourage consolidating low-dollar-value procurements. The way they were procuring low-dollar-value items resulted in (1) the avoidance of required procedures on competitive purchases and (2) costly administrative expenses which could be disproportionate to the value of the items purchased. C F

Weaknesses in bid control procedures

At two contractor locations procedures for controlling incoming supplier quotations were weak and could possibly lead to bid manipulations. At each location bids were given directly to the buyers and were not recorded at the time of receipt by an independent unit. C D

Lack of control over purchase orders

One contractor had a lack of control over purchase orders. Under the contractor's purchasing system, the same numbered document was used as both the purchase requisition and purchase order. The system entailed assigning blocks of purchase requisitions-purchase orders to the functional departments throughout the plant. This procedure resulted in purchase requisitions-orders arriving in the procurement department out of numerical sequence. Complicating the problem, the contractor did not keep a purchase order register. C

Lack of management awareness of single/sole-source procurements

One contractor's procurement officials were not preparing a monthly single/sole-source report to the director of procurement, contrary to the contractor's regulations. The report was to insure compliance with the contractor's intent to reduce noncompetitive procurements. We found that 62 of 102 purchase orders had been awarded noncompetitively. C

Misleading and erroneous data in contractor procurement files

At one contractor location misleading procurement data in contractor files created an erroneous impression concerning the sequence in which purchase orders were awarded and F

analyzed. Documents in procurement files relative to 7 of the 19 procurements we identified as being placed before price-cost analyses by the responsible department (see p. 20) gave the impression that the analyses had been made before the orders were placed. Two purchase order dates had been changed, four purchase orders were postdated, and one price-cost analysis report date was changed by the buyer.

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We brought the matters discussed in this appendix to the attention of the responsible contractor officials at the close of our review. In most cases the contractors had taken or were considering corrective actions.

Chairman PROXMIRE. Our next witness is Mr. Ralph Nader.

We are honored to have Mr. Ralph Nader this morning, and Mr. Mark Green, who is the director of research, the Corporate Accountability Research Group, who also has done work in preparation of this statement.

Mr. Nader, go right ahead.

STATEMENT OF RALPH NADER, CONSUMER ADVOCATE, ACCOMPANIED BY MARK GREEN

Mr. NADER. Mr. Chairman, thank you for your invitation to discuss the subject of corporate corruption.

Not perhaps since the robber baron era, and certainly not since the 1930's—when New York Stock Exchange president, Richard Whitney was convicted of stock theft and utility mogul Samuel Insull escaped prosecution by fleeing abroad dressed as a woman—has America witnessed such an epidemic of corporate crime.

Indeed, the developments and disclosure relating to corporate crime in recent weeks have reached an all-time peak.

The evidence to support this claim of an epidemic of corporate crime appears daily on newspaper business pages and front pages. Indeed, reading the Wall Street Journal, it is as if you were reading the Crime Street Journal.

Lockheed acknowledges giving out $202 million between 1970 and 1975 in payoffs to foreign politicians, parties and agents in order to win overseas contracts. Gulf Oil makes a $4 million bribe to South Korean officials, and hands out $5 million in illegal political contributions in this country. United Brands gives a $1.3 million bribe to Honduran officials in exchange for a reduction in its export tax on bananas.

The following corporations have admitted to making an illegal campaign contribution or paying a bribe to a foreign agent or official, as of October 27, 1975: American Airlines, American Ship Building, Ashland Oil, Braniff Airways, Carnation, Diamond International, Exxon, Goodyear Tire & Rubber, Greyhound, Gulf Oil, Lockheed, Mercantile Trust, 3M, Northrop, Phillips Petroleum, Singer, American Home Products, Cities Service, Del Monte, Merck & Co., Mobile Oil, Monsanto, Occidental Petroleum, Southwestern Bell Telephone, and United Brands.

Aerospace firms seeking Pentagon contracts have lavished valuable benefits on procurement officials; for example, Northrop had Defense Department personnel to its duck hunting lodge 144 times between 1971 and 1973, thereby violating Executive order 11222 which forbids Government employees from accepting anything of value from companies seeking business with their department.

I submit, Mr. Chairman, that these revelations reflect a far more pervasive interlock between Government officials engaged in the procurement business and defense contractors.

The question now needs to be probed as to whether there is not significant delegation of foreign policy and military policy activities to these defense contractors, since it is relatively easy over a period of 5 or 6 years to syphon away for unaccounted activities hundreds of millions of dollars in defense appropriations. Indeed, one Government official, when he was asked, is it possible for about $3 billion in the

last 6 to 7 years to be syphoned away for illicit activities by the defense contractors without detection, that Government official said, yes, over a 6-year period. It is done by inflated defense contracts and all the mumbo-jumbo in the financial relationships between the agencies and the defense contractors this committee has been looking into for sometime.

So it is not merely a little payola or a few duck hunting lodges, these are the kind of surface superficialities of a much more intensive interlock system which is also made more persuasive by the practice of Defense Department officials or military officials going into the defense contract companies after retirement.

The Watergate Special Prosecutor has obtained convictions of or guilty pleas from 22 corporations and 21 individuals. Newsweek reported that, although the Special Prosecutor has evidence to move against "hundreds" of firms, it had to drop these cases when Congress recently shortened the statute of limitations.

One might add that these convictions or guilty pleas are only a few of the many that could have been obtained if there was an adequate prosecutoral resource and tenure to the Watergate Special Prosecutor or any other similar Justice Department unit. The fact of the matter is that the Justice Department has been expending the huge bulk of its funds in the area of crime in the streets. However ineffective the expenditure of these funds has been, particularly under LEAA, very little has been expended on corporate economic crimes or crimes involving Government-corporate relationships. Indeed, most Federal prosecutors shy away from these kind of prosecutions. For one reason, they are extremely time consuming or complex, because the defendants usually have the most imaginative corporate lawyers representing them. The evidential problems are significant as well because of the diffusion and secrecy of the corporate structure.

So we are looking at the tip of the iceberg in the sense that this is what has come forward with the most miniscule of Federal prosecutorial resource and efforts.

The Securities and Exchange Commission has successfully sued nine companies for failing to disclose illegal foreign bribes or domestic contributions. The Internal Revenue Service is currently auditing the books of 110 companies for illegal deductions related to such payoffs. Attorney General Edward Levy acknowledged in an October 9 letter to us that his Department was conducting "in excess of 50 investigations in the area of illegal political contributions."

Of course in today's paper there was the announcement that there wil be set up a public integrity office in the Justice Department to deal with Government or political corruption, which very often involves corporate payoffs and other extended temptations.

Are all these, at worst, just a clutch of rotten apples—or is much of the business barrel rotten? It is, of course, impossible, given present data collection systems, to conduct a scientific "corporate crime prevalency study"; we only know of firms publicly exposed, since other culpable companies do not volunteer their guilt. Still, the presumption is strong that these illegal practices are common. First of all, where illegal bribes and payoffs amount to competitive advantage in a particular industry, that competitive advantage is either going

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to squeeze out the more honest competitors, or it is going to induce the more honest compeitors to take up these illicit or nefarious practices. In short, bad business activities run out good business activities much as Gresham's law would do in the monetary area.

One businessman, for example, told me that it was almost impossible for him to compete in his particular area of business because intercorporate bribery between buyers and sellers was so extensive. Indeed, this problem of interbusiness payoffs, which has hardly been touched in the last few years of disclosures, is probably the next dimension of inquiry by interested Government prosecutors. In the procurement business alone, for example, if one company is a big buyer of a commodity and several companies are bidding for that business, the temptations for these kinds of payoffs are greater than those that occur in Government procurement areas affecting private contractors.

Many of the most important and established corporations in the country were involved, I am referring to the specific disclosures in corporate crimes—firms no more or less prone than others to prevailing political and commercial pressure. These companies involve such diverse industries as aerospace, food processing, oil, sewing machines, airlines, banking and office supplies. In the early 1960's, W. K. Whiteford, then Gulf Oil chairman, reportedly talked "to top management of some other major oil companies and learned that all of them had setup arrangements" similar to Gulf's illegal payoffs system—according to the company's own internal report. When Archie Carroll of the University of Georgia surveyed 238 business managers last year, 60 percent agreed that the go-along ethic of CREEP's junior members "is just what young managers would have done in business." When the American Management Association surveyed 3,000 business executives, 70 percent said they had been expected to compromise personal principles to attain organizational standards. A survey of 531 top and middle managers by the Opinion Research Corp. in July 1975 found 48 percent agreeing that foreign bribes should be paid if such practices were prevalent—even though illegal—in that foreign country.

I might add that there is some vociferous business dissent to this type of behavior. One particular article by Stanley Marcus, the head of Neiman Marcus, which appeared in the New York Times recently strongly dissented from this type of conforming criminal behavior.

Otherwise, in the pure pursuit of pure profits, anything goes—law and ethics notwithstanding. All of which makes understandable the grim conclusion of former SEC Chairman Ray Garrett, Jr. that "This is bribery, influence peddling and corruption on a scale I had never dreamed existed."

Indeed, the justification of many exposed executives was that "everyone does it." This and other rationales for recently disclosed illegality deserve examination.

Point 1. Payoffs are common practice abroad—perhaps common practice, but still illegal in virtually all countries. When some businessman says that it is common practice abroad, that does not mean that it is legal abroad. That X can always cite a Y who violates the law can hardly exculpate X's illegality—unless law enforcement is to sink to the lowest common denominator—or in special circumstances, for example, where the arbitrary enforcement of the law on less than

1 percent of the subjects betrays the kind of political persecution, or a gross negligence in enforcing the law on 99 percent of the subjects. And that can raise unequal protection claims under the U.S. Constitution. But this is certainly not that situation.

Another defense by the culpable companies is that what they do doesn't violate U.S. law, what they do abroad.

Title 18 of the United States Code does not explicitly prohibit foreign bribes—an omission which should be corrected—but such activity can still violate U.S. law. Many firms took deductions for such payments, although the IRS forbids deductions for activities abroad which would be illegal here. Also, the Federal Trade Commission, outgoing Chairman Lewis Engman told us, is investigating whether such activity discriminates against competitors who don't bribe—and hence is an "unfair trade practice" under section 5 of the FTC Act. He told us this about 2 months ago, so perhaps, Mr. Chairman, you might want to inquire of the FTC as to the status of this investigation. This is a potentially very powerful tool indeed, because if these payoffs can be considered unfair trade practices, they can be brought in under another inforcement umbrella for action and for possible damage payment to the damaged parties.

Another defense by the corporations is that payoffs are necessary to protect properties. Gulf Chairman Bob Dorsey explained that his firm's $4 million payment to the South Korean ruling party seemed essential to protect his company's $300 million investment there. But, to take this example, would an ally so militarily dependent on the United States cavalierly damage the interests of a major American firm? When subsequently asked in Senate hearings why he didn't go to the State Department to protest extortionate pressure, Dorsey replied, "It never occurred to me."

Mr. Dorsey just resigned from the chairmanship of the Gulf Oil Co.

Actually, payoffs can jeopardize properties—as Gulf should be well aware. After making $350,000 in payments to Bolivian officials, a new regime, as a result, expropriated Gulf's holdings and is now withholding the firm's $57 million indemnity. New governments can predictably want to retaliate against American firms who corrupted earlier officials.

Another defense by the company is we did it for our shareholders. This view is extremely shortsighted. A company may indeed persuade itself that only payoffs can win a lucrative contract, but what of the potential longrun costs. An extortionist invariably comes back for more, and other officials may make additional demands when they perceive a company is known to be responsive. There is the risk of local law enforcement—an ITT director was convicted in Belgium of bribing a high official for an equipment contract—and the risk of exposure in the United States, with adverse publicity and SEC, Justice Department, IRS and shareholder suits ensuing. One can hopefully assume that 3M, Northrop, and Phillips Petroleum, if they could do it all again, wouldn't.

And there is the claim by the corporate defendants that recent business violations result from too many laws. No, this is not an Art Buchwald parody but the earnest claims of Murray Weidenbaum and

the Wall Street Journal. According to Mr. Weidenbaum, a former Assistant Secretary of the Treasury, "the fundamental cause of the lawbreaking can be seen to be the tremendous and often arbitrary power that the society has given the Federal Government over the private sector." The Wall Street Journal editorialized that recent disclosures "in part reflect the number of new laws, inspired partly by folks like Mr. Nader and Mr. Udall, that businessmen can potentially run afoul of." Laws like those against foreign bribes, domestic payoffs, pollution, monopoly and continual tax evasion? Are Weidenbaum and the Journal serious? Their logic has some interesting applications: The only thing wrong with serious consumer fraud or wife beating are those bothersome consumer protection and assault laws. This view is—there is no kinder way to describe it—nonsense. These illegal activities that we are referring to are not mere technical violations resulting from honest error, they are not these honest error type situations which any company or many individuals could run afoul of under the matrix and complexity of laws in the country. These illegalities are serious systematic deliberate violations of basic legal prohibitions, most often by high corporate officials, or under the condoning of high corporate officials.

Finally, the argument that commercial pressure compels all corporations to pay off foreign agents is simply not true. Fortune has reported that RCA and Xerox have a strict policy against such practices, they believe it is both moral and feasible to say no.

I am going to summarize the rest of the testimony, Mr. Chairman. I would like the entire testimony to be included in the record.

Chairman PROXMIRE. Without objection it will be done.

Mr. NADER. The costs of corporate crime—not only foreign bribes and domestic contributions, but also regulatory violations, antitrust violations, and financial swindles—are huge. The chamber of commerce in 1972 estimated that white-collar crime costs Americans $40 billion annually. That estimate deals very heavily with internal corporate violations like embezzlement and internal employee theft and the like. It does not include antitrust violations, which amount to tens of billions of dollars more every year. The electoral machinery bid rigging cases of 1961 stole more from consumers via price overcharges than all the property crimes, street property crimes, that is, for that year combined.

Finally, there is the political toll of business violations kickbacks and bribes abroad that can distort foreign national priorities to accommodate American companies. One can only guess how policy has been perverted as a result of political bribes and payoffs. But what was the purpose of all that Gulf cash in blank envelopes if not to shape or misshape legislation in its favor? Here the line between an outright bribe to fix the Congressman's vote and an illegal contribution is thin if not nonexistent.

Many of the costs of corporate crime have been underplayed by scholars and practitioners in the criminal law enforcement area. Indeed, one scholar, Prof. James Wilson of Harvard, pointed out in one of his books that street crime is so much more serious than business crime because it makes personal interrelationships almost impossible. Well, without in any way denigrating the tragedy of street crime, Mr.

Chairman, consider what kind of relationships business crime makes impossible, like physical injury or even death can come from tainted foods or harmful drugs sold in violation of the Poor Food and Drug Act. Financial losses produced often cripple a family's entire savings, financial losses caused by the swindles that have been brought to the attention of State attorneys general throughout the country, or by the frauds that violate the rules of the Securities and Exchange Commission, or the erosion of a family's income by the sale of goods based on misrepresentation or antitrust violations, or the damage that business crime does to the Nation's social, economic and political institutions. Restraint of trade tends to undermine the principles of free enterprise that the antitrust laws are intended to protect. Brought all together, crime in the suites, crime at the highest levels of these corporate institutions, has a rotting effect through the society. Society is very much like a fish in this respect, it rots from the head down.

Federal agencies seem to agree here with those commentators who think that concentration should be heavy on street crime, often at the expense of corporate crime. Perhaps because of the lack of public outrage over the invisible or unfocused tolls of corporate crime, Federal law enforcers have made business crime a low priority. In a November 1975 report, Paul J. Curran, the outgoing U.S. attorney for the southern district of New York, complained that "except for the Securities and Exchange Commission and the Internal Revenue Service, which operate in fairly narrow areas, the Federal agencies responsible for investigating these (white-collar crime) cases are simply not doing the job." Until the creation of the Watergate Special Prosecutor, the Justice Department had almost never moved against illegal business contributions to political figures. At present, there is not even a reporting category for business crime in the FBI's detailed annual compendium, "Crime in the United States"—although there are 27 other categories. The hundreds of millions spent on local law enforcement by the Law Enforcement Assistance Administration goes largely for more armaments and equipment to fight street crime—with barely traceable amount applied to white-collar crime. The Defense Department has for years tolerated or winked at foreign bribes; its recently disclosed memorandum, "Agents' Fees in the Middle East," acknowledges the existence of agents' fees, a euphemism for bribes, of at least 4 to 6 percent on arms contracts.

The exposure of corporate crime must rest on more than the confluence of the events surrounding Watergate. And the way to deter such violations requires more than the existing insubstantial penalties.

You indicated in your invitation, Mr. Chairman, that you wanted some recommendations about what can be done about these corporate crimes. One way to deter such violations requires more than the existing insubstantial penalties. Fines imposed by judges in antitrust cases almost invariably are insignificant compared to the amounts illegally garnered. The SEC and Antitrust Division often conclude their cases with consent decrees by which defendants deny they violated the law but promise to obey it in the future—an obligation they presumably labored under before the decree was signed. Since the companies recently prosecuted for illegal contributions paid an average fine of $7,000, and earned an average $77,000 a minute, it took

each about 6 seconds to pay their debt to society. A survey by New York Times reporter Michael Jensen found that "most of the 21 business executives who admitted their guilt to the Watergate Special Prosecutor in 1973 and 1974—especially those from large corporations—are still presiding over their companies * * * only two went to jail. They served a few months and were freed. Most are still ensconced in their paneled corporate offices with platoons of lawyers and public relations men at their disposal."

With these failures in mind, any program of sanction and deterrence must appreciate the two special qualities of corporate crime. First, unlike the tempestuous and treacherous spouse or the impoverished and desperate mugger, suite criminals are sophisticated and deliberative businessmen who engage in crime after carefully calculating the benefits and costs. And second, as law professor Christopher Stone has written in "Where the Law Ends," "We have arranged things so that the people who call the shots do not have to bear the full risks," that is, it is difficult to pinpoint and punish individual violations within that collective body called the corporation.

If the likelihood of personally getting caught and the penalties for getting caught are sufficiently great, potential business law violators should be able to literally calculate that crime does not pay. That is a traditional recommendation, Mr. Chairman. Let's go on to some others.

Ideally, the Justice Department should create a separate division on corporate crime. This division should be delegated authority to investigate and prosecute a wide range of business crimes, from mail fraud to regulatory offenses to the illegal distribution of political contributions or bribes, here and abroad, by corporate officers or their agents.

Next, it should be evident that foreign or domestic bribes are an "unfair trade practice" under the Federal Trade Commission Act. And that was pointed out earlier in my testimony as a new avenue to improve the efficacy of law enforcement.

Furthermore, given the reality that our prisons are places of cruelty and breeding grounds for recidivism, serving time does not often lead to rehabilitation. Still, it is discriminating to send pickpockets and checkbouncers to prison but not convicted businessmen. One survey indicated that 16 percent of those guilty of securities fraud actually go to jail while 71 percent of those convicted of auto theft do. In the first 82 years of the Sherman Act, which is both civil and criminal, there were only four instances when businessmen actually went to jail for their criminal violations; in hundreds of other cases, sentences were suspended.

I might add, Mr. Chairman, that probably one of the best techniques for prison reform is to make sure more corporate criminals end up in prison. They wouldn't stand for the conditions. And they often become reformers after they have left their incarceration and returned to civil society.

So that punishment falls on those individuals responsible, corporate officers convicted of willful corporate related violations should be disqualified from serving as a corporate officer or director in any American corporation or partnership for 5 years after conviction, guilty plea or

nolo contendere plea. This is only logical. One does not reemploy an embezzler as a bank teller. Union officials under the Landrum-Griffin Act and broker-deaers under securities laws can be similarly suspended for pertinent violations. There are many positions available in a company for such a corporate law violator other than management or the board, which are peculiarly positions of major trust.

Furthermore, fines should be calibrated to the size of the firm and the "size" of the violation. Business crime has its own cost curve. If companies are punished with penalties which are the equivalent of wrist slaps, the result is predictable. If we make the cost of a conviction sufficiently high, it should discourage many violations which now are profitable to pursue. And a violation by GM—given the firm's resources and impact—should not be penalized the same as Mrs. Smith's Pie (Fortune's 833d industrial firm). Instead of absolute fines, there would be percentage fines based on gross sales—so the fine would fit the crime.

We are elaborating all of these sanctions, Mr. Chairman, in a report which we will release next week on the case of Federal chartering of joint corporations.

There is also the problem of how to deal with corporations which repeatedly violate the law. In addition to percentage fines, penalties for a particular law violation should increase for corporate recidivists—since by definition the company has not been successfully deterred. For example, if a firm violated the Sherman Act or antibribery statute three times in 3 years, the percentage fine for its third offense would be greater than for its first offense.

Finally, defendants in cases of corporate wrongdoing are often enjoined from future violations, but are almost never required to pay restitution. Shareholder suites may seek and obtain restitution, though this does not invariably occur. These are very arduous suits to bring and conclude successfully. Ideally, agencies like the SEC and Justice Department, as a part of any relief, should insist on restitution being made by those culpable to their victims or their company.

Autocratic chief executive officers, whose handpicked "inside directors" dominate their boards of directors, lack the kind of external accountability that encourages responsible and lawful decisionmaking. Instead, boards of directors should monitor and oversee executive decisionmaking. And those boards should be filled with full-time outside directors.

Company indemnification and isurance plans often provide for reimbursement to officials who plead nolo contendere in criminal cases or who are found liable in, or agree to settle, a civil lawsuit—if they thought they were acting "in the best interests of the company." These cushions against personal accountability for illegality contribute to the managerial feeling of being above the law. So that responsible businessmen feel the sting of personal sanctions, such provisions should be prohibited.

This committee could perform a valuable function by advocating that Federal agencies maintain and release regular compliance reports. The public may occasionally learn of a regulatory violation by a company, but nowhere is there a systematic report on the level of violations and resources in particular areas. For example, a com-

pliance report could contain the following: The laws enforced by the agency, the resources given it, and the remedies available to it—for example, recall, repair, fines, warning letters, referrals to Justice for prosecution, and so forth; a list by company of each violation established and the corrective action required and taken; a statement of what additional tools are needed—for example, subpena staff—for the agency to perform its mission adequately; an analysis of priorities for compliance activities and how they are determined; an analysis of the cost to citizens and the economy of the level of violations uncovered and the cost of the level of estimated violations.

With such information altogether in one report, Federal regulators and their congressional monitors can better appreciate the costs of regulatory violation and better deter them. As in so many other areas of Government regulation over business, knowledge is power and a prerequisite to fair enforcement of the laws.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Nader follows:]

PREPARED STATEMENT OF RALPH NADER

Mr. Chairman, thank you for your invitation to discuss the subject of corporate corruption.

Not perhaps since the robber baron era, and certainly not since the 1930s—when New York Stock Exchange president Richard Whitney was convicted of stock theft and utility mogul Samuel Insull escaped prosecution by fleeing abroad dressed as a woman—has America witnessed such an epidemic of corporate crime.

The evidence to support this claim appears daily on newspaper business pages and front pages. Lockheed acknowledges giving out $202 million between 1970 and 1975 in payoffs to foreign politicians, parties and agents in order to win overseas contracts. Gulf Oil makes a $4 million bribe to South Korean officials, and hands out $5 million in illegal political contributions in this country. United Brands gives a $1.3 million bribe to Honduran officials in exchange for a reduction in its export on bananas.[1] Aerospace firms seeking Pentagon contracts have lavished valuable benefits on procurement officials; for example, Northrop had Defense Department personnel to its duck hunting lodge 144 times between 1971 and 1973, thereby violating Executive Order 11222 which forbids government employees from accepting anything of value from companies seeking business with their department.

The Watergate Special Prosecutor has obtained convictions of or guilty pleas from 22 corporations and 21 individuals. (*Newsweek* reported that, although the Special Prosecutor has evidence to move against "hundreds" of firms, it had to drop these cases when Congress recently shortened the statute of limitations.) The Securities and Exchange Commission has successfully sued nine companies for failing to disclose illegal foreign bribes or domestic contributions. The Internal Revenue Service is currently auditing the books of 110 companies for illegal deductions related to such payoffs. Attorney General Edward Levy acknowledged in an October 9th letter to us that his department was conducting "in excess of 50 investigations in the area of illegal political contributions."

Are all these, at worst, just a clutch of rotten apples—or is much of the business barrel rotten? It is, of course, impossible to conduct a scientific "corporate crime prevalency study"; we only know of firms publicly exposed, since other culpable companies do not volunteer their guilt. Still, the presumption is strong that these illegal practices are common. Many of the most important and es-

[1] The following corporations have admitted to making an illegal campaign contribution or paying a bribe to a foreign agent or official, as of October 27, 1975. (*See*, Investor Responsibility Research Center, *The Corporate Watergate* (October, 1975): American Airlines, American Ship Building, Ashland Oil, Braniff Airways, Carnation, Diamond International, Exxon, Goodyear Tire & Rubber, Greyhound, Gulf Oil, Lockheed, Mercantile Trust, 3M, Northrop, Phillips Petroleum, Singer, American Home Products, Cities Service, Del Monte, Merck & Co., Mobil Oil, Monsanto, Occidental Petroleum, Southwestern Bell Telephone, and United Brands.

tablished corporations in the country were involved, firms no more or less prone than others to prevailing political and commercial pressure. These companies involve such diverse industries as aerospace, food processing, oil, sewing machines, airlines, banking and office supplies. In the early 1960s, W. K. Whiteford, then Gulf Oil chairman, reportedly talked "to top management of some other major oil companies and learned that all of them had set-up arrangements" similar to Gulf's illegal payoffs system—according to the company's own internal report. When Archie Carroll of the University of Georgia surveyed 238 business managers last year, 60 percent agreed that the go-along ethic of CREEP's junior members "is just what young managers would have done in business." When the American Management Association surveyed 3000 business executives, 70 percent said they had been expected to compromise personal principles to attain organizational standards. A survey of 531 top and middle managers by the Opinion Research Corporation in July, 1975 found 48 percent agreeing that foreign bribes should be paid if such practices were prevalent (even though illegal) in that foreign country.

In other words, in the pure pursuit of pure profits, anything goes—law and ethics notwithstanding. All of which makes understandable the grim conclusion of former SEC chairman Ray Garrett, Jr. that "This is bribery, influence-peddling and corruption on a scale I had never dreamed existed."

Indeed, the justification of many exposed executives was that "everyone does it." This and other rationales for recently disclosed illegality deserve examination.

Payoffs are common practice abroad.—Perhaps common practice, but still illegal in virtually all countries. That X can always cite a Y who violates the law can hardly exculpate X's illegality—unless law enforcement is to sink to the lowest common denominator.

They don't violate U.S. law—Title 18 of the U.S. Code does not explicitly prohibit foreign bribes—an omission which should be corrected—but such activity can still violate U.S. law. Many firms took deductions for such payments, although the IRS forbids deductions for activities abroad which would be illegal here. Also, the Federal Trade Commission, outgoing chairman Lewis Engman told us, is investigating whether such activity discriminates against competitors who don't bribe—and hence is an "unfair trade practice" under Section 5 of the FTC Act.

Payoffs are necessary to protect properties.—Gulf chairman Bob Dorsey explained that his firm's $4 million payment to the South Korean ruling party seemed essential to protect his company's $300 million investment there. But, to take this example, would an ally so militarily dependent on the U.S. cavalierly damage the interests of a major American firm? When subsequently asked in Senate hearings why he didn't go to the State Department to protect extortionate pressure, Dorsey replied, "It never occurred to me." Actually, payoffs can jeopardize properties—as Gulf should be well aware. After making $350,000 in payments to Bolivian officials, a new regime, as a result, expropriated Gulf's holdings and is now withholding the firm's 57 million indemnity. New governments can predictably want to retaliate against American firms who corrupted earlier officials.

We did it for our shareholders.—This view is extremely short sighted. A company may indeed persuade itself that only payoffs can win a lucrative contract, but what of the potential long run costs? An extortionist invariably comes back for more, and other officials may make additional demands when they perceive a company is known to be responsive. There is the risk of local law enforcement—an ITT director was convicted in Belgium of bribing a high official for an equipment contract—and the risk of exposure in the U.S., with adverse publicity and SEC, Justice Department, IRS and shareholder suits ensuing. One can hopefully assume that 3M, Northrop and Phillips Petroleum, if they could do it all again, wouldn't.

Recent business violations result from too many laws.—No, this is not an Art Buchwald parody but the earnest claims of Murray Weidenbaum and the Wall Street Journal. According to Mr. Weidenbaum, a former Assistant Secretary of the Treasury, "the fundamental cause of the law-breaking can be seen to be the tremendous and often arbitrary power that the society has given the Federal Government over the private sector." The Journal editorialized that recent disclosures "[i]n part [reflect] the number of new laws, inspired partly by folks like Mr. Nader and Mr. Udall, that businessmen can potentially run afoul of." Laws like those against foreign bribes, domestic payoffs, pollution, monopoly

and continual tax evasion? Are Weidenbaum and the Journal serious? Their logic has some interesting applications: the only thing wrong with serious consumer fraud or wife-beating are those bothersome consumer protection and assault laws. This view is—there is no kinder way to describe it—nonsense.

Finally, the argument that commercial pressure compels all corporations to pay off foreign agents is simply not true. Fortune has reported that RCA and Xerox have a strict policy against such practices. Father Theodore Hesburgh reported that one U.S. company told a Latin American finance minister it "would not pay one cent in mordita [bribes], take it or leave it. The government took it. . . . Everybody's happy except some of those sleazy characters who aren't being paid off." An Arab businessman told the Washington Post that Nestles, a Swiss multinational corporation, dominates the processed food market in many Arab countries even though it refuses to pay agents' commissions. "If the [other U.S. and European companies] stood firm, they could end the payoff system quickly," he said.

Thus, it is both moral and feasible to say "no."

The costs of corporate crime—not only foreign bribes and domestic contributions, but also regulatory violations, antitrust violations, and financial swindles—are huge. The Chamber of Commerce in 1972 estimated that white collar crime costs Americans $40 billion annually—a figure which does not include antitrust violations. The electrical machinery bid-rigging cases of 191 stole more from consumers via price overcharges than all property crimes for that year combined. It was a successful patent and price conspiracy which raised the price of 100 tetracycline antibiotic capsules to $51 (it dropped to $5 after an FTC enforcement action) and another criminal agreement raised the price of guinine, needed largely by elderly people for heart ailments, by more than 300 percent. The IOS and Equity Funding scandals each involve over a quarter billion dollars in outright fraud. "Business crime imposes three kinds of costs on society," said the President's Commission on Law Enforcement and the Administration of Justice in *The Challenge of Crime in a Free Society*.—It continues:

"(1) First, physical injury or even death can come from tainted foods and harmful drugs sold in violation of the Pure Food and Drug Act, foods sold in violation of the Pure Food and Drug Act, foods sold in violation of local health laws, and various violations of safety laws and housing codes.

"(2) Second, financial losses are produced, for example, by the marketing of worthless, defective, or injurious products in violation of Post Office Department regulations, by frauds that violate the rules of the Securities and Exchange Commission, and by the sale of goods based on misrepresentation in advertising.

"(3) Third, [there is] the damage it does to the Nation's social, economic, and political institutions. Restraint of trade tends to undermine the principles of free enterprise that the antitrust laws are intended to protect."

The New York Times, editorializing about this last point on July 20, 1975, concluded that illegal business payments lead to "the present atmosphere of public cynicism and distrust toward business . . . if it is permitted to continue, [it] could in the end be the death of the free enterprise system. . . . Business's own conduct will in large part determine the outcome."

Finally, there is the political toll of business violations. Kickbacks and bribes abroad can distort foreign national priorities to accommodate American companies. As Senator Frank Church commented to a Lockheed official in hearings before his Multinational Subcommittee, "If you base your sales on payoffs to government officials and make them rich, then you force these governments in the direction of military purchases, when other purchases might be far more beneficial to them and to their people." And domestically, one can only guess how policy has been perverted as a result of political bribes and payoffs. But what was the purpose of all that Gulf cash in blank envelopes if not to shape, or misshape, legislation in in its favor? Here, the line between an outright bribe to fix a congressman's vote and an illegal contribution is thin, if not non-existent.

Many of these costs of corporate crime, however, are often invisible to the public's eye. There are no burned out buildings or rioters to flash on the evening news. This comparative lack of visible drama has misled even some experts. Harvard professor James Q. Wilson disparages the importance of white collar crime. "Unlike predatory street crime," these economic violations don't make "difficult or impossible the maintenance of basic human communities." Which confirms Nicholas Murray Butler's observation that "An expert is one who knows more and more about less and less." True, a citizen would prefer to be illegally overcharged than mugged, but he or she would undoubtedly also prefer to be mugged than to ingest a carcinogen or be given a drug whose adverse reaction

shortens his or her life. The issue, however, should not be a battle of hypotheticals. Whatever the damage caused by street criminals, suite criminals exact a substantial tribute from society. The latter, exploiting the faith people have in business leaders, violates our trust—and hence inspires mistrust. "If the word 'subversive' refers to efforts to make fundamental changes in a social system," sociologist Edwin Sutherland wrote in his 1949 classic White Collar Crime, "the business leaders are the most subversive influence in the United States."

Federal agencies seem to agree more with Wilson than Sutherland. Perhaps because of the lack of public outrage over the invisible or unfocused tolls of corporate crime, federal law enforcers have made business crime a low priority. In a November, 1975 report, Paul J. Curran, the outgoing U.S. Attorney for the Southern District of New York, complained that "Except for the Securities and Exchange Commission and the Internal Revenue Service, which operate in fairly narrow areas, the federal agencies responsible for investigating these [white collar crime] cases are simply not doing the job." Until the creation of the Watergate Special Prosecutor, the Justice Department had almost never moved against illegal business contributions to political figures. At present, there is not even a reporting category for business crime in the FBI's detailed annual compendium, "Crime in the United States"—although there are 27 other categories. The hundreds of millions spent on local law enforcement by the Law Enforcement Assistance Administration goes largely for more armaments and equipment to fight street crime—with a barely traceable amount applied to white collar crime. The Defense Department has for years tolerated or winked at foreign bribes; its recently disclosed memorandum, "Agents' Fees in the Middle East," acknowledges the existence of agents fees, a euphemism for bribes, of at least four to six percent on arms contracts.

The recent avalanche of disclosed corporate crime was set off by small, flukish rocks. For example, Common Cause successfully sued to get CREEP's list of pre-April 15, 1972 donors, some of whom had illegally contributed corporate funds; a Watergate Special Prosecutor, created because of a bizarre and muffed burglary, sought and obtained the kind of convictions its parent department had shunned; Eli Black, the chairman of United Brands, leapt 44 stories to his death—inspiring investigations which led to foreign bribes by his company and others.

The exposure of corporate crime must rest on more than the confluence of such coincidental events. And the way to deter such violations requires more than the existing insubstantial penalties. Fines imposed by judges in antitrust cases almost invariably are insignificant compared to the amounts illegally garnered. The SEC and Antitrust Division often conclude their cases with consent decrees by which defendants deny they violated the law but promise to obey it in the future—an obligation they presumably labored under before the decree. Since the companies recently prosecuted for illegal contributions paid an average fine of $7,000, and earned an average $77,000 a minute, it took each about six seconds to pay their debt to society. A survey by New York Times reporter Michael Jensen found that "most of the 21 business executives who admitted their guilt to the Watergate Special Prosecutor in 1973 and 1974—especially those from large corporations—are still presiding over their companies. . . . Only two went to jail. They served a few months and were freed. Most are still ensconced in their paneled corporate offices with platoons of lawyers and public relations men at their disposal."

With these failures in mind, and program of sanction and deterrence must appreciate the two special qualities of corporate crime. First, unlike the tempestuous and murderous spouse or the impoverished and desperate mugger, suite criminals are sophisticated and deliberative businessmen who engage in crime after carefully calculating the benefits and costs. And second, as law professor Christopher Stone has written in Where the Law Ends, "we have arranged things so that the people who call the shots do not have to bear the full risks"; i.e., it is difficult to pinpoint and punish individual violations within that collective body called the corporation.

If the likelihood of personally getting caught and the penalties for getting caught are sufficiently great, potential business law-violators should be able to literally calculate that crime doesn't pay. If otherwise, profit-obsessed businessmen may consider illegality a very logical option. The following proposals can help ensure that the potential costs of corporate crime outweigh its perceived benefits:

Ideally, the Justice Department should create a separate Division on Corporate Crime. This Division should be delegated authority to investigate and prosecute a wide range of business crimes, from mail fraud to regulatory offenses to the

illegal distribution of political contributions or bribes, here or abroad, by corporate officers or their agents. (Antitrust enforcemnt would remain within the Antitrust Division.) The complexity and pervasiveness of corporate crime, as well as the ingenuity of its perpetrators, justify that the Justice Department create a special division to focus on this area—rather than deal with it piecemeal, if at all. The Assistant Attorney General in charge of the Corporate Crime Division (AAG) would be nominated by the President, subject to confirmation by the Congress. To insulate the Division from the kind of political pressures that could engulf and eviscerate it, the AAG should not be a member of the President's party and he or she should not have run for public office within the past six years.

It should be evident that foreign bribes are an "unfair trade practice" under the Federal Trade Commission Act. But since it is not to many observors, federal law should make explicit the illegality of such behavior. New legislation should clearly prohibit the collection of a fund for making bribes to foreign agents, officials or political figures.

Given the reality that our prisons are places of cruelty and breeding grounds for recidivism, serving time does not often lead to rehabilitation. Still, it is discriminating to send pick-pockets and check-bouncers to prison but not convicted businessmen. One survey indicated that 16 percent of those guilty of securities fraud actually go to jail while 71 percent of those convicted of auto theft do. In the first 82 years of the Sherman Act, which is both civil and criminal, there were only four instances when businessmen actually went to jail for their criminal violations; in hundreds of other cases, sentences were suspended. The law must punish violators equitably, not according to their rank in society. The threat of incarceration may be the most powerful deterrent to middle and upper class business managers—as the Antitrust Division came to appreciate immediately after the imprisonment of several executives in the 1961 electrical equipment cases.

So that punishment falls on those individuals responsible, corporate officers convicted of willful corporate-related violations should be disqualified from serving as a corporate officer or director in any American corporation or partnership for five years after a conviction, guilty plea or nolo contendere plea. This is only logical. One does not re-employ an embezzler as a bank teller. Union officials under the Landrum-Griffin Act and broker-dealers under securities laws can be similarly suspended for pertinent violations. There are many positions available in a company for such a corporate law violator other than management or the board, which are peculiarly positions of trust.

Fines should be calibrated to the size of the firm and the "size" of the violation. Business crime has its own cost curve. If companies are punished with penalties which are the equivalent of wrist slaps, the result is predictable. If we make the cost of a conviction sufficiently high, it should discourage many violations which now are profitable to pursue. And a violation by GM—given the firm's resources and impact—should not be penalized the same as if by Mrs. Smith's Pie (Fortune's 833rd industrial firm). Instead of absolute fines, there would be percentage fines based on gross sales—so the fine would fit the crime.

This approach has some modest precedent. Judge William H. Mulligan fined IBM for failure to produce documents in the Justice Department's current antitrust proceeding. He analyzed the size and resources of IBM and then settled on a fine of $150,000 a day—one appropriate to IBM but not a small firm or a street-walker. His decision acknowledged the need to gradate fines to get a response from business, rather than employing the equivalent of a corporate traffic ticket. In common market nations such as West Germany, antitrust and other laws now impose fines on the basis of a percentage of the gross annual sales or profits of the firm, rather than in stated dollar amounts which have progressively less sting the greater size of a firm.

There is also the problem of how to deal with corporations which repeatedly violate the law. In addition to percentage fines, penalties for a particular law violation should increase for corporate recidivists—since by definition the company has not been successfully deterred. For example, if a firm violated the Sherman Act or anti-bribery statute three times in three years, the percentage fine for its third offense would be greater than for its first offense.

Defendants in cases of corporate wrong-doing are often enjoined from future violations, but are almost never required to pay restitution. Shareholder suits may seek and obtain restitution, though this does not invariably occur. Ideally, agencies like the SEC and Justice Department, as a part of any relief, should

insist on restitution being made by those culpable to their victims or their company.

Autocratic chief executive officers, whose handpicked "inside directors" dominate their boards of directors, lack the kind of external accountability that encourages responsible and lawful decision-making. Instead, boards of directors should monitor and oversee executive decision-making. To accomplish this goal, which was the original concept of the board, requires a full-time board comprised of "outside" directors. Such an independent authority should help make executives think twice before casually approving millions of dollars in illegal payments to foreign agents.

Company indemnification and insurance plans often provide for reimbursement to officials who plead "nolo contendere" in criminal cases or who are found liable in, or agree to settle, a civil lawsuit—if they thought they were acting "in the best interests of the company." These cushions against personal accountability for illegality contribute to the managerial feeling of being above the law. So that responsible businessmen feel the sting of personal sanctions, such provisions should be prohibited.

Finally, this committee could perform a valuable function by advocating that federal agencies maintain and release regular compliance reports. The public may occasionally learn of a regulatory violation by a company, but nowhere is there a systematic report on the level of violations and resources in particular areas. For example, a compliance report could contain the following: the laws enforced by the agency, the resources given it, and the remedies available to it—e.g., recall, repair, fines, warning letters, referrals to Justice for prosecution, etc.; a list by company of each violation established and the corrective action required and taken; a statement of what additional tools are needed—e.g., subpoena power, increased penalties, more statutory authority, increased staff—for the agency to perform its mission adequately; an analysis of priorities for compliance activities and how they are determined; an analysis of the cost to citizens and the economy of the level of violations uncovered and the cost of the level of estimated violations.

With such information altogether in one report, federal regulators and their congressional monitors can better appreciate the costs of regulatory violation and better deter them. As in so many other areas of government regulation over business, knowledge is power.

Chairman PROXMIRE. Thank you very much, Mr. Nader, for a remarkable statement, and a most helpful and thoughtful statement.

There are a number of parts of your statement which are useful. Nobody else has given us anything like an estimate of how prevalent this kind on corporate abuse of power is. You go into considerable detail in indicating a number of hard bits of evidence to suggest it is quite prevalent.

And also I thought it was most helpful to call to our attention the fact that we have on the books a provision which the outgoing Chairman of the Federal Trade Commission says could be used right now, and it has not been used ever to my knowledge, to proscribe any kind of unethical conduct. It didn't occur to me, for instance, when Mr. Houghton was up before us, and admitted that they had engaged in this practice, that this FTC power could have been used at that time.

Mr. NADER. It is so important because it deals right with the problem of bad business driving out good business, when it becomes an unfair trade practice, and it protects the honest businessman.

Chairman PROXMIRE. I am happy to get a number of your recommendations. They are all very helpful. The compliance report, I think, is something that we can follow up on, too, that would be most useful.

I would like to ask you a couple of things before I get into your recommendations. First, I had a call yesterday after the hearings from a man who told me that he refused to pay a bribe to an official in a foreign country. He had a moderate-sized business. And they were very

dependent on the business they got in that country. And as a result of refusing to pay the bribe, they lost that business, and it had a very, very serious effect on their operations.

I think that this is a common complaint on the part of businessmen who say, well, it is fine to have this theory, we know that the morals and the ethics are all against us, but we like in a hard, cruel world, we have to make a living. If we don't bribe, we are going to suffer a big loss. What would be your answer to that?

Incidentally, this man wants to testify before this committee. And we are going to have him before us, because I think that kind of viewpoint should be expressed and challenged and discussed. What would be your answer?

Mr. NADER. First of all, once bribes are made they involve the company in further extortionate demands. They involve the company in succumbing to temptations to further illegal activities, because once tainted they tend to lower their guard. And it subjects the company to the risk of the consequences of any coup d'etat or change of government. So from a long-range viewpoint it can be a very, very short-sighted practice.

Second of all, if the company refuses to pay the bribe and not do business in that country, it ought to make sure it is publicized. Sometimes when it is publicized there are changes made in that country, or other companies can rally around that kind of refusal to deal. There is just never any percentage for succumbing to that kind of——

Chairman PROXMIRE. How about their going to the State Department, what kind of attitude and action could the State Department take that would be helpful under these circumstances?

Mr. NADER. The State Department, for example, could lead in the establishment of a public code adhered to by all these companies from Japan, Western Europe, the United States, and other countries around the world, that they would not engage in such payoffs. Now, that is not very self-enforcing. But at least it gives comfort to the pioneers in these corporate arenas to want to do it right, and that is, if it is true that many of these companies bribe because the other fellow is bribing, if they all get together and publicly state that they are not going to succumb to those activities, a reversal of that process may occur.

Chairman PROXMIRE. Yesterday we had testimony from the Chairman of the Securities and Exchange Commission. And they proposed that we rely very heavily on a policy which they are following now. In the case of five of the nine companies that they are prosecuting, five of them which got consent decrees, they have called for a kind of internal self-discipline. They have asked for directors and officers who were not involved in bribery to move in and to take over and to make sure that they developed policies that would prevent this, and make reports to the Securities and Exchange Commission. The particular example Chairman Hills gave, Gulf, John McCloy—he is a man of great integrity, and highly respected, and he apparently has been responsible for very effective action by that corporation.

I am very interested in this. I think it is a practical approach. Because it is obvious that we cannot develop, or probably would not develop, the kind of staff personnel in the SEC or the Justice Department to act in all these cases. It relies on business to do the job it should have been doing anyway.

At the same time I am disturbed about the weakness in this proposal, because it relies on people taking care of themselves, which is a very tough thing to do. Occasionally you get a John McCloy, a tough fellow, who has the prestige and the power and the will to act. But it is so unusual that it may be kind of a weak reed to rely on. What do you think?

Mr. NADER. Mr. Green will reply to that.

Mr. GREEN. As we have seen in the last day, the results of an internal report can be very dramatic. Bob Dorsey resigned from Gulf as a result of a report. But I have always been reluctant to depend on the voluntary virtue of companies who have admitted to crimes to reform themselves. When I recently conducted some interviews at the SEC on these issues, the staff and the officials acknowledged that the reason for these subsequent reports as part of the consent decree was to save them staff time. And they feel very stretched now because of inadequate staff as it is.

I would like to go much further and require as a part of a consent decree not merely that they promise never to do it again—as we pointed out, presumably they knew that before they agreed to a consent decree—but to require restitution to innocent victims or the company itself, to require the kind of continual reporting that will more routinely disclose illegal bribes and political offers in this country, rather than have it occur exceptionally after something as unusual as a Common Cause lawsuit to get CREEP's list, and Watergate and the Special Prosecutor's office, which are so unique that they are hardly the kind of reeds you want to depend on.

So I think if we agree to the SEC's complaints, the initial reaction of Congress could be to assess how much more personnel do they need to systematically oversee the companies which may be bribing abroad or paying off at home. But without that additional staff they are going to have to rely on the companies themselves, which I think could ultimately be self-defeating.

Chairman PROXMIRE. Mr. Nader, I would like to ask you or Mr. Green—we just had the GAO testify before us, and I would like to ask you how they might better serve Congress in their area of corporate excesses. Do either one of you gentlemen have any suggestions on what GAO can do to keep Congress better informed and better able to conduct its investigations in order to legislate?

Mr. NADER. Yes; I think first of all the GAO has tended to be weak in its recommendation of compliance systems that could be legislated by Congress for these agencies to adhere to. It is simply not enough to report on the abuses and make the kinds of recommendations that aren't going to make much difference. There has to be an agency compliance reporting system that will alert Congress when agency inaction over the years leads to the fostering and the proliferation of these kinds of illegalities by private corporations.

That is one very, very important measure that the GAO could do, to work on a system of compliance to submit to the Congress which would involve effective reporting measures every year.

Chairman PROXMIRE. Mr. Rousselot.

Mr. ROUSSELOT. You have both mentioned continual reporting as one way to prevent this. And yet you mention that it might not be done on a voluntary basis. How could this be achieved?

Mr. GREEN. If you had as part of a law, for example, increased corporate disclosure, or as a section of a Federal chartering act that companies regularly release this kind of information—and suppose they don't, because they don't want to admit their guilt, that they have been paying off the agents for commercial purposes, then you can build into that law very strict sanctions, so that if they do violate it, they pay for it in a way that will deter them. Right now, as was indicated in the testimony, the penalty, for example, for illegal political contributions is so small that it takes the average firm 6 seconds to pay off their penalty. Obviously that is not a deterrent. And it pays to pay off with such poor law enforcement and sanctions. But if, for example, you penalize the company 5 percent of the gross annual sales if they violate a serious provision of disclosure law like that, then they can make a very obvious cost-benefit judgment, and they are sophisticated men that can do that, and they won't engage in that activity.

Mr. NADER. I might add, Mr. Chairman, appropos your GAO question, a fascinating study by GAO would be to survey its own recommendations, its own multiple reports over the years to see whether these recommendations have been adopted, a kind of followup on its own reports, a GAO report on requiring GAO reports. And I think when you commit them to that kind of review of their own findings and recommendations, perhaps they can be even more encouraged to come up with the reforms that you seem to be looking for and that we are all looking for. If you go back over 10 years and look through some of these GAO reports and just flip over to the recommendations section, I wonder what has happened in the last few years, you would be compelled to make a very pervasive probe into why these agencies are not structured to respond to these recommendations—many of which are accepted in the report by the agency that is subject to the GAO review in the first place.

Mr. ROUSSELOT. Now, do you believe we should have the same surveillance of labor organizations to protect their members, too?

Mr. NADER. Yes; certainly. In fact, the situation in some of the pension funds and other great institutionalized illegalities raise the point as to whether these labor laws are at all enforced by the Department of Labor particularly.

Mr. ROUSSELOT. I was interested, Mr. Nader, in your comment about—I have forgotten the exact page—but in your testimony as to the need for more concern for the kind of directors that we have in corporations. That is easy to talk about, but in a practical matter of getting ones appointed that "represent the public view," how do you go about that when it is a private corporation? And it is pretty difficult to achieve that by law, don't you think?

Mr. NADER. In our Federal charter report that will be out next week we address ourselves to that very question. And the recommendations we make are first that there be full-time directors. This is a full-time job. When you are on the board of directors of Lockheed or Northrop or General Motors, that is at the very least a full-time job. It is not something that you should consider going to once a month or once every 2 months along with your 10 other director posts and along with your other full-time job as an officer of a bank.

Second, we call for the establishment of cumulative voting, so that shareholders need not succumb to the lowest common denominator,

and groups of shareholders who are keen on one area of the corporate performance, such as environment or labor relations or efficiency, can focus on that. Some States do permit cumulative voting. But many of the giant corporations go to Delaware, where, needless to say, cumulative voting is not encouraged.

We are also recommending that there be more information released so that people can know what this corporation is doing to their lives and to their interests as a prerequisite of making them not only more interested in that corporation's behavior, but also encouraging directors to respond to these kinds of situations.

Mr. GREEN. Also the board would be a fully outside board of directors. As we read today in the newspapers, the inside directors at Gulf, who had been selected by Bob Dorsey, wanted him to stay. It was only because of the pressure of the outside directors, who were not handpicked by the chairman, that he eventually had to leave. And with that kind of outside directorate the board would finally become an independent monitor and overseer of executive activity, where when it is stacked with inside directors it can't be.

Mr. ROUSSELOT. Thank you, Mr. Chairman.

Chairman PROXMIRE. Mr. Nader, there have been suggestions that Congress create a special prosecutor, independent of the Justice Department, to handle this problem. How do you react to that?

Mr. NADER. I think there should be a special prosecutor as a permanent office in the Federal executive establishment, subject to the kinds of conditions that would prohibit any kind of runaway activity or any abuse of civil rights and liberties.

Chairman PROXMIRE. And you would have it outside the Justice Department?

Mr. NADER. Yes; I would. As long as the Justice Department is a Presidential appointee, removable without cause, I find it difficult to see how acceptable priorities can be directed toward prosecuting these corporate crimes, and particularly these corporate crimes involved in political activity.

Chairman PROXMIRE. The same sort of status as the Watergate prosecutor?

Mr. NADER. Yes; although that was deemed to be temporary, so perhaps it needs to be more permanent.

Chairman PROXMIRE. Can you tell us whether the Federal chartering post would be helpful in controlling corporate views?

Mr. NADER. Obviously we are devoting 600 pages to saying yes to that question. Briefly, most of the giant corporations in this country, ITT, GM, Ford, Chrysler, the First National City Bank Holding Co., are chartered in Delaware. It is for a simple reason. Delaware makes it very easy for them to do what they want vis-a-vis shareholders and vis-a-vis other matters. We think it is more anachronistic, given the fact that these giant corporations operate in 50 or 100 countries around the world, not to mention their operations nationally. Indeed, Delaware chartering was considered anachronistic back in the early 1900's when Presidents Teddy Roosevelt and Taft came out for Federal chartering. We think that the Federal chartering approach would strengthen the rights of shareholders, make the board of directors more effective and responsive, require more disclosure of information as a

preemptive factor to foresee and forestall problems and abuses, develop more effective sanctions under the law, and in effect create some rights in the community of interests, consumer, labor, shareholders, neighbors, that are often victimized by corporations without having any remedies whatsoever. And in particular, the Hopewell, Va. situation, where the pesticide Kepone is a perfect example, people living in the area, not the shareholders, not the consumers, have been very severely affected in terms of their health and the health of their children, and there is very little that they could have done about it to prevent it. It is not only to try to get compensation, for damage already existing, but to try to develop a process where these kinds of situations can be prevented.

Chairman PROXMIRE. Earlier we heard from the General Accounting Office a series of cases referred to Justice since 1973 involving apparent kickbacks and other violations of the law. Justice dropped every case. Nothing was done, and we are in the dark as to why. Yesterday we had the appearance of the Securities and Exchange Commission, and they were unable to indicate any of the cases they brought—and they have brought a number—in which Justice has taken any action at all. Do you think it might be useful to require that the Justice Department make a full report to their referring agencies in such cases so that we can determine whether that action was justified?

Mr. NADER. Exactly. When an agency in the Government thinks it is serious enough to refer a violation or a suspected violation to the Justice Department, that agency is entitled to something more than indifference and silence on the part of the Justice Department, it is entitled either ot action or an explanation as to why no action was taken.

Chairman PROXMIRE. By the way, to correct an impression that may be created by your statement in your reference to the Pentagon memo on agents' fees in the Middle East. Bribes and payoffs, and political contributions have been made in other countries and other parts of the world, in Latin America, Canada, South Korea, Western Germany and Italy and elsewhere. The practice isn't limited to the Arab countries, indeed much of it is on right here at home, is that correct?

Mr. NADER. That is correct. But the Pentagon has not seen fit to put out a report on such procurement abuses in Formosa or Latin America. Perhaps they should put out a series of regional reports.

Chairman PROXMIRE. Then of course the procurement abuses we learned about this morning from the General Accounting Office were entirely domestic.

Mr. NADER. That is where it starts.

Chairman PROXMIRE. I want to thank you very much, gentlemen.

Do you have any more questions?

Mr. ROUSSELOT. No.

Chairman PROXMIRE. I would like to summarize the hearings thus far.

They have established several important facts. First, the problem of abuse of corporate power is much more serious than most people understand. It involves a growing list of major firms in many sectors of the economy operating in the United States and throughout the world.

And second, the Federal Government's response has been mixed, and less than wholehearted.

One small independent agency, the Securities and Exchange Commission, has done most of the work. But SEC has limited resources and local authority. The staff of its enforcement division totals 400, 200 here and 200 in the field, less than some of the law firms which serve the powerful corporations. Most important of all in my view, they don't have the power to do anything in the way of penalties, they can't even slap wrists, or impose a few thousand dollars fine, all they can do is to take civil action and ask them to desist, not secure the assurance that they will.

Third, Congress has not done enough to investigate abuses. And we are not frankly, in a position to do much.

Our investigative arm, the GAO, by its own admission, is not set up or equipped or authorized to investigate the kind of illegal and improper actions that we have been discussing.

I note that the Agricultural Department has launched a new investigation of the food stamp program. I don't belittle the investigation or other efforts to expose welfare cheaters. But there seems to be a reluctance on the part of most agencies to go after powerful corporate wrongdoers and to take meaningful action once wrongdoing is identified.

In a sense this reluctance is as significant as the corporate abuses themselves. It remains to be seen whether this attitude will change in the executive branch and in the Congress.

Additional hearings on this subject will be announced in the future.

Once again, thank you very much, gentlemen, for your appearance. The subcommittee will stand adjourned, subject to the call of the Chair.

[Whereupon, at 12:18 p.m., the subcommittee adjourned, subject to the call of the Chair.]

78-547—77——8

ABUSES OF CORPORATE POWER

TUESDAY, MARCH 2, 1976

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON PRIORITIES AND
ECONOMY IN GOVERNMENT OF THE
JOINT ECONOMIC COMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 5302, Dirksen Senate Office Building, Hon. William Proxmire (chairman of the subcommittee) presiding.

Present: Senator Proxmire and Representative Long.

Also present: Richard F. Kaufman, general counsel; George D. Krumbhaar, Jr., minority counsel; and M. Catherine Miller, minority economist.

OPENING STATEMENT OF CHAIRMAN PROXMIRE

Chairman PROXMIRE. The subcommittee will come to order.

A number of persons have said, in response to discolsures of bribes and other improper payments by American business firms, that it is unrealistic to expect to compete successfully in foreign countries without going along with the bribery system.

So far congressional hearings have focused on the bribes that have been uncovered. The issue of whether American business can survive abroad if it adopts a no-payoffs policy and the position that the U.S. Government should adopt, has not been explored. This hearing will focus on that hidden dimension of the problem.

Following a hearing I conducted in August on the subject of Lockheed bribes, I asked my staff to check into the assertion that it was necessary to make payoffs in foreign countries and everyone did so. Two large aerospace firms were asked to state publicly that they did not engage in bribery.

Whether the two firms had made payoffs was not known. I assumed they had not. Neither firm agreed to make a statement. Since our initial contact, one of the firms has admitted making payments to foreign officials and the other is under investigation by the SEC.

Nevertheless, I believe that there are many businessmen who do not pay bribes—I think a great majority of the corporations probably do not pay bribes—and cannot be shaken down and who act according to strict legal principles whether engaged in business in foreign countries or at home.

Today's testimony will show how two honest and responsible businessmen refused to become part of the bribery system and the consequences for their firm, Translinear, Inc.

It was disclosed last year that the Pentagon has actually been tutoring its contractors on how to make foreign payoffs.

More recently documents were uncovered showing that the Pentagon is so zealously pushing arms sales that the cost of its own procurement for the U.S. armed services have been adversely influenced.

Bribery flourishes in this kind of environment. Among the questions we will pursue today and tomorrow is where the State Department stands in this regard.

I am pleased to welcome as our two witnesses this morning William H. Crook and William R. Carden.

Mr. Crook has had a distinguished career in public service and private life. From 1965 through 1970 he served as Director of VISTA, Assistant Director of OEO, member of the United States-Mexico Border Development Commission, and U.S. Ambassador to Australia.

Mr. Carden has a masters' degree in history from Baylor University, a Ph. D. from Emory University and has taught classes in Russian studies and European history in both schools. He served as assistant to the president at Baylor University, was executive vice president of a Texas publishing company and is the author of numerous articles and research studies.

Gentlemen, before you begin, I would like to read a brief note which I received this morning from Senator Bentsen of Texas who writes:

I regret that prior commitments in Texas have prevented my being present today to introduce my old friend and highly respected colleague, the former Ambassador to Australia, Bill Crook of San Markos, Tex. His firm's experience with foreign governments have been interesting ones and I commend you and the Joint Economic Committee for inviting him to testify today. Sincerely, Lloyd Bentsen.

Gentlemen, I have read your written statement. We are happy to have Congressman Pickle here this morning. And if Congressman Pickle would like to make a statement in connection with the two witnesses this morning, we would certainly welcome it.

STATEMENT OF HON. J. J. PICKLE, A U.S. REPRESENTATIVE IN CONGRESS FROM THE 10TH CONGRESSIONAL DISTRICT OF THE STATE OF TEXAS

Representative PICKLE. I thank you very much. I apologize to you and the members of the committee for being a few minutes late. I appeared before another committee in the House to introduce one of my distinguished constituents, Judge Homer Thornberry.

Mr. Crook comes from a very distinguished family in Texas. He is an honored graduate of Baylor University. He served as regional director of the OEO, the poverty program. He was the National Director of the VISTA program. He was appointed by President Lyndon B. Johnson as Ambassador to Australia from the United States. He, at one time, served as president of the San Markos Baptist Academy. He is a very distinguished administrator.

I commend you and the members of this committee for looking into this question of foreign payoffs. In this day and time when we are having so many headlines about improprieties practiced by our business people and questions raised concerning those activities, it

seems to me that somewhere in our Government we should have a way to find equity and fairness for a businessman who makes legitimate investments in other countries. And I think these are questions that our Government and State Department ought to look into.

I would simply say to this committee I know the Ambassador is going to present his own case and his own facts, but this is a matter of integrity and respect and honor in our State and in our Nation. And I am glad you have given him a chance to present his side of these facts to date.

Chairman PROXMIRE. Thank you very, very much, Congressman Pickle. We are indebted to you for coming to us and giving us this fine statement about your constituent. I am going to ask Congressman Long, who is a member of the subcommittee, who has a statement he would like to give.

Representative LONG. Thank you, Mr. Chairman. I want to associate myself with the remarks made by my friend, Mr. Pickle. I have had the opportunity of knowing Ambassador Crooks since his early OEO days. I was assistant director and he was regional director down in the Southwestern part of the United States. He did an outstanding job for OEO in that capacity. And I want to welcome you here, Ambassador, and tell you that it is a pleasure to have you here. I want to again say that all of the good things that have been said about you by our friend, J. J. Pickle, that I heartily concur in them.

Chairman PROXMIRE. Thank you very much.

Well, gentlemen, this is a very, very interesting story you have to tell us here today. It is one that I think goes right to the heart of our problem about what we do about this very unfortunate and damaging situation that we know that has developed now around the world with American businesses paying bribes. And your most enlightening revelation that you can tell us about what situation you are in, gentlemen, when you are pressurized to take that action, will be helpful.

I understand it would be most constructive this morning if we proceed on the basis of having Mr. Carden go first. Is that correct? All right, sir, Mr. Carden, then we will be happy ot have you give your statement and then we will hear from Mr. Crook and have questions.

STATEMENT OF WILLIAM E. CARDEN, PRESIDENT, TRANSLINEAR, INC.

Mr. CARDEN. The officers, board of directors, and stockholders of Translinear, Inc., wish to thank the distinguished members of this committee for the gracious invitation to appear here today. In particular, we want to express our appreciation to you and your staff for arranging the details of this testimony.

I want the members of the committee to know that 4 years and $3 million ago we had no idea that 1 day we would be in Washington, D.C. testifying before a joint congressional committee on the issue of bringing charges against a foreign country—charges of expropriation of assets, confiscation of equipment, and attempted bribery and extortion.

On December 4, 1970, the Republic of Haiti and an American firm, Dupont Caribbean, Inc., signed a "Convention" or contract which

provided for a 99-year lease and a free port status in return for the commercial development of the Ile de la Tortue (the Island of La Tortue). This island was discovered by Christopher Columbus on his first voyage to the United States. This small island of approximately 85 square miles lies off the north coast of Haiti, separated by a channel. Under the terms of the 1978 Convention, the island was to be governed by a five-man body, quasi-sovereign, called the Dupont Caribbean Free Port Authority (DCFPA).

The convention, modeled after Freeport Bahamas and Hong Kong, officially went into effect on June 5, 1971, when it was published in the government newspaper "Le Moniteur."

The Translinear investment partnership, located in Dallas, Tex., became interested in the development potential of this island and, after extensive investigation into both the investment climate in Haiti and into the legality of the convention, the partnership invested heavily in the project. We leased 4,800 acres of land of the 5,200 acres released by the Haitian State, and we purchased one of the seats on the five-man free port authority (DCFPA).

Translinear, Inc. was formed by the partnership as the vehicle for this investment. An internationally known architectural firm, Hellmuth, Obata, and Kassabaum (H–O–K), was engaged to prepare a master development plan. The island was surveyed, mapped from the air, and a topographical map was created (all of the above for the first time in history for the island). In August 1972 construction barges from the United States landed and on August 10 we began on implementing the master plan.

Parenthetically, I should say there were approximately 10,000 people living on this island and they were living in extreme poverty. There was no monetary economy whatever on the island. There were no roads. We think we had probably the only internal combustion engines on that island—in the form of our equipment—that had been there in at least 40 years. The arrival of Translinear meant new jobs and new skills to a host of people that were living in poverty. We kept the Haitian Government fully informed at all points, and we received their approval for all the work that was being done.

I don't mean to imply that this work proceeded without interruption and that there were not delays. Both the Haitian state and Translear, Inc. faced trouble with the tactics and attitude of the original concessionaire of the project, Dupont Caribbean, Inc. During the summer and fall of 1972, there had been no meetings called of the Dupont Caribbean Free Port Authority and, therefore, the administrative development of the island was falling far behind the physical construction work that we were doing there.

Even a casual observer could see that break was near between Haiti and DCI unless some pattern of activity was changed on the part of DCI. As a third party, holding contractual development rights to a free port in a 99-year lease, Translinear was quite concerned about its position should any break develop between the Republic of Haiti and DCI.

However, I want to stress that even before the Haitian Government did decide to bring charges against DCI, that Translinear was assured on several occasions at ministerial level that our rights would

be protected regardless of what happened to DCI. This assurance was given by Minister of Interior Cambronne, later Minister of Interior LaFontant, Minister of Finance Francisque, and by the Director of the National Bank, Mr. Antonio Andre; plus we received this assurance in countless conversations with minor Haitian officials.

On February 28, 1973, our own Haitian attorney, Mr. Jean Claude Leger, was called to the office of the Finance Minister. He was told that the Haitian Government was in fact planning to bring charges against Dupont Caribbean and that these charges would mean, if they were successful, that the contract would be canceled. Minister Francisque, however, continued to assure our attorney that the Translinear rights would in no case be violated and he urged our attorney to be present in the court on March 8 when the charges were brought so that he could read a statement for Translinear into the record. This, in fact, was done.

On Friday, March 23, 1973, two Haitian ministers, the Ministers of Finance and of Justice, and a government attorney, Mr. Jeanty, who is now a Minister of Justice, came to Tortue Island to stop all activity there until the court could decide what to do about DCI. I was present on the island on that Friday and was told by these Haitian officials that we would be back at work the following Monday. Minister Francisque profusely praised the quality of the work that Translinear had done and repeated several times that any quarrel that Haiti had was with Dupont Caribbean, Inc. and not with Translinear. He again repeated this to me when we met each other on our return to the mainland from the island. At the time the work was stopped, Translinear had completed some 20 kilometers of roads. We had done the engineering and survey work for a major airport, a dock, new hotels, and utilities for the island. And when the work was stopped, some 250 Haitians that had been without work before Translinear came to the island, were suddenly out of work.

Being assured of and believing in the promise that the work stoppage was only temporary, we left the island on Friday, expecting to return to work the following Monday. Much of the construction equipment was left in the field. The support van was full of supplies that later spoiled, and countless maps, plans and engineering drawings were left in the office trailer. As events developed, however, Translinear was never allowed to resume work on the island.

At the beginning, we were told "Be patient, be patient, be patient, have faith in the government and soon you will be back to work." But days passed into weeks and months. I made frequent trips to Haiti in fruitless attempts to gain clarification of this situation. In every minister's office to which I went, I was always politely received and was always assured that the government was interested in our rights and that soon we would be back to work on the island.

Gradually, however, a new verse was added to this song: That Translinear could not resume its work until Haiti completed its trial with DCI. On August 27, 1973, the trial was completed and the verdict was in favor of the Haitian Government and the original contract with DCI was now canceled. However, and this is very important, the French civil law system provided for a cancellation and not a rescinding of the contract. This meant that all rights in existence up to that

point were still in existence. Thus, the rights of third-parties, by Haitian civil law, were still to be protected.

We were privately told at the ministerial level that it would only be a matter of days now before activities would resume on the island. There was even some speculation by some ministers to whom I talked that the new relationship between Haiti and Translinear might be in the form of a joint venture, whereby Haiti would take DCI's place in the contract.

On November 15, 1973, the Minister of Commerce, Serge Fourcand, gave me a letter stating that the Haitian State wished to continue the project and that the President of Haiti had instructed him to ask Translinear for a new contract for the development of Tortue Island.

Using some of the finest legal services available anywhere in the United States, we prepared a new contract, asking for no other rights than the rights we had enjoyed in the first contract: 4,800 acres of land in a free port status for 99 years. Translinear guaranteed to the Republic of Haiti, a minimum investment in this island of $15 million within the next 5 years in an area of only 4,800 acres. And most important, we offered to split the profits of this venture 50–50 with the Haitian Government.

During the next 18 months, we were subjected to an unbelievable series of shuffles and delays. The original contract we amended many times at their request and they made no suggestion of change or amendment to which we did not agree. I made frequent trips to Haiti, often for no purpose. Often after I arrived in Haiti, a Minister frequently would say, "We need to reset this appointment 10 days, 2 weeks, or 3 weeks later" with the promise that with patience, with faith, that our problems would be solved. I kept the American Embassy in Haiti fully informed of all the discussions that I had with the Republic of Haiti. And the only counsel that they were ever able to offer was to be patient.

In April of 1974, I was informed that Translinear, Inc. could no longer fly to Tortue Island—even for purposes of maintenance, inspection or to meet our small payroll of security guards there watching the equipment. When I suggested the possibility of sailing to the island rather than flying to the island, if flying was some problem, I was told that if we attempted to do so, our boat would "be blown out of the water."

In May, 1974, the U.S. Embassy assured me that we now had permission to go to the island, if we would request permission 24 hours in advance. When this was attempted, it turned out not to be true. We made dozens of requests and in the next 18 months, Translinear was only able to fly to the island two times: Once on an official inspection trip and once merely to drop a small payroll.

Just as disturbing to me as the restrictions on flight to Tortue Island were new suggestions by the involved Ministers that Translinear now had no rights at all in Haiti—merely the right of hoping that we might obtain a new contract.

But then, suddenly, in March of 1975, it appeared that we were making progress toward a new contract. I was in Haiti March and April. Early on the morning of April 15, I was telephoned at my hotel by a Translinear employee and asked to stop at his house. When I

arrived at his home at about 8 o'clock in the morning, I found the employee quite frightened. He was in tears. I was told that he was instructed to get me to his house and to wait there for further instructions. While he was relating this, a telephone call came summoning us in separate cars to come to a small square in Petionville, which is a suburb of Port-au-Prince. I sat alone in my car, where I was joined by an individual who closely resembled a Hollywood grade B gangster, even down to the details of reflective sunglasses, like those that had formerly been worn in Haiti by the infamous Ton-Ton Macoutes.

Speaking in English, he refused to tell me his name, and began to speak in a contemptuous manner of Translinear's long efforts to obtain this new contract. He purported to be a member of the government and promised that Translinear would receive no contract unless we agreed to the following conditions: First. We were to fire our highly respected Haitian attorney, who had a reputation throughout the country of refusing to take bribes or make payoffs, and we were to hire a Mr. Sieyed, who I later discovered was an employee in the Department of Justice. Second. We were to deposit $500,000 in the National Bank——

Chairman PROXMIRE. That is, he was in the Haitian Department of Justice?

Mr. CARDEN. That is right, yes.

We were to deposit $500,000 in the National Bank of Haiti.

Third. We were to give yet-to-be-named third parties one-half of the stock in Translinear, Inc. And I would say, parenthetically, if we accepted these first three conditions, it would be an extortion attempt to gain operating control of an American company.

Fourth. We were to write a letter to the President of Haiti, praising his administration and promising to begin work—I should say to resume work on the island in 30 days, if we were granted the contract.

He made additional demands and statements which included the following: First. We were not to mention this incident to anyone, particularly to the American Embassy. Second. Unless the demands were agreed to, the project would be shifted from department to department to department and from ministry to minstry to ministry and from commission to commission until Translinear would finally give up and leave Haiti. When I reminded him that our contract was at the point of signature, he challenged this and said the contract would be moved to another ministry if we did not cooperate. And this is exactly what happened. He spoke of other American companies that had grown tired and left, but mentioned a company that had received a major mineral development contract because they had been willing to cooperate. Third. He concluded by telling me that there was another group waiting in the wings if Translinear did not go along. And we have since discovered, at least to our own satisfaction, that there is another group waiting in the wings.

When our discussion was over, the employee, who was obviously frightened to the verge of hysteria, then repeated the man's demands to me in order to make sure that I had understood everything in this previous conversation. The small, unnamed individual then added that our employee was to be the contact for me with himself and his

group. When he asked for my answer, I replied that I could not do anything until I had gone to the American Embassy to discuss the situation. He was outraged at this and in Creole he threatened our employee, promising that Translinear would never receive the contract.

I immediately drove to the office of our attorney, who expressed an opinion that the bribery attempt could, in fact, be real and suggested I immediately report this to the Minister who was working on the contract. I first returned to the hotel, where Ambassador Crook was waiting, and discussed the situation with him. We decided that it would be best, because of his Embassy experience, if he reported the attempt to the Embassy and that I, in turn, would go on to the Minister's office, as the attorney had suggested—to Minister Bayard, who was Under Minister of Commerce, and was handling the contract negotiation.

The Minister dismissed this incident as meaningless. He assured me that there was no other individual to whom the President had given any authority to handle these negotiations, and he reassured me that it was only a matter of days before we would have this elusive contract signed.

Nevertheless, within 2 weeks the contract discussions were shifted to another Ministry and then shifted again to the Presidential Commission. I continued to receive assurances that the contract was close to the point of signature. Then, suddenly, out of the blue, in mid-June our Haitian attorney telephoned me to report that the Presidential Commission had been abolished; that there was no information on the fate of this project or any other project that the Commission was handling.

We sent telegrams and letters to the appropriate individuals in Haiti, and they brought no response or progress. Then, inexplicably, on October 20, 1975, Minister Bayard wrote a very critical letter to Translinear. He accused us of trying to usurp the authority of Haiti on Tortue Island. I returned to him by hand a clarifying letter, but discussions did not seem to be going anywhere. Then I was telephoned in late November of 1975 by a business friend who told me that the contract would be signed if Translinear would agree to two conditions: (1) That any dispute between Translinear and Haiti would be submitted to Haitian courts rather than to international arbitration, and this I readily agreed to; and (2) Haiti would have to be in charge of customs and immigration in the island—as had already been written into the contract. However, upon my arrival in Haiti, I was presented with an under-the-table demand for $50,000 before any discussions would take place. When I refused——

Chairman PROXMIRE. Could you give us a little bit of detail as to how this $50,000 demand was made, who made it, and so forth? Do you have any evidence whether that was a demand from a Government employee?

Mr. CARDEN. All right. When I arrived at the international airport in Haiti, I was met by two business friends who took me to their home and said that as soon as they made a telephone call to the Minister, that we would go to his house. The telephone call was made. They obviously were disturbed. They spoke to each other for a while in Creole, which I do not understand. And then they told me that there would have to be a $50,000 payment to the Minister before the con-

tract would be signed. I demured in this. There was further discussion. One of them——

Chairman PROXMIRE. These were two business acquaintances of yours?

Mr. CARDEN. Yes; they are Haitian businessmen, and I would prefer, frankly, not to identify them.

Chairman PROXMIRE. Well, I am not asking you to identify them. Can you give us any reason why you would feel that their demand was legitimate and was the demand of the Haitian Government officials?

Mr. CARDEN. Yes, I have known these gentlemen for the 4 years that I have been going to Haiti. They were very interested in the island development and had helped frequently behind the scenes in our attempt to get the contract. They introduced me to several members of the Haitian Government that I had not been able to meet. They had never done anything in the whole 3½ to 4 years that I had been going to Haiti to make me feel that they were anything but friendly and interested in the island development. Both of them wished to lease land on the island and both of them wished to put free port businesses on the island. They are very substantial Haitian men.

After some further conversation, one of them went to the Minister's home and returned and said "It is all over." And then we discussed some more why $50,000 would stand in the way of the contract, when there was so much promise to the Haitian State with the signing of the contract and of future profits that were to be divided with Haiti. One of them went back to the Minister's home the next morning and argued and talked supposedly for a couple of hours there and returned and said, "It is no use."

After I had refused this bribe attempt, no further discussions took place. I was told by several sources that the Tortue project was now dead for good. Thus, a project that began with such great hopes and perhaps misplaced idealism approximately 4 years and $3 million earlier ended with a whimper and not a bang. During these 4 years, Translinear officers, employees and agents had made over 150 trips to Haiti on behalf of this project. I have made 31 myself.

In all that time, we never asked for a single thing we did not contract for in 1972. We then paid nearly $1 million for the leasehold development rights to 4,800 acres of free port land. We have been refused leasehold title to this land, we have been denied access to the equipment and materials we were forced to leave there. For 3 years, we have watched the elements destroy the work we did on the island and turn nearly one-half million dollars worth of equipment and supplies into rusted wrecks with little more than salvage value. And, for 3 years, we have been told to have patience and we would receive a new development contract for Tortue Island. The reward of our patience has been two sleazy bribery attempts, continued denial of leasehold title to the land, and a denial of access to our equipment.

Our conservative feasibility study shows that if this project had been allowed to continue as it started, by July of 1977 it would have had a conservative net worth of $27 million. Ironically, the Republic of Haiti would have shared one-half of the profits of this success.

In my last official communication with Haiti in my letter to Minister Bayard of October 23, 1975, I told him that Translinear was not trying

to force Haiti to compromise any point or principle of sovereignty—that we were willing to discuss and compromise on any issue between us in order that we might both reach the goal of resumption of a promising joint venture development of Tortue that would be profitable and beneficial to both parties.

Senator, I am not a wealthy man. I have very little money and very little stock invested in Translinear. I can honestly and sincerely say that for the past 4 years I have invested my life in this project because I believed in what it could mean for the Republic of Haiti and for the people there. I am not only distressed, however, for the loss of what this might have meant for Haiti; I am distressed for the loss it represents to the Translinear stockholders, particularly Ambassador Crook, Mr. Beckham, Mr. Robert Fanning, who are the three principals of the Translinear investment partnership. They have poured a large percentage of their fortunes and their emotional energies into this project. They have always insisted to me and to other people in this project that our relations with Haiti, the other stockholders, our suppliers, and potential investors should always be one of honor and honesty. It is for that, the loss to these men, the loss to the people of Haiti, the loss of jobs, the loss of skills, the loss of needed foreign exchange that this country could have received, Senator, that I feel it is a tragedy that this project should have ended in the manner it did.

Thank you.

Chairman PROXMIRE. Thank you, Mr. Carden. Now, Mr. Crook.

STATEMENT OF WILLIAM H. CROOK, CHAIRMAN OF THE BOARD, TRANSLINEAR, INC., AND FORMER AMBASSADOR TO AUSTRALIA

Mr. CROOK. Thank you, Mr. Chairman.

Chairman PROXMIRE. May I say, incidentally, we will be happy to have your report, which details the developments in a very helpful, chronological manner, printed in the record in full.[1]

Mr. CROOK. Thank you, Senator.

Let me express my appreciation this subcommittee and its distinguished members and to you, sir, and to your efficient staff and to Senator Bentsen for his expression, and to Congressmen Long and Pickle for their comforting support.

We have been involved in Haiti for 4½ years. And during that time, we have come to have an extremely high regard for the Haitian people—for their hopes and their aspirations for the future. The more than 300 Haitian men and women who worked for us during those years, both in offices in Port-au-Prince and in the various projects on the Island of Tortue, have worked hard and energetically. Had our project been permitted to continue, and had its growth been on schedule, that number would have increased by now to over 6,000 employees working for us and for our clients who wanted to establish industries on the island.

We do not come here in a spirit of troublemaking or hostility, but out of a genuine concern for what has occurred. Nor do we wish, under the circumstances of what is happening today, Senator, to appear

[1] See report entitled "Summary of Relationships Between the Republic of Haiti and Translinear, Inc., beginning on p. 125.

smug or sanctimonious about refusing to deal under the table. We can understand the almost irresistible temptation on the part of American businessmen to simplify negotiations, end delays, cut expenses, and assure profits by passing out American dollars to officials who can cut redtape, guarantee signatures and deliver contracts. Such practice is easy to rationalize, when others are doing it and when competition is fierce. The responsibility of representing stockholders abroad is a serious one. And while we are sure that our decision to resist bribery and extortion was right, we are equally sure that the decision was costly to our stockholders and ruinous to our company. It is my opinion that no one wants to pay bribes, either voluntarily or under duress. And everyone knows that a climate of bribery and extortion is expensive, inefficient and unhealthy. An international code of business ethics is badly needed, and I believe would be enthusiastically supported by American businessmen abroad.

The decision my company made nearly 5 years ago to invest in Haiti was the result of cautious and careful and thorough research. A new government was in power in Haiti, and the young President had proclaimed, "My father brought the political revolution, I will bring the economic revolution." The contracts and agreements under which we would be operating were carefully researched by some of the best legal minds in Canada and the United States. The initial involvement of my company was that of a manager and subcontractor. As events developed, however, we found ourselves the principal developer and investor. The money invested belonged to the principals of Translinear and to a few stockholders. It came from our own resources, and from bank loans personally guaranteed and repaid by us.

To assure ourselves of the validity of the contract existing between the Republic of Haiti and Dupont Caribbean, Inc., we sought and received the opinions of the American Embassy in Port-au-Prince, the School of Law at Southern Methodist University, and the opinions of prestigious law firms in Montreal, Canada and Dallas, Tex.

The contract under which we were acting was signed by the President of Haiti and by every member of his Cabinet. The contract contained stipulative clauses against exappropriation and confiscation, and we proceeded to invest in confidence.

Our first major outlay was in the amount of $800,000 to lease approximately 5,000 acres on the east side of the island. Before beginning development, we sought and received the title opinion from Haitian legal counsel. I quote the concluding paragraph of that opinion:

> Therefore, Translinear, Inc. has a clear chain of title to the Government land released by said Government or Haiti to Dupont Caribbean, Inc., and the transfer of leasehold interest regarding this land has been effected in accordance with Haitian law.

Almost simultaneously we entered into a construction contract with a major American firm and began building 20 kilometers of roads and installing infrastructure. High altitude aerial photography and land surveys were completed. A thorough ecological study of the tides and currents and prevailing winds was made. The architectural firm of Hellmuth, Obata & Kassabaum of St. Louis was commissioned as mas-

ter architects for the project. Within a matter of months more than $2 million had been invested. Construction was ahead of schedule, and demands for hotel sites, industrial sites, marinas, housing sites and investment acreage was far greater than anything we had anticipated. We had been told that there was little water on the island and that the limited supply in existence would stunt the development. Within a matter of a few months, expensive exploration led us to a major discovery of ample artesian water—ample enough to support a population of 10,000 people.

Suddenly, without warning and without cause, Haitian officials of Cabinet rank arrived on the island to inform us that the project was closed. We were told that because of litigation between Haiti and a third party, litigation having nothing to do with Translinear, all work was terminated. Bulldozers, earth-moving equipment, rock crushers and a helicopter were abandoned where they sat.

Approximately 20 kilometers of finished road was left to deteriorate and return to the jungle. Our manager and foreman were hustled off the island, leaving behind them valuable files of engineering plans, bluprints, surveys, topographical maps, aerial photography and subdivision plats. A Haitian Army soldier was ordered to stand guard in our camp. Empty barrels were lined up on the runway so that our plane could not return, and officials of Translinear were informed by the colonel of the airport in Port-au-Prince that any attempt to reach the island by boat would result in the Armed Forces of Haiti "blowing the boat out of the water." When we asked for explanations, we were told that the situation had nothing to do with Translinear, that the Government had no complaints with Translinear, that Translinear had met all of its obligations, and that in time we would be permitted to return and resume construction. For a period of several months, at the expense of over $2,000 a day, we stood ready to return. But, as the Government continued to delay and to deceive, it became apparent to us that our equipment had been confiscated and our assets exappropriated. For more than 2 years, almost 3, we have been forbidden access to our own leasehold property, and to our equipment and material. I made one inspection trip in the presence of a military guard during that time. Finally, in April of 1975, 2 years after the closedown of the project, we were informed that the last of six contracts drawn by our attorneys, modified, changed and amended at the request of the Haitian State, was acceptable and would be signed by the President of Haiti.

Within hours of receiving this official assurance, the outrageous extortion attempt, narrated by Mr. Carden, took place on April 15, 1975. Within an hour of this incident, I had reported in detail to the Deputy Chief of Mission at the U.S. Embassy in Port-au-Prince. The threats in the extortion attempt all came to pass. The island is still closed. We have been told not to return to Haiti. Negotiations have ceased, all protests have been ignored, expensive plans and vital information concerning the project are in the hands of the Haitian Government; we have sustained staggering financial losses, and the damage to Translinear, Inc., is in the millions of dollars. In a final attempt to have this injustice addressed, I wired a protest to the Presi-

dent for Life of Haiti and appealed for intervention on our behalf. I concluded the wire by saying, and I quote:

> We have acted in good faith, we have obeyed every law, we have observed every ethic, we have complied with every request and followed every suggestion of your government. We are not promoters. Money invested has come from the stockholders of our company and from bank loans. We are honest and successful business men asking only for the protection of international laws and the privilege of investing in your Country on fair terms and in an honorable manner.

A copy of the telegram was sent to the U.S. Secretary of State. Neither the government of Haiti nor the government of the United States has replied.

Chairman PROXMIRE. What was the date you sent this to the Secretary of State?

Mr. CROOK. July 16, 1975.

Chairman PROXMIRE. About 8 months ago?

Mr. CARDEN. That is right.

Mr. CROOK. I might say at this point, Mr. Chairman, that statement is no longer accurate, because as of Friday of last week, the State Department did respond.

Chairman PROXMIRE. After we had asked them to appear and testify on this matter and after they knew you were scheduled to testify before a congressional committee to disclose what your experience had been with the State Department and with the Haitian Government, correct?

Mr. CROOK. Yes, sir.

Chairman PROXMIRE. Go ahead.

Mr. CROOK. We do not know why our assets have been taken from us. There have been no problems with the population. No labor problems. No complaints from the people. On the occasion of our one inspection trip, the newspaper on the north coast ran an editorial which heartened the drought stricken area, and I quote from that:

> Last Saturday, on a special plane, the Americans, Mr. William Carden and Mr. William Crook, members of Translinear, arrived accompanied by some Haitians. Natually this visit was the subject of the week. There has been much talk and the people can see the morning of better days for the complete northwest; the reopening of the project which the population have waited for for so long. The company will be received back with joy.

The closest thing we have ever received to a complaint from official sources was contained in a letter of October 20, 1975, from the Secretary of State of Commerce and Industry, Henri P. Bayard. Mr. Bayard rebuked us and accused us with interfering with national sovereignty by appealing our case to two U.S. Senators—Senator Bentsen and Senator Kennedy—asking them to inquire in our behalf as to the reasons for the closing of the project and the confiscation of material and equipment. However, while the first paragraphs of that letter contained the rebuke, the concluding paragraph read thusly:

> We want and we are ready to meet at a date convenient to you, the representatives of Translinear, on an official basis in order to work with you on a convention project which would be mutually advantageous to Haiti and to Translinear.

Thus, our multimillion-dollar puzzle. There have been no charges brought against us by any official of the Haitian State at any time.

There has been no negative publicity against Translinear in any of the newspapers of Haiti. No complaints have been lodged by workmen, by landowners, by merchants, or by any citizen. We have violated no customs, broken no laws. We have left no bills unpaid behind us.

Our files are replete with official letters and communications from high Cabinet level Haitian officials. These letters are positive, encouraging, and even enthusiastic. They recognize our interest and our investments and our expenditures. They tell us our investments will be protected. They tell us our contracts are being studied and with the exception of minor modifications will be acceptable. As you can imagine, since we have made more than 150 trips to Haiti in the past 5 years, we have met many officials and had numerous meetings in Government buildings with authorized Government people. These people have always been courteous and always affirmative. But contrasting their gentleness and their courtesy is the abusiveness of an extortioner in the park who purports to speak for the Government—for the President himself—who predicts that if we do not comply with his demands the contract will not be granted and negotiations will be terminated. These predictions have come true. From the American Embassy at various times we are told that the problem is smuggling, but we are not smugglers, and that problem does not exist with us. We are also told that the problem relates to national security, but our company is in no way a threat to the Haitian people or to the state. We are told to be patient and we think we have been patient. After an approximate $3 million of actual cash investment, not to mention the several pending projects and money actually in escrow by hotel builders, developers, and others from Italy, from France, from Canada, and from the United States, the stockholders have demanded of us explanations and action.

We believe the project to be more valuable than ever. The beautiful Island of Tortuga, discovered by Columbus, served as the pirate base during the days of the Spanish Main and is one of the most dramatic and enchanting sites in the world. It is situated directly under the major airlines from Miami to Port-au-Prince, and is in the midst of the sea lanes of the world. We have found abundant water. We have opened up one end of the island with a 20-kilometer road. We have proven that the Freeport concept is extremely popular to industry as well as to individual investors. The United States, along with other nations, is spending several million dollars through the Inter-American Bank to build a major highway from Port-au-Prince to the north coast. This will make the island available for the first time to the thousands of tourists of Port-au-Prince. We believe this project will be completed by others. We believe that the Haitian State already knows who those others will be. Translinear has taken all the risks, paid all the bills and suffered all the loss. The land is there, the infrastructure is there, the plans and the engineering are there, and the equipment to continue to work is there. By right of lease and of law, these assets belong to American citizens. But any hope of regaining them appears to us to be remote.

So we have come to ask your help in the recovery of our assets. As American citizens we are grateful for a government that will hear us. But I think I speak for American business abroad when I say "hearing" is not enough. We must also be protected and supported.

On April 2, 1973, I received a letter from the American Ambassador in Haiti. From that letter I quote:

Minister of Finance, Francisque, has assured me that the interests and investments of Translinear will be protected and that he hopes your company will continue to carry on its work in Tortuga. Signed, Clinton E. Know, American Ambassador.

Thank you.

[The following report was attached to Mr. Crook's statement:]

SUMMARY OF RELATIONSHIPS BETWEEN THE REPUBLIC OF HAITI AND TRANSLINEAR, INC.

1970

December 4—Original Convention signed between Republic of Haiti and Dupont Caribean, Inc., a Texas Corporation headquartered in Eastland, Texas. Convention provided for 99 year lease and freeport status for Ile de la Tortue, an 85 square mile island off the north coast of Haiti. The island was infamous in 17th and 18th centuries for pirate activities but in 1970 it was an undeveloped area containing about 10,000 people existing in a condition of extreme poverty.

1971

April 5—Convention becomes official through publication in government paper Le Moniteur.

July 13—first meeting between principals of Translinear partnership and Dupont Caribbean, Inc. Mr. Don Pierson was President of DCI.

July 27—Mr. William H. Crook has telephone conversation with U.S. Ambassador to Haiti Clinton Knox, who assures him of Convention's soundness and legality and new favorable investment climate in Haiti.

September 28—DCI signs a management contract with Equity Capital Management Corporation (ECM), a company owned by the Translinear partnership.

October—Architectural firm of Hellmuth-Obata-Kassabaum retained to develop master plan of project.

November 20—Securing of Jean Claude Leger as Translinear attorney in Haiti.

November 30—Amendment of Convention between Haiti and DCI (requested by Haiti).

Mr. Robert A. Fanning, Translinear partner and attorney, secures release of 1,650 carreaux of land on Tortue for first development activity (approx. 5,200 acres). Signed copy of release by Minister of Finance, Francisque.

1972

January 20—Convention amendment published in Le Moniteur.

January 20—1000 acres of land on Tortue leased for 99 years by International Business Ventures (IBV), a joint venture controlled by the Translinear partnership.

February 7—Reception for leading Haitian government officials and businessmen at Haitian restaurant, La Lanternne. Progress report and development plans presented. Preliminary Planning Report brochure distributed and architectual model of project shown.

February 10—Translinear receives $15,000 check from pharmaceutical group wishing to lease land for manufacturing facility.

February 24—Contract between DCI and Translinear partnership for Translinear to lease additional 3,800 acres of land on Tortue and one seat on five man Dupont Caribbean Free Port Authority (DCFPA). This organization was provided for by the Convention and was to be a quasi-sovereign body that would administer the Island as a freeport. Translinear forms Translinear, Inc.

February 27—Completion and publication by Translinear, Inc. of financial-feasibility study of Tortue project.

April 11—Separate letters from Translinear attorney Leger to Haitian Minister of Finance. Francisque, and Haitian Director of Contributions, Merentie in-

forming them of Translinear's sub-lease from DCI and Translinear's right to one seat on Freeport Authority (DCFPA).

April 12—Amended contract between Translinear and DCI.

April 21–23—Administration aide of Haitian Minister of Interior and Defense Luckner Cambronne, Mr. Jean Baker in Dallas. Assures Translinear of Haitian interest in project and support of Translinear's development efforts.

April—Translinear arranges for and finances survey of released zone of Island (first survey ever on Island).

May—Translinear, Inc. opens bank account in Banque Nationale in Port-au-Prince and leases office in airport.

May 12—Letter to Haitian Interior Minister Cambronne detailing Translinear's progress on the development.

May 23—Survey of Island submitted to and accepted by Department of Contributions. Receipt for survey returned.

June 6—Letter from Department of Contributions confirming lease.

June 14—Letter of response from Attorney Leger to Contributions.

July—Mr. Jim Hobbs, Translinear, Inc., Executive-Vice President, moves to Haiti to become project director of Island development.

July—Translinear, Inc., opens office in Port-au-Prince airport. Perhaps the most impressive office in Haiti, the facility was designed by Haitian architect Max Ewald. Translinear is the only non-airline business in the airport.

Late July—Completion of the topographic mapping of the released zone of the Island.

August 4—Letter from O. T. Beckham to Mr. Don Pierson, President of DCI, containing long list of items urgently needing action of Freeport Authority and asking Pierson for meeting of DCFPA as soon as possible.

August 10—Arrival on Tortue of construction barges and beginning of first construction activity. Translinear, Inc. had signed $455,000 construction contract with Indian River Construction Co., of Jacksonville, Florida. Initial contract was for roads and engineering work for airport, dock and first hotel.

Receipt from Mapco of composite 30" x 96" color aerial map of Island shot from 2,500'.

August 14—Meeting with Ambassador Clinte[illegible] at U.S. Embassy to complain of DCI's disruptive activities toward Translinear in Haiti.

August 14—Translinear receives from DCI a "cease and desist" letter calling for stoppage of all work on Haiti until $50,000 construction permit paid to DCI.

August 15—DCI has barrels placed on runway at Tortue to prevent Translinear plane from landing. Action evokes anger of Haitians and prompts rebuke of Pierson by Ambassador Knox.

August 16—Translinear letter to Mr. Antonio Andre, Director of National Bank, asking for his advice regarding Pierson's demand of $50,000 before Translinear can continue work on Island.

Mr. Andre tells Translinear attorney, Leger, that Haiti is upset with Pierson actions and is about ready to take action against him.

September 6—Haiti, under leadership of Antonio Andre and Interior Minister Cambronne, calls meeting with DCI personnel. They force DCI to admit validity of DCI-Translinear contract, confirm validity of Translinear seat on Freeport Authority, request letter naming Mr. William H. Crook as Translinear representative to Freeport Board, and give clearance for Indian River Construction Company to resume work.

September 7—Letter from DCFPA signed by Pierson and Weber Alexandre (Haitian representative) saying that Translinear can resume work.

September 12—Letter to Haiti and DCI announcing William Crook as Translinear representative to DCFPA.

September 12—Letter to DCFPA containing documents detailing Translinear construction plans on the Island.

September—HOK plots first subdivision on Island—107 lots.

October 4—Progress report to Antonio Andre accompanying $15,000 check to Republic of Haiti (which was due on October 5 as part of DCI's contractual obligations to Haiti—assumed by Translinear under April 12 contract with DCI). Check was never cashed by Republic of Haiti.

October 11—Mr. Andre instructs Hobbs to write DCI letter requesting meeting of DCFPA as soon as possible.

October 20—Mr. Andre instructs Pierson to hold DCFPA in his office at 1:00 P.M. Pierson does not come.

October 23—Hobbs meets with Minister Cambronne and is assured of Government's backing to move forward with DCFPA meeting to obtain approval of Translinear's requests contained in September 12 letter.

October 25—Leger issues title opinion on validity of Translinear land lease.

October 27—Mr. Andre sends telegram to Pierson calling for DCFPA meeting on November 3 and asks Pierson which Translinear partner Pierson wants on DCFPA board. Mr. Andre also instructs Leger to have Translinear representative at the scheduled meeting.

Late October—By end of October Translinear is holding 37 license applications accompanied by over $75,000.00 in checks for presentation to DCFPA.

November 2—telegram to Mr. Andre that William Crook will represent Translinear at meeting.

November 3—Pierson does not appear for meeting.

November 10—Contract between Translinear and Daniel Bourderau, French hotel chain owner, for $215,000 for hotel site on Tortue. Condition of contract for validity is meeting of DCFPA.

November 15—dismissal in Haiti of Minister Cambronne.

November 16—visit to State Department by William Carden, Translinear, Inc., Administrative Vice-President, requesting advice and direction on problems faced by Translinear in Haiti.

Novmeber 29—HOK plots second subdivision on Island.

Late November—O.P.I.C. filing complete for Translinear project except for approval letter from Haitian Government.

December 1—Letter to Minister Francisque requesting his signature on letter required for O.P.I.C. Insurance.

December 6—Meeting with Minister of Interior Roger Lafontant. Presentation of report showing problems Translinear is having; list of decisions urgently needed from DCFPA presented Minister Lafontant reports he is DCFA member replacing former Minister Cambronne. He sets up meeting for Translinear with Mr. Andre who says that Pierson has two weeks to have meeting of DCFPA or Government will take action against him.

December 18—Both Minister Francisque and Mr. Andre tell Hobbs that Haiti will not sign O.P.I.C. letter until Haitian problem with DCI is resolved (but that it will be signed immediately at that point).

December 28—Letter to Andre Theard, Director of Tourism, asking for his help in getting things moving.

December 29—Conversation with Herve Michele. Consul General of Haiti in New York, who promises to help when he goes to Haiti in January.

End of December—Completion of H.U.D. filing for sale of Haitian land to U.S. citizens with the exception of letter from D.C.F.P.A. stating it is administrative authority on the Island. DCI refuses to send letter.

1973

January 6—Carden goes to Haiti and meets with Minister Lafontant and Consul Michel who report that Government is ready to take action against Pierson and that Translinear's interest will be protected.

January 15—Haitian hotel owner Clement Robitale signs provisional lease for $164,000 of hotel land.

January 28—Group of Italian developers sign contract for $1,000,000 worth of land on Tortue with option of $1,000,000 more. Condition of Contract is meeting of DCFPA.

January 22—Letter to Mr. Andre asking what to do about uncashed $15,000 check. No reply.

January 22—Filing of papers to set up Translinear d'Haiti and deposit of $5,000 required for same. This done at the suggestion of Haitian officials.

February 8-9—Trip to State Department by Carden asking for advice on worsening Haitian situation. Polite reception but State refuses to get involved.

February 14-20—Carden in Haiti. Is told by Minister Francisque that Haitian patience with DCI is gone and action expected soon.

February 28—Pierson summoned to office of Minister Francisque. Is told legal action is going to be started against him for purpose of cancelling contract. Translinear attorney Leger also summoned to office where he is told of governments plans and is assured that Translinear's interests will be respected and protected by Haiti.

March 1—Pierson called to Court in Haiti and Government asks for temporary restraining order—allegations include failure to form Freeport Authority.

March 8—Haitian court meets to indict Pierson and to announce plans to bring suit against him.

March 18—Findings of the Court in Haiti issued in favor of the Government. Order issued to stop work on Island.

March 22—Carden in Haiti. Meets with Minister Francisque who assures him that although all of Pierson's activities on the island will be stopped that Translinear will be allowed to continue work after a brief interruption.

March 23—Ministers Francisque (finance) and Fortune' (justice) come to Island where Government attorney Jeanty issues order for work stoppage. Translinear is told it can resume work the following Monday. On Monday Translinear is informed that the stoppage must continue.

At time work was stopped. Translinear had invested over $2,000,000 in the project. Over 20 kilometers of roads had been constructed and construction was ready to begin on a major airport, dock, and the first hotel.

March 27—Carden visits Commerce Minister Jean-Leberre, who assures him of President's interest in continuing the project and suggests writing letter to President.

Letter to President Duvalier explaining Translinear's development activities and expressing concern over the work stoppage. No reply.

March 28—Letter to Ambasador Knox expressing concern over the work stoppage. No reply.

March 30—Translinear, Inc. files suit in U.S. against DCI and Pierson.

April 2—Letter to William Crook from Ambassador Knox indicating he had received assurances from Minister Francisque that the interests and investments of Translinear would be protected and expressing the hope that Translinear would continue its work.

April 4—Letter to Minister Francisque asking for clarification of Translinear's position, where Translinear should take the requests that would normally go to the DCFPA and what Translinear should do with the license requests and cashier checks being held by its Haitian attorney. No reply.

April 10—Letter to new Secretary of Commerce Serge Fourcand asking for his help in resolving work stoppage. No reply.

April 11—Letter to President Duvalier explaining financial burden work stoppage places on Translinear. Letter also explains Translinear's reasons for bringing suit against DCI. No reply.

April 12—Pierson attempts to call Freeport Meeting. Carden is in Haiti and instructed by Minister Francisque not to attend.

At the request of Minister Francisque letter is sent to him detailing list of decisions needed by Translinear from the DCFPA or its equivalent.

May 8—Telephone conversation between Ambassador Knox and William Crook in which Ambassador promises to get President to make affirmative statement about Translinear and the future of the project.

Mid-May—Translinear distributes newsletter in French in Haiti relating its development activities on Tortuga up to that time.

May 22—Letter to President Duvalier recalling the two previous letters sent to him and asking for (1) a firm conveying of land titie to Translinear of the 4,800 acres it had leased; and (2) the implementaton of a working Freeport Authority. No reply.

May 29—Carden meets with Minister Fourcand who says nothing can be done about Translinear's problem until Government solves problem of urgently needed sugar mill. Carden promises to find investors who will build the mill and Minister promises if he does that Translinear "can have anything it wants on the Island." Carden tells him Translinear only wants what it contracted for.

June 1—Letter to Haitian Ambassador to U.S., Rene Chalmers asking for appointment to discuss situation.

June 4—Letter to Minister Fourcand regarding prospective investor for sugar mill. No reply. Several telephone calls to Fourcand regarding investors for a sugar mill received the uniform response that he was not in.

June 5—Meeting with Ambassador Chalmers in Washington, D.C. He promised to help. Carden, while in Washington, also meets with representatives from O.P.I.C. and the State Department.

June 7—Follow-up letter to Ambassador Chalmers explaining situation.

June 7—Telephone call from Attorney Leger reporting on reassuring meeting with Minister Francisque. Letter sent to Minister Francisque. No reply.

June 21—First showing of Translinear financed multi-media production of 17-minute film: "Haiti: Pearl of the Antilles." Production and equipment cost approximately $15,000. An English version kept in the United States; a French version set up in Haiti.

July—Film shown privately in Haiti to numerous ministers and government officials. Unvarying comment that film was the best that anyone had ever produced about Haiti.

August 22—Film shown at large reception for Haitian business and government leaders. Representative of Palace present.

August 27—Judgment of Haitian Court given, finding DCI in breach of Clauses 6 and 7 of the Convention and cancel the Convention. Attorney Leger told by Minister of Justice Jeanty that Translinear's rights are protected.

August 29—Attorney Leger and Carden visit Minister of Information and Coordination Paul Blanchet who says problem and statement of what Translinear wants.

August 31—Carden visits Minister Fourcand who is very evasive about when Translinear can expect to return to work.

September 4—Follow-up letter from Leger to Minister Blanchet.

September 5—Copy of Blanchet letter to Justice Fortune's asking for his advice and help.

September 7—Minister of Justice Jeanty, on instructions from President, calls Leger to give him certified copy of Court decision.

Minister of Finance, Bros, calls Attorney Leger to his officer to discuss moving forward with project. They discuss Translinear's need of letter for O.P.I.C. and letter reaffirming land title. Letters are promised soon.

September 25—Carden meets with officials from Departments of Commerce and Justice, but promised letters are not forthcoming.

September—DCI case appealed to the Haitian Court of Civil Appeals.

October 1-3—Carden has three meetings with Minister Fourcand. Is told in third meeting that President wants statement from Translinear of what it wishes to do.

October 4—Letter to President Duvalier outlining Translinear's position and asking for clarification of Translinear's position in view of August court decision. No reply.

October 4—Letter to Minister Fourcand outlining what Translinear would like to do. Answer promised by October 12.

October 12—No answer.

October 12—Request from Haitian-American Diversified, Inc., an American firm, for 370 acres of industrial land on Tortue. They represent 30 companies and over 4000 light assembly jobs.

October 23—Letter to Mlle Josette Philippeaux, Charge d'Affairs at the Haitian Embassy in Washington, asking for help in getting an answer from the Government. No reply.

October 25—Letter to Thomas J. Corcoran. Deputy Chief of Mission at U.S. Embassy in Haiti asking for any help Embassy might give in clarifying situation. No reply.

October 26—Follow-up letter to Minister Fourcand. No reply.

November 13—Carden meets with Minister Fourcand. Minister reports that President has instructed him to undertake negotiations with Translinear to resume work. Promises to get O.P.I.C. letter signed by Minister Bros.

November 15—Letter from Minister Fourcand recognizing Translinear's work and investment and indicating President wishes to continue project. Letter asks for Translinear to submit new contract.

Late November—Attorney Leger comes to Dallas and works with law firm of Locke, Purnell, Boren, Laney and Neely in drawing up document. Document is examined by International Departments of Law Schools at SMU and University of Michigan.

December 6—Carden returns to Haiti with proposed new contract. Five copies with supporting documents are delivered to Minister Fourcand, Carden is told that Haiti's involvement with World Cup Soccer competition will prevent any discussion of contract until after first of year.

December 29—Telephone call from Leger with some suggested revisions of contract passed on to him by members of Department of Commerce.

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January 6--Carden returns to Haiti with slightly amended contract and appointment for January 8 with Minister Fourcand.

January 8—Minister Fourcand wishes to change appointment to the following week because of a Trade Commission in Haiti.

January 22—Carden returns to States after failing on seven occasions to get Minister Fourcand to agree on an appointment date.

January 28—Haitian Appeals Court rules against DCI and in favor of the Haitian state.

March 21—Carden back in Haiti and has meeting with Minister Fourcand who reports that Haiti is ready to negotiate but that Finance Minister Bros must also be involved. After failing in numerous attempts to get an appointment with Bros, Carden returns to States.

April 22—Carden returns to Haiti with three American investors interested in putting sugar mill in Haiti. Refused appointment by Fourcand. The Colonel at the airport announces that Tortue Island is now closed to any traffic, including Translinear. This is despite the fact that Translinear has nearly $400,000 worth of equipment on the Island and a monthly payroll for people guarding the equipment.

April 29—Letter to Paul Blanchet, Minister of Interior, asking for permission to go to Island.

May 2—Carden leaves Haiti. The morning he leaves the U.S. Embassy reports permission to visit the Island will be given if request is made 24 hours in advance.

May 30—Letter to Congressman Olin Teague from State Department (signed by Linwood Holton) stating that Translinear's denial of access to Tortuga was for reasons other than the project and that Translinear could go if they requested passage 24 hours in advance.

Last week in July—Translinear investor, A. T. Robertson, Vice President of Dresser Industries, goes to Haiti and is repeatedly refused permission to go to Island (U.S. Embassy personnel made requests on Robertson's behalf, but to no avail.) The Colonel at the airport told the Translinear secretary that any attempt to sail to the Island would lead the Haitian armed forces "to blow the boat out of the water."

June 4—Letter to Minister Fourcand asking for release of the $5,000 deposited on February 5, 1972 to form Translinear d'Haiti. The government had refused to sign the appropriate documents for nearly eighteen months. (After government officials had suggested this company be formed.)

June 10—Letter to Mr. John W. Sims, U.S. Department of State, asking for information on travel ban to island.

June 14—Sims replies that ban on going to island imposed for security reasons.

June 24—Haitian Supreme Court turns down D. C. I. appeal, exhausting all appeal procedures.

July 19—Leger sends letters to Minister Bros and Fourcand calling their attention to Supreme Court decision and suggesting a meeting at their convenience to begin discussions regarding Translinear.

July 24—Telegram to President Duvalier asking for clarification of Translinear's position.

August 12—Letter to Mr. George High, U.S. State Department, at his request giving background on Translinear involvement in Haiti.

August 14—Letter to Translinear from Leger saying he has received strong encouragement from Minister of Justice Jeanty.

August 22—Carden goes to Washington for visit with State Department.

Late September—Translinear settles out of court with DCI.

October 2—Telegram to President Duvalier announcing favorable conclusion to suit with Pierson and asking for right to resume work.

November 4—Letter to Leger from Artaud Toureaux, Director General of the Department of Finance, asking for Translinear representative to come to Haiti for a meeting on November 13 with members of the Presidential Commission.

November 9-16—Trip to Haiti by Crook and Carden and two attorneys from Baker and Botts. Unexpectedly called for non scheduled appointment on morning of 13th with Edeuard Dupont, member of Sub-Commission on Foreign Investment. Dupont informs group that there will be no meeting with Presidential Commission and that his sub-commission will study project. No presentation or negotiation allowed.

Group meets with Minister of Justice Jeanty who promises unrestricted access to Island when Haitian Government receives certified copy of Translinear—DCI court settlement. On Saturday evening the Translinear group hosted U.S. Ambassador Isham for dinner. The Ambassador reported he had talked with the President about the project. The President was reported to have said that he knew "we were serious men."

November 24—Certified copy of settlement sent to Minister Jeanty.

December 6—Leger receives word from sub-committee they have contract revisions to suggest. He sends letter to committee asking for study to be halted until revisions can be made.

December 12—Dupont gives affirmative reply.

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January 3—Letter from Ambassador Isham to Senator Lloyd Bentsen regarding project.

February 7—Receipt by Translinear of suggested revised contract.

February 12—Haitian attorney Leger comes to U.S. to work with Baker and Botts on contract revision.

February 24—Carden returns to Haiti with revised contract where more revisions are made following suggestions of Minister Bros.

March 10—Leger makes further revisions in contract.

March 11–20—Carden in Haiti.

March 15—Letter to Minister Bros. telling of wish to submit new contract.

March 17—Letter to President Duvalier asking for permission to go to Island to inspect equipment. No reply.

March 18—Summons to come to office of Henri Bayard, Under Secretary of Commerce. Minister Bayard informs Carden that President has instructed him to begin serious negotiations regarding new contract for project. Carden delivers complete documentation of the situation. Bayard postpones negotiation until Carden's next trip so he can have time to study proposal.

March 19—Letter to Minister Bayard confirming conversation and appointment of April 2.

March 19—Meeting with Leon Jeune, Director of Civil Aviation who reported Translinear would soon get permanent authorization to go to Island because "the President has given his okay for your company to be taken care of."

March 31—Letter from Leger to Minister Jeanty asking for permission for William Carden and William Crook to go to Island on their forthcoming trip to Haiti.

April 2—Telephone call from Leger that meeting is postponed to April 10.

April 8–18—Carden in Haiti (Crook there part of time.)

April 10—Discussion with Minister Bayard indicates President is concerned about questions of Haitian sovereignty and the possible return of exiles to the Island. Bayard wants Commerce Department Legal Officer to examine contract. Suggests more negotiation on next trip to Haiti.

April 12—Crook and Carden go to Island. First visit to Island by Translinear personnel in over a year.

April 15—Carden is summoned to clandestine meeting in a park where he is approached by someone purporting to be a member of the Haitian Government. A demand is made for $500,000 and one half of the Translinear, Inc. stock before a contract will be granted. The attempt is reported by Carden to the Haitian attorney, Leger, and to Minister Bayard. In the absence of Ambassador Isham, William Crook reports the incident to David Thompson, Deputy Chief of Mission. Minister Bayard assures Carden there is nothing to attempt and promises speedy conclusion to negotiations.

April 28–May 10—Carden in Haiti.

April 29—Discussion with Mr. Montez, legal officer of Department of Commerce, regarding any legal reservations he might have about contract.

April 29—Meeting with nIterior Minister Blahchet asking for permission to go to Island. No response ever given.

May 7—Meeting with Minister Bayard who said Minister Bros needed to be involved in negotiations.

May 11—Revision of contract to meet objections of Mr. Montez.

May 22–June 12—Carden in Haiti. Went to Haiti expecting to meet with Ministers Bros and Bayard on May 23. Meeting did not take place until June 4 and

the only with Minister Bros. Minister Bros inexplicably says the Contract must be given to Presidential Commission for further study and revision.

June 5—Contract presented to Presidential Commission by Attorney Leger.

June 5—Letter to President urging resumption of work on Tortue as quick method of dealing with misery and starvation caused by extensive drought in north east.

June 9—Meeting with Pierre Gousse, Minister of Coordination and Information and member of Commission, who said Commission had studied over half the contract and had no major changes to offer. He reported that the contract had the highest priority from the President and that Carden should be ready to return to Haiti by June 16–21 for the final negotiations and signing.

June 23—Telephone call from Haitian attorney saying the President has abolished the Presidential Commission and that a new law has been passed limiting leaseholds held by foreigners to a maximum term of nine years.

Late June—Haitian attorney in U.S. and calls to say he has been told "it is all over" and the project has been dropped.

July 16—Telegram to President Duvalier from William Crook asking for clarification of Translinear position in view of Translinear investment and encouragement by Haitian officials. No reply.

August—Numerous reports from Haiti that President was personally offended by July 16 telegram.

September 3—Telegram to President Duvalier apologizing for any offense he may have taken at telegram of July 16, and again asking for a clarification.

September 8—Telex from Leger saying he was contacted by Minister Bayard who had been told by President to take care of matter. The Minister said he would like to reach quick resolution of matter "One way or another."

October 8—Telegram from Carden to Minister Bayard appealing for his help as a friend to get matters moving.

October 20—Surprisingly strong and hostile reply from Minister Bayard denouncing Translinear for attempting to use political pressure to squeeze a contract out of Haiti.

October 23—Letter from Carden to Minister Bayard suggesting a misunderstanding exists and that Translinear is not demanding anything, but wishes an equal partnership joint venture with Haiti with no sovereignty challenged.

October 27—Letter to Minister Bayard hand delivered to his office by Carden on trip to Haiti. During five days in Haiti Carden manages one brief visit with Minister who asks him to be patient and assures him that he is taking care of the contract. The Minister promises to complete negotiations on Carden's next trip to Haiti.

November 28—Telephone call from Haitian businessman to come to Haiti as quickly as possible. Minister Bayard is ready to sign contract if two small problems can be resolved.

December 1–5—Carden in Haiti. Met by businessman who says: (1) New contract must specify problems between Translinear and Haiti will be resolved in Haitian Courts (agreed); and, (2) New contract must put customs and emigration on Island under Haitian control (contract already written that way). After these two items agreed on, Carden was told the Minister would have to have $50,000. Carden refused. Discussions were abruptly broken off and Carden found it impossible to meet with the Minister himself. Finding further discussions impossible, Carden made arrangements to terminate all Translinear relations with Haiti.

Chairman PROXMIRE. Well, I want to thank both of you gentlemen for the very interesting story. I want to see if we can get some clearer understanding of just what happened and what you think should be done under these circumstances, not only by American business concerned with this kind of situation, but also by the State Department, by the Government of the United States.

Mr. Carden, you described a lengthy situation concerning your business investment in Haiti, going back to 1971. Throughout most of this period, were you encouraged by the Government in Haiti to continue work on the Tortue project?

Mr. CARDEN. I would say that we were not only encouraged, but enthusiastically encouraged, until the point——

Chairman PROXMIRE. When you discovered water on this island?

Mr. CARDEN. Well, it was after that.

Chairman PROXMIRE. Well, wasn't it right after that?

Mr. CARDEN. Yes.

Chairman PROXMIRE. Doesn't it sound like what happened is you discovered water that would make your investment much more valuable?

Mr. CARDEN. That is one interpretation that could be put on it. Perhaps that is the one that it should be. We fell that there is some merit in that evaluation.

Chairman PROXMIRE. You are very indefinite, and perhaps you cannot be anything else, about this other group. Do you have any indication whether it is another American concern or whether it is a Haitian operation or some other country? Do you have any notion or any evidence?

Mr. CARDEN. Senator, I am a historian by training. And you don't like to put anything down as the written word until you have the facts in hand. All we have are allegations, but the source where these rumors come from, we trust rather implicitly. And the word that we have is that a part of the Presidential family that is now living in the United States is soon to join in concert with a European group to take our place on the island. And the only thing that they are waiting for is for us to get sick and tired enough of the situation to pull the equipment of the island.

Chairman PROXMIRE. How much do you estimate has been Translinear's total investment in Haiti?

Mr. CARDEN. A solid figure is $3 million.

Chairman PROXMIRE. What was the status of the project at the time the Haitian Government issued the work-stop order?

Mr. CARDEN. We were in phase I of the master plan. We had invested a little over $2.2 million to that point. We had completed 20 kilometers of roads. We had done the engineering work and surveying for a 10,000 foot-long and 200 foot-wide airport that would be on the island, a dock that was to extend some 700 feet out into the Tortuga Channel, and for the first major hotel on the island. In addition, we had contracts for two other hotels and a contract with an Italian group to lease from us some $2 million worth of land on the island. In addition to that, we had set up a sales organization to begin leasing lots in the first two subdivisions. And we had signed provisional leases for over one-half of those lots.

Chairman PROXMIRE. When did the work actually stop?

Mr. CARDEN. On March 23, 1973.

Chairman PROXMIRE. And you were given the stop-order when?

Mr. CARDEN. On that day. They came into the island——

Chairman PROXMIRE. As soon as you were told to stop, you did?

Mr. CARDEN [continuing]. Yes, sir.

Chairman PROXMIRE. Now, before getting into the problems you encountered after you were forced to stop work in 1973, I want to get into the details of the attempts to get you to pay a bribe.

First, in April of 1974, you were told not to visit Tortue Island even to inspect your property?

Mr. CARDEN. That is right.

Chairman PROXMIRE. And you were warned that if you tried to sail there, your boat would be blown out of the water?

Mr. CARDEN. That is right.

Chairman PROXMIRE. Who made that statement to you and what did you do about it?

Mr. CARDEN. The Director of Civil Aviation at the airport, my secretary, the colonel in charge of the airport—the airport is under military authority in Haiti—and myself were in a conversation on the landing area just in front of the airport where passengers disembark. We were asking for a possible alternative to flying there. I suggested, "What if we drove to Port-au-Paix, which is a small town lying opposite the island, and just sailed across?" And it was then that the colonel of the airport——

Chairman PROXMIRE. The colonel of the airport said your boat would be blown out of the water?

Mr. CARDEN. That is right.

Chairman PROXMIRE. He was Haitian?

Mr. CARDEN. Yes.

Chairman PROXMIRE. In March of 1975, you were summoned to the Office of the Under Secretary of Commerce?

Mr. CARDEN. That is right.

Chairman PROXMIRE. And negotiations for a new contract were begun. Did it appear at this time that the project might finally be getting underway? Were your hopes renewed?

Mr. CARDEN. Yes, sir. I was summoned from a businessman's office with the word that the Under Secretary of Commerce was calling all over town trying to find me. The contract at that time was supposedly located in the Ministry of Finance and I had no reason to be expecting a call from or to have contact with the Under Secretary of Commerce. But the word came that he urgently wanted to see me. I went to his office. He said:

I received a call this morning from the President of Haiti, and he told me for us to complete the work on this contract as quickly as possible.

He reported to me that when the President had called him, he said: "Do you know Bill Carden?" And he said, "Yes, I do." And he said, "Well, find him and get this contract over with." And while I was having this conversation with the Under Secretary, the telephone rang and it was the President himself inquiring as to whether he had reached me and what we were doing about the contract.

Chairman PROXMIRE. Now, on April 12, 1975, that is more than a year later—13 months in fact—you were allowed for the first time, as I understand it, to visit your property. Is that correct?

Mr. CARDEN. Well, I should say that there was an unofficial visit some 3 months earlier, when I was allowed to go to the island long enough to drop a payroll. We literally touched down, left the money and took off again. But, this was the first official inspection trip where we got out, walked around, looked at the equipment, saw the deterioration, and made some estimate of what kind of salvage value was left in the equipment.

Chairman PROXMIRE. What was your estimate?

Mr. CARDEN. Less than $100,000.

Chairman PROXMIRE. What was that equipment worth?

Mr. CARDEN. The equipment—the supplies, plans, and materials—was worth between $450,000 and $500,000 when we left the island, when we were forced to stop work.

Chairman PROXMIRE. Any other salvage value at all except for the perhaps less than $100,000 you could get for the equipment?

Mr. CARDEN. Well, I hardly see any because the plans and drawings apply to that island. They are not the kind of thing where we could find another island and use them. If they cannot be used on Tortue, they can't be of value to us. They would only be of value to someone who came in and took over after we left.

Chairman PROXMIRE. You refer to a few days later going to the house of one of your employees and finding him very frightened. What was the reason for his fright?

Mr. CARDEN. The fright was occasioned by a call from an individual—from this individual that later met me in the park, threatening physical harm to this employee if he did not get me to his house that morning in order that this meeting could be arranged for the park.

Chairman PROXMIRE. Your employee told you he had been threatened?

Mr. CARDEN. Yes. The employee, I might add, remained quite frightened.

Chairman PROXMIRE. Yes.

Mr. CARDEN. And in great fear.

Chairman PROXMIRE. Now, did you suspect at that point that you were going to be shaken down for a bribe?

Mr. CARDEN. Well, I had no idea. When I went to the employee's house, I really thought this individual was going to hit me up for a raise. And I was frankly kind of dreading the encounter because with no work going on and things at a complete standstill, there was really no justification for a raise. But this is really what I expected.

Chairman PROXMIRE. Now, while you were there, a telephone call came in?

Mr. CARDEN. Yes, sir.

Chairman PROXMIRE. Was that telephone call for you to take part in the conversation?

Mr. CARDEN. No, I took no part in the conversation. The employee was explaining to me that he was asked to bring me to his house and had just indicated that we were to have some kind of a meeting with an individual representing the Haitian Government, who would explain things to me further. The employee said, "They are going to put the touch on you." While he was explaining this, the telephone rang. The employee talked to the individual and broke into tears again in fear. I really thought I had a hysterical individual on my hands and worried about the two of us driving in separate cars to this appointed rendezvous. But we did get there. I sat in my car alone until this individual approached.

Chairman PROXMIRE. Then you were approached by a person. Who did this person say he represented?

Mr. CARDEN. At first the individual and I engaged in some rather heated conversation about the fact we were not going to have any further conversation if he did not identify himself by name. I finally saw that that was fruitless. The individual purported to represent the

Government of Haiti. As it later developed this individual represented a group of 12 other individuals—that is, there were 13 in all involved in setting up the demands that were made to Translinear for this payoff.

Chairman PROXMIRE. You say he did claim to represent the Haitian Government?

Mr. CARDEN. Yes, sir.

Chairman PROXMIRE. What branch of the Government?

Mr. CARDEN. He said he was "from the palace."

Chairman PROXMIRE. From the palace?

Mr. CARDEN. That could mean any one of several branches because there are several——

Chairman PROXMIRE. Did you ask him whether he represented or claimed to represent the President?

Mr. CARDEN. No, I did not put it into those words. When he said he came "from the palace," it was obviously a claim to represent the official voice of the Government of Haiti.

Chairman PROXMIRE. Did he give any kind of official indication that he represented the palace, any kind of badge or anything of that sort?

Mr. CARDEN. No, sir.

Chairman PROXMIRE. You said he spoke contemptuously of Translinear's efforts. Was he intimidating? Did he threaten you?

Mr. CARDEN. Well, he did. I was not smart enough at the time to be frightened. I was more angry than I was anything else. I was frankly furious.

Chairman PROXMIRE. How did he threaten you? Did he threaten your life?

Mr. CARDEN. No, not my life. But he just said, "It was going to be very unhealthy for Translinear and for other American companies if we did not cooperate."

Chairman PROXMIRE. He used that term "unhealthy"?

Mr. CARDEN. Yes, sir.

Chairman PROXMIRE. And you said he ordered you to fire your attorney and hire Mr. Sieyed?

Mr. CARDEN. Yes.

Chairman PROXMIRE. Who you later learned was employed by the Haitian Justice Department. How did you find that out that Mr. Sieyed was employed by the Justice Department?

Mr. CARDEN. Well, after Mr. Crook reported to the Embassy and I spoke to the Minister, I went to several different businessmen in Haiti that day and said, "Look, this proposition has been made. What do you think about it? Is this real? Who is this?"

And one of the businessmen that I went to knew immediately who it was and said that, "Mr. Sieyed is an attorney that works in the Department of Justice." I later was taken——

Chairman PROXMIRE. How did he know who he was?

Mr. CARDEN. I was later taken to the Justice Department in Haiti, which is rather difficult to describe architecturally, but there is a large covered lobby with grillwork opened from the street and in which there is a kind of reception room. And the businessman and I sat outside one day in a car until Mr. Sieyed was spotted inside this lobby. Then we got out and went inside and kind of walked around and

came back outside. And he said, "Is that the man?" And I said, "Yes, it is."

Chairman PROXMIRE. So, you saw him at a desk in the building?

Mr. CARDEN. Not so much at a desk. I saw him with papers in his hand having come out of a room inside the Justice Department. He was obviously a man on some official business there.

I might say, parenthetically, Senator, that this same businessman did a lot of work for me in trying to find out who the unidentified individual in the park was. He also took me back to the Justice Department on another occasion in late October of 1975. He asked, "Do you see in the lobby the individual that approached you in the park?" And he was, in fact, also in the lobby of the Justice Department.

Chairman PROXMIRE. Do you believe that this man is a Government official?

Mr. CARDEN. It is my assumption.

Chairman PROXMIRE. That this man who approached you——

Mr. CARDEN. That is my personal belief, yes, that he does work for the Justice Department—well, that he does work for the Justice Department.

Chairman PROXMIRE [continuing]. In what capacity?

Mr. CARDEN. I have no idea.

Chairman PROXMIRE. Do you think that simply because you saw him in the building?

Mr. CARDEN. Yes, and because this businessman said that, "as far as he could determine, he worked for the Justice Department." There is an unusual employment situation in Haiti. A man does not necessarily have to have an obvious job before he is employed in some of these places.

Chairman PROXMIRE. Now, one of the demands was one that you deposit half a million dollars, $500,000, in the National Bank of Haiti. In what name was that deposit to be made?

Mr. CARDEN. The deposit was to be made into two accounts: one was to be made into the Translinear account. And if, for any reason—and the reason did not have to be under our control—but if for any reason we did not resume work in 30 days on the island, it was to be immediately forfeited. The other $200,000——

Chairman PROXMIRE. Forfeited to whom?

Mr. CARDEN [continuing]. Forfeited to the Republic of Haiti.

Chairman PROXMIRE. That was $250,000?

Mr. CARDEN. No, that was $300,000. The other $200,000 was to be deposited into an account that was identified to me as the Fund Defense Nationale, which supposedly goes for the widows and orphans of the military and police, but I have been told that this account is often used for other purposes.

Chairman PROXMIRE. Such as?

Mr. CARDEN. The personal use of certain people in the Government.

Chairman PROXMIRE. What people in the Government?

Mr. CARDEN. Well, I have been told, and I have no knowledge of this, but I have been told that members of the President's family—not the President himself, but members of the President's family.

Chairman PROXMIRE. Another demand was that you give five unnamed persons half the stock in Translinear?

Mr. CARDEN. No, not five—yet-to-be-named persons. There was no identification.

Chairman PROXMIRE. I should have said five yet-to-be-named persons.

Mr. CARDEN. There was no indication at that time of the number of people.

Chairman PROXMIRE. I beg your pardon. I should say yet-to-be-named persons.

Mr. CARDEN. And this was to be worked out later as to how this was to be done.

Chairman PROXMIRE. Do you have any idea of who those persons might be and how much half the stock would have been worth had the Tortue project been allowed to go forward. You said something like $27 million as of July——

Mr. CARDEN. As of July of 1977.

Chairman PROXMIRE. Yes, as the net worth of the project. So I presume this would be worth $13.5 million on that basis. Is that correct?

Mr. CARDEN. Well, theoretically, it would be in July of 1977 be worth that much, Senator. I did not know at the time who these unnamed persons were to be. The Translinear employee had a second and a third meeting with this individual who met us in the park. And the second meeting included the 12 other individuals that were working with this individual. And at that time, it was indicated they were to be the ones to receive this stock.

Chairman PROXMIRE. Now, according to your statement, you said that the man who approached you mentioned another U.S. firm that received a mineral contract from the Government because it had cooperated. Do you know what firm he referred to and what he meant by "cooperated"?

Mr. CARDEN. Well, I have been told what firm that was. I am hesitant, frankly, to say, because that firm did not involve Translinear. We are here only representing Transliner and I would rather not name——

Chairman PROXMIRE. Well, I am not going to ask you to name the firm, unless you have some pretty solid evidence, because it would be unfair and unfortunate if an innocent firm, through some hearsay, was damaged.

Mr. CARDEN. Exactly. We personally contacted that firm to find out if, in fact, this was true, and they denied anything of this nature having happened between themselves and the Republic of Haiti and I have no reason to doubt it.

Chairman PROXMIRE. Does the firm have a mineral contract in Haiti?

Mr. CARDEN. Yes, sir.

Chairman PROXMIRE. But you have no evidence other than this allegation that they had "cooperated"?

Mr. CARDEN. That is correct.

Chairman PROXMIRE. Is it your present belief that the payoff demands come from officials of the Haitian Government and, if so, what do you base that on?

Mr. CARDEN. It is my personal belief that the demands did originate somewhere within the Haitian Government, because of checking that Haitian business friends did for me, and because of our experience with the contract immediately after this bribery attempt—it being shifted to another Ministry and then to another Commission. So we can only assume that this is prima facie evidence that someone in high places was interested in either receiving this money or seeing Translinear disappear.

Chairman PROXMIRE. Now, Mr. Ambassador, you are a man of remarkable and very impressive background. When you decided to make this very substantial investment of your own funds and that of other principals, did anything of this kind occur to you at all? You are a sophisticated man, having been an Ambassador to Australia and a man who has been successful. Did you anticipte you might run into difficulties like this? Did you explore this possibility as one problem that might develop or did it just not occur to you?

Mr. CROOK. No, I think it did occur to us, Senator. We believe that Haiti was in a new period. We had the assurance of official Haitian statements that Haiti wanted to attract American investment and that they would provide a healthy and wholesome climate for that investment. I contacted the American Embassy and asked if the contract, under which we were to operate, was legitimate and if they believed that Haiti was under a new era. And they answered affirmatively.

I don't know how sophisticated I was. I think in retrospect I was probably rather naive. But, I did believe that it would be a rewarding venture, both in terms of honest profit and in terms of being able to do something for an underdeveloped country.

Chairman PROXMIRE. Now, in your statement, you say that a military guard was placed in your camp when the employees were rejected from Tortue. Approximately when did that occur?

Mr. CROOK. This would have occurred on the date that our men were flown out.

Mr. CARDEN. March 23, 1973.

Mr. CROOK. Yes; of the island.

Chairman PROXMIRE. March 23, 1973?

Mr. CARDEN. Yes, sir.

Chairman PROXMIRE. According to your statement, you reported the April 15 extortion attempt within 1 hour to the Deputy Chief of the Mission at the U.S. Embassy in Port-au-Prince. What was the Deputy Chief's reaction?

Mr. CROOK. I would say, sir, it was a nonreaction. He listened. He was courteous. There was no response.

Chairman PROXMIRE. This is shocking. As I say, you are an Ambassador, a former Ambassador to Australia. This is a very, very substantial investment. A bribe demand of this kind would seem to me to be of the greatest importance to our Government. If our Government is to protect American citizens and to do its best to assist in protecting their property abroad, this would seem to me to be a classic case where they should have moved. Weren't you shocked that there was no real reaction?

Mr. CROOK. I was disappointed.

Chairman PROXMIRE. Well, as an Ambassador, as a person who knew that Ambassadors, after all, are under the direction of the State

Department, did you take further action? Did you go to the State Department?

Mr. CROOK. I am sorry, Senator?

Chairman PROXMIRE. Did you appeal to the State Department?

Mr. CROOK. Yes; we had contacted Washington on many occasions. My only contact with Washington after reporting this to the Embassy came some weeks later. I frankly thought that the Embassy perhaps was quietly investigating on its own and that I would hear something from the Ambassador there. The telegram that I sent to the President of Haiti was a very strong and detailed telegram containing charges of exappropriation, confiscation, and intimidation. And a copy of that was sent to the Secretary of State. I had hoped that that might produce some response.

Chairman PROXMIRE. Let me identify that telegram. I have a copy of it here. That telegram was sent on what date?

Mr. CARDEN. July 16, 1975.

Chairman PROXMIRE. Let me just read from that telegram. It says:

On May 8th, 1975, culminating two years of negotiation—

This is a telegram you sent to the President of Haiti—it says:

On May 8, 1975, culminating two years of negotiation, this company was assured by Minister Bayard that our pending contract met all basic requirements and was acceptable to Haiti. On May 9, 1975, our representative, Mr. Bill Carden, was accosted in the park by an individual purporting to represent the President for Life of Haiti. Mr. Carden was instructed to pay a bribe of $500,000 and 50 percent of stock of this American company before the contract would be signed. Mr. Carden was verbally abused for his race, nationality, and because he was a foreign investor in Haiti. He was threatened with the blockage of the contract unless a letter addressed to your Excellency accepting the above conditions was sent. As Translinear rejected this extortion attempt and reported it immediately to the American Embassy and officials of your government, and so forth.

Now, having taken that action, what was the reaction, if any, of President Duvalier?

Mr. CROOK. We received word that the President was quite angry.

Chairman PROXMIRE. Angry at you?

Mr. CROOK. Yes. And that Mr. Crook was not to return to Haiti—that he would not be welcome back in Haiti. I then tried to move a step back in the company and pushed Mr. Carden forward in the hopes that perhaps something could be salvaged, but the response to the telegram was dramatic.

Chairman PROXMIRE. The response to the telegram was what?

Mr. CROOK. Was dramatic, in terms of the anger that it caused in Haiti, not in terms of any result concerning the contract.

Chairman PROXMIRE. Was there any evidence that the President of Haiti took any action in this regard within his own Government? Was there any indication that he was attempting to determine about this? I can understand his anger, but——

Mr. CROOK. I knew of nothing.

Chairman PROXMIRE [continuing]. But, you know of no action he took to investigate this?

Mr. CROOK. No, sir.

Mr. CARDEN. Senator, may I interrupt to say that on my next trip to Haiti after this telegram, I was told by the Minister that Mr. Crook

would never be allowed to return to Haiti and that if he attempted to do so, he would be arrested at the airport.

Chairman PROXMIRE. Have you returned to Haiti since then?

Mr. CROOK. No, sir. And that is information that has been kept from me. I am happy to hear about that. I won't return.

Chairman PROXMIRE. Now, you served as Ambassador to Australia under President Johnson's administration. Did you ever hear of any similar incidences during your service in Australia?

Mr. CROOK. No, sir.

Chairman PROXMIRE. What would you have done had an American businessman reported an atempted extortion to you?

Mr. CROOK. I think I would have picked up the phone and called the Prime Minister of Australia and reported it in detail and ask for permission to see him immediately. I think I would have followed through. I hope I would have done so.

Chairman PROXMIRE. Is that what you expected to be done on your behalf by the American Ambassador to Haiti when you reported to him what had happened?

Mr. CROOK. The American Ambassador was out of the country. My report was not to him. But, yes, I expected something at that level and of that immediacy to take place.

Chairman PROXMIRE. Now, in view of the reaction of the President of Haiti to your telegram, do you have any reason to expect that that might have had some success? I think that it is quite a different situation if the U.S. Ambassador takes this position, as compared to a private businessman.

Mr. CROOK. Yes.

Chairman PROXMIRE. So, it is possible that if the U.S. Ambassador had spoken up with force and strength, that he might have gotten a different reaction?

Mr. CROOK. I think it is very possible.

Chairman PROXMIRE. Why, in your judgment—well, let me put it this way. Is there any possibility in your mind that he did quietly do this without your knowledge?

Mr. CROOK. Yes, I think there is a possibility that Ambassador Isham made inquiry. I am not privy of course to what occurs between the Embassy and the palace.

Chairman PROXMIRE. If they did, why wouldn't they tell you?

Mr. CROOK. I don't know, sir.

Chairman PROXMIRE. As a former Ambassador, wouldn't you feel that that is a courtesy owing to a businessman who had endured this kind of treatment?

Mr. CROOK. I think, Senator, it is more than a courtesy. I think it is a right that is owed to an American businessman.

Chairman PROXMIRE. You are correct. It is a right. It is not a courtesy. That is much better. You feel it would be a right, then, of the businessman to be informed if there had been any attempt on the part of the Ambassador to call this to the attention of the President of Haiti?

Mr. CROOK. Yes, sir.

Chairman PROXMIRE. Did you make any other effort to contact the Embassy in Haiti or the State Department about the extortion attempt and, if so, what were the results of such efforts?

Mr. CARDEN. Let me answer that, if I may, Senator. I have made five other trips to Haiti since the first extortion attempt. And on the first three of those trips, I continued to keep the American Embassy informed of what went on in Haiti while I was there. I always visited the Embassy immediately upon arriving, suggesting what I hoped to accomplish on that trip, and then I visited the Embassy toward the end of the trip, saying what had happened. I finally became discouraged at the results. On my last two trips to Haiti, I did not visit the American Embassy. And the second bribery attempt, frankly, was never reported because of the reception we received on the first bribery attempt.

Chairman PROXMIRE. Let me ask you, Ambassador Crook, did you ever discuss this matter with the U.S. Ambassador there?

Mr. CROOK. Yes, I called the U.S. Ambassador from Rockport, Tex., where I was spending some time on vacation, and brought him up to date on the incident and our inability to penetrate the Government at any point to have any response or get any appointments. I told him our attorney had informed us that in his best opinion, the project was dead, and the issue was closed. And informed him that because the company was now drained of any funds other than what I was personally putting in it, that we were going to withdraw. I went over again briefly the bribery attempt. By this time, he was conversant with it. He expressed regret that the project was being terminated.

Chairman PROXMIRE. What was his reaction? You say he just expressed regret?

Mr. CROOK. He was sympathetic and expressed regret, yes, sir.

Chairman PROXMIRE. Now, I understand that the U.S. Ambassador flew to Tortue Island with an American businessman not connected with Translinear on at least one occasion to look over your property during a period when you and your associates were barred from Tortue. Did you ever ask Ambassador Isham about this? If so, what did he say? Do you know what the purpose of the visit was?

Mr. CROOK. Perhaps Mr. Carden could answer that.

Mr. CARDEN. Senator, the Ambassador did visit the island on one occasion with an American, a nationalized Haitian citizen who has business interests in Cap Haitian, which is approximately 35 miles to the east of Tortue Island. This businessman was interested in either leasing or buying our equipment since we were restricted from using it on the island. And the Ambassador did visit the island with this individual. I visited the Ambassador in his office shortly after this took place and asked him why he thought they were able to fly to the island and we were not. And he said he thought it was because this particular businessman had some pull that Translinear did not have.

Chairman PROXMIRE. Was that trip made with Translinear's prior knowledge or approval?

Mr. CARDEN. No, sir, it was not. Not that we had to approve anything. This businessman in Cap Haitian, who was interested in the equipment, had talked about it since the island had been shut off to Translinear. It was no surprise to me that he was interested in flying there. I was a bit surprised that members of the American Government went up there when they told us it was impossible for Translinear to go and that they had done everything they knew to do, to allow us to get these flights resumed.

Chairman PROXMIRE. Mr. Ambassador, I want to be sure I have a complete picture of your attempts to call the situation to the attention of the Haitian Government. We have a copy, as I say, of your cable to the President of Haiti. Were there any other attempts to communicate with Haitian officials about it? Was there any followup attempt with any one else in the Haitian Government or——

Mr. CROOK. There was a second telegram sent by Mr. Carden, who was informed that if an apology should be sent, or an apology of kind should be sent, that negotiations might get off high center. And this was during the period when I was saying "Well, if I have become a block in this negotiation, let me step aside." Other than that telegram, which was quite brief and innocuous, I know of no contact with the Government. Mr. Carden has made several and was our representative there.

Mr. CARDEN. That telegram was sent, Senator, on September 3, 1975.

Chairman PROXMIRE. Now, you say that a few weeks after the April extortion attempt, the contract discussions with the Haitian Government were shifted to another ministry in Haiti and then to the Presidenial Commission and then the Presidential Commission was abolished. What significance do you place on those developments?

Mr. CROOK. There were two developments that we thought were aimed directly at us: The abolishment of that Commission was one and the changing of the law in Haiti stating that land could be leased to foreigners for no longer than 9 years after we had paid approximately $800.000 or $1 million for 5,000 acres of land with 100 years lease. We believed that those actions were directed at our project.

Chairman PROXMIRE. Now, in the second extortion attempt, according to your statement, Mr. Carden, you were telephoned in late November of 1975 from Haiti and told that Translinear would be signed if you met certain conditions.

Mr. CARDEN. Yes, sir.

Chairman PROXMIRE. Who was the telephone call from that you once again go down to Haiti?

Mr. CARDEN. This was from a Haitian businessman I had known from the first year that I had been in Haiti. He was the gentleman who had been instrumental in introducing me to several Ministers.

Chairman PROXMIRE. What date did you arrive and which officials did you see?

Mr. CARDEN. I arrived on Monday, December 1, 1975. I believe the first of December was a Monday, but I arrived on December 1 on an evening. I was met by these two businessmen. When the attempt to extract $50,000 for the signature on the contract was reported, I refused. I later went to the Minister's office in an attempt to see him, but was told by his secretary that the Minister was not in, even though I knew for a fact that he was in. I went back later the same day and received the same response. I saw that it was going to be impossible to see him. I was told by these business friends that it was over. Our attorney confirmed that rumor had told him that it was over. I met two members of the Minister's family: his son, who is the manager of American Airlines in Haiti and his wife, who is the owner of a very successful cosmetics firm there. And they told me that they thought it was over. And with this kind of report, I proceeded to close down all Translinear's interests in Haiti, to close down our

office that was located in the airport there, to dismiss the employees we still had, and to sell the equipment, materials and supplies in our office and to return to the United States, because it was obvious it was a hopeless situation.

Chairman PROXMIRE. I want to run over this drama once again. I think we have gone over it, but I want to go over it again.

You said you were met with an under-the-table demand for $50,000. Now, where were you when this demand was made?

Mr. CARDEN. When I was met at the airport by these two businessmen, I was told this as we were driving from the airport to their home——

Chairman PROXMIRE. Did they make the demand on you?

Mr. CARDEN. No; they did not make it themselves. They were serving as agents, saying, "Look, we've got this down to these two conditions." And I repeated, as I said over the telephone to him when he called, that those two conditions are not a problem. He said: "There is one other issue. They are asking for $50,000 before the contract is signed."

Chairman PROXMIRE. Who did they say they were agents of?

Mr. CARDEN. The Under Secretary of Commerce, Minister Bayard.

Chairman PROXMIRE. The Under Secretary of Commerce?

Mr. CARDEN. Yes, sir.

Chairman PROXMIRE. What is his name again?

Mr. CARDEN. Minister Andrew Bayard. B-a-y-a-r-d.

Chairman PROXMIRE. And you were supposed to make the payment to him?

Mr. CARDEN. Yes.

Chairman PROXMIRE. Just write out a check to his name, or deposit the money——

Mr. CARDEN. That was not discussed. I just said:

I told both of you before that if there is ever a condition of payment or a bribe, we are not going to do it. If we have to put some extra people on a payroll after a contract is signed, I can understand that, because that is a way of life here, but we are not going to give money to anyone.

We would give legitimate jobs, but we would not give money and we would not give anything to get a contract signed.

Chairman PROXMIRE. Do you have any way of knowing whether that official knew about who was behind the demand?

Mr. CARDEN. The first demand or the second demand?

Chairman PROXMIRE. The second demand.

Mr. CARDEN. Whether he knew himself?

Chairman PROXMIRE. You say the payment was to be made to this particular person whom you have identified. Did you know that he was actually the beneficiary? Do you have any reason to know that?

Mr. CARDEN. The only reason that I have——

Chairman PROXMIRE. Do you have any reason to know that he wasn't acting as an agent for somebody?

Mr. CARDEN. The only reason I have to know is that he was expecting me; he did refuse to receive me after we said no; and that the two members of his family that I met with, Senator, were quite embarrassed. At the time of my meeting them, although I did not confront them with the fact that money had been demanded, it was obvious

they were very uncomfortable to see me, which was very unusual from the past. I had invited his son one one occasion to come to Texas and go hunting. And I have an import company in Dallas and the Minister's wife and myself were in the process of some negotiations for my importation of the perfumes and cosmetics she produced in Haiti. So I had a good relationship with them, but suddenly it was very cold and embarrassing.

Chairman PROXMIRE. And what did they say or do when you refused to pay the bribe again?

Mr. CARDEN. Well, of course I refused to the two businessmen who met me at the airport. And they said: "Well, you know, it still might be able to be worked out." They did have extensive conversations with the Minister and his family. But, as I said, on the morning of December 2, the businessman that had spent that morning with the Minister, came back to say that it is all over.

Chairman PROXMIRE. Now, did you attempt to report the second attempt to Haitian officials?

Mr. CARDEN. To our officials in Haiti or——

Chairman PROXMIRE. Either one. First to the Haitian officials?

Mr. CARDEN. I reported it to our attorney.

Chairman PROXMIRE. Did he make any attempt to report it to the Haitian officials?

Mr. CARDEN. I have no idea. I really felt, if you could put yourself in my place, this was the 31st trip I had made to Haiti and——

Chairman PROXMIRE. I understand that. I am not passing any judgment on what you should have done. I just want to find out what the facts are.

Mr. CARDEN. No; I did not go to any other Minister and report this. I merely proceeded to begin to close down our operation there.

Chairman PROXMIRE. If he had reported this to Haitian officials, you would have known about it?

Mr. CARDEN. Yes.

Chairman PROXMIRE. As far as you know, it was not reported?

Mr. CARDEN. That is right.

Chairman PROXMIRE. Well, then, was this reported to U.S. officials, to the Ambassador?

Mr. CARDEN. I did not report it, because——

Chairman PROXMIRE. Why not?

Mr. CARDEN. Because of our——

Chairman PROXMIRE. Previous experience?

Mr. CARDEN [continuing]. Our rather unsatisfactory previous experience. I have made three trips and——

Chairman PROXMIRE. Was this the same Ambassador at that point?

Mr. CARDEN. Yes, sir. I made three trips to the State Department here in Washington, D.C. during the period of these attempted negotiations in Haiti, and I have made countless trips to the American Embassy in Haiti. And I had frankly come to the conclusion it was hopeless.

Chairman PROXMIRE. Now, Ambassador Crook, following the second extortion attempt, did you report the incident to the U.S. Embassy or the State Department?

Mr. CROOK. No, sir, I did not. I agreed with Mr. Carden we should salvage what we could and I wanted to get him out of Haiti and get him home. So I asked him to come home.

Chairman PROXMIRE. Now, Ambassador Crook, according to your statement you have been told not to return to Haiti, yet your property and your investment is still on Tortue. Is it your belief that you were, in effect, de facto ejected from Haiti and that your property has been taken without your consent and without compensation?

Mr. CROOK. Yes, sir; it is.

Chairman PROXMIRE. Do you believe that the Tortue project was terminated and that your property was taken from you because you refused to pay the bribes?

Mr. CROOK. Yes; in the main, I believe that that was the cause of the disruption. I also think that there was at that time, and that there is now, the motivation for someone else to develop that island. I believe that we have proven the tremendous value and worth of the project. And when the extortion attempt was made, Mr. Carden was told that there was someone ready with cash to develop it. So, I think those two motivations: The fact that we would not pay and that it is a desirable project for somebody and is worth much more now than it was when it was only a concept, I think those two motivations led to this act.

Chairman PROXMIRE. Now, since these hearings were scheduled, and we brought this out to a limited extent, but I would like to get a full answer now, have you been contacted by the State Department? If so, by whom and what was said to you?

Mr. CROOK. As soon as the hearing was scheduled, I thought out of courtesy I should notify the Haitian desk that I would be testifying and that I would be touching on these matters. I called Mr. Dan Strauser at the State Department and told him that I had been invited to appear. Then on Friday of last week, in Texas, Mr. Strauser called me and we chatted I suppose some 20 minutes. I think that was the first give and take conversation I had had on the subject where I felt that they were listening. And I told him, "This is the first time you have not been so defensive that I felt that I was the culprit in this situation; that I felt that we were criminals and that you were siding with Haiti."

And he said:

> I want you to know that we have never had a complaint of any kind against your company and that we have no criticism whatsoever of Translinear and that we would like to see this matter worked out amicably.

My response was that unless we heard directly from some high officials in Haiti, that we were going to proceed; and that even if we did hear, that we still would make this testimony and bring these charges, but that we would be willing to negotiate with them further.

At this point, Senator, I think the contract has no value to us. We have broken off on the negotiations. We would like to get our equipment back and the cost that we have put into the project back. Because I think the business climate in Haiti is so hostile at this point towards us, and I think toward other American businesses, Senator, that it would be futile for us to attempt to continue the project.

Chairman PROXMIRE. Now, I understand that you have business interests in Mexico. Have officials in that country ever attempted to ex-

tort money for you or your business associates, and have you ever paid any bribes to Mexico?

Mr. CROOK. No official has ever attempted to extort and we have never paid a bribe of any kind at any level.

Chairman PROXMIRE. How substantial are your business interests in Mexico?

Mr. CROOK. I have an interest in a furniture factory in San Luispotosi, which I am told is the largest furniture factory in Mexico. I have a minority interest with another partner.

Chairman PROXMIRE. Now, in view of your experience, and it is hard for me to imagine a more difficult or more trying or painful experience than you have gone through economically because you have suffered very great financial losses and you have devoted a great deal of time and energy to this. I would like each of you gentlemen to tell me whether it makes any sense, in your judgment, for businessmen to pay bribes or make payoffs in foreign countries in order to continue doing business there? I wonder whether, knowing what you know now, you might do things differently in Haiti?

Mr. CROOK. Senator, it makes no sense to begin a course of bribery. In the long term, you would become so involved with so great an outlay of money that it would be very difficult to operate. You can't divide morality between foreign and domestic. It would be demoralizing to the company at home.

But, I do understand how a climate that lends itself to bribery, Senator, eventually wears down an American businessman, especially when the conduct of his country abroad has not been inspirational, when he cannot look to it for support or strength of any kind. And the results are to have your pride and your conscious, and then go bankrupt. I am sympathetic. I think there is a degree of hypocrisy in chastising an American business abroad without facing up to the fact that this Government should perhaps heed the admonishion of "physician heal thyself."

Chairman PROXMIRE. Are you saying that once you get on the hook, that once you pay a bribe—whether $50,000 or half a million dollars or maybe $13 million or $14 million, as it might have been—once you are on the hook, that you are just squeezed; that you are in a position where you can be imposed on over and over again and, in effect, blackmailed? If you paid the bribe, if you have taken that action, then you are pretty much a victim of whatever the government under those circumstances wants to do do with you. Is that right?

Mr. CROOK. Exactly. I have never been on the hook, but contracts have to be renewed and new contracts have to be issued and negotiated and signed. And at every point, when the word gets out that you will pay off, you have to pay.

Chairman PROXMIRE. Isn't it further a problem that—and you have different situations in all cases—but when you do pay a bribe, you don't know whether you get delivery on it? You may simply be out the $5,000 or $500,000 and get no results.

Mr. CROOK. Well, of course. We cannot emphatically say that we know this man represented the government of Haiti. We believe he did. We believe all evidence points to the fact that he did. But, it is conceivable that he was an independent.

Chairman PROXMIRE. Supposing he did represent the government of Haiti. What is to keep any corrupt official who was in the government of Haiti, Mr. Crook, from simply taking the money and putting it in his pocket and not giving you any satisfaction?

Mr. CROOK. Yes; or knowing that you are going to get the contract anyway, taking the credit for it.

Chairman PROXMIRE. Anybody who takes the moral position that they will accept a bribe, it seems to me he is unlikely to be of any firm assistance when you expect their word to come through that they will deliver on the bribe. Isn't that correct?

Mr. CROOK. Yes; that is correct.

Chairman PROXMIRE. Mr. Carden?

Mr. CARDEN. There is very little I could add to elaborate on Ambassador Crook's statement. I would like to comment on one portion of your question. You asked if there is anything we would do differently. I suppose that knowing what we know now, I doubt if we would go into an investment climate like this.

However, as I tried to bring out in my statement, and as Ambassador Crook said in his statement, we did undertake every kind of investigation that we felt was necessary for doing business abroad in this country.

They have a bright young President down there. I personally am very impressed with what he is trying to do. The depth of management in the government is not particularly deep though, and he is having to rely on advisers that remain from the previous administration.

I wish I could say that there was some point in this activity of 4-year's duration where we could say at this point it would have been smart to leave. But at every step on the way, Senator, as we review this 4 years later, it seemed very logical at the time—and it still seems logical in retrospect—to have continued these attempted negotiations. We did have a legitimate contract. We did have a legitimate third-party contractual right and we still feel we have those rights.

Chairman PROXMIRE. And what you started to say—and maybe you said it and I missed it—is the fact that one very important area of investigation for any American business firm investing in a developing country or any country, for that matter, Mr. Carden, is whether or not bribes may be necessary. Correct?

Mr. CARDEN. That is right.

Chairman PROXMIRE. Whether or not you have an atmosphere that may be so corrupting that you either are going to lose your property or be put in an untenable and impossible position.

Mr. CARDEN. I couldn't agree more.

Chairman PROXMIRE. Therefore, this is something that we have to look at, and something that ought to be a warning to developing countries, if they expect to have American capital in the future, and they should recognize that it is a very foolish course of action and only temporarily of benefit to permit these bribes to be accepted.

Now, the other aspect that troubles me—and Ambassador Crook, you can help me on this—after all, people in the State Department are good people, as I am sure you and I recognize, and they are interested in helping this country and they are interested in having good relations with other countries. I am sure that there is no element of cor-

ruption on the part of the State Department in this whole matter. They must have been thinking about something. What they are thinking about, I presume, is our relations with a foreign country and a foreign government and the head of a foreign government.

Can you help us in meeting this problem? You are going to be followed by Mr. Ingersoll, the No. 2 man at the State Department, who is going to appear and testify later this week. He was going to appear tomorrow, but he is meeting with Mr. Kissinger tomorrow, and he will appear a little later. I presume that this is a very difficult thing for the Secretary of State and the State Department; that is, on the one hand, they want to be friendly with all the governments but on the other hand, they want to protect and defend American commercial interests. It is easy to take a moral position and one that we all want to take on this—I certainly do, and I know you do—but, let's be as practical and as tolerant and as sensitive as we can to the problems of the Secretary of State.

Now, how do we meet the problem of trying to stay friendly with governments that condone this kind of practice or that may engage in it?

Mr. CROOK. Well, Senator, I certainly couldn't answer that. I recognize that the State Department has its own set of priorities and the priority of an Embassy does not coincide necessarily with the priorities of an American business abroad. That is complicated when American businesses abroad are in competition for the same item. So the Embassy must be, and in this case has been, very discreet and sensitive to these matters.

But, in answer to the popularity portion of your question, of how do we maintain the good will of a nation, I think a partial answer to that is that we operate consistently at the highest standard of ethics. And if the foreign government is aware of that, that seems to me to be the beginning of an improved understanding. But, if we, by wink or smile or nod, ignore that bribery is going on and that it is because the country is underdeveloped and they are not morally responsible, then there has got to be a break somewhere; there has got to be a rupture somewhere down the line. So, I think we must make it known that we deal one way at home and abroad. And if those customs clash or coincide, we don't deal.

Chairman PROXMIRE. Isn't it true that a consistent policy of opposing bribery, of trying to root it out, of doing all we can to protect innocent persons who have been solicited for bribes and of trying to expose those who solicited bribes, isn't it true that it is not only to the interest of the American businessman, but in the great and clear and long-term interest of all the countries involved?

Mr. CROOK. Of course.

Chairman PROXMIRE. Certainly, it would be to the interest of Haiti were the State Department to take this position and to use everything in its power to persuade the President of Haiti that his interests are being damaged by people who are engaged in this practice in his government; isn't that true?

Mr. CROOK. I believe that to be true.

Chairman PROXMIRE. I will conclude by saying that the Deputy Secretary of State, Robert Ingersoll, informed me this morning after the hearing began that he would not be able to appear as scheduled.

He has promised to reschedule his testimony during the next few days. I hope we can announce a new date shortly.

We've heard two stories this morning. One was the anatomy of an attempted shake-down; the other story is a profile of an honest—well, I should say of two honest American businessmen who refused to buckle under to extreme pressure in a foreign country. I think America can be proud of Ambassador Crook and Mr. Carden. They behaved honestly and, as far as I can tell, with complete discretion under very trying circumstances and at considerable sacrifice to both of them and to the stockholders they represent. The testimony shows that some businessmen want to act strictly within the law. The question in my mind is whether the U.S. Government is encouraging or discouraging such proper and lawful behavior.

There will be a new date set for resumption of these hearings and that will be announced in the next day or so. This hearing is adjourned.

[Whereupon, at 12 noon, the subcommittee adjourned, subject to the call of the Chair.]

ABUSES OF CORPORATE POWER

FRIDAY, MARCH 5, 1976

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON PRIORITIES AND
ECONOMY IN GOVERNMENT OF THE
JOINT ECONOMIC COMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:10 p.m., in room 5302, Dirksen Senate Office Building, Hon. William Proxmire (chairman of the subcommittee) presiding.

Present: Senators Proxmire and Helms.

Also present: Richard F. Kaufman, general counsel; George D. Krumbhaar, Jr., minority counsel; and M. Catherine Miller, minority economist.

OPENING STATEMENT OF CHAIRMAN PROXMIRE

Chairman PROXMIRE. The subcommittee will come to order.

The disclosures of corporate bribes and payoffs have dealt the public two severe blows.

First is the fact that many of the Nation's largest and most prestigious business firms have stooped to making bribes and have allowed themselves to be shaken down by foreign government officials.

At the same time, there is a continuing thread running through many of the payoff disclosures of U.S. Government acquiescence and even encouragement of the bribery system.

A high official in the Nixon administration once advised that people should pay attention not to what Government officials say but rather to what they do.

An application of that guideline to the system of bribery that has been uncovered may explain the apparent discrepancy between official statements and official actions.

For example, Secretary William Simon condemns the Lockheed bribes and other payoffs in the strongest terms. But Secretary Simon has failed to exercise his authority as Chairman of the Loan Guaranty Board to require Lockheed to disclose full details of the bribe.

Spokesmen for the Pentagon have also stated publicly their opposition to bribes and payoffs with regard to foreign military sales. But behind the scenes the Pentagon has been aware of outrageously high "sales commissions" and has actually lectured contractors on how to make payoffs.

One of the things we hope to learn today is whether the State Department's behavior falls into this pattern. Unfortunately, there have been allegations that it does.

The importance of this question cannot be over-emphasized. The public has a large stake in international commerce and international arms sales. The business community certainly has a stake in whether it must go along with the bribery system.

The economy is influenced by the bribery system directly and indirectly and it is therefore most appropriate that this committee's inquiry go forward on the broad range of issues involved in illegal and improper payments, at home and abroad.

Our witness today is the Honorable Robert S. Ingersoll, Deputy Secretary of State. Secretary Ingersoll has a distinguished record in private business as well as with the government. He has been the president, chairman of the board, and chief executive officer for the Borg-Warner Corp., has served as trustee for the University of Chicago and the California Institute of Technology; was the U.S. Ambassador to Japan from 1972 to 1974; and was the Assistant Secretary of State for East Asian Affairs.

Secretary Ingersoll, unfortunately, the subcommittee did not obtain a copy of your statement until afternoon today so I have not had an opportunity to study it, as carefully as I would like.

Now you may proceed in your own way. It is a very interesting statement and we have a number of questions for you when you conclude.

STATEMENT OF HON. ROBERT S. INGERSOLL, DEPUTY SECRETARY OF STATE

Mr. INGERSOLL. Thank you, Mr. Chairman.

I am pleased to be here today to discuss a serious problem which bears directly on U.S. foreign relations and economic interests: the revelations about alleged corrupt practices involving U.S. multinationals abroad.

First, let me again state emphatically that the Department of State condemns in the strongest terms any and all corrupt practices involving corporations, whether United States or foreign. We have stated this position in several forums recently, but I want to reiterate it here today as the basis for all the comments I make to you. The Department's view—and my own personal view as one with experience in business and Government—is that bribes or other illicit payments cannot be condoned. Moreover, this is not a new policy. The Department of State has never condoned such payments.

They are ethically wrong; their disclosure can unfairly tarnish the reputations of responsible American businessmen; they make it more difficult for the U.S. Government to assist U.S. firms in the lawful pursuit of their legitimate business interests abroad; they encumber our relations with friendly foreign governments; they are, in the long run, bad business, as firms involved in such practices risk loss of contracts, sales and even property; and they contribute to a deterioration of the general investment climate.

The U.S. Government has taken the position that any investor who makes illegal payments cannot look to the United States to protect him from legitimate law enforcement actions by the responsible authorities of either the host country or of the United States. We support cooperation by the U.S. agencies investigating these cases with responsible for-

eign authorities who are seeking information consistent with the requirements of the law and procedural fairness.

However, the U.S. Government will provide appropriate diplomatic protection to American nationals abroad who are not treated fairly in accordance with international law. We are concerned at threats of extrajudicial sanctions which may be disproportionate to the offense and based on unproved allegations. We do not believe that economic retaliation is an appropriate response to payments which, although controversial, are either lawful under the foreign law concerned, or if unlawful, are subject to specific civil or criminal penalties prescribed by that law.

Of course, we also oppose such retaliation for failure to make such payments, as alleged in some recent cases. The Department of State has a responsibility to assist American businessmen who are treated unfairly.

In international discussions of enterprise behavior, the United States has supported two basic principles:

First, all sovereign states have the right to supervise and regulate the activity of foreign investors in their territory, consistent with the minimum standards of justice called for by international law.

Second, investors must respect the laws of the nations in which they operate and conduct themselves as good corporate citizens of these nations, refraining from improper interference in their internal affairs.

Unfortunately, however, in these matters foreign investors and traders are not always faced with clear-cut choices in unambiguous circumstances. Instead, they frequently find themselves operating under unclear rules, local customs, and business methods far removed from those learned in business schoool. A foreign investor who receives "suggestions" from officials of the host government is placed in a difficult position. Many courageous businessmen have refused to go along with questionable practices abroad, and in some cases have had to forgo business opportunities as a result.

We are told that businessmen from other countries take the view that what we call improper payments are a basic requirement of the societies in which they operate, and represent centuries old practices which no amount of indignation or legislation can change. These businessmen are reluctant to support either domestic or international legal action for fear that such measures would not only do no good, but would also burden commerce and provide a dangerous instrument for selective application against individual corporations. Some American businessmen may share this point of view, but increasing numbers are concluding that some action is necessary to deal with the situation.

What should be done? Obviously, the principal responsibility for dealing with criminal acts in foreign countries is that of the governments directly concerned. But we too have a responsibility to make sure that U.S. laws regulating corporate behavior are vigorously enforced, and that official U.S. programs in foreign countries are effectively managed to guard against these practices. The responsible U.S. agencies are already taking significant steps. The SEC and the IRS are giving the problem vigorous attention, and their efforts can be expected to have a substantial deterrent effect.

The Departments of State and Defense have taken steps to insure that foreign governments who purchase defense articles and services under the foreign military sales program are fully informed of any agents fees that are included in the price of the goods sold. Under the applicable regulations, the foreign government is notified of any such fee at the time of the DOD offer to sell. If the foreign government responds that the fee is unacceptable, the American supplier is advised that DOD will not consider the fee an allowable cost under the contract.

In several cases foreign governments have established a general policy that contingent fees are not to be allowed on FMS cases. The USG has responded to that policy by adopting a regulation with respect to such countries that no contingent fee will be allowed as an item for reimbursement unless it is specifically approved in advance by the purchasing government.

We believe that our procedures on FMS transactions can be further improved, and support the concept of systematic reporting along the general lines of the pending amendments to the security assistance bill. Of course, it is important that any such legislation respect the legitimate need for confidentiality of business information, the public disclosure of which could harm the competitive position of American companies.

But this is an international problem and significant progress will come only on a broad scale. It is tempting to try to deal with the situation unilaterally, but there are serious risks for the United States in such an approach. There is widespread recognition in the Congress that such unilateral action would put U.S. companies at a serious disadvantage in the export trade. Senate Resolution 265, adopted by a vote of 93 to 0 last November 12, takes note of the trade distorting effect of corrupt practices and calls upon the executive branch to negotiate a multilateral agreement to deal with the problem.

We have seen dramatic evidence in recent weeks of the potential consequences of disclosure in the United States of events which affect the vital interests of foreign governments. Preliminary results have included serious political crises in friendly countries, possible cancellation of major overseas orders for U.S. industries and the risk of general cooling toward U.S. firms aboard. Many foreign commentators and opinion makers have expressed concern about the effects of U.S. processes in their countries and suggested that the United States has a responsibility to take into account the interests of its allies when it is cleaning up its own house.

I wish to state for the record that grievous damage has been done to the foreign relations of the United States by recent disclosures of unsubstantiated allegations against foreign officials. As I said, we do not condone, nor does the U.S. Government condone, bribery by American corporations overseas. On the other hand, it is a fact that public discussion in this country of the alleged misdeeds of officials of foreign governments cannot fail to damage our relations with these governments.

We think there are many advantages to a multilateral approach which is based on international agreement both as to the basic standards to be applied in international trade and investment, and the pro-

cedures to curtail corrupt practices. A coordinated action by exporting and importing countries would be the only effective way to inhibit improper activities of this kind internationally. An international agreement would also help insure that action would be taken against those who solicit or accept payments, as well as those who offer or make them.

As a first step we have negotiated strong language condemning bribery, as part of the voluntary guidelines for multinational enterprises which are being drawn up in the OECD.

However, in the area of criminal law, such as bribery, more is needed. Effective action, consistent with individual rights, must be in accordance with established legal procedures. Thus, in this area we favor action pursuant to national law and international agreement.

Therefore, I am taking this occasion to announce that the United States is proposing a multilateral agreement on corrupt practices.

The agreement would be based inter alia on the following principles:

It would apply to international trade and investment transactions with government, that is, government procurement and such other governmental actions affecting international trade and investment as may be agreed; it would apply equally to those who offer or make improper payments and those who request or accept them; host—importing—governments would agree: (1) to establish clear guidelines concerning the use of agents in connection with government procurement and other covered transactions, and (2) to establish appropriate criminal penalties for bribery and extortion by enterprises and government officials; governments would cooperate and exchange information to help eradicate such corrupt practices; and uniform provisions would be agreed for disclosure by enterprises, agents, and officials of political contributions, gifts, and payments made in connection with covered transactions.

Our delegation to the second session of the UN Commission on Transnational Corporations, now meeting in Lima, has been instructed to call for such an agreement.

At this point, I would like to say a few words about the *Lockheed* case. A number of foreign governments have expressed great concern about disclosures resulting from Senate investigations, or reports attributed to those investigations, that are said to implicate high officials. These governments have requested the Department of State's assistance to obtain the documentation necessary to investigate these allegations.

The Department has always cooperated fully with foreign governments whose interests are affected by these disclosures. But we do not have the corporate documents in question. These, where they exist, are held by Lockheed, by the Senate Subcommittee on Multinationals or by the SEC subject to a court order.

Press reports have given the erroneous impression that the State Department has not been responsive to the requests of foreign governments for information developed on this matter. This is not the case. The Department has been concerned that premature public disclosure of unsubstantiated charges against foreign officials might unfairly damage the rights of individuals and cause serious problems in U.S. relations with other countries.

However, we have never questioned the need for friendly foreign governments to have access to the information to carry on their own legitimate investigations, and we have taken appropriate steps to facilitate that access.

In recent days we have been consulting urgently with the SEC and with the Department of Justice to develop a procedure that would facilitate the exchange of information with interested foreign governments. Under this procedure, the Department of Justice would enter into cooperative arrangements with the responsible law enforcement agencies of other interested governments, as it has done in past cases of interest to more than one government. It will arrange for the exchange of information in accordance with the traditional procedures established to protect the integrity of criminal investigations and the rights of individuals affected.

That is to say, foreign law enforcement officials would be expected to assure that information secured from U.S. sources would be treated on a confidential basis until such time as the foreign law enforcement agency had decided that it wished to proceed with a criminal prosecution against a particular individual.

Should any exchange of information require modification of the court order in the *SEC-Lockheed* case, the Government will be prepared to propose suitable amendments to the court.

Finally, let me say that the Department of Justice is already making inquiries to determine whether overseas payments and related activities by Lockheed have involved violations of U.S. law. This matter is being pressed with vigor. It should be understood, however, that foreign governments have an equal interest in prosecuting offenses against their laws, and in some cases the nature of the alleged wrongdoing is such that foreign law enforcement officials have an even more urgent need to proceed than U.S. law enforcement officials. These varying priorities will have to be resolved by mutual discussion between our Department of Justice and foreign law enforcement officials.

In conclusion, Mr. Chairman, we are proposing two new actions to deal with the international bribery problem. First, a multilateral agreement to be negotiated within the United Nations system to help deter and punish such activities by enterprises, agents, and government officials.

Second, a framework for bilateral cooperation with foreign law enforcement agencies with which we can make satisfactory arrangements for the exchange of evidence. We are hopeful that these initiatives will prove to be effective.

Chairman PROXMIRE. Thank you very much, Mr. Secretary. We appreciate your testimony.

The announcement of a proposed multilateral agreement on corporate practices is very welcome. It is also very intriguing. I hope we can get more information on this proposal and I wonder if you could elaborate on it somewhat.

For example, most, if not all countries, now have criminal laws against bribery and against extortion. How would the new agreement, which would make such actions crimes, change anything?

Mr. INGERSOLL. Make such what?

Chairman PROXMIRE. Which would make such actions crimes, how would this change anything that we have now?

Mr. INGERSOLL. Well, I think it is rather premature to say exactly how this might come out because it is being proposed that a special group be formed in the U.N. Commission on Multinational Corporations to pursue this subject. We have not given our delegates there any more guidelines than the general guidelines because we think it is up to the people in this special group to come up with what they think would be appropriate.

Chairman PROXMIRE. You see the problem that I am trying to get at is that we found that law enforcement can be very effective within a country's borders. In some cases it is a little more effective than others but it can be more effective. The U.N. has never impressed me as a very effective enforcement organization. I think it is a great organization and I strongly believe in it, but it does not give me much confidence that if we work this way we can strengthen the law enforcement operations in countries that do not seem to have the will now to act against crimes of this kind.

Mr. INGERSOLL. Well, I think that if you can get agreement by a large proportion of the members, I think you will have at least a moral obligation on the part of those governments to pursue their own laws or to even establish——

Chairman PROXMIRE. Well, they have that now; don't they?

Mr. INGERSOLL. Except they do not have international pressure on them because there is no such agreement.

Chairman PROXMIRE. I wonder how strong that international pressure really is. We have a situation now with Japan where they are just pleading to get information in the *Lockheed* case for example and both houses of their legislature passed resolutions asking for it. The Prime Minister has asked for it. The Ambassador has asked for it. Yet they cannot seem to get that information.

Mr. INGERSOLL. Well, I propose, I suggested in this statement the means by which they and other governments can get access, but we believe it would be premature to release information of an allegation nature until it has been investigated by their agencies and ours who are responsible for law enforcement.

Chairman PROXMIRE. Well, I want to come to that a little later. Let me ask you, Are you proposing a treaty that would have to be ratified by the Senate or would it be an Executive agreement?

Mr. INGERSOLL. I think it would be one ratified by the Senate. We would consider it a treaty; yes.

Chairman PROXMIRE. Isn't this a cumbersome, protracted type of undertaking? Why wouldn't it make more sense for us to act unilaterally whenever U.S. firms are concerned, Mr. Ingersoll, to the extent it is legally possible for us to act. And if other countries follow our example and want to enter into an agreement with us, then fine.

Mr. INGERSOLL. I see nothing wrong with the U.S. Government acting on U.S. corporations operating within the United States. I think you get into a fuzzy area when you begin to prosecute for actions outside the United States where foreign citizens may be involved and evidence may have to be gathered from those foreign citizens outside the United States.

Chairman PROXMIRE. Well, if a crime is committed outside of the United States, why should not we provide all the information promptly

and not in a matter of months or years but within a matter of days to the appropriate law enforcement officials? We haven't done that in the Lockheed. We haven't done in some other cases. Why not?

Mr. INGERSOLL. I am not a lawyer but I believe we normally try to keep evidence in the hands of the law enforcement agencies until they have developed a case. I have been told that you can jeopardize the case by prematurely leaking information on the particular situation at hand.

Chairman PROXMIRE. Now you say, and I quote: "As a first step we have negotiated strong language condemning bribery, as part of the voluntary guidelines for multinational enterprises which are being drawn up in the OECD. However, in the area of criminal law, such as bribery, more is needed."

Well what do you have set up to provide for an inspection system and for an enforcement system? What are you proposing in the way of penalties and in the way of making this really have the firmness and effectiveness that would inspire credibility?

Mr. INGERSOLL. As I mentioned earlier, Mr. Chairman, I think that is up to the U.N. Commission that is studying this problem in Lima at the present time. I would not want to prejudge their recommendations on this. The first step that I refer to is a guideline for multinational corporations that covers much more than corrupt practices or bribery. It covers a whole gamut of practices by multinational corporations. When I referred to the criminal situation, I am referring primarily to bribery. That is the area where we think that this international agreement is necessary. The first is a voluntary agreement, or it is suggested that it be a voluntary agreement, because the circumstances of multinational corporations are so diverse that it is almost impossible to get an agreement that everybody will subscribe to. But when it comes to bribery, criminal bribery, we see no reason for any discretion and we believe that an international agreement, Senator, should be developed by such a U.N. body.

Chairman PROXMIRE. Well, I am trying to see how specific, how far you have been able to go. And I realize you have to leave much of this to the UN agency that is studying it for the full details. But you say, for example: "It would apply equally to those who offer or make improper payments." Now you say that is more than bribes. What else do you have in mind? Would you be as specific as possible?

Mr. INGERSOLL. Well, I am not sure what they will come up with. In this country, improper payments include political contributions. In other countries they are not improper. So I think it is up to this group to determine what they call "improper." Another one might be excessive commissions where the amount of the commission is unreasonable in relation to the amount of sale. Commissions in themselves are not improper if they are related in the amount to the sale itself or the amount of effort required to make the sale.

Chairman PROXMIRE. What did you have in mind when you said, "clear guidelines concerning the use of agents in connection with government procurement?" What kind of guidelines? Can you give me an example or two?

Mr. INGERSOLL. Well, there have been some countries in recent months that have decided that any military sales to their governments should not have any agent or commission involved. Other gov-

ernments rely on agents. Therefore, I think it is going to have to be spelled out that if a country specifically excludes an agent in a transaction, then that would apply in their case. In other countries, an agent with a reasonable commission for his effort is proper.

Chairman PROXMIRE. Is there some danger that this might result in enfeebling the present restrictions that some countries have in order to get to the lowest common denominator?

Mr. INGERSOLL. That is up to the country.

Chairman PROXMIRE. In order to make sure that you don't lose a competitive advantage to a country that might have an easier system?

Mr. INGERSOLL. I don't see that there would be any disadvantage to a country if they wanted to exclude all commissions, because everybody involved would be under the same rules. If some country said, "we are going to have an agent or commission," then everybody has the same rules. So I don't think it would be a disadvantage.

Chairman PROXMIRE. Then you say, "governments should cooperate and exchange information to help eradicate such corrupt processes." What information would be exchanged and would it be made public?

Mr. INGERSOLL. If there were a criminal action, and I refer to the process that we would suggest, I would say when the case is brought to trial or for an indictment, then I would think, yes, it would be made public. Prior to that time I think it would be improper.

Chairman PROXMIRE. Senator Helms.

Senator HELMS. Thank you, Mr. Chairman.

Mr. Ingersoll, I listened with interest to your statement. It was quite eloquent and the thrust is one that I think all of us would agree with essentially. I do have some problem, sir, however in your tense. I notice throughout the statement that you used the present tense in asserting that bribes and other illicit payments "cannot be condoned" and so forth.

Now, when Mr. Haughton appeared before the Banking Committee some weeks ago, I asked him specifically whether he had any impression that the State Department and/or the Defense Department knew about the alleged kickbacks and bribes and consultant fees at the time. I recall, Mr. Chairman, that before responding he consulted with his attorney. He did not give an unequivocal answer, but he did indicate clearly that both State and Defense did indeed have an awareness of this.

So my question to you: Did the State Department in the past have any knowledge about these kinds of alleged transactions?

Mr. INGERSOLL. What time frame are you talking about, Senator.

Senator HELMS. You may select your own time frame, sir. I particularly want to know whether at any time the State Department had known about these transactions?

Mr. INGERSOLL. I would like to refer you to the first page of my statement when I say: "The Department of State has never condoned such payments." You are perhaps quarreling with my tense in a few places and I tried to make it——

Senator HELMS. I wasn't quarreling with it. I just want to know what the facts are, sir.

Mr. INGERSOLL. Well, you were saying that it may be in the future but on the very first page I say: "The Department of State has never condoned such agreements."

Chairman PROXMIRE. Would the Senator yield? You said "condone" but Senator Helms' question is whether you knew about it. That is quite different.

Senator HELMS. Precisely.

Mr. INGERSOLL. I am coming to that. I want to be sure it is understood we have never condoned such payments.

Now, whether or not we knew about them, as far as I know we did not know about them until they were brought to our attention after the SEC made their investigation. That was our first knowledge.

Senator HELMS. In other words, you are saying that at no time, to the best of your knowledge, did the State Department ever close its eyes to information it had, Mr. Ingersoll, that this sort of practice may have been going on? At no time?

Mr. INGERSOLL. As far as I know, Senator Helms.

Senator HELMS. Did the State Department ever discuss this problem with a foreign government prior to the more highly publicized episodes that have occurred?

Mr. INGERSOLL. Well, my tenure in the State Department goes back only 4 years and almost 2 of those were in Japan. But in the time I have been in Washington I have not known of any.

Senator HELMS. Prior to——

Mr. INGERSOLL. Are you referring primarily to Lockheed or are you talking about any other case?

Senator HELMS. I want to know about all companies, sir.

Mr. INGERSOLL. I don't know of any.

Senator HELMS. If you have any information about another company, I want to know about that.

Mr. INGERSOLL. No, I didn't. No, I just wanted to know if you were referring to Lockheed.

Senator HELMS. Are you aware whether the State Department at any time even discussed formulation of a policy to deal with such situations as this? Now, again I am using the frame of reference prior to the more highly publicized episodes?

Mr. INGERSOLL. Well, the first time that this came to my attention was in connection with the United Brands case in Honduras. That is of rather recent vintage, of sometime last year.

Senator HELMS. You may have covered this in your statement prior to my arrival, Mr. Ingersoll, but has the State Department ever instructed our ambassadors to announce that no bribes or kickbacks would be tolerated and that the Embassy would assist the U.S. firms in resisting extortion?

Mr. INGERSOLL. I would say that this particular run of cases really began about last year. We have circulated to the Embassies the response that we have given particularly in the case of the United Brands case. In that case we gave the Embassies our response in that case, which was by letter. And gave them copies of that.

We have also circulated the public statements that we make saying that we condemn any kind of an action of this type. We have not given any specific instructions to the embassies other than the ones they have. So I would say we have kept them informed and we have, by our general instructions, expected them to report anything of this type.

Senator HELMS. Very well. Has any ambassador abroad ever requested assistance from Washington to help solve this problem? Now, I would prefer, sir, to have your impression from a date prior to the highly publicized episode with which we are dealing specifically now.

Mr. INGERSOLL. Well, as I say, I was not aware of this until last year. I have no knowledge of it before that time.

Senator HELMS. Is it possible Secretary Kissinger would have more knowledge about it than you?

Mr. INGERSOLL. Well, he came to the Department about 3 or 4 months before I did so perhaps in that short time he would have.

Senator HELMS. Are you speaking for Secretary Kissinger in this connection as to the specific questions I have asked?

Mr. INGERSOLL. Well, I don't know. I would think that I would have as much information on that as he would because we share all of this. As I say, there were 3 or 4 months that he was Secretary of State before I came on as Assistant Secretary of State.

Senator HELMS. So you are saying, if I may summarize it—and correct me if I am wrong—so you are saying, sir, that the State Department had absolutely no knowledge of anything of this sort going on at any time prior to the time frame that we are talking about?

Mr. INGERSOLL. I can only say to my knowledge, Senator, we did not have.

Senator HELMS. You have not heard it discussed?

Mr. INGERSOLL. I have not.

Senator HELMS. You have not heard it discussed in executive sessions at the State Department?

Mr. INGERSOLL. No.

Senator HELMS. Mr. Chairman, I renew my suggestion that we call Secretary Kissinger and find out what he knows about this.

Chairman PROXMIRE. Well, I renew my reaction, which is that that is an excellent idea. We will do that within the Banking Committee. That is where you made your request.

Senator HELMS. Very well.

Chairman PROXMIRE. That is a good idea. Now, Mr. Secretary, you were a businessman for many years. I presume you had some direct involvement in international sales with Borg-Warner? Were you aware of a system of bribery and payoffs when you were there?

Mr. INGERSOLL. Yes, sir.

Chairman PROXMIRE. You were aware?

Mr. INGERSOLL. Yes, sir.

Chairman PROXMIRE. Did your company make any such payments?

Mr. INGERSOLL. Not that I know of.

Chairman PROXMIRE. What was the extent of your awareness?

Mr. INGERSOLL. It was general knowledge that you frequently lost business because you didn't pay off, and our policy was not to pay off.

Chairman PROXMIRE. Well, if you lost business, to whom did you lose business?

Mr. INGERSOLL. Supposedly it was to those who made the payoffs.

Chairman PROXMIRE. Did you lose business to any American firms?

Mr. INGERSOLL. I can't say for sure, but I would imagine there were some American firms, and there were certainly many foreign firms.

Chairman PROXMIRE. If there were some American firms, did you call on the State Department for assistance?

Mr. INGERSOLL. No, because it was in a foreign country. It is not something that we felt the State Department could change in the customs of that country.

Chairman PROXMIRE. It seems to me that is precisely the place where only the State Department could really be of assistance. I realize they can't change it, but they could at least make representations on behalf of businessmen who are being hurt by this kind of conduct, couldn't they?

Mr. INGERSOLL. Well, I will tell you frankly when I first started calling on American embassies, I didn't find I got enough help from them so I didn't make many repeat calls.

Chairman PROXMIRE. I hope you have changed that since you have been one of the top people in the State Department.

Mr. INGERSOLL. It was changed before I came to the State Department. It was in the latter part of the 1960's it began to change. They began to recognize the need to pay more attention to economic policy.

Chairman PROXMIRE. Well, I want to come to that in a minute in connection with a case I think you expect me to inquire about. Before I do that, I would like to ask you some questions about Lockheed. You were Ambassador to Japan during the period when at least some of the bribes and payoffs by Lockheed to Japanese officials took place. Were you aware formally or informally of any of these payoffs while you were Ambassador?

Mr. INGERSOLL. I was not.

Chairman PROXMIRE. Can you state categorically that you were not aware of the bribery in Japan or any other country in connection with the foreign military sales program during your tenure as Ambassador or Assistant Secretary and your present capacity, except the revelations made in the press and the official hearings?

Mr. INGERSOLL. That is true, except some of these have come to us and been publicized since. The first one I mentioned was one I think came to the State Department first—the United Brands case.

Chairman PROXMIRE. Can you tell us what action you have taken about the bribes that did come to your attention, if any?

Mr. INGERSOLL. On United Brands we refused a request from the company to assist in suppressing the information that was suggested to us, Senator, on the grounds that revelation might be contrary to foreign policy interests.

Chairman PROXMIRE. Well, I want to come to that, too. But before I do let me ask this. Supposing you were informed of the bribes while you were Ambassador to Japan. What actions would you have taken under those circumstances?

Mr. INGERSOLL. I would report it to the Department.

Chairman PROXMIRE. Is that all? Would you have just reported it?

Mr. INGERSOLL. Well, I think it would be up to Washington to give me guidance on what kinds of actions they would like to have me take.

Chairman PROXMIRE. Would you have made any protestations to the Government of Japan and inform them? Wouldn't that be the action of a friendly country if they knew of a crime that had been committed in their country?

Mr. INGERSOLL. It depends on what kind of informaton had come to my attention and how much assurance I had that it was correct.

Without investigating authority or the ability to run down a rumor, I think it would be very difficult to make protestations to the Government until I knew more about it.

Chairman PROXMIRE. Well, why wouldn't it have been the proper policy to have taken whatever action you could, Mr. Ingersoll, to inquire of Lockheed directly, and to ask the State Department to get whatever information they could get, and then in turn make that available to the Japanese Government?

Mr. INGERSOLL. I didn't know that any of this was going on.

Chairman PROXMIRE. I know, but I am saying why wouldn't that have been a proper policy if you had been the Ambassador at the time when this was going on or if you were informed when you were Ambassador?

Mr. INGERSOLL. I think it is pretty hard to answer a hypothetical question without knowing the exact circumstances or the facts in the case. I can't make a general reply without knowing just what it would have been.

Chairman PROXMIRE. Well, then what has changed in the attitude of the embassies? You are acting just the way you acted or as you said the embassies acted back in the early 1960's.

Mr. INGERSOLL. No, I don't think so.

Chairman PROXMIRE. I don't see that you have done anything different.

Mr. INGERSOLL. Well, I didn't know of it; so, without the knowledge, I could not make the protestation or even report to the Department.

Chairman PROXMIRE. But all you said you do is tell the Department. You wouldn't take any other action?

Mr. INGERSOLL. I can't tell what action would have taken place after I have reported it to the Department.

Chairman PROXMIRE. All right, sir, let me pursue that in this way. You are now one of the top people in the State Department. As I understand it, you are No. 2 man. If you received such a report from an embassy, what action would you advise taking now? What is your understanding of the action that the State Department would be expected to take under present policy?

Mr. INGERSOLL. If it were a request from a company and they could give me reasonable evidence that the act took place, I would certainly recommend a protest to the government, if it were a government that was involved.

Chairman PROXMIRE. Well, what kind of evidence do you want? These people who solicit bribes are pretty cagey and careful. They are not going to leave anything in writing. Do you want a photograph or a tape recording or what kind of hard evidence do you need?

Mr. INGERSOLL. Well——

Chairman PROXMIRE. After all if it is a reputable businessman why isn't it proper to pass onto the foreign government the allegation, Mr. Ingersoll, with the understanding, with the clear expression, that this is simply an allegation for them to investigate, if they wish, but it comes from a source which we can ascertain is a reputable firm.

Mr. INGERSOLL. I think if we have that kind of evidence, we certainly should pass it on.

Chairman PROXMIRE. All right, sir, now the State Department expressed its concern about possible foreign policy repercussions if the

details of the Lockheed bribes were disclosed. You did that, I understand, to the court. Since then the Japanese Government formally requested details including the names of recipients of the bribes. And because of the court's position the Japanese Government has not been able to secure those. So what the State Department's official response to that request and have the details been given to the Government of Japan?

Mr. INGERSOLL. Well, I would like to say that a letter was sent to the court by Secretary Kissinger on the 28th of November, last year.

I would just like to quote from that letter because there has been a lot of——

Chairman PROXMIRE. Would you give us that letter so we can make that part of the record?

Mr. INGERSOLL. Surely.

[The letter referred to follows:]

THE SECRETARY OF STATE,
Washington, D.C., November 28, 1975.

Hon. EDWARD H. LEVI,
Attorney General

DEAR MR. ATTORNEY GENERAL: I am writing to request that you exercise your authority under section 516 of Title 28 of the United States Code to file a Suggestion of Interest of the United States in a matter now pending before Judge John H. Pratt, United States District Court for the District of Columbia. The case before Judge Pratt, *Securities and Exchange Commission* v. *Lockheed Aircraft Corp. et. al.*, Misc. No. 75-0189, concerns the effort of the Securities and Exchange Commission to enforce a subpoena and subpoena duces tecum of June 19, 1975, against the Lockheed Corporation. The subpoenas are for testimony and the production of documents in connection with an investigation of allegedly improper activities by Lockheed, including unreported payments to foreign officials. Lockheed has filed a cross-motion and proposed an order which would require the company to comply with the subpoenas, with provision, however, for protection from public disclosure of the names and nationalities of certain foreign persons identified in the subpoenaed documents or in future depositions.

On November 19, 1975, Rogers and Wells, Counsel for Lockheed wrote to me formally requesting the Department of State to file a Suggestion of Interest in the case. Accordingly, officers of the Department have examined some of the documents under subpoena which contain the names of officials of friendly foreign governments alleged to have received covert payments from Lockheed. As the Department has stated on many occasions, the making of any such payments and their disclosure can have grave consequences for significant foreign relations interests of the United States abroad. We reiterate our strong condemnation of any such payments, but we must note that premature disclosure of third parties of certain of the names and nationalities of foreign officials at this preliminary stage of the proceedings in the present case would cause damage to United States foreign relations. We wish to emphasize that our expressions of interest pertains only to a very small number of documents. We would be pleased, should Judge Pratt so desire, to have representatives of the Department meet with him and counsel for the parties in *camera*, and discuss the precise limits of the Department's area of concern.

The Department has stated and reaffirms its resolve not to shield American firms which have made such payments from legitimate law enforcement actions by responsible authorities of either the host country or the United States. Our interest in having certain documents in this case protected grows simply out of our desire that documents which contain uncorroborated, sensational and potentially damaging information not be made public as long as that is not necessary for purposes of effective law enforcement. The Department of State wishes to make clear that it requests protection for the foreign policy interests of the United States only to the extent that this can be accomplished without impeding investigation and enforcement actions by authorized agencies of the United States. In this case, the Department of State respectfully defers to the judgment of the Court as to whether a protective order can be fashioned which will prevent premature disclosure to third parties of the names and nationalities of cer-

tain foreign officials without impeding access to the information in question by appropriate law enforcement bodies.

I would appreciate your bringing the views of the Department of State on this matter to the attention of Judge Pratt.

Best regards,

HENRY A. KISSINGER.

Mr. INGERSOLL. But it goes on to say, Senator:

Officers of the Department have examined some of the documents under subpena which contain the names of officials of friendly foreign governments alleged to have received covert payments from Lockheed.

It goes on to say:

Our interest in having certain documents in this case protected grows simply out of our desire that documents which contain uncollaborated, sensational and potentially damaging information not be made public as long as that is not necessary for purposes of effective law enforcement. The Department of State wishes to make clear that it requests protection for the foreign policy interests of the United States only to the extent that this could be accomplished without impeding investigation and enforcement actions by authorized agencies of the United States.

And then it goes on:

In this case, the Department of State respectfully defers to the judgment of the court as to whether a protective order can be fashioned which will prevent premature disclosure to third parties of the names and nationalities of certain foreign officials without impeding access to the information in question by appropriate law enforcement bodies.

Chairman PROXMIRE. It seems to me that puts a tremendous burden on the court. After all, the State Department is far better equipped to determine and make a judgment as to whether or not a foreign country can provide protection for the innocent. It would seem to me in a case of a country like Japan with its excellent record in this regard, that you would be able to provide Japan or provide many countries with this information, with the understanding that they would not disclose information that might damage innocent people.

Mr. INGERSOLL. This is just the procedure that I proposed in my statement.

Chairman PROXMIRE. Well, you asked the court to make the judgment.

Mr. INGERSOLL. No, that was at that time before the procedure was established.

Chairman PROXMIRE. Well, let me ask you this then. Has the State Department to date provided, taken action to see that that information is made available to the Government of Japan?

Mr. INGERSOLL. The State Department has been discussing with the SEC and the Justice Department that this procedure——

Chairman PROXMIRE. You say, "discussing." This has been discussed for weeks and weeks and weeks.

Mr. INGERSOLL. Well I was saying through this discussion the procedure has been established. And the Justice Department is now in a position to provide documents to interested foreign governments.

Chairman PROXMIRE. When was this established?

Mr. INGERSOLL. Last week.

Chairman PROXMIRE. When was Japan notified?

Mr. INGERSOLL. This is the announcement today to all governments and not just Japan, because there are other governments involved.

Chairman PROXMIRE. You just announced it today for the first time?

Mr. INGERSOLL. Right.

Chairman PROXMIRE. Let me see if I understand precisely what you are saying. Are you saying now that this information will be released?

Mr. INGERSOLL. Will be made available.

Chairman PROXMIRE. Will be made available? I should say, not released; will be made available to the Japanese Government.

Mr. INGERSOLL. Well, I tried to point out that this does not apply only to the Japanese Government but all interested governments.

Chairman PROXMIRE. I understand, but as far as Lockheed is concerned, there is a specific situation.

Mr. INGERSOLL. There are specific cases from other governments as well.

Chairman PROXMIRE. There are indeed, but I am talking about that particular situation first.

Mr. INGERSOLL. This procedure will be made available to the Japanese Government and any other government that would request it.

Chairman PROXMIRE. When will they get it?

Mr. INGERSOLL. That is up to the SEC and the Subcommittee on Multinational Corporations, and the Justice Department to work that out with the law enforcing agency of the foreign government.

Chairman PROXMIRE. Well, I think what is likely to happen—and we had a hearing just the other day as you know when we had Mr. Haack and Chairman Hill of the SEC—and it was apparent there that there is negotiation going on now between the SEC and Lockheed. And that negotiation is to determine the method in which an investigation will be made of the Lockheed payments, that is, who will make the investigation. It will be the directors of Lockheed presumably and some independent person perhaps. If that is done, that investigation is expected to take 6 months. Do you think that is satisfactory?

Mr. INGERSOLL. I think it is if it protects innocent people who might have their reputations damaged by unsubstantiated allegations.[1]

Chairman PROXMIRE. But as Mr. Haack pointed out and as we all know, innocent people have been virtually destroyed by the rumors and allegations. For the life of me I can't understand why it takes months and months and the major part of a year to make available information that should be rather direct and simple. The fact is that Lockheed made payments and they admitted it. They paid $24 million in illegal payments abroad and about $8 million in Japan. I can't for the life of me understand why that cannot be made evident. They cannot say those checks were made to a specific agent by name. They must have been made to a number of agents in Japan. If they could give that, that country and the other countries involved could investigate it. But they have a beginning then and they know where to go if they do that. They have the documentation for the start.

Mr. INGERSOLL. Well, I have suggested a process by which that can take place by any foreign government that wishes to avail themselves of this procedure.

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[1] See letter from Mr. Ingersoll of Mar. 31, 1976, appendix, p. 187.

Chairman PROXMIRE. Well, that sounds like a mighty cumbersome detailed procedure. You go to a Federal court and you go to a congressional committee and Government agencies.

Mr. INGERSOLL. No, I said in my statement that we would ask the courts to modify their order to make this possible.

Chairman PROXMIRE. When did you ask the court to do that?

Mr. INGERSOLL. I said we would do so. I didn't say we had.

Chairman PROXMIRE. Well, when would you?

Mr. INGERSOLL. Whenever we get a request.

Chairman PROXMIRE. You mean you haven't gotten a request from the Japanese Government?

Mr. INGERSOLL. Not for that, no sir. And it may not be necessary. It may be possible to transfer these documents without the court order being modified.

Chairman PROXMIRE. Well, at any rate you are telling me that in the event a foreign government like Japan or Holland or whatever the foreign government is, wishes to secure this information, that if they make the protestation to the Department of State, you will in turn go to the court and ask the court to modify their restrictions so that under proper safeguards, Mr. Ingersoll, this will be made available to the foreign countries. Is that right?

Mr. INGERSOLL. That is right.

Chairman PROXMIRE. Do you want to modify that?

Mr. INGERSOLL. I understand that the preliminary judgment of the SEC is that there will be no need for the modification of the court order. So that the process could be implemented immediately.

Chairman PROXMIRE. Well, you made that clear but let's see if I understand it now. By "immediately" you mean that could be done today?

Mr. INGERSOLL. I think that each government will have to make its arrangements with our Justice Department.

Chairman PROXMIRE. So you are saying that instead of going to the State Department, the foreign government can go directly to the Justice Department?

Mr. INGERSOLL. They will make their requests to us. We in turn would ask the Justice Department to be in touch with their Minister of Justice or law enforcement agency in that country.

Chairman PROXMIRE. Senator Helms.

Senator HELMS. Mr. Ingersoll, I certainly don't want to even have the appearance of badgering you, and I don't want to belabor the point, but I am somewhat mystified in the light of all the reports that have come to me, sir, that apparently at the State Department during all of these years when these things were alleged to have occurred, that there was a complete "hear no evil and see no evil."

Now, just tell me this one more time. Nobody at the State Department ever dreamed anything of this sort was going on at any time? I am talking about the official top-echelon people.

Mr. INGERSOLL. Well, I probably was in a position to be closer to it than anybody else because I was in Japan at the time. And the only thing that I heard was that people were cutting price to get the order. Now, that is done all over the world both in this country and elsewhere. So that I did not see that that was any reason for me to report to the

State Department or anywhere else or to complain to the Japanese Government.

Senator HELMS. Mr. Chairman, I think I have no further questions.

Chairman PROXMIRE. Mr. Ingersoll, you said earlier that unilateral action should be taken only with respect to acts committed within the United States. Suppose a firm's international sales are subsidized by our Government with a low-interest loan or a loan guarantee? Should our Government take no unilateral action with respect to such a firm that we know is engaging in bribes in a foreign country?

Mr. INGERSOLL. Well, we suggested we subscribe to the—I think both the House and Senate have come up with an amendment to the Foreign Military Sales Act whereby it is required that they disclose any such payments or any actions on their part of this type. We certainly do subscribe to that requirement. I think this would give our Government an opportunity to see whether there are any improper payments.

Chairman PROXMIRE. Now, with respect to foreign military sales, in your statement you say:

> Defense and State have taken steps to insure that governments who make purchases under the foreign military sales program are fully informed of any agent's fees that are included in the price of the goods sold.

Is this a recent action?

Mr. INGERSOLL. I would say on a universal basis, yes, but it has been done selectively in recent years.

Chairman PROXMIRE. When was it taken on a universal basis?

Mr. INGERSOLL. I will have to supply that for the record. I don't really know.

Chairman PROXMIRE. How recently roughly? Can you tell us that? Was it the last week or two?

Mr. INGERSOLL. I know some cases were last year but I don't know whether it went before that. That is the first time it came to my attention.

Chairman PROXMIRE. Was it done by Executive order or regulation or an oral understanding or what?

Mr. INGERSOLL. Yes, it was a regulation of the Defense Department which primarily handles the FMS contracts.

Chairman PROXMIRE. Would you get us a copy of that and send it to the committee?

Mr. INGERSOLL. Surely.

[The following information was subsequently supplied for the record:]

[Telegram]

To: CSA Washington, D.C.; CNO Washington, D.C.; CSAF Washington, D.C.; CARMISH MAAG Tehran, Iran; CJUSMAG, Athens, Greece; GJUSMAG Bangkok, Thailand; CJUSMAG Seoul, Korea; CMAAG Addis Ababa, Ethiopia; CMAAG Ankara, Turkey; CMAAG Bonn, Germany; CMAAG Copenhagen, Denmark; CMAAG Lima, Peru; CMAAG Lisbon, Portugal; CMAAG Madrid, Spain; CMAAG Manila, Philippines; CMAAG Oslo, Norway; CMAAG Paris, France; CMAAG Rome, Italy; CMAAG Santo Domingo, Dominican Republic; CMAAG Taipei, Taiwan; CMAAG The Hague, Netherlands; USDAO Canberra, Australia; USMTM Dhahran, Saudi Arabia; COMUSMILGP Burenos Aires, Argentina; COMUSMILGP Caracas, Venezuela; COMUSMILGP Guatemala City, Guatemala; COMUSMILGP La Paz, Bolivia; COMUSMILGP Montevideo, Uruguay; COMUSMILGP Panama City, Panama; COMUSMILGP Quito, Ecuador; COMUSMILGP Rio de

Janeiro, Brazil; COMUSMILGP San Salvador; COMUSMILGP San Jose, Costa Rica; COMUSMILGP Santo Domingo; COMUSMILGP Tesucigalpa, Honduras; COMUSMILGP Asuncion, Paraguay; USDAO Vienna, Austria; COMUSMILGP Managua, Nicaragua; CMDAO Tokyo, Japan; CHMAAG Brussels, Belgium; JBUSMC Rio de Janeiro, Brazil; USDAO Jakaria, Indonesia; USDAO Tel Aviv, Israel; USDAO Amman, Jordan; AMEMB Kuwait, Kuwait; USDAO Beirut, Lebanon; CHUSBMISH Monrovia, Liberia; USDAO Kuala Lumpur, Malaysia; USDAO Mexico City, Mexico; CHMUSLO Rabat, Morocco; USDAO Wellington, New Zealand; USDAO Islamabad, Pakistan; USDAO New Delhi, India; USDAO Singapore; USDAO Stockholm, Sweden; USDAO Berne, Switzerland; USDAO Tunis, Tunsia; USDAO London, England; USCINCEUR Vaihingen, Germany; USCINCSO Quarry, Heights, Canal Zone; and CINCPAC Honolulu, Hawaii.

From: A5D:ISA(6A)/OSAA/T5.

Subject: Agents fees/commissions for foreign military sales.

References: (A) DA MSG 1109002 Jul 75 (Nutal); (B) AFLGPC Letter dated 1 July 75 Subj: agent's fees/commissions for foreign military sales (Nutal); and (C) CNM procurement planning memorandum (PPM) number 27 dated 3 July 75 (Notal).

1. The following outlines current policies for the inclusion of agent's fees for foreign military sales and supersedes previous policies issued on subject.

2. Unless a purchasing government has indicated to contrary (see paragraph 5 below) it is policy of Department of Defense that all agent's fees anticipated to be included in FMS contracts be made known to purchasing government prior to or in conjunction with submission of letter of offer to that government. Such advice will include (a) the name and address of the agent(s); (b) the estimate of the proposed fee, along with a statement as to the percentage of sale involved if such fee is based on a percentage of the sale price; and (c) a statement indicating one of the following, whichever is applicable: (I) appropriate officials within the U.S. DOD consider the fee to be fair and reasonable; (II) in the event only a portion of the proposed fee is considered fair and reasonable, a statement to this effect together with the rationale therefore; or (III) the USG cannot determine reasonableness of hte proposed fee. The most appropriate means of providing such advice normally will be as a "note" to the letter of offer. Such a note may also include the contractor's explanation of and/or justification for the proposed charge, together with any other data which may be requested by the purchasing government.

3. The "notes" to the letter of offer also will include a statement to the effect that acceptance of letter of offer by the purchasing government, after receipt of the notification outlined above will constitute that government's approval of the agent's fee/commission involved.

4. Where it is not possible to determine prior to presentation of letter of offer whether or not the price to be paid for materiel/services will include agent's fees, the purchasing government will be notified as soon as possible if subsequent contract negotiations indicate that agent's fees charges will be claimed by contractor. This notification will include the information outlined in paragraph 2 above, along with an indication that the DOD will determine whether or not to accept such costs as a valid charge to the contract unless contrary notification is received from the purchasing government within 30 days of the date of the notification. No agent's fees will be accepted by the contracting officer prior to that date.

5. DOD reserves right to disallow any fee on basis that amount is unreasonable or agent is not bonafide. If DOD determines any fee unreasonable or that the agent is not bonafide the fee would not be allowable and therefore no report of agent's fee would be included within the letter of offer. Further, no fee shall be accepted by DOD if disapproved by the purchasing government.

6. Defense security assistance agency will consider country requests to deviate from the above policy. Currently, requests have been honored from the governments of Iran, Kuwait and Israel and the minister of defense and aviation of Saudi Arabia that all letters of offer issued to these governments will include the following statement: Quote

All U.S. government contracts resulting from this letter of offer shall contain one of the following provisions, unless the agent's fee/commission has been identified and payment thereof approved in writing by the government of (blank) before contract award:

(a) For firm fixed price contracts or fixed price contracts with escalation:

The contractor certifies that the contract price does not include any direct or

indirect costs of agent's fees/commissions for contractor sales agents involved in foreign military sales to the government of (blank).

(b) All other types of contracts:

Notwithstanding any other provision of this contract, any direct or indirect costs of agent's fees/commissions for contractor sales agents involved in foreign military sales to the government of (blank) shall be considered as an unallowable item of cost under this contract. Unquote.

Accordingly, with respect to these four purchasers, paragraph 3 of this message will not apply. As to them, specific written approval of agent's fees/commissions is required prior to contract award.

7. Inclusion of a "note" to the letter of offer with respect to agent's fees/commission shall not be deemed, with respect to distribution and availability of copies of the letter of offer as altering the proprietary nature, if any, of such data for the purposes of 18 U.S.C. 1905.

Chairman PROXMIRE. Suppose a bribe or a large agent's fee is paid but not included in the price of goods sold. Will the steps that have been taken cover that kind of a situation?

Mr. INGERSOLL. You mean if a company——

Chairman PROXMIRE. I mean in the form of a kickback. That is what Lockheed said they did. They said they didn't bribe anybody; they just had kickbacks. The distinction was, of course, that their stockholders weren't hit with it and they said the guarantee wasn't affected because the poor sucker was the customer in the foreign country. They would pay more. They would pay the bribe in effect out of the higher prices. Would that be covered? That is my question. Would that be covered in your regulations?

Mr. INGERSOLL. I think the DOD regulations provide that any payment, whether it be a bribe or any commission or anything, must be reported. Therefore the foreign government knows if they are paying a commission, they know it in the price.

Chairman PROXMIRE. Well, that is right. I wanted to be sure it was covered in either of them because you state:

The Departments of State and Defense have taken steps to insure that foreign governments who purchase defense articles and services under the Foreign Military Sales program are fully informed of any agent's fees that are included in the price of the goods sold.

Mr. INGERSOLL. Yes.

Chairman PROXMIRE. That would answer that question. Then if it is not included in the price, you also would be assured that you would be notified, be informed?

Mr. INGERSOLL. If it is not included, we wouldn't know about it.

I understand the new regulations that are being proposed in this particular foreign assistance bill will cover commissions paid out of profits as well as those that are considered a cost. So I think that would cover those cases.

Chairman PROXMIRE. All right, sir, whether it is included in the price or whether it is aside and apart from the price, and therefore taken out of profits?

Mr. INGERSOLL. They are required.

Chairman PROXMIRE. The foreign government would be informed?

Mr. INGERSOLL. The seller would be required to——

Chairman PROXMIRE. Inform the government of the procuring country?

Mr. INGERSOLL. Well, to us, to the U.S. Government under the new legislation, and then we would in turn notify the foreign government.

Chairman PROXMIRE. I see. But that is not the case now?

Mr. INGERSOLL. No.

Chairman PROXMIRE. When will that go into effect?

Mr. INGERSOLL. Whenever that bill gets passed. I think it is still in conference now.

Chairman PROXMIRE. Suppose a very large fee is paid, reported, and not objected to? Is that OK under your policy? Supposing a very large fee is paid, reported, and not objected to?

Mr. INGERSOLL. Would that be what?

Chairman PROXMIRE. Is that all right under your policy?

Mr. INGERSOLL. If it has relation to the size of the order and the effort required to get the order; I would say yes. Well, you can have a large——

Chairman PROXMIRE. Well, suppose it is large, the fee is large in relation to the order. Suppose it is excessive but there is no objection to it?

Mr. INGERSOLL. By the purchaser you mean.

Chairman PROXMIRE. That is right. Suppose, for example, the usual commission on these things is 1 percent but here is one that is 20 percent or 10 percent or 10 times the usual commission?

Mr. INGERSOLL. Well, it depends on the size of the order. If it were a small order, 20 percent probably wouldn't be enough. If it were a large order, 1 percent might be too much.

Chairman PROXMIRE. Suppose it is 10 or 20 times the usual commission.

Mr. INGERSOLL. Under the present regulations the Defense Department could prohibit inclusion of any agent's fee as an item of allowable costs to the purchaser in a foreign military sales transaction if it determined that the fee was unreasonable or that the agent was not bona fide. Criteria are set forth in the regulations for making such determinations. If Defense proved unable to reach such a determination, it could refer the matter to the purchasing government.

Chairman PROXMIRE. Well, does that mean that the bribe is all right if it is not protested?

Mr. INGERSOLL. Well, if the purchaser or the foreign government believes that that is the cost of making a sale to them and they do not eliminate a commission, I don't know what concern we have.

Chairman PROXMIRE. Let me give you an example. Assume we have a sale of arms to a government for $1 billion. The agent who persuades the government to buy the arms charges the seller 5 percent or $50 million. You are saying such a huge payment is acceptable so long as it is reported and approved by the foreign government even though the agent may in fact have distributed the $15 million to various government officials? Is that correct?

Mr. INGERSOLL. If the government wants to purchase any articles on that basis, I don't quite know why we should want to preclude their being able to do so. I might say that I have had some experience with commissions for agents and the circumstances can change; that is, the size of the orders that he has been nominally getting. He might have a 20-percent or a 15-percent commission under a circumstance where it is very difficult to get the business. All of a sudden, as has been the case in the Middle East where there is a large flow of money and

a large flow of sales, the commission that heretofore was completely proper is no longer proper and that should be principally up to the purchaser to negotiate a revised commission rate. And I think that the buyer is the one who should have the responsibility for that. You are not going to be expecting a salesman to want to cut his price unless by competition he is forced to. Sometimes——

Chairman PROXMIRE. I am talking about foreign military sales.

Mr. INGERSOLL. Yes, but they are sales in which we do not contribute——

Chairman PROXMIRE. In which the U.S. Government is involved. Are you saying a $15-million bribe wouldn't be considered anything we should be concerned about unless the purchaser objects?

Mr. INGERSOLL. I would like to differentiate between a commission and a bribe. I don't believe that legitimate commissions are bribes because that is a legitimate way of doing business around the world. If there is a bribe involved, that is illegitimate.

Chairman PROXMIRE. If there is a bribe involved, it is what?

Mr. INGERSOLL. It is illegitimate I would say in most countries, and certainly in this country. Most countries have laws against bribery.

Chairman PROXMIRE. But under this new system that you are proposing though, Mr. Ingersoll, they are military sales, foreign military sales made by our Government. And if bribes are paid in the foreign country, no action would be taken unless that foreign country objects?

Mr. INGERSOLL. Well, I think this case, Mr. Chairman, is a very difficult one. I think commissions are usually paid to an agent. He may have some relationship to the government and he may have, as you say, some of this onto other members of the government. We report—that is, the DOD looks over the commission that is reported in the expected sale. DOD can determine at the outset, using criteria set forth in the armed services procurement regulations, that the fee is unreasonable or that the agent is not bona fide, thus excluding the fee as an item of allowable costs. If it cannot reach such a determination on the basis of information available to it, it could refer the issue to the purchaser.

Chairman PROXMIRE. Well, I am not talking about the reasonableness of the commission. I realize sometimes commissions may or may not be reasonable. I realize they may be somewhat excessive. I realize that is something we can't do a great deal about. But what we should be able to do something about; if all of these actions mean anything, is to prevent bribes.

Mr. INGERSOLL. Well, I think it is very worthy, a very worthy effort, but I am not sure you are always going to be able to do it in other countries. In this country, yes.

Chairman PROXMIRE. Well, what has been changed by the State Department and Pentagon arrangement that you described? Until recently at least the Pentagon was teaching its contractors how to make payoffs as I said in my opening remarks. You may recall the statement published by the Pentagon in 1974, "Agents' fees in the Middle East," which dealt with the problem in which it said, "Influence in these countries may range from family ties to the payments of substantial sums to individuals in high government positions."

The statement continues:

Since most major Defense contractors both United States and foreign have local agents for the express purpose of influencing a sale. It is no wonder that the decisionmaking process is complicated by conflicting points of view as to the proper equipment to acquire. Obviously the agent with the greatest margin of profit has a distinct advantage over those with a lesser fee in that greater influence can be applied to all personnel in the governmental decisionmaking chain.

Now, as a result of the new arrangement, are such statements no longer being made to U.S. contractors?

Mr. INGERSOLL. Well, I would like to have a copy of that because I am not aware of it. But I do not know of that practice being pursued by the Defense Department. I know that they are providing the foreign governments with the amount of the fee, or if the government says, "We do not permit a fee," then the DOD does not agree to a fee in the price.

Chairman PROXMIRE. Well, I have here the document to which I referred. It says, "Defense Security Assistance Agency, Washington, D.C." It is a memorandum to the aerospace industry, the electronic industry, the NSIA and was signed by Joseph K. Hoenig, assistant director, sales negotiations. It is dated July 5, 1974.

And then I take it that in view of the assertions that you have made that State and Defense are cooperating in this, that that kind of policy is no longer the policy being pursued?

Mr. INGERSOLL. As far as I know it is not.

Chairman PROXMIRE. Well, don't you think——

Mr. INGERSOLL. And I was not aware of this document you speak of.

Chairman PROXMIRE. Well, this is a most disturbing document. This is a document that is counseling in effect corruption. It suggests bribery.

Mr. INGERSOLL. It is counseling the way business is done in those areas. I would certainly subscribe to that.

Chairman PROXMIRE. Supposing business is done through kidnapping and assassination and extortion, should we give them instructions on how to do it, on how to rub somebody out to get the sale?

Mr. INGERSOLL. I wasn't aware of this document and I certainly wouldn't condone it or recommend it be distributed.

Chairman PROXMIRE. Well, I would think in view of the fact it has been distributed, that it would be most important that the State Department and the Defense Department issue instructions to these people who receive this document, saying that now the policy is quite different and we not only condemn bribery but are taking every action we can to prevent it.

Mr. INGERSOLL. I think you are right, sir.

[The following information was supplied for the record:]

We have looked into the Defense Department document entitled "Agents Fees in the Middle East" and are informed that it has not been disseminated by Defense for many months. I believe the significant changes in Defense Department practices with respect to agent's fees, which are set forth subsequently and are known throughout the industry, make further clarification of the above document unnecessary at this time.

Chairman PROXMIRE. I am convinced, as I am sure you are as a successful businessman of high integrity, that bribery was something that disturbs you a great deal.

Mr. INGERSOLL. It really does.

Chairman PROXMIRE. And it really hurts your honest operations. And I am sure the great majority of American businessmen want to stop it.

Mr. INGERSOLL. It wasn't only overseas. It was in this country.

Chairman PROXMIRE. Well, I am sure that is true but right now we are concerned with the problem here. Of course that is the State Department's responsibility.

Now, you said that the State Department did not know about—in a response to Senator Helms earlier, Mr. Ingersoll, you said the State Department did not know about these bribes until the SEC's disclosure this year. Isn't it a fact that our embassies in the Middle East and the highest officials in the State Department have known for years of payments of large fees to agents as high as 10 to 15 percent of sales in some cases? Isn't it true State Department officials have helped negotiate or expedite the payment of those fees?

Mr. INGERSOLL. Certainly not to my knowledge. And I cannot believe that we would negotiate or expedite any kind of fee.

Chairman PROXMIRE. Are you aware that documents filed with the SEC by Northrop Corp. show a long-standing pattern of such involvement by both State and Pentagon employees in sales abroad?

Mr. INGERSOLL. No, I am not.

Chairman PROXMIRE. Well, we will be happy to make those documents available to you. They are filed with the SEC.

Mr. INGERSOLL. Are you talking about agents' fees or are you talking about bribes?

Chairman PROXMIRE. Well, I am talking about fees that are extraordinarily large especially in view of the size of the sales involved and that the State Department and the Defense Department, and the State Department particularly, assisted in negotiating those fees.

Mr. INGERSOLL. You mean with the governments?

Chairman PROXMIRE. With the government. That is right. Northrop Corp., is what I am talking about specifically.

Mr. INGERSOLL. State Department officials assisted in the negotiation of those fees?

Chairman PROXMIRE. We will provide that documentation to you.

Mr. INGERSOLL. That is contrary to anything I have ever heard, but I would like to see it, sir.

Chairman PROXMIRE. Will you comment on it when we send you the documents? Will you give us your response?

Mr. INGERSOLL. Yes.

Chairman PROXMIRE. You will?

Mr. INGERSOLL. Yes, sir.

[The following information was subsequently supplied for the record:]

Pursuant to Senator Proxmire's offer Committee Staff provided the Department of State with the following documents:

(1) unsigned copy of a one page letter dated July 5, 1974 from Josef K. Hoenig, Assistant Director, NESA/AFR Division of the Defense Security Assistance Agency covering an "article" prepared by the Department of Defense entitled "Agent's Fees in the Middle East" (4 pages);

(2) a copy of a five page typed document numbered 453–457 and 7–11 entitled "Five page hand written memo, on graph paper, entitled notes for conversation with Adnan" (names of the persons who authored and transcribed the document were not listed).

(3) copy of five page document, numbered 479–483 and 33–37 apparently summarizing various documents from Northrop's files. (Name of author of summary lot listed);

(4) copy of 3 page telegram dated March 2, 1972 from Manuel G. Gonzalez to Gaylord Anderson and R. G. Rogan bearing numbers 495–497 and 52–54;

(5) copy of two page document stamped "Northrop Private" with handwritten notation "Note for Mr. Jones' Trip (undated, apparently late 1970 or early 1971)" bearing numbers 488 and 489 and 45 and 46. (Name of author not listed).

I have reviewed the above listed documents and, as explained below, do not find in them any showing that the State Department or Defense Department assisted in negotiating or expediting the payment of agents fees.

(1) The first document was an article prepared in the Department of Defense, Defense Security Assistance Agency without, to my knowledge, the participation of the Department of State. We are informed that it was published only in the Congressional Record and was withdrawn from circulation by the Defense Department shortly after its basic inadequacy became apparent, i.e. its failure to emphasize the strong U.S. Government opposition to bribery of foreign government officials or exorbitant agents fees. It does not, however, allege any involvement by personnel of the Departments of State or Defense in negotiating or expediting the payment of any agent's fee.

(2) The second document purports to recount events in Saudi Arabia on July 27–28, 1971 surrounding the signing of a Letter of Offer by the Saudi Minister of Defense and Aviation. With respect to the American Ambassador (Ambassador Nicholas Thacher who retired from U.S. Government service in 1973) and General Olin Smith (formerly Chief of the U.S. Military Training Mission in Saudi Arabia) the document indicates:

The Ambassador and General Smith went to the Saudi Ministry of Defense on July 27, 1971 to witness the scheduled signing of the Letter of Offer; they conferred with the Minister of Defense and were informed that the signing had been postponed to the following day;

The Ambassador and General Smith then met at the American Embassy, July 27, first with General Hashim (a Saudi General) and a Mr. Monsouri and then with Northrop representatives, and requested authority from the U.S. Defense Department to certify the price of 20 F–5–B aircraft as a ceiling price; this request was turned down;

The Ambassador then attended the signing ceremony on July 28 at the Saudi Ministry of Defense and allegedly assured the Saudi Minister of Defense that there were no middle men in the contract in the United States or Saudi Arabia since this was a government-to-government transaction.

Though the document contains a long description by its unnamed author of company intrigues over its agents arrangements, it does not suggest that the Ambassador or General Smith were in any way aware of either these arrangements or the intrigue or that they facilitated the negotiation or performance of these arrangements. Since my testimony, State Department personnel have consulted with Ambassador Thacher telephonically and he recalls no knowledge of Northrop's agents arrangements at the time the Letter of Offer was signed.

(3) The third document which apparently reflects some unnamed person's summary of a number of documents in Northrop's files contains one entry relating to State Department activities. That entry dated December 3, 1973 summarizes a memorandum to file from "Gonzalez" and states that a telegram had been sent by the State Department, "signed by Henry Kissinger", to Ambassador Akins requesting him to secure the Minister of Defense's appproval for agent's fees on government-to-government (FMS) transactions. The entry subsequently notes that Ambassador Akins had advised Collins, presumably another Northrop employee, that he would not initiate a discussion of this issue with the Minister of Defense. It also states that Ambassador Akins had told Collins "I'd better find Khashoggi and get him to speed up Sultan. . . ."

A cable was sent to the American Embassy in Saudi Arabia in early November, 1973. Since, as you know, all cables sent from the Department bear the Secretary's name when he is present in Washington, the appearance of his name on a cable does not indicate that he saw or was personally aware of it. The cable in question was sent in order to seek Saudi verification of a contention by Northrop's agent that the Saudi Minister of Defense considered the agent's fee contemplated for a particular transaction to be reasonable. In response, the Embassy stated that it did not wish to raise the fee issue with the Saudi Government, and the matter was never raised with respect to the particular

transaction. A similar issue was raied, however, with repect to related transactions in 1975 with the result that the Saudi Minister of Defense determined that no agent's fees would be permitted for those transactions.

The Northrop document also alleges that Ambassador Akins advised "Collins" that he would approach Khashoggi. Ambassador Akins has informed Department personnel that he made no such statement and that, while he was Ambassador to Saudi Arabia, he never once met with Khashoggi.

The same document goes on to summarize Northrop memoranda in 1974 describing discussions and communications between Northrop employees and Major General Robert F. Trimble (USAF) and other Air Force staff about Northrop's agent's arrangements. Though this shows some Air Force awareness of Northrop's agent's arrangements, it does not indicate involvement by the U.S. Government in facilitating negotiation of agent's fees or expediting their payment.

(4) The fourth document (a coded telegram from Manuel G. Gonzalez to Northrop representatives in Lebanon) states that Gonzalez disclosed to "Thacher" (presumably Ambassador Thacher) that Northrop had a consultant/representative agreement with Khashoggi's company. It also states that Ambassador Thacher said that Khashoggi's commission on the various F–5 transactions through government-to-government channels was substantially lower than on other (undefined) direct sales. Though the cable indicates that Ambassador Thacher was knowledgeable regarding Northrop's fee arrangements with Khashoggi, it does not suggest that he assisted in negotiating those fees or in expediting their payment. Moreover, as noted, Ambassador Thacher has denied to Department personnel any recollection of awareness of Northrop's fee arrangements at the time.

(5) The fifth document contains a general statement commending U.S. Government personnel, particularly Ambassador Thacher and General Smith, for helping to make the F–5 program a success. Again, there is no indication they assisted in negotiating Northrop's agent's fees or in expediting their payment.

Chairman PROXMIRE. You say that bribes, in the long run, are bad business, as firms involved in such practices risk loss of contracts, sales, and even property.

Assuming the United States has the constitutional authority to regulate foreign activities of U.S. corporations, would you favor legislation outlawing bribes to foreign officials by the U.S. corporations?

Mr. INGERSOLL. Well, I am inclined to think from the standpoint of the Republic, Senator, that would probably be a good idea. How you carry it out, I don't know. I think that is probably up to our law enforcement agencies to determine that.[1]

Chairman PROXMIRE. Well, your support is very important. I think there are ways that it can be carried out. Nothing is likely to be 100 percent effective all the time. It seems to me through requiring disclosures, imposing responsibility on auditors and accountants and so forth, that you can——

Mr. INGERSOLL. Oh, I am all for disclosure. As I said, we subscribe to the amendments that have been appended to the Foreign Security Assistance Act.

Chairman PROXMIRE. In your statement you say, "unilateral actions." As distinct from what you are proposing today and you have announced—you say, "Unilateral action would put U.S. companies at a serious disadvantage in the export trade." Are you saying that the United States should continue to encourage firms to go along with the bribery system or help cover up evidence of bribes until an international agreement is reached?

Mr. INGERSOLL. Well, I think that this subject has been so distorted in the press by the fact that commissions are considered as bribes, but

[1] See letter from Mr. Ingersoll of Mar. 31, 1976, appendix, p. 187.

I think it would be unfair to American companies to have to report commissions and the proprietary information they have in doing their business, when their competitors are not required to do so. I certainly don't condone bribes but I do believe that commissions are a legitimate way of doing business and I think a very necessary way of doing business.

Chairman PROXMIRE. I think so, too. As far as commissions and bribes being confused, the Lockheed Corp. admitted that they made I think $160 million in payments abroad; $24 million of which were payments to foreign officials.

Mr. INGERSOLL. But there is a headline in one of today's newspapers that talks about $70 million being paid to sell jets abroad. Now, I don't know what the volume of the business was, and I only read halfway down the article or three-quarters of the way down and it does not say how much business was done that required such payments. I think it relates to the amount of business——

Chairman PROXMIRE. Well, I agree with that. I am talking about payments to government officials. I am not talking about commissions. And I agree commissions can be almost any percentage if it is in fact a commission. If somebody makes a real effort to sell, sometimes it can be more than 50 percent of the price and be legitimate if it was a tremendously hard article to sell. But we are talking now about payments to the officials of the foreign government, who are in the pay of the foreign government and not working——

Mr. INGERSOLL. Well, as I say, I think it is probably inevitable that there will be such legislation but I don't know how you can enforce it. And I think it will put American companies at a disadvantage just because the purchaser is going to say, "I won't chance my doing business with that company because it might have an allegation." And the allegation might not be true, but the allegation would come out. Therefore, they are not going to take the chance of doing business.

Chairman PROXMIRE. Of course one way to enforce it is through disclosure.

Mr. INGERSOLL. Well, that is what we are subscribing to.

Chairman PROXMIRE. Now, let me get into something else that I think is of great importance. We had testimony on Tuesday from the former Ambassador to Australia, U.S. Ambassador William Crook, and also from William Carden of Translinear, Inc., concerning attempts by government officials in Haiti to extort money from their company, soliciting bribes. They testified that they reported the extortion attempt to the U.S. Embassy and they sent the State Department a copy of a telegram addressed to the President of Haiti last July complaining of the extortion attempt but they tetsified the Embassy did not offer to help them and did not try to help them.

As a result of their refusal to make payoffs and the lack of support from their own government, they have lost the investment. They have been asked not to return to Haiti. As a matter of fact, they lost at least $3 million and incurred substantial other losses on sums they had available for investment.

What is your response to these charges?

Mr. INGERSOLL. Well, first, Translinear Corp. was a subcontractor to Dupont Caribbean Corp. Therefore, their contract was with another

company and not with the Haitian Government. When the original prime contractor, that is Dupont Caribbean, had their contract canceled for nonperformance, Translinear Corp. had the first response to the Dupont Caribbean Corp., with whom they had their contract. When they were not able to get satisfaction, that is with Dupont Caribbean Corp., they then went directly to the Haitian Government to see if they could negotiate a contract with them. They never had a contract with the Haitian Government. So that I don't know all they told you, but they have come to the Embassy in Haiti and they have come to the Department. We have responded. We have made representations to the Haitian Government. They came to us the last time in July of last year and until they came to us on February 17 of this year, we had no contact with them. They did not ask us to intercede on their behalf. They came to us on that date and told us there had been a request for an extortion in December, 2 months before. We were not even aware of it until they came and said that they were going to disclose this in your hearings. And we understand that there has not been an expropriation of their property, that they even have a lawyer in Haiti today—as has been released in a press conference by the Under Secretary of Commerce and Industry in Haiti—and that they are negotiating to sell the property, which they consider theirs on this island.

Chairman PROXMIRE. Well, we sent you a transcript of the hearings. I never met either Mr. Carden or Mr. Crook until they appeared before this committee. All of the conversation between us took place on the public record and we sent you a full transcript of that so you knew of what they told us.

It seems to me it is irrelevant that they were a subcontractor. The fact is that they were shaken down and they were approached. Nobody disputes the fact that they have outlined. At least I have not seen any disputation of the facts as they described them. They did tell the agency about it. I asked Mr. Crook what he would have done, as Ambassador to Australia, if a firm had approached him with this kind of information. He said he would have immediately called the Government of Australia in that case and he would have made a full report to them and would have asked for an investigation and he would have asked for satisfaction. He said in this particular case the American Ambassador to Haiti did absolutely nothing except offer them a cup of coffee.

Mr. INGERSOLL. That is entirely contrary to the facts because the Ambassador did talk to the Government of Haiti and the Government said: "Ignore any requests for funds. Deal directly with us. You don't have to deal through an intermediary." And Mr. Crook and his partner, Mr. Carden was notified of this. As a matter of fact, the Government of Haiti has said that they would be willing to negotiate with Translinear Corp. but will not accept the terms of the contract Translinear submitted.

Chairman PROXMIRE. This seems to be a pretty bad breakdown of communications. I think you would agree with me that Mr. Crook and Mr. Carden are honest and men of integrity. And I know of no reason why we wouldn't expect them to speak the truth. Mr. Crook has had a long record of service to this Government. As you know,

he has been a successful businessman. He has been, as a matter of fact, a top man in the State Department as an ambassador.

Mr. INGERSOLL. If you would like to take the time, I have the record of this and I can cite that for you.

Chairman PROXMIRE. All right, let's hear it.

Mr. Secretary, before you get into that, let me say what we were told. Mr. Carden, who is the president of Translinear, on April 28 of last year, almost a year ago, went to the Embassy and told about the problem and the bribe. He went back to the Embassy on the 9th and 10th to report a lack of progress. Again, he discussed the problem. That was in May. Later in May he was back in Haiti and on May 22 he went to the Embassy again; he identified the lawyer whom he was told he should hire in place of the lawyer he had; and pointed out that that lawyer was in fact employed by the Haitian Government. And between June 12 and July 18 he—well, yes, later in June I should say, Mr. Ingersoll, he called the Ambassador on the phone from Dallas and told him about the telegram he was going to send to the President of Haiti, Mr. Duvalier. Now, go ahead.

Mr. INGERSOLL. Well, that is true. I don't know whether it was Mr. Crook of Mr. Carden who came to the Embassy after they had been to the Government and complained of this extortion attempt. They told the Embassy that the Government had said not to pay any attention to that; that they (Translinear) did not need to make any payoff; that they should deal directly with the Under Secretary of Commerce, Mr. Bayard. Bayard said it must have been a con man that was trying to take their money and it was not necessary.

In view of that fact——

Chairman PROXMIRE. Who told them that?

Mr. INGERSOLL. Under Secretary Bayard. The Haitian Government——

Chairman PROXMIRE. Who in the U.S. Embassy?

Mr. INGERSOLL. Well, this says the DCM. Mr. Crook called on the DCM and reported the attempts by an unidentified man to solicit a $500,000 bribe from Translinear.

Chairman PROXMIRE. What was that date?

Mr. INGERSOLL. May 7.

Mr. Crook says he reported the extortion attempt to Mr. Bayard, who advised Mr. Crook to ignore it. Crook did not ask for assistance on the extortion attempt but asked that it be made a matter of internal record in the Embassy.

Then on May 27:

Mr. Carden called on the Embassy's Economic Officer saying, among other things, that "three minor matters had to be resolved."

June 1:

Mr. Crook on June 1 telephoned the Ambassador to report Translinear's decision to pull out of negotiations with an intention to recoup losses in the face of the bleak situation caused by Haitian delays. However, further meetings are still scheduled with the Haitian Government. Crook made no request for Embassy assistance.

July 11:

The Ambassador and the Economic Minister called on the Finance Minister to discuss investment difficulties including Translinear. The Ambassador urged

the Haitian Government to inform the company whether it wished to continue negotiations and name the official to do so or inform the company it does not plan to enter into a contract. The Ambassador expressed hope that the Government would explain clearly its reasons for not wishing to sign a contract.

Mr. Crook called the Department on July 15 and said that Translinear's investors had lost patience with the Haitian Government delays and want to make public charges of confiscation of property and extortion. Crook says that he does not hold this position but is under pressure from investors. He was invited to come into the Department the following week for conversations but did not.

July 16:

On July 16 Mr. Crook sent the circular telegram to President Duvalier with copies to Senator Sparkman, Senator Bentsen, Senator Brooks, Senator Kennedy, Senator Jackson, Congressman Pickle, as well as to the Secretary.

August 14:

Again, on August 14 the Ambassador and the Economic Minister from our Embassy discussed Translinear's negotiations with Secretary Murat of Commerce.

On October 20 Bayard wrote to William Carden saying Translinear's contract proposals were unacceptable. The Haitian Government objects to Translinear's tactics but is ready and willing to meet at "any time of your choosing to work on a draft convention (i.e. contract)."

We did not have this letter at that time, Senator. We didn't get that until later. But it was sent. Translinear did not inform us of it.

October and November, Translinear officials visited Haiti and did not contact the Embassy, which at the time was unaware of their visits.

Then the next contact we had was on February 17 when Mr. Crook called and told us about this hearing and what he was going to say.

Chairman PROXMIRE. Well, let me ask Mr. Kaufman, who is the counsel of the committee, to inquire about this. He has made a very intensive investigation. Let me say I can certainly sympathize with the reason that Mr. Crook and Mr. Carden did not contact the Embassy much more than they did because whenever they did contact it, their response to us was they did nothing; the Embassy gave no reaction whatsoever and no help and no encouragement and no assistance and no suggestions and they met with nothing but a blank wall.

Mr. INGERSOLL. Well, I reported some of the things the Embassy did to the Government.

Mr. KAUFMAN. Mr. Secretary, does your record show that Mr. Carden telephoned the Embassy from Dallas—that is, telephoned the Embassy in Haiti from Dallas prior to July 16 to describe the telegram that Translinear intended to send to the President of Haiti protesting the attempted extortion?

Mr. INGERSOLL. What was the date of this telephone call?

Mr. KAUFMAN. The telephone call was made between June 12 and the middle of July. We don't have the precise date.

Mr. INGERSOLL. Well, there is a call on June 10 that I referred to where he reported the Translinear decision to pull out of negotiations but it does not say anything about a telegram going forth. He talked to our representatitve here in the Department the day before the telegram went out and did not mention it.

Mr. KAUFMAN. According to Mr. Carden, he talked with Ambassador Isham prior to July 16 and described the telegram. In fact, he

read a draft of the telegram, which was addressed to the President of Haiti, which also included a description of the attempted extortion. And according to Mr. Carden, Ambassador Isham urged Mr. Carden not to send that telegram; urged him, and the others in Translinear, to remain patient. Do your records show that?

Mr. INGERSOLL. I have no record of that but there is a record here that before sending the cable "Translinear officials had explained their situation to the Embassy in June. As a result, our Ambassador conveyed concern to the Minister of Finance on July 11, and July 16 the Economic Counselor of the Embassy met with the Under Secretary of Commerce and impressed upon him the urgency of resolving the issue." There were two actions taken after the call in June.

Mr. KAUFMAN. In fact the telegram was sent by Translinear to the President of Haiti on July 16 describing the alleged attempted extortion; a copy of which was sent to the State Department. Did the State Department receive that copy of the telegram?

Mr. INGERSOLL. Yes, sir.

Mr. KAUFMAN. You said that the Embassy did talk with the Government of Haiti around the middle of July and urged Government officials to try to speed up the negotiations and resolve the problems with Translinear. Was it on those occasions that the Embassy officials reported the alleged attempted extortion?

Mr. INGERSOLL. No, because when it was originally reported to the Embassy, Mr. Crook said that he had already reported it to the Government and that he had been given the information that he should pay no attention to it.

Mr. KAUFMAN. I see.

Mr. INGERSOLL. We didn't see that it was a current request on their part at all.

Mr. KAUFMAN. I see. So in other words, Mr. Crook had stated to the Embassy that he had talked with the Haitian officials and that the Haitian officials responded that he should not concern himself about this incident?

Mr. INGERSOLL. That was on May 7.

Mr. KAUFMAN. Did anyone from the Embassy ever report the alleged attempted extortion to Haitian officials?

Mr. INGERSOLL. We did not discuss that, to my knowledge, that is, the extortion attempt, until February when the second extortion attempt was presented to us. We did not know about that until February and then we did mention that to the Haitian government. But in both cases—in the case when Mr. Crook talked to the government and in the case when we talked to them—the Government said: "Ignore it because these are not representatives of the Haitian Government, because these do not represent the Haitian Government."

Mr. KAUFMAN. You said that our Embassy did discuss the extortion attempt in February with the Haitian officials? Can you give us the date of that discussion?

Mr. INGERSOLL. On February 25 the Ambassador discussed the Translinear-Haitian contract and the extortion allegation with Minister Bayard, who said that the Haitian Government was still willing to negotiate the contract and he said that the extortion was probably the work of some confidence man trying to extort cash from a businessman.

Mr. KAUFMAN. February 25? That is last week I believe. Is it not? And that was after the chairman invited you to testify in this hearing, is that not correct?

Mr. INGERSOLL. I think the chairman's letter was dated the 27th of February and this was on February 25. At least the letter I have from the chairman is dated February 27.

Mr. KAUFMAN. That is correct, Mr. Secretary, but I believe that discussions on the staff level between the committee and your office took place prior to the 27th.

Mr. INGERSOLL. It may have. I am not aware of it. But Translinear had told the Embassy that they had already notified the Government. They had not told us of the second allegation until 2 months after it took place. I am referring to the second extortion attempt.

Chairman PROXMIRE. In view of this entire situation and doing your best as a former businessman yourself, Mr. Secretary, and recognizing the problems Translinear has and the losses they have suffered, would you recommend that these gentlemen try again?

Mr. INGERSOLL. It is hard for me to know the exact circumstances because they were a subcontractor. They had no relationship to the Haitian Government. Their prime contractor had the relationship. How they have related to the Government since that time, it seems to be a mixed story. It has been going on I would say for 3 years or 2½ years anyway. They have been unable to resolve their contract terms with the government. I would say if they have been willing to compromise to meet the Haitian Government's demands for sovereignty—as I understand it, this is the issue; it is the matter of sovereignty on this particular Island—and the Haitian Government will not accept some of the terms they have suggested and if they are willing to modify that, they could find out the true interest of the Haitian Government by trying a modification.

Chairman PROXMIRE. Well, you see here is a situation where this firm designed a very, very elaborate and expensive—it was $15 million I think it was or more—project for hotels, golf courses, tennis courts, a beach, a beautiful development in Haiti that would have been very beneficial to both Haiti and to the firm involved. They were warmly encouraged to do this. They proceeded very constructively up until the time that they discovered water on the Island. When they discovered water, they found that this would greatly increase the economic value of their operation. It was within a very short time after they discovered water and it became known they discovered water, that the shakedown occurred and then the attitude of the government began to change. It was clear that another firm could step in——

Mr. INGERSOLL. I think the contract had been cancelled before that time. The contract with Dupont Caribbean was——

Chairman PROXMIRE. But their rights had not been canceled.

Mr. INGERSOLL. Well, no, their legal rights——

Chairman PROXMIRE. Translinear's rights were assured by the Government up until that point.

Mr. INGERSOLL. I don't know what the terms of the contract are but I would assume their recourse would be to the prime contractor. And if it flowed through to the subcontractor, then they had some rights. But I don't know what the contract said.

Chairman PROXMIRE. Well, at any rate will the State Department help them get back their property that was taken from them or recoup their losses?

Mr. INGERSOLL. The State Department will be very happy to help them in any request they make. They have made almost no requests to us. They have told us of the facts in some cases and in some they have delayed telling us. They have not asked us to enter into and help them except to tell the Haitian government they would like to negotiate a contract, which they never had.

Chairman PROXMIRE. Well, if they do ask, will you help?

Mr. INGERSOLL. You are darned right.

Chairman PROXMIRE. Now, has Translinear's property been in effect expropriated?

Mr. INGERSOLL. Well, I mentioned earlier that it does not look as if there had been an expropriation if they are down there negotiating the sale of the property, which they say is theirs. I wouldn't say that is expropriation because they wouldn't have the right to sell it.

Chairman PROXMIRE. Well, they had equipment that was worth a great deal at the time. I think they said it was $500,000 worth. It is now rusted. It has deteriorated greatly because of the weather, of course. It has been left out because they felt they could not go back there. At one time Mr. Crook was told that if he came back to the Island—and this was after he sent the telegram—he would be arrested. They feel they are unable to operate effectively down there.

Mr. INGERSOLL. Well, say that—

Chairman PROXMIRE. And they were prevented from going to the island. At one time they were told that if they sailed over there, their ship would be blown out of the water.

Mr. INGERSOLL. As I say, it is reported—and I only get this from a press report—that their lawyer is negotiating the sale of the equipment. If he is negotiating the sale, he must think he has title to it and it has not been expropriated.

Chairman PROXMIRE. Of course we do give substantial aid. In fiscal 1976 we gave $18.7 million in technical assistance through development loans and Public Law 480. In 1977 the administration is requesting $28.3 million to Haiti. Why should we continue to give foreign aid to a country that abuses American firms the way Translinear has been abused?

Mr. INGERSOLL. Well, I do not want to say what the facts of this case are because I do not know. We have had relatively little contact or request from this company. Until they come to us and we can get involved in it, I don't think we can go to the Government of Haiti and claim certain facts that we are not aware of.

Chairman PROXMIRE. Well, will you talk to Ambassador Brook about this personally?

Mr. INGERSOLL. I would be glad to.

Chairman PROXMIRE. Now, on Wednesday the House approved an amendment to the International Security Assistance Act, which would result in cutting off aid to any country where government officials received bribes or extorted payoffs from U.S. funds. Do you support that amendment?

Mr. INGERSOLL. Yes, sir.

Chairman PROXMIRE. You do?

Mr. INGERSOLL. I see no reason not too.

Chairman PROXMIRE. You do support it?

Mr. INGERSOLL. Yes, sir, but I think you must be sure you can prove the allegation.

Chairman PROXMIRE. Yes, sir.

Mr. INGERSOLL. In this particular case I am not sure there is proof.

Chairman PROXMIRE. Now, it was reported recently the American firm Rollins, Inc. had admitted to the SEC it paid bribes to government officials in Mexico amounting to $127,000 in the past 5 years. According to Rollins, it will continue to pay bribes in the future. They say that is the way they intend to operate because they say that is how they have had to operate in Mexico. Does it make any difference to the State Department or the Embassy in Mexico that this firm admits paying bribes and will continue to pay bribes in the future? What do you do about that?

Mr. INGERSOLL. Well, the State Department is not an enforcement agency and certainly not an enforcement agency of laws in another country. If we should be told of a violation of U.S. law, we would report it immediately to the U.S. law enforcement agency.

Chairman PROXMIRE. But this is an American firm. It seems to me we ought to do our best to try to persuade our firms to be good citizens in foreign countries. A State Department official was reported by the Wall Street Journal to have said there is just no way he can understand these payments to local and municipal officials can be construed as legal. They have to be illegal. Shouldn't we take some kind of action? Shouldn't the State Department at least publicly condemn the intention of this firm to pay bribes in a foreign country, a friendly country like Mexico?

Mr. INGERSOLL. I think the SEC is the enforcement agency. And if he is making these statements before the SEC and says he intends to continue to do so, I think it is up to the SEC.

Chairman PROXMIRE. Well, the SEC has taken a position that perhaps won't have a material effect on many stockholders. It seems to me it is a matter of morality and it is a matter of also of good behavior in foreign countries. It would seem the State Department could at least take the action of indicating its strong disapproval.

Mr. INGERSOLL. Well we have.

Chairman PROXMIRE. To Rollins? Have you told Rollins?

Mr. INGERSOLL. No.

Chairman PROXMIRE. It was reported in the Wall Street Journal that this was a policy they expected to adopt in the future. They are going to pay bribes in Mexico. They said so.

Mr. INGERSOLL. I don't think we should tell every company that says they are going to pay bribes, that we condone it. We make a public statement on it.

Chairman PROXMIRE. I don't say condone it; I say condemn it.

Mr. INGERSOLL. Well, I am saying we do condemn it. I am saying that we say that generally and we don't need to say it to every company that says that they are going to pay bribes.

Chairman PROXMIRE. Then you are saying you condemn that action by Rollins?

Mr. INGERSOLL. We do condemn that. We certainly do.

Chairman PROXMIRE. Now, finally, Mr. Secretary, let me say we appreciate your appearance here. I know it is not always pleasant to have to go through some of these things. I think it is good that you have taken the actions that you have taken although I am concerned about how effective it will be and how swift and prompt the effect will be. The international agreement may take a long, long time, if it is ever ratified and approved and made effective.

Incidently, when would it become effective? Would it become effective if the Senate ratifies it? Would it depend on the ratification of a certain number of other countries before it would go into effect?

Mr. INGERSOLL. Well, this is the first time we made the announcement. I think it is premature to say how soon or how many governments are going to be involved.

Chairman PROXMIRE. Usually isn't that the form? It requires not just this government's action but at least half or two-thirds of the governments who are interested, correct?

Mr. INGERSOLL. We would certainly press for urgent approval but how long it would take other governments to act I could not say.

Chairman PROXMIRE. Well, this is something that may take years. Meanwhile we do have this very, very serious corruption problem.

Mr. INGERSOLL. Well, I think just the fact that it is being proposed and being acted upon by countries will have a deterrent effect immediately.

Chairman PROXMIRE. Wouldn't it be desirable for the State Department to make a policy of specifically and directly by letter notifying all firms operating abroad of the opposition that this country has, as a matter of policy, to bribes. So in view of the fact that this has become so widespread, shouldn't you spell out the dangers involved in bribes—the danger being that once they are hooked, they are in a position to be blackmailed and there is no guarantee people who will take bribes and are that dishonest; that they will deliver—and also specifically and directly and effectively state that the State Department stands ready to assist firms and indicate the ways the State Department can and would assist in event a bribe is reported; namely, that you would make protestations to the Government involved and that you would do everything you could to protect and assist those who resisted the solicitation for bribes?

Mr. INGERSOLL. I think it is a good idea. I think we should look into it.

Chairman PROXMIRE. Why don't you take that kind of action, make that kind of policy? Wouldn't that do a lot of good?

Mr. INGERSOLL. My initial reaction is really that the Department of Commerce should have that kind of contact and they in turn can report to us any extortion attempt made on U.S. corporations overseas but the primary contact with U.S. corporations should be by the Department of Commerce. And we would be glad to assist the Department of Commerce in carrying out such policy.

Chairman PROXMIRE. Well in view of the fact that the State Department is a foreign office and is the Department that is responsible for a foreign policy and our conduct abroad, it would seem to me at the very least it would be very useful for the State Department to communicate this to the Commerce Department.

Mr. INGERSOLL. I agree.

Chairman PROXMIRE. And try to work out with the Commerce Department a procedure of notifying firms about this and that the State Department should also be sure that it finds a way of letting firms know exactly the steps that can be taken in the event that bribes are solicited.

Mr. INGERSOLL. I think it is a good idea and I think we should discuss it with the Department of Commerce.

Chairman PROXMIRE. All right, sir. Well, thank you very much. The subcommittee stands adjourned.

[Whereupon, at 5 p.m., the subcommittee adjourned, subject to the call of the Chair.]

APPENDIX

THE DEPUTY SECRETARY OF STATE,
Washington, D.C., March 31, 1976

Hon. WILLIAM PROXMIRE,
U.S. Senate.

DEAR SENATOR PROXMIRE: We have reviewed and annotated the transcript of my testimony before the Joint Economic Committee on March 5, 1976, and also attach appropriate inserts in response to requests during the testimony and in your letter to me on March 19, 1976.

I should like to clarify two points in our discussion. First, I am concerned over the misconception fostered by press accounts that there will be significant delays in implementing the arrangements established by the Executive Branch to exchange information on the Lockheed case with the Government of Japan and other foreign governments. (I refer to the New York Times account on March 6 of my appearances before your Committee, and the article by Jerome Cohen in the New York Times of March 29.) As I made clear in my testimony, the arrangements which we are recommending can be implemented immediately, so that the information flow could begin at once. Moreover, it was never intended that foreign governments should wait until the SEC's investigation of the company is completed.

When I telephoned you on March 6 concerning the New York Times article, you were kind enough to agree that it was incorrect in that respect and that you would try to correct the record.

The second question concerns my attitude towards the regulation of foreign activities of U.S. companies. As I pointed out at the hearing, there is an important distinction between bribes, which should be prohibited by the countries directly concerned, and commissions which may be perfectly legitimate. I do not believe that extraterritorial criminal legislation by the United States can be an effective solution to this problem. Disclosure, on the other hand, may be very helpful to deter bribery, but effective action requires a concerted effort on the part of the international community, not just action by the United States alone. Further, premature unilateral action by the United States could put U.S. firms at a serious competitive disadvantage in foreign markets.

I would appreciate your including these comments as part of the official record of my testimony.

In addition, in response to the request in your letter, I enclose a copy of the Department's statement of current policy regarding foreign military sales, which includes a detailed explanation of the role of the Departments of State and Defense in processing transactions under the Foreign Military Sales Act generally.

Sincerely,

ROBERT S. INGERSOLL.

Enclosure:

[From Current Policy, No. 4, July 1975]

U.S. FOREIGN MILITARY SALES

The high level of spending throughout the world on military equipment and services—more than $2.5 trillion by 108 developing and 28 developed countries over an 11-year period (1963–1973)[1]—is a matter of considerable concern to the Administration, Congress, and the public. As the most technologically-advanced industrial nation, the United States is the leading supplier of arms. In Fiscal Year 1974 this country received orders totaling $8.3 billion in foreign military

[1] World Military Expenditures and Arms Trade, 1963–1973, U.S. Arms Control and Disarmament Agency Publication 74, 1975.

CONTINUED

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sales from 70 governments. Other principal arms exporters are the U.S.S.R., France, and the United Kingdom in that order.

The developing countries are now spending almost as much of their gross national product on military expenditures as the developed countries. In fact, the trend of military expenditures as a percent of the GNP is declining in the developed countries as it rises in the developing world. Factors influencing the rise in military spending by developing countries include the conflicts in the Near East and East Asia, and more recently the need felt by newly-independent nations and those with petrodollar surpluses to establish and/or equip their armed forces with modern weapons systems.

Considerable misconceptions exist as to the U.S. role in providing military materiel and services to selected countries and to the extensive controls which exist within the government over exports of such materiel. Thomas Stern, Deputy Director of the Department of State's Bureau of Politico-Military Affairs, recently discussed these topics before the Senate Subcommittee on Foreign Assistance and Economic Policy of the Foreign Relations Committee (June 18, 1975). This *Current Policy* report is based on his statement and portions of the ACDA report.

THE INTERNATIONAL ENVIRONMENT

The most fundamental reason for security assistance and military sales is to be found in American history and the growing realization in this country that, in the 20th century, we could not isolate ourselves from the mainstream of major forces and events abroad. The view that aggression should not be permitted to succeed had, after our experience in World War II, assumed a certain moral force. The emergence of new threats in the late 1940's toward Greece and Turkey, Europe, and then Korea, were clear challenges to our own security.

As the leading proponent of collective security and international organization, we looked to the newly formed United Nations to respond. Where it could not, we created regional collective security organizations. Where required and appropriate, we also entered into special bilateral arrangements. Throughout this immediate post-war period, the United States saw the danger to its interests as both military and ideological—i.e., as a threat to the beliefs, values, and institutions of the western world.

In a world that has divided along bipolar lines the United States' role as a major supplier was clear and straightforward: We sold or gave military materiel and services to countries that were closely associated with us in opposition to the Soviet Union and the People's Republic of China. While the legislative and executive branches sometimes debated the specifics of our security assistance program, there existed a consensus on the relationship of our program to our security, and it was generally supported.

More recently, however, changes in the international scene have made security relationships a much more complex subject:

The rigid bipolar world of the 1950's and early 1960's no longer exists. Our painful involvement in Viet-Nam is ended. Power no longer is measured today in purely military terms.

The post-bipolar period is an era of increasing interdependence in the fields of international trade, international security, and in development and shared environmental concerns.

Despite this interdependence, the world of nations is constantly growing. The total now approaches 150. All have some kind of armed force, and few judge themselves capable of insuring international order or of maintaining the integrity of their territory without external sources of military supply. Furthermore, no government can be indifferent to its security, however it defines it, and security requirements will compete with economic and social development for a share of whatever resources are available.

It follows, then, that the level and quantity of military transactions between nations will be substantial. Most of the world's nations have no arms industries. Their equipment and related services must be acquired from the more industrialized nations on a cash, credit, or grant basis.

In the early 1950's the United States and the United Kingdom were the dominant suppliers of major weapons systems. The Soviet Union is now very active, and France has equalled and at times surpassed Britain as a major weapons supplier. Nine nations were the source of 97 percent of world military exports over the period 1964–1973. The United States delivered 51 percent, the Soviet Union 27 percent, the United Kingdom, France and China 10 percent, and Czecho-

slovakia, Poland, Canada, and West Germany 8.5 percent. These trends all point toward the growth in size and complexity of the international military trade.

Today the purchasers from the United States vary widely in their security concerns and political orientations. There are, of course, the traditional United States allies, such as the NATO countries of Western Europe. In addition, we sell military items to Israel, Korea, Jordan, the Philippines, and Thailand—countries with which we maintain special ties and connections. Within the past 3 years, a substantal proportion of our military sales has shifted to the Persian Gulf area. This is an area where a spectacular transition is in progress—in terms of the balance of economic power, the emergence of new political institutions, and the transfer of technology from industrialized nations to states in the region. It is also an area where concerns for security and stability have loomed large since Britain's termination in 1971 of its protective presence. Because the forces at work in the Persian Gulf could have a profound influence on the world balance of power, the U.S. Government has developed a special relationship with a number of states in the area.

THE MACHINERY OF DECISION

In developing and implementing its policy, the U.S. Government in recent years has instituted a well-structured review process that passes on all requests for military materiel and services within the framework of the Foreign Assistance and Foreign Military Sales Acts.

The normal review channel for military equipment transfers which involve appropriated funds is the Security Assistance Program Review Committee, chaired by the Under Secretary of State for Security Assistance and consisting of representatives from State, Defense, Treasury, Office of Management and Budget, the National Security Council, the Agency for International Development, and the Arms Control and Disarmament Agency. The Committee reviews both the level and the content of each country program.

In cases of cash sales through government channels or commercial sales, the procedures vary somewhat depending on type of case. All cases are processed within policy guidelines established by the Department of State. Furthermore, all major cases must be approved by senior officials in the Department.

Within the State Department cases are reviewed by the regional bureau involved and the Politico-Military Bureau. In very important cases the President or the Secretary of State may make the decision.

Although the views of Defense Department officials are fully taken into account in the decision-making process, it should be emphasized that the Defense Department does not make policy with respect to military sales or transfers. The prime responsibility of the Defense Department is to implement national policy. This is clearly understood within the Executive Branch but may not be so clearly understood by the public.

Procedures in and of themselves, of course, cannot insure that sales, or any other activity, support the national interest. Decisions are made by men, not organizational and staffing arrangements. But procedures can help insure that the relevant information, analysis, and perspectives are brought to bear on the issue for decision.

CONSIDERATIONS IN TRANSFER DECISIONS

The United States normally takes into account a large range of considerations when judging whether to enter into a military supply relationship and, when that decision is positive, determining what kinds and quantities of materiel and services we will provide. Each case is unique and is so handled. There are, however, several fairly consistent yardsticks that we apply. On the political side we assess:

The role the country plays in its surroundings, what interests it has in common with the United States, and where our interests diverge.

Whether the transactions will do more to further U.S. objectives on balance than other economic or political measures.

The position of influence that sales might help support, including the potential restraint that can be applied in conflict situations.

Whether a particular sale would set a precedent which could lead to further requests for arms, or similar requests from other countries.

The current internal stability of the recipient country, its capacity to maintain that stability, and its attitude toward human rights.

The possible adverse impact on our relations with a friendly government of not selling.

The options available to the recipient country. Will a refusal result in the country's training to other sources of supply? What source? What will be the political, military, and economic implications of this? If a country has options that it will unhesitatingly employ, would our refusal to sell mean the forfeiting of opportunities to develop or maintain parallel interests and objectives?

There are also important economic questions to be considered:

Whether the proposed sale is consistent with the recipient country's development goals or our economic assistance program, if there is one.

Whether the sale might strain the country's ability to manage its debt obligation or entail operations and maintenance costs that might make excessive claims on future budgets.

The economic benefits to the United States from the sale or co-production of arms, especially to the oil rich states. As significant as these benefits may be, however, they remain secondary and certainly would never decide an issue.

Finally, there are the following military aspects to be taken into account:

The threat the military capability is supposed to counter or deter, whether we agree on the nature of the threat, and how it relates to our own security. During a period when the United States and some other major powers are transferring some security responsibilities, we must attempt to understand the security concerns of smaller countries. To us their concerns may seem exaggerated, but to them their concerns are usually very real.

How the proposed transfer affects the regional military balance, regional military tensions, or the military build-up plans of another country.

Whether the recipient country has the capability to absorb and utilize the arms effectively.

What other military interests—for example, U.S. overflight rights or access to facilities—would be supported by the transaction.

The impact on our readiness. Since the Arab-Israeli War of October 1973 we have had to assess the impact of sales on the readiness posture of our own forces.

Whether a substantial physical dependence on U.S. sources of supply could enable us to better control conflict under some circumstances.

Except in special circumstances we do not sell or otherwise transfer certain sensitive items such as hand transportable surface-to-air missiles and riot-control agents such as tear gas which are primarily designed for use against crowds.

The basic issue is to make the best possible systematic judgment in light of the totality of U.S. interests just as we do in other international political judgments. This is a critical point: Security relationships are an element of foreign policy and thus neither more nor less subject to uncertainties than any other tool of policy. Like any other tool it could theoretically be dispensed with. But in an age when we need to exploit our capabilities to the maximum it would be pointless to forego the use of any tool that, when wisely used, promises substantial benefit at acceptable cost and risk.

RATIONALE FOR TRANSFERS

The United States is, for many countries, the supplier of choice. Our products are preferred because they are of high quality. Our hardware is well-designed, well-made, and dependable. Our supporting systems—training and logistics—are second to none.

Of equal importance, many nations want to buy from us because they want to be associated with the United States on other matters of mutual interest, and they may wish to avoid relations with other exporting countries whose intentions are open to question. Military assistance, and most recently military sales, have been supporting elements in relationships with friends and allies over the years. Noting the public's concern about the U.S. arms role, Under Secretary of State Joseph J. Sisco stated June 10, 1975:

> "Americans . . . are troubled at seeing their country in the arms-supply business. The image of the 'merchant of death' dies hard. We should put this issue into proper perspective to demonstrate that we are dealing with it in the context of an overall and carefully developed policy concept. We cannot pick up elements with which we feel comfortable and ignore others. For every country in the world, defense is the key to national survival. If we do not take this into account in our relations with that country, the totality of our relaionships with that country will suffer, as well as our political and economic objectives."

Even nations not under immediate threat find it prudent to maintain a certain level of military capability to meet unforeseen foreign or domestic contingencies much as we did through long periods of our own history. Also, a military establishment is almost an inevitable symbol of national sovereignty, especially in new countries that are developing a national identity and pride. One may have reservations about this, but it is a fact of life.

Obviously it is not in the U.S. interest to cater to extreme expectations and we practice maximum restraint in dealing with countries under these circumstances. But refusal to sell any military articles and services would be interpreted in some cases as a signal by the United States that we do not support the security concerns of the countries involved or that we do not consider them mature enough to be trusted with some types of military equipment. There have been cases in which we in fact made such judgments in light of our interests, and as a result refused the sale of sought-after equipment. However, we must recognize the sensitivity of these problems and make careful judgments in a context of trying to foster maturity and responsibility.

It has been argued that relationships involving military exports harbor hidden dangers. Based primarily on our Viet-Nam experience, some think that these transactions, whatever our intentions, can draw us into quarrels among nations, or within nations. It is true that military transfers by their nature are not as politically neutral as non-military trade or economic assistance, especially when the supplier is a nation, such as the United States or U.S.S.R., that is recognized as having global interest and responsibilities. Military assistance and sales are by design supportive of bilateral relationships and broader foreign policy interests. However, a distinction can be made between these transfers, whether grant or sales, that support a recognized security commitment and others which support a more general relationship. In the latter case, commitments are not entailed; in the former, transfers only support a commitment already made. Moreover, to the extent that military transfers strengthen the ability of states to defend themselves, they can diminish the excessive dependence on the United States which has so often led to pressures for direct U.S. military involvement in the past.

It is possible that those who argue that our military assistance and sales policies are intrinsically destabilizing and eventually lead to conflict may be assuming a narrow view of history. An arms balance in areas of tension has, in most cases, inhibited the occurrence of conflict. Also, a good case can and should be made that the risk of war is increased in situations when a power imbalance exists, where the stronger power is tempted to take advantage of the weaker, or where one or the other power attempts to markedly alter the power relationship.

DEPARTMENT OF STATE,
Washington, D.C., April 21, 1976.

Hon. WILLIAM PROXMIRE,
U.S. Senate.

DEAR SENATOR PROXMIRE: I wish to clarify one point covered in the material attached to former Deputy Secretary Ingersoll's letter to you of March 31, regarding the Department's role in the matter of agent's fees in Saudi Arabia. The need for clarification arises from the ambiguity of the wording used in one section of the presentation forwarded to you, which has apparently led to a basic misunderstanding by at least one person who has reviewed the document and has called it to our attention.

The point in question is covered in item (3) on pages 3–4 of the attachment to Mr. Ingersoll's letter.[1] The last sentence of the first paragraph under item (3) states "that Ambassador Akins had told Collins 'I better find Khashoggi and get him to speed up Sultan . . .' ". In referring to this point, the second succeeding paragraph said "the Northrop document also alleges that Ambassador Akins advised 'Collins' that he would approach Khashoggi."

According to material available to us, the actual quote in the Northrop document itself, quoting Collins, is as follows: "Akins told me I better find Khashoggi and get him to speed up Sultan . . ." From this, it is clear, according to the Northrop document, that Akins did not say that he would himself approach Khashoggi; rather, Akins was said to have suggested to Collins that he (Collins)

[1] See Deputy Secretary Ingersoll's response for the record, p. 175.

approach Khashoggi. The latter suggestion was normal inasmuch as Collins was an employee of Northrop and Northrop had an existing relationship with Khashoggi. I regret the ambiguity in the presentation we forwarded to you, which was an entirely inadvertent editorial oversight.

To further emphasize the point, I believe it useful to reiterate the point already made under item (3) of the attachment to Mr. Ingersoll's letter, to the effect that Ambassador Akins informed Department personnel that he never once met with Khashoggi while Akins was Ambassador to Saudi Arabia.

Sincerely yours,

ROBERT J. MCCLOSKEY,
Assistant Secretary for Congressional Relations.

DALLAS, TEX., *May 12, 1976.*

HON. EMMANUEL BROS,
Minister of Finance and Economic Affairs,
Department of Finance, Port-au-Prince, Republic of Haiti, West Indies.

DEAR MINISTER BROS: Translinear, Inc. is in receipt of a letter from Minister Henri P. Bayard dated March 17, 1976, in which we are told that the Haitian Government believes it impossible to sign a new contractual agreement with Translinear, Inc. and that the Haitian Government wishes to repossess the Island of La Tortue.

If this is the position of the Haitian Government, Translinear, Inc. herewith declares that it is the victim of breach of contract, confiscation and expropriation of assets, and attempted bribery and extortion. Although we have been grievously damaged, the only claim we are herein making against the Haitian State is for the amount of our actual dollar investment loss, $2,755,798.

Even though only slight documentation accompanies this claim an extensive array of documents supporting each point will be submitted for your examination if desired.

Although Translinear, Inc. believes the development of La Tortue as we originally contracted to do is in the best interests of the Haitian State, we accept the right of the Haitian Government to deny us this right, provided just and adequate compensation for the loss is paid. We believe the above sum is fair and minimal.

Sincerely,

WILLIAM R. CARDEN,
President, Translinear, Inc.

Enclosure.

CLAIM OF TRANSLINEAR, INC., AGAINST THE REPUBLIC OF HAITI

SUMMARY OF ARGUMENT

Whereas, on April 5, 1971, a Convention was executed between the Republic of Haiti and Dupont Caribbean, Inc. pertaining to the economic and tourist development of the Island of La Tortue, such Convention having been ratified by the Decree of the President for Life of the Republic of Haiti, His Excellency Francois Duvalier, and the Haitian Cabinet, dated April 5, 1971, as published in the official journal "Le Mouiteur" issue No. 27 of even date; and

Whereas, such Convention was amended in certain respects, such Amendment having been ratified by the Decree of the President for Life of the Republic of Haiti, His Excellency Jean Claude Duvalier, and the Haitian Cabinet, issue No. 3 of even date; and

Whereas both the original Convention and the amended Convention contained stipulative clauses against expropriation and confiscation of assets of any parties to the Convention; and

Whereas, the Republic of Haiti was an interested witness to and recognized that Translinear, Inc., a Texas corporation, entered into certain Land Lease and Land Release Agreement with Dupont Caribbean, Inc., such agreement being dated April 12, 1972, whereby Translinear, Inc. acquired certain land lease and administrative rights then held by Dupont Caribbean, Inc. under the Convention of April 5, 1971, as amended, and as hereinabove described; and

Whereas, the Republic of Haiti recognized and acknowledged that Translinear paid certain monies in connection with property rights acquired pursuant to such

agreement with Dupont Caribbean, Inc. and invested substantial sums of money in developing the general purposes of the Convention of April 5, 1971; and

Whereas, the Republic of Haiti was an interested witness of the development and construction activities carried on by Translinear, Inc. on La Tortue Island, and was further a witness of the business activity of Translinear, Inc. in the Haitian capitol of Port-au-Prince, which activities included an office in the national airport, Haitian employees, telephone service, bank account, promotional advertising, and a multi-media film extolling the investment climate in Haiti and the development opportunities on La Tortue; and

Whereas, on March 8, 1973, the Justice Department of the Republic of Haiti in bringing charges against Dupont Caribbean, Inc. of breach of contract for reasons of non-performance, requested the Haitian attorney for Translinear, Inc. to read into the court record a statement of the interests of Translinear, Inc. in the case; and

Whereas, on August 27, 1973, judgment was rendered by the Port-au-Prince Civil Court, sitting as a regular and legally convened Civil Court of the Republic of Haiti, ruled cancellation but not recision of the Convention with Dupont Caribbean, Inc. of April 5, 1971, as amended January 20, 1972, for the hereinabove mentioned reasons; and

Whereas, the cancellation of the Convention was upheld by Haitian appellate courts on January 28, 1974, and June 24, 1974; and

Whereas, the cancellation did not rescind the public contractual rights of third parties to the Convention, such as Translinear, Inc.; and

Whereas, the Republic of Haiti, in furtherance of its national and international interests, expressed its desire to continue the development of Tortue Island by entering into a new Convention solely with Translinear, Inc., providing for the economic and tourist development of the Island of La Tortue, subject to the sovereignty of the Island remaining in the Republic of Haiti; and

Whereas, the Republic of Haiti, suddenly, inexplicably and without warning did deny Translinear, Inc. access to the Island of La Tortue for a period of approximately two years, thereby effectively confiscating and expropriating the valuable construction equipment and engineering plans Translinear was forced to leave on the Island; the recent request by the Haitian Government tht Translinear remove the equipment from the Island did not mention that the two year lack of preventive maintenance has reduced high quality equipment to a condition of scarcely salvageable junk; and

Whereas, in May 1975 a Haitian individual, claiming to represent the Haitian Government, did in a clandestine manner approach an officer of Translinear, Inc. and did attempt to extort from this American company a sum of $500,000 and one half of the company stock in exchange for a new contractual relationship between the Republic of Haiti and Translinear, Inc.; the abovementioned individual explained that Translinear, Inc. would never received a contract until such payment had been made; and

Whereas, Translinear, Inc. has now been told by the Republic of Haiti that it is not welcome in Haiti, that no new Convention will be signed, and that its ruined equipment is to be removed from La Tortue Island; this being done without due process, without an opportunity for Translinear, Inc. to present its case, without an investigation by the Haitian Government into the incident of attempted bribery and extortion, and in total and complete violation of the public third party rights enpoyed, exercised and held by Translinear, Inc. under the Convention of April 5, 1971, as amended January 20, 1972; and

Now, therefore, on these grounds and reasons, and on all other grounds and reasons which may be hereinafter introduced and supplemented for being right, equitable and just, and all rights reserved. Translinear, Inc. presents to the Haitian Government a claim of losses in the amount of $2,755,798, a sum detailed and explained in Exhibit I. This sum is fair and just and does not include a statement of damages suffered by Translinear, Inc., which the company believes to be in excess of one hundred million dollars.

FACTS AND SUPPORTING REASONS

The Convention signed between the Haitian State and Dupont Caribbean, Inc., and the amendment thereto, were official public documents signed by two different Presidents of the Haitian Republic and by members of the Haitian Cabinet.

The Republic of Haiti was aware of the Land Lease and Land Release Agree-

ment of April 12, 1972, signed between Translinear, Inc. and Dupont Caribbean, Inc. Letters announcing this Agreement were sent on April 11, 1972, to the Ministry of Finance and to the Department of Contributions. Periodic progress reports of the Translinear development activities in Haiti were delivered to the Minister of Interior Luckner Cambronne, Director of the National Bank Antonio Andre, and Haitian representative to the Dupont Caribbean Freeport Authority Weber Alexandre.

When the Haitian Government requested the original Convention be amended, it was the Translinear attorney, Mr. Robert A. Fanning, who represented Dupont Caribbean, Inc. in the negotiations.

Under the terms of the Land Release Agreement, most of the expenses and obligations of Dupont Caribbean, Inc. in Haiti were paid for or carried out by Translinear, Inc. This included the surveying and mapping of the Island of La Tortue, which was submitted to the Republic of Haiti on May 23, 1972, and confirmed on June 6, 1972.

When Translinear, Inc. began construction work on La Tortue in August 1972, the Republic of Haiti requested and received from Translinear, Inc. a manifest of the equipment sent by barge from the United States to La Tortue. The equipment was allowed to enter the Republic of Haiti duty free in recognition of the tax-free franchise held by Translinear, Inc. through its third party rights vested in the Convention of April 1971.

On September 7, 1972, Translinear, Inc., received a letter from the Dupont Caribbean Freeport Authority, signed by the Haitian representative to the Authority, Mr. Weber Alexandre, giving Translinear permission to carry on construction activities on La Tortue. The letter was sent at the direction of Mr. Luckner Cambronne, Minister of Interior and National Defense.

In November, 1972, Translinear, Inc. brought a 1972 Ford sedan into Port-au-Prince duty-free from the U.S. mainland, another recognition of the separate third party franchise held by Translinear under the Convention. At the same time Translinear sent a Chevrolet truck and a cement block machine to La Tortue from the U.S. Both pieces of equipment were allowed to enter Haiti duty-free.

In January 1973 over $1,800 in office furniture was sent from Florida to the Translinear office in Port-au-Prince. This furniture entered duty-free under Translinear's Convention rights.

In June, 1973, after work was stopped on Tortue Island and the Republic of Haiti had brought suit against Dupont Caribbean, Inc., Translinear brought approximately $3,500 in electronic and audio-visual equipment into its office in Port-au-Prince. This equipment entered duty-free.

Office supplies, equipment and substitute pieces of electronic equipment were periodically brought into Haiti on a duty-free basis during 1973, 1974, and 1975.

Translinear, Inc. operated a full-time office, staffed by Haitian employees, in a national facility, the Francois Duvalier International Airport. The company also kept an active bank account in the Banque Nationale. There was a telephone in the airport office and a box at the post office. All of the above giving evidence both of Translinear's active business life in Haiti and the recognition by the Government of Translinear's presence there.

When the Republic of Haiti initiated legal proceedings against Dupont Caribbean, Inc. the separate third party status of Translinear was specifically mentioned in the preliminary hearing of March 8, 1973, at which time the Translinear attorney was invited to read a statement of the Translinear interests into the court record.

On March 28, 1973, La Tortue was visited by three Haitian officials (Ministers of Finance Francisque and Justice Fortuné and Governor Attorney Jeanty). They examined the work done by Translinear on the Island and were highly complimentary. They issued a stop work order which recognized Translinear's separate third party status.

In a letter dated April 2, 1973, the American Ambassador to Haiti, the Honorable Clinton E. Knox, informed Translinear of a conversation he had held with Haitian Finance Minister Francisque, who had assured the Ambassador "that the interests and investments of Translinear will be protected and that he hopes your company will continue to carry on its work on Tortuga."

In preparing its case against Dupont Caribbean, the Haitian Government requested copies of all checks written by Translinear on the project and copies of all license applications for prospective island businesses held by Translinear.

In the list of charges made against Dupont Caribbean as detailed in the Haitian Court decision of August 27, 1973 mention is made of Translinear's third party requests for meetings of the Dupont Caribbean Freeport Authority.

Because of the size of the Translinear investment in Haiti, Translinear made a request to the Haitian Embassy in Washington, D.C. that some statement be released in the U.S. recognizing Translinear's rights in the dispute between Haiti and Dupont Caribbean. In early June, 1973, the Embassy released a four paragraph statement in which they acknowledged the actions of Dupont Caribbean had "created collateral problems" for third parties "which have the serious and sympathetic consideration of the Haitian officials."

In the Haitian civil action against Dupont Caribbean no complaint of any kind was made against Translinear, Inc., and the decision against Dupont did not mention Translinear.

Although the Civil Court decision of August 27 against Dupont Caribbean mentioned the possibility of recision of all rights that Dupont ever held under the Convention of April 1971, the actual decision simply cancelled the Convention as of August 27. Under Haitian Civil Law this meant that all public third party rights were still in existence. Translinear, Inc. held such rights, including a valid lease-hold for 99 years to 4,800 acres of land on La Tortue. A copy of a title opinion on this land is attached as Exhibit 2.

Shortly after the Court decision of August 27, the President of Translinear was informed by Minister of Commerce Fourcand that President Duvalier wished Translinear, Inc. to continue its development work on La Tortue. On November 15, 1973 Minister Fourcand formally recognized, by letter, the Translinear investment on Tortue and requested that Translinear prepare a new contract for submission to the Haitian Government. See Exhibit 3.

A proposed contract was submitted in December 1973, and for the next twenty-four months Translinear was subjected to an unbelievable series of delays, broken appointments, unanswered letters, and movement from minister to minister. The company attempted to make every change and adjustment in the contract that was desired by the Haitian Government. Although Translinear officials were told on several occasions that the contract was almost ready for signature, no signing was ever forthcoming. During this period, Translinear made every adjustment and change suggested by the Government and offered a financial remuneration to the Government that represented a larger percentage of return than the Government enjoyed with any foreign investor. During the entire negotiation process, Translinear continued to receive the private encouragement of Haitian officials that an agreement was very near.

During the entire period of time that Translinear, Inc. operated in the Republic of Haiti, the company was careful to keep Haitian officials at every level—from the President for Life down to secondary officials in certain ministries—aware of the Translinear situation in Haiti. Our files contain numerous letter to various officials. The construction work on La Tortue was visited by a large number of Government representatives. The Translinear multi-media promotional films on Haiti and the Tortue development was seen by over a thousand Haitian business and government leaders, including Major Avril, who represented the National Palace, and several members of the Cabinet. Between November 1971 and December 1975 Translinear, Inc. had correspondence and/or conversation with the following Haitian officials regarding the Translinear position in the Republic of Haiti: President for Life, Jean Claude Duvalier; Ministers of Interior and Defense Luckner Cambronne, Roger Lafontant and Paul Blanchet; Minister of Finance Francisque and Emanuel Bros; Minister of Commerce and Industry Jean Pierre, Serge Fourcand, and Antonio Andre; Undersecretary of Commerce Henri Bayard; Ministers of Coordination and Information Fritz Cineas and Pierre Gousse; Ministers of Justice Fournier Fortune and Aurelian Jeanty; Directors of Tourism Andre Theard and Jean Baptiste; Member of the Subcommission on Foreign Investment Edouard Dupont; Haitian Ambassador to the United States Rene Chalmers; Haitian Charge d'Affairs Josette Philippeaux; Haitian Consul in New York Herve Michel; and Haitian Representative to the Dupont Caribbean Freeport Authority Weber Alexandre. Because of the distinguished nature of these individuals and the extensive correspondence, receipts and documents in the Translinear files, it is impossible for the Republic of Haiti to claim to be an innocent witness to the Translinear rights in that country.

However, in April 1974 Translinear was informed that it could no longer go to La Tortue Island to service and maintain the construction equipment and supplies it was forced to leave there when the work stoppage began in March 1973. No explanation was given for this denial of access to land for which Translinear had purchased a ninety-nine year lease. During the next twenty-four months, Translinear was allowed to make only two brief trips to the Island: one

for the purpose of delivering a payroll, a second inspection trip was made under the embarrassing supervision of military guard. Although Translinear was informed by both the U.S. Embassy and Haitian officials that the company could go to the Island by requesting permission to visit twenty-four hours in advance of departure, such permission was not forthcoming although it was requested on numerous occasions. At one point Translinear officials were told they would be "blown out of the water" if they attempted to sail across Tortuga channel to the Island.

This denial of access to a valid leasehold and the equipment thereon is a prima facie case of confiscation and expropriation of assets. The recent request from the Haitian Government to Translinear to remove the equipment from the Island ignores the significant damage to the equipment suffered during two years of inattention and neglect.

On two occasions during 1975 (May 9 and December 2) the Translinear, Inc. President was informed a new contract could be signed if certain monies were given to selected Haitians. On both occasions a previously friendly attitude became decidedly hostile when the attempted bribery was rebuffed.

A concerned Translinear stockholder wrote to two United States Senators asking their inquiry into the attempted bribery of an American firm abroad. When this information was shared with the Haitian Under-secretary of Commerce, Henri Bayard, his response was an indignant letter accusing Translinear of interferring with the sovereignty of the Republic of Haiti. Nothing could be further from the truth. The fact was that certain Haitians were attempting to compromise the legality and honesty of an American firm operating abroad.

Moreover, the unfriendly attitude of the Haitian Government toward Translinear, Inc. in recent months has frightened away a group of Haitian businessmen who made a firm offer to purchase the construction equipment on La Tortue (provided approval could be abtained from the Government to remove the equipment from the Island).

From April 12, 1972, when Translinear, Inc. entered into a contractual relationship with Dupont Caribbean, Inc., the company has met all contractual obligations and paid all debts both with Dupont Caribbean, Inc. and secondarily with the Republic of Haiti. We have always acted with dispatch, broken no Haitian laws, have never abused Haitian national sovereignty, and have always attempted to follow the Haitian ethic. We have answered all requests and have waited patiently for the legal process in Haiti to be completed with Dupont Caribbean. Our problems, plans and hopes were shared with the Government at all levels; our development activities on the Island were conducted with a sympathetic awareness of the history of La Tortue as a part of Haitian national pride, with a strong interest in the ecological soundness of the construction activities, and with the best interest of the people living there in mind.

Translinear, Inc. was adequately financed to complete the development for which it had contracted. Indeed, most of the funds originally expanded represented the personal resoruces of the stockholders. Translinear has never received a single complaint in Haiti for its actions or policies from an employer, worker, citizen, businessman or island resident. To the contrary, the company has received numerous assurances from all quarters that our presence is desired and a resumption of work on the Island is fervently hoped for.

In the dozens of articles written about the project, there has never been any negative publicity about Translinear, Inc. Indeed, until Translinear officials reported to a U.S. Joint Congressional Committee that the company had suffered two attempts at bribery and extortion within Haiti, there had never been any charges or complaints leveled against the company by the Government of Haiti. Suddenly, in response to this report to the American Congress of an illegal action toward a U.S. company abroad, the Haitian Government became angry, and a letter from the Republic of Haiti to Translinear on March 17, 1976, calls the Translinear position "manifestly hostile" and accuses the company of ignoring a proposal to negotiate. The fact is that the President of Translinear, Inc. was in Haiti December 1–5, 1975, at which time he was told that the Haitian Government would no longer negotiate with Translinear and that the company was through in Haiti.

Translinear officials have made over one hundred and fifty trips to Haiti during the past four years. The Haitian Government has never made a request or suggestion to Translinear that has not been followed. We have made every contractual alteration suggested, consistently maintained that a new Convention should be a genuine joint-venture with the profits equally shared, and have con-

tinually assured the Haitian Government that we desire its sovereignty to be guaranteed in any new Convention.

The past four years of unjustly thwarted development activity on La Tortue and the attendant lack of due process in denying Translinear, Inc.'s contractual lease-hold rights have been a most disappointing and expensive experience for this company. We have suffered breach of contract, confiscation and expropriation of assets, and attempted bribery and extortion. The serious material damages we have endured run into the tens of millions of dollars, being deprived of the increase in asset value of our investment and the profits therefrom which would have followed from the fulfillment of the Convention.

The actual Translinear dollar loss amounts to $2,755,798.

On the grounds and for the reasons enumerated above, Translinear, Inc. respectfully requests the Government of the Republic of Haiti to reimburse it for actual losses in the indicated dollar amount.

EXHIBIT I

TABLE 1.—*Translinear, Inc., Expenditures Made Relative to Tortuga Investment as of January 31, 1976*

Cash outlays (schedule 1)	$1,699,165
Related companies' outlays (schedule 2)	529,213
Note payable—Indian River Construction Co	123,000
Total	2,351,378
Stock issued:	
In settlement of debt [1]	111,000
For services rendered	24,500
	135,500
Accrued interest payable:	
Related companies on monies advanced	203,927
Indian River Construction Co	24,993
	228,920
Contingent liability [2]	40,000
	$2,755,798

[1] 111,000 shares issued at $1 per share, 49,000 shares issued at 50 cents per share; par value=25 cents per share.
[2] Potential cost of Florida lawsuit.

TABLE 2.—*Translinear, Inc., Expenditures Made Relative to Tortuga Investment as of January 31, 1976*

	Cash outlays
Land leasehold—includes DCI payments	$536,851.63
Leasehold improvements	412,908.62
Office equipment	10,173.52
Deposits and licenses	975.00
Equipment escrow, Indian River Construction Co	54,100.00
Expenses:	
Operating [1]—after allocations to Boca Chica	52,028.19
Repairs, maintenance and supplies—Haiti	26,721.79
Consulting fees	26,300.00
Engineering and architectural fees	65,139.76
Legal and professional fees	96,323.95
Management fees—ECM—(not paid):	
Interest	42,720.60
Salaries and payroll taxes	181,628.29
Sales commissions	900.00
Sales promotion	23,932.74
Travel expense	139,091.48
Telephone and telegraph	28,869.39
Totals	$1,699,164.96

[1] Includes all other expenses.

TABLE 3.—*Translinear, Inc., Expenditures Made Relative to Tortuga Investment, January 31, 1976*

Land leasehold (ECM, IBV and T/L partnership)	$380,213
Management fees (including 77,246 accrued)	149,000
Total	$529,213

EXHIBIT 2

OCTOBER 25, 1972.

Memorandum to: *Translinear Inc.,*
First National Bank Building,
Dallas, Tex.

By virtue of two agreements entered into by Translinear Inc. and Dupont Caribbean Inc. and International Business Ventures, Translinear has acquired the leasehold interest on approximately 5,000 acres of land located on the western end of the Island of La Tortue also known as Tortuga Island, said being part of the territory of the Sovereign Republic of Haiti.

The first contract above mentioned, namely the one signed by Dupont Caribbean Inc. and Translinear Inc. is dated April 12, 1972, is in my opinion a valid contract.

By this contract, Translinear Inc. purchased from Dupont Caribbean Inc. which transferred to Translinear Inc. all of its interests in the possession and use of approximately 1.000 carreaux of unimproved land, located east of the 721 Georef meridian on the Island of Tortuga; the contract contains no stipulation restricting the right of Translinear Inc. to transfer in whole or in part the leasehold interest it acquired from Dupont Caribbean Inc.

The contract was signed by the duly authorized representatives of each of above mentioned corporations, and lawful compensation considered adequate by each parties, was given by Translinear in payment for its purchases.

Further the transaction itself, that is the transfer of leasehold interest, is permitted and provided for by the laws of the Republic of Haiti.

The second contract, dated July 31, 1972 transfers into Translinear Inc. the leasehold interest which had been acquired by International Business Ventures and limited partnership, from Dupont Caribbean Inc., on land located within the above mentioned area of the Island of Tortuga.

The same remarks made on the first contract also applies to this second contract, that is:

(1) The transaction is lawful;

(2) Compensation is of a lawful nature and considered adequate by the parties;

(3) The contract was signed by authorized representatives of each parties; and

(4) The contract contains no clause restricting the right of Translinear to transfer in whole or in part the interests it required.

These rights now vested into Translinear Inc. are in fact rights transferred by Dupont Caribbean Inc. which received them from the Haitian State by virtue of two (2) documents, one published in Le Moniteur, the Official Gazette of the Republic of Haiti, in the issue of Monday April 5, 1971 and second one published in the issue of January 20, 1972 of the same Official Gazette.

These documents, while stating that the ownership of the land of the Island of Tortuga, is and remains property of the Republic of Haiti, stipulate that said Republic leases to Dupont Caribbean Inc. land to be released in lots of 150 carreaux each for a first period of 25 years with an automatic renewal for further periods of 25 years provided certain fiscal obligations and other requirements of the contract be met at the time the renewal is requested.

The Government released to Dupont Caribbean Inc., eleven (11) parcels of 150 carreaux each after payment of the rental for this total area of 1.500 carreaux for the first 25 years.

Incidentally, one carreaux is equal to 1.2923 hectares or 3.19237 acres.

The transaction, leasing of Government land, is lawful, compensation of a lawful nature was paid, the contract was signed by the authorized representatives of the parties and no stipulation in the contract forbids Dupont Caribbean Inc. to transfer in whole or in part the right it had acquired to the use and possession of the land released by the Haitian State.

The contracts between the Haitian State and Dupont Caribbean Inc. were duly approved by Presidential decree duly countersigned by the members of the Cabinet.

Notice has been given by Translinear Inc. to the Haitian State that it has acquired the rights of possession and of use of the land released by the Haitian State to Dupont Caribbean Inc. and all legal formalities required by Haitian law to be fulfilled by the beneficiary of such transfer have been met by Translinear Inc.

Therefore, Translinear Inc. has a clear chain of title to the Government land released by said Government of Haiti to Dupont Caribbean Inc. and the transfer of leasehold interest regarding this land have been effected in accordance with Haitian Law.

I wish to state that I am an Attorney member of the Port-au-Prince Bar and have been practicing for close to 24 years; I am not a director, shareholder or full time employee of Translinear Inc. or of any of its affiliated companies.

Very truly yours,

JEAN CLAUDE N. LEGER.

EXHIBIT 3

SECRETAIRERIE D'ETAT DU COMMERCE ET DE L'INDUSTRIE,
Port-au-Prince, Novembre 15, 1973.

TRANSLINEAR, INC.
First National Bank Building,
Dallas, Texas.

MESSIEURS: Comme vous avez déjà dû l'apprendre, le Tribunal Civil de Port-au-Prince a rendu une décision prononçant la résolution du Contrat intervenu entre la DUPONT CARIBBEAN, INC., Monsieur Don PIERSON d'une part et l'Etat Haitien d'autre part.

Cependant, il n'est point dans l'intention de l'Etat Haitien d'abandonner le projet de développment de l'Ile de la Tortue et particulièrement, des Mille Six Cent Cinquante (1.650) carreaux de terre se trouvant à la pointe de la Tortue.

En raison de l'intérêt que vous avez témoigné à ce projet et des investissements que vous avez faits, Son Excellence le Président à Vie de République m'a instruit d'envisager avec votre Compagnie une reprise du project sur des bases favorables, tant aux intérêts de la République qu'à ceux de votre Compagnie.

En conséquence, nous vous sauvions gré de préparer une proposition détaillée que vous devrez soumettre aux organislmes appropiés due Gouvernement—

Recevez, Messieurs, mes meilleures salutations.

DR. SERGE N. FOURCAND,
Secrétaire d'Etat du Commerce et de l'Industrie.

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