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effort to improve public understanding of the need for these changes.

It is now general knowledge that significant savings—financial as well as social—are associated with early intervention through good prenatal programs and preventive care for infants. As most of my colleagues are already aware, numerous studies have shown that an expenditure of \$1 in prenatal services can yield as much as \$12 in savings through reduced costs of intensive neonatal care and the long-term institutional expenditures that often accompany the handicaps associated with premature birth and low birthweight.

As Governor Riley's task force has shown, 10 of the 11 States with the most severe infant mortality rates are in the Southern region of the United States. In the South, it is estimated that one of every 15 mothers is likely to have a child with a discernible mental or physical handicap. While the national average is 6.8 percent, 7.6 percent of all babies born in the Southern States are low in birthweight—which is, of course, closely correlated with high rates of infant mortality, and the incidence of lifelong handicapping conditions.

Technically, S. 2333 assumes that States will be offered the option of extending coverage to those women and infants whose incomes exceed the current eligibility threshold for Medicaid, but who, nevertheless, are below 100 percent of the poverty level. While I am hopeful that we will be able to provide services to this entire population on enactment, it may be necessary to adjust eligibility to comply with final Congressional Budget Office cost estimates. However, if such a change is needed, I hope that members of the Finance Committee will join me in support of implementing this change as quickly as costs allow.

In sum, Mr. President, passage of S. 2333 will permit States to improve access to health care by restructuring eligibility and benefits under the Medicaid program according to local priorities. I invite my colleagues to join with us in support of that goal.

Mr. THURMOND. Mr. President, today my colleagues and I are introducing legislation which represents a major initiative toward reducing the high infant mortality rate of this Nation.

The United States has a higher infant mortality rate than many other developed countries such as Sweden, Japan, Denmark, Norway, France, Spain, Canada, East Germany, and the United Kingdom. Recent statistics indicate that for every 1,000 live births, approximately 11 babies will die before the age of 1 year. In my home State of South Carolina the problem is greater, with 15 deaths for every 1,000 live births.

Mr. President, two-thirds of infant deaths occur in the neonatal period—the first month of life. The factor most commonly associated with these

newborn deaths is low birthweight. The smaller the baby, the poorer the chances of healthy survival. A low birthweight baby is more likely to need costly special care. In addition, low birthweight babies also have significantly higher rates of rehospitalization. To address the problem of low birthweight infants, the Medicaid system needs to be improved. This legislation is designed to accomplish that goal.

Mr. President, Medicaid plays a critical role as the Nation's principal financing source for the health care of mothers and children who are financially unable to help themselves. However, as many as 3.4 million poor pregnant women a year are denied vital prenatal care because they are ineligible for Medicaid. Without proper prenatal care, many unnecessary low birthweight babies are born who need significant ongoing medical attention. This, of course, means additional medical expenses. In many cases, the high medical expenses associated with low birth babies drain the financial resources of the mother until she then becomes eligible for Medicaid. Medicaid then must pick up the tab for the expensive institutional medical treatment.

Mr. President, what is needed, and what this legislation provides, is an approach geared toward preventative medicine. Under this legislation, the Medicaid law would be amended to allow States, with an Aid to Families With Dependent Children [AFDC] standard of need above 50 percent of the Federal poverty level, to target Medicaid assistance to pregnant women and infants, without the State also being required to raise AFDC payments to this group. This action would be completely optional with the States. The idea behind this change is to remove a financial obstacle for many States that want to provide a comprehensive maternity and infant health-care package to indigent women, but have not done so because of the high cost of State matching requirements for AFDC payments.

Mr. President, the cost of this bill will be \$100 million to the Federal Government. This amount has already been added to the Domenici-Chiles budget plan to cover the cost of the expansion, after the Budget Committee gave it careful consideration.

Mr. President, I want to emphasize that these moneys spent now will prove cost-effective over the long run. The American Academy of Pediatrics reported in 1984 that for every dollar spent on prenatal care, \$2 to \$10 can be saved down the road. "An ounce of prevention is worth a pound of cure." This is the approach of this legislation, and I urge my colleagues to support this bill.

By Mr. THURMOND:

S. 2334. A bill to amend section 207 of title 18, United States Code, to prohibit Members of Congress and off-

cers and employees of any branch of the U.S. Government from attempting to influence the U.S. Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes; to the Committee on the Judiciary.

INTEGRITY IN POST EMPLOYMENT ACT

Mr. THURMOND. Mr. President, today, I am introducing tough, new legislation that will restrict all Federal employees from lobbying the Federal Government for 1 year, and from working for a foreign entity for 2 years, after they leave Government service.

This legislation also mandates a complete prohibition on certain high-level Federal officials from ever representing, assisting, advising, or lobbying in behalf of a foreign government or entity.

Mr. President, the potency of this legislation is that it applies to all Federal employees, regardless of rank, grade, or status, and that it mandates criminal penalties for violations—including fines of up to \$250,000 and prison terms of up to 2 years.

It is a proposal whose time has come, and one which seeks to maintain public confidence and integrity in Federal Government service. In its simplest form, it provides a uniform, straightforward, and enforceable way to prevent those who are employed by the Federal Government from leaving public service and marketing their access and influence for private gain. It will also terminate violations of public trust by halting very high-ranking Federal officials, who by the nature of their jobs are privy to some of our Government's most sensitive information about national security and trade, from vending that information to a foreign entity.

There is something very disquieting to me, and I suspect the great majority of Americans, about high-level officials leaving the service of the Federal Government and going to work assisting, advising, lobbying, or in any way representing a foreign power for compensation. The absolute prohibition against this practice would help end the problem of foreign entities gaining knowledge and information, in any way, about such things as our Nation's international trade strategy or defense posture from former officials whose knowledge of those issues could do harm to this country if it is conveyed to others.

The officials affected by a lifelong prohibition would include, among others: Cabinet Secretaries; Director of Central Intelligence Agency; Secretaries of the armed services; U.S. Trade Representative; Director of the Federal Bureau of Investigation; and high-ranking White House officials.

Mr. President, this legislation is a starting place for the Congress to consider much-needed changes to the con-

EYES ONLY

April 17, 1986

CONGRESSIONAL RECORD — SENATE

S 4517

fusing and oftentimes conflicting laws and regulations now governing former Federal officials who lobby the Federal Government or work for a foreign entity. It is an attempt to restore rationality and effectiveness to the ethics provisions applying to the Federal Government. Toward that end, my bill would apply equally to all branches of the Federal Government and to all Federal employees—including Members of Congress, Government-established corporations, and the military.

The Judiciary Committee has tentatively set a hearing on this bill and other lobbying-related issues on April 29. I look forward to hearing testimony on this issue and to working with my colleagues on this important legislation.

Mr. President, I ask unanimous consent that a copy of this legislation be printed in the Record.

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

S. 2334

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Integrity in Post Employment Act of 1986".

SEC. 2. DISQUALIFICATION OF FORMER MEMBERS, OFFICERS, AND EMPLOYEES FROM ATTEMPTING TO INFLUENCE THE UNITED STATES GOVERNMENT OR REPRESENTING OR ADVISING A FOREIGN ENTITY.

(a) PROHIBITION.—(1) Section 207 of title 18, United States Code, is amended by striking out subsections (b) through (e) and inserting in lieu thereof the following:

"(b) Whoever, having been a Member of Congress, an officer or employee of the United States, including a special Government employee who has served in excess of sixty days during any period of three hundred and sixty-five consecutive days, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States, or an officer or employee of a Government corporation, Government controlled corporation, or an independent establishment as defined in section 104 of title 5—

"(1) Within one year after termination of employment with the intent to influence makes any oral or written communication to any Member of Congress, officer or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States on behalf of another person (other than the United States) for compensation, financial gain, or other remuneration; or

"(2) within two years after termination of employment—

"(A) is employed by, or advises, represents, or assists any foreign entity for compensation, financial gain, or other remuneration; or

"(B) with intent to influence makes any oral or written communication to any Member of Congress, officer or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States on behalf of any foreign entity for compensation, financial gain, or other remuneration.

shall be fined not more than \$250,000 or imprisoned not more than two years, or both.

"(c) Whoever, having been employed in a position listed in section 5312 or 5313 of title 5 or under section 105(a)(2)(A) of title 3, at any time after termination of employment—

"(1) is employed by, or advises, represents, or assists in any way, directly or indirectly, a foreign entity; or

"(2) with intent to influence makes any oral or written communication to any Member of Congress, officer, or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States on behalf of any foreign entity,

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"(d)(1) The prohibitions of subsections (a) through (c) shall not apply to a former Member, officer, or employee who is acting in his official capacity as an elected official of a Federal, State, or local government.

"(2) The prohibition of subsection (b)(1) shall not apply to an attorney appearing in a judicial proceeding before a court of the United States."

(2) Section 207 of title 18, United States Code, is further amended—

(A) by striking out subsections (h) and (i);

(B) in subsection (f) by designating such subsection as subsection (e) and striking out "subsections (a), (b), and (c)" and inserting in lieu thereof "subsection (a)";

(C) by redesignating subsection (g) as subsection (f);

(D) in subsection (j) by redesignating such subsection as subsection (g) and striking out "subsection (a), (b), or (c)" in the first sentence and inserting in lieu thereof "subsection (a)"; and

(E) by inserting at the end thereof the following:

"(h) For purposes of this section the term 'foreign entity' means—

"(1) a foreign country;

"(2) a foreign political party;

"(3) a person outside of the United States, unless it is established that such person is an individual and a citizen of the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; or

"(4) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."

(3) Subsection (a) of section 207 of title 18, United States Code, is amended by striking out "; or" at the end thereof and inserting in lieu thereof a comma and the following:

"shall be fined not more than \$250,000 or imprisoned not more than two years, or both."

(b) AMENDMENT TO CAPTION.—(1) Section 207 of title 18, United States Code, is further amended by striking out the caption for such section and inserting in lieu thereof the following:

"§ 207. Disqualification of former Members and employees and officers of any branch of Government from attempting to influence the United States Government or representing or advising a foreign entity."

(2) The table of sections for chapter 11 of title 18, United States Code, is amended by striking out the item relating to section 207 and inserting in lieu thereof the following:

"207. Disqualification of former Members and employees and officers of any branch of Government from attempting to influence

the United States Government or representing or advising a foreign entity."

SEC. 3. EFFECTIVE DATE.

The amendments made by section 2 of this Act shall be effective upon the date of enactment of this Act.

By Mr. ABDNOR (for himself, Mr. BURDICK, and Mr. PRESSLER):

S. 2336. A bill to protect United States cattlemen from imports of live Canadian cattle, and to require the International Trade Commission to conduct a section 201 investigation of such imports; to the Committee on Finance.

MORATORIUM ON BEEF IMPORTS FROM CANADA

Mr. ABDNOR, Mr. President, cattlemen in my home State of South Dakota and all across the United States have been suffering from years of economic stress. High interest rates, natural disasters, and imports of live cattle have left cattlemen without a profit and many are on the verge of bankruptcy.

Let me remind my colleagues that the American cowboy is a noble man who generally believes that little or no Government involvement in his industry is good. Ranchers do not derive any benefits from Federal farm programs and they don't want any. They haven't asked for handouts; instead, they are just asking for a fair shake.

Unfortunately, cattlemen haven't been getting a fair shake. Imports of live cattle have been streaming across our borders. Some of this beef is subsidized and unfairly undercuts in price the healthy, wholesome beef produced by American cattlemen. And while all beef entering the American market possibly isn't subsidized, this beef enjoys a de facto subsidy due to the high value of the U.S. dollar which allows foreign beef to be priced 20 to 30 percent below U.S. beef.

Of major concern to America's cattle industry is beef being imported from Canada. Canadian cattle have been pouring across our northern border. In my home State of South Dakota, semi-truck loads of live cattle arrive every day. The reason for this glut of Canadian cattle on United States markets is threefold. First, it is the result of an over-valued U.S. dollar. Canadian beef producers enjoy an effective 20 percent or more subsidy in today's market. Second, imports of Canadian cattle are the result of provincial and national beef stabilization programs which give Canadian producers an unfair competitive advantage. Canada's National Beef Stabilization Program as well as provincial programs injure United States producers since our cattlemen do not benefit from such programs. Third, the herds of Canadian cattle on United States markets are the result of Canada's import policies which result in backdoor brokering. Backdoor brokering results when domestic beef in Canada is displaced by imports and when that do-

HAYNES JOHNSON

Private Gain, Public Trust

This is one of those weeks that Washington loves; a whiff of scandal in the air, a confidant of the president twisting slowly in the wind, congressional investigators pressing on with highly publicized hearings, the media pack in full assemblage and panting after the newest disclosure, and everything taking place amid the promise of more damaging developments to come. Perhaps, like the Bert Lance affair, this, too, will last into the slow summer months and hold the capital in thrall.

That is not to suggest that the Michael Deaver affair is a synthetically manufactured drama without real significance. It is to suggest that preoccupation only with Deaver's plight misses the mark.

The Deaver case is most significant as a symbol of a far more important Washington subject: the standards that govern public service here in the era of "privatization." They are low and sinking.

As the Deaver episode unfolds, inevitably drawing more and more public attention, questions are being raised about the adequacy of laws and codes of conduct governing conflicts of interest and proper behavior for government officials. Various proposals to remedy them are being floated. First, it is said, the laws and/or codes ought to be strengthened. Second, given the penchant for Washington to believe that all things can be "solved" by passing a law, there is talk of drafting new ones to replace the old.

Nonsense. No new laws are needed, no new codes of conduct required. The solution to this question of ethics is simply to observe the letter and the spirit of existing laws and codes and rigorously enforce them.

That has not been happening. The so-called "Office of Government Ethics" is a joke. Established as a bureaucratic means of overseeing and implementing ethical guidelines and rules already in existence, it does so by silence.

Even if it were functioning as intended, the greater problem involving diminishing standards of public service would remain. An officially sanctioned air of indifference to all questions of ethical conduct and impropriety permeates Washington.

Sadly, and ironically, President

Reagan has set the tone for this state of affairs. It is reflected throughout his administration. His response to legitimate, not witch-hunting, questions about ethical standards of public service has been to dismiss them as simply not matters of serious concern.

That's the way he has repeatedly dealt with new allegations arising out of the developing Deaver case. He dismisses them. They are either unimportant or derive from others' resentment of Deaver's success since leaving the president's service as White House deputy chief of staff. Reagan said: "So I think maybe the criticism is just because he is being darn successful and deservedly so."

In this, Reagan is wrong. The basic criticism about Deaver and others like him who have left high office for high private profit through government dealings revolves around fundamental questions of public service. Have they been sensitive not only to the letter of the law but to the spirit of avoiding the appearance of cashing in on their public service? If not, what kinds of signals are they sending to those who remain in government service and those who plan to enter?

It will be unfortunate if the focus on Deaver leads the country to see this as another just-politics, made-in-Washington story in which one side seeks to exploit a problem for partisan advantage. It is neither a partisan story of Democrats versus Republicans nor an ideological one pitting liberals against conservatives.

In that respect, the comments of South Carolina's conservative Republican Sen. Strom Thurmond admirably go to the heart of the real issue of setting desirable standards for public service. "I have always believed it was improper for people to hold high positions in the government and then turn around and use that position for profit," he said.

A similar statement from the president would be welcome. Instead of talking about bureaucratic fraud and about waste and abuse in government agencies, he should address the greater abuse in government today—the erosion of the concept of public service and the notion of excellence in public life. That's a theme worthy of a great communicator who happens to be president of all the people.

99TH CONGRESS
2D SESSION

S. 2334

To amend section 207 of title 18, United States Code, to prohibit Members of Congress and officers and employees of any branch of the United States Government from attempting to influence the United States Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 17 (legislative day, APRIL 8), 1986

Mr. THURMOND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

3 **SECTION 1. SHORT TITLE.**

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5 ployment Act of 1986".

1 SEC. 2. DISQUALIFICATION OF FORMER MEMBERS, OFFICERS,
2 AND EMPLOYEES FROM ATTEMPTING TO IN-
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5 ENTITY.

6 (a) PROHIBITION.—(1) Section 207 of title 18, United
7 States Code, is amended by striking out subsections (b)
8 through (e) and inserting in lieu thereof the following:

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10 officer or employee of the United States, including a special
11 Government employee who has served in excess of sixty days
12 during any period of three hundred and sixty-five consecutive
13 days, in the executive, legislative, or judicial branch of the
14 Government, or in any independent agency of the United
15 States, or an officer or employee of a Government corpora-
16 tion, Government controlled corporation, or an independent
17 establishment as defined in section 104 of title 5—

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19 ment with the intent to influence makes any oral or
20 written communication to any Member of Congress, of-
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22 cial Government employee, in the executive, legisla-
23 tive, or judicial branch of the Government, or in any
24 independent agency of the United States on behalf of
25 another person (other than the United States) for com-
26 pensation, financial gain, or other remuneration; or

1 “(2) within two years after termination of employ-
2 ment—

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11 Government, or in any independent agency of the
12 United States on behalf of any foreign entity for
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14 tion,

15 shall be fined not more than \$250,000 or imprisoned
16 not more than two years, or both.

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18 in section 5312 or 5313 of title 5 or under section
19 105(a)(2)(A) of title 3, at any time after termination of
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8 “(d)(1) The prohibitions of subsections (a) through (c)
9 shall not apply to a former Member, officer, or employee who
10 is acting in his official capacity as an elected official of a
11 Federal, State, or local government.

12 “(2) The prohibition of subsection (b)(1) shall not apply
13 to an attorney appearing in a judicial proceeding before a
14 court of the United States.”.

15 (2) Section 207 of title 18, United States Code, is fur-
16 ther amended—

17 (A) by striking out subsections (h) and (i);

18 (B) in subsection (f) by designating such subsec-
19 tion as subsection (e) and striking out “subsections (a),
20 (b), and (c)” and inserting in lieu thereof “subsection
21 (a)”;

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2 thereof “subsection (a)”; and

3 (E) by inserting at the end thereof the following:

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5 entity’ means—

6 “(1) a foreign country;

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9 it is established that such person is an individual and a
10 citizen of the United States, or that such person is not
11 an individual and is organized under or created by the
12 laws of the United States or of any State or other
13 place subject to the jurisdiction of the United States
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15 United States; or

16 “(4) a partnership, association, corporation, orga-
17 nization, or other combination of persons organized
18 under the laws of or having its principal place of busi-
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20 (3) Subsection (a) of section 207 of title 18, United
21 States Code, is amended by striking out “; or” at the end
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13 **SEC. 3. EFFECTIVE DATE.**

14 The amendments made by section 2 of this Act shall be
 15 effective upon the date of enactment of this Act.

○

effort to improve public understanding of the need for these changes.

It is now general knowledge that significant savings—financial as well as social—are associated with early intervention through good prenatal programs and preventive care for infants. As most of my colleagues are already aware, numerous studies have shown that an expenditure of \$1 in prenatal services can yield as much as \$12 in savings through reduced costs of intensive neonatal care and the long-term institutional expenditures that often accompany the handicaps associated with premature birth and low birthweight.

As Governor Riley's task force has shown, 10 of the 11 States with the most severe infant mortality rates are in the Southern region of the United States. In the South, it is estimated that one of every 15 mothers is likely to have a child with a discernible mental or physical handicap. While the national average is 6.8 percent, 7.6 percent of all babies born in the Southern States are low in birthweight—which is, of course, closely correlated with high rates of infant mortality, and the incidence of life-long handicapping conditions.

Technically, S. 2333 assumes that States will be offered the option of extending coverage to those women and infants whose incomes exceed the current eligibility threshold for Medicaid, but who, nevertheless, are below 100 percent of the poverty level. While I am hopeful that we will be able to provide services to this entire population on enactment, it may be necessary to adjust eligibility to comply with final Congressional Budget Office cost estimates. However, if such a change is needed, I hope that members of the Finance Committee will join me in support of implementing this change as quickly as costs allow.

In sum, Mr. President, passage of S. 2333 will permit States to improve access to health care by restructuring eligibility and benefits under the Medicaid program according to local priorities. I invite my colleagues to join with us in support of that goal.

Mr. THURMOND. Mr. President, today my colleagues and I are introducing legislation which represents a major initiative toward reducing the high infant mortality rate of this Nation.

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newborn deaths is low birthweight. The smaller the baby, the poorer the chances of healthy survival. A low birthweight baby is more likely to need costly special care. In addition, low birthweight babies also have significantly higher rates of rehospitalization. To address the problem of low birthweight infants, the Medicaid system needs to be improved. This legislation is designed to accomplish that goal.

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Mr. President, the potency of this legislation is that it applies to all Federal employees, regardless of rank, grade, or status, and that it mandates criminal penalties for violations—including fines of up to \$250,000 and prison terms of up to 2 years.

It is a proposal whose time has come, and one which seeks to maintain public confidence and integrity in Federal Government service. In its simplest form, it provides a uniform, straightforward, and enforceable way to prevent those who are employed by the Federal Government from leaving public service and marketing their access and influence for private gain. It will also terminate violations of public trust by halting very high-ranking Federal officials, who by the nature of their jobs are privy to some of our Government's most sensitive information about national security and trade, from vending that information to a foreign entity.

There is something very disquieting to me, and I suspect the great majority of Americans, about high-level officials leaving the service of the Federal Government and going to work assisting, advising, lobbying, or in any way representing a foreign power for compensation. The absolute prohibition against this practice would help end the problem of foreign entities gaining knowledge and information, in any way, about such things as our Nation's international trade strategy or defense posture from former officials whose knowledge of those issues could do harm to this country if it is conveyed to others.

The officials affected by a lifelong prohibition would include, among others: Cabinet Secretaries; Director of Central Intelligence Agency; Secretaries of the armed services; U.S. Trade Representative; Director of the Federal Bureau of Investigation; and high-ranking White House officials.

Mr. President, this legislation is a starting place for the Congress to consider much-needed changes to the con-

fusing and oftentimes conflicting laws and regulations now governing former Federal officials who lobby the Federal Government or work for a foreign entity. It is an attempt to restore rationality and effectiveness to the ethics provisions applying to the Federal Government. Toward that end, my bill would apply equally to all branches of the Federal Government and to all Federal employees—including Members of Congress, Government-established corporations, and the military.

The Judiciary Committee has tentatively set a hearing on this bill and other lobbying-related issues on April 29. I look forward to hearing testimony on this issue and to working with my colleagues on this important legislation.

Mr. President, I ask unanimous consent that a copy of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2334

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Integrity in Post Employment Act of 1986".

SEC. 2. DISQUALIFICATION OF FORMER MEMBERS, OFFICERS, AND EMPLOYEES FROM ATTEMPTING TO INFLUENCE THE UNITED STATES GOVERNMENT OR REPRESENTING OR ADVISING A FOREIGN ENTITY.

(a) PROHIBITION.—(1) Section 207 of title 18, United States Code, is amended by striking out subsections (b) through (e) and inserting in lieu thereof the following:

"(b) Whoever, having been a Member of Congress, an officer or employee of the United States, including a special Government employee who has served in excess of sixty days during any period of three hundred and sixty-five consecutive days, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States, or an officer or employee of a Government corporation, Government controlled corporation, or an independent establishment as defined in section 104 of title 5—

"(1) Within one year after termination of employment with the intent to influence makes any oral or written communication to any Member of Congress, officer or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States on behalf of another person (other than the United States) for compensation, financial gain, or other remuneration; or

"(2) within two years after termination of employment—

"(A) is employed by, or advises, represents, or assists any foreign entity for compensation, financial gain, or other remuneration; or

"(B) with intent to influence makes any oral or written communication to any Member of Congress, officer or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States on behalf of any foreign entity for compensation, financial gain, or other remuneration,

shall be fined not more than \$250,000 or imprisoned not more than two years, or both.

"(c) Whoever, having been employed in a position listed in section 5312 or 5313 of title 5 or under section 105(a)(2)(A) of title 3, at any time after termination of employment—

"(1) is employed by, or advises, represents, or assists in any way, directly or indirectly, a foreign entity; or

"(2) with intent to influence makes any oral or written communication to any Member of Congress, officer, or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States on behalf of any foreign entity,

shall be fined not more than \$250,000 or imprisoned not more than two years, or both.

"(d)(1) The prohibitions of subsections (a) through (c) shall not apply to a former Member, officer, or employee who is acting in his official capacity as an elected official of a Federal, State, or local government.

"(2) The prohibition of subsection (b)(1) shall not apply to an attorney appearing in a judicial proceeding before a court of the United States."

(2) Section 207 of title 18, United States Code, is further amended—

(A) by striking out subsections (h) and (i);

(B) in subsection (f) by designating such subsection as subsection (e) and striking out "subsections (a), (b), and (c)" and inserting in lieu thereof "subsection (a)";

(C) by redesignating subsection (g) as subsection (f);

(D) in subsection (j) by redesignating such subsection as subsection (g) and striking out "subsection (a), (b), or (c)" in the first sentence and inserting in lieu thereof "subsection (a)"; and

(E) by inserting at the end thereof the following:

"(h) For purposes of this section the term 'foreign entity' means—

"(1) a foreign country;

"(2) a foreign political party;

"(3) a person outside of the United States, unless it is established that such person is an individual and a citizen of the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; or

"(4) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."

(3) Subsection (a) of section 207 of title 18, United States Code, is amended by striking out "; or" at the end thereof and inserting in lieu thereof a comma and the following:

"shall be fined not more than \$250,000 or imprisoned not more than two years, or both."

(b) AMENDMENT TO CAPTION.—(1) Section 207 of title 18, United States Code, is further amended by striking out the caption for such section and inserting in lieu thereof the following:

"§ 207. Disqualification of former Members and employees and officers of any branch of Government from attempting to influence the United States Government or representing or advising a foreign entity."

(2) The table of sections for chapter 11 of title 18, United States Code, is amended by striking out the item relating to section 207 and inserting in lieu thereof the following:

"207. Disqualification of former Members and employees and officers of any branch of Government from attempting to influence

the United States Government or representing or advising a foreign entity."

SEC. 3. EFFECTIVE DATE.

The amendments made by section 2 of this Act shall be effective upon the date of enactment of this Act.

By Mr. ABDNOR (for himself, Mr. BURDICK, and Mr. PRES-
SLER):

S. 2336. A bill to protect United States cattlemen from imports of live Canadian cattle, and to require the International Trade Commission to conduct a section 201 investigation of such imports; to the Committee on Finance.

MORATORIUM ON BEEF IMPORTS FROM CANADA

● Mr. ABDNOR. Mr. President, cattlemen in my home State of South Dakota and all across the United States have been suffering from years of economic stress. High interest rates, natural disasters, and imports of live cattle have left cattlemen without a profit and many are on the verge of bankruptcy.

Let me remind my colleagues that the American cowboy is a noble man who generally believes that little or no Government involvement in his industry is good. Ranchers do not derive any benefits from Federal farm programs and they don't want any. They haven't asked for handouts; instead, they are just asking for a fair shake.

Unfortunately, cattlemen haven't been getting a fair shake. Imports of live cattle have been streaming across our borders. Some of this beef is subsidized and unfairly undercuts in price the healthy, wholesome beef produced by American cattlemen. And while all beef entering the American market possibly isn't subsidized, this beef enjoys a de facto subsidy due to the high value of the U.S. dollar which allows foreign beef to be priced 20 to 30 percent below U.S. beef.

Of major concern to America's cattle industry is beef being imported from Canada. Canadian cattle have been pouring across our northern border. In my home State of South Dakota, semi-truck loads of live cattle arrive every day. The reason for this glut of Canadian cattle on United States markets is threefold. First, it is the result of an over-valued U.S. dollar. Canadian beef producers enjoy an effective 20 percent or more subsidy in today's market. Second, imports of Canadian cattle are the result of provincial and national beef stabilization programs which give Canadian producers an unfair competitive advantage. Canada's National Beef Stabilization Program as well as provincial programs injure United States producers since our cattlemen do not benefit from such programs. Third, the herds of Canadian cattle on United States markets are the result of Canada's import policies which result in backdoor brokering. Backdoor brokering results when domestic beef in Canada is displaced by imports and when that do-

FRIDAY, APRIL 11, 1986
page 2

In reaction to Deaver, hearings set on tight rules for ex-officials

By Lucy Keyser
THE WASHINGTON TIMES

The special access apparently accorded to lobbyist Michael Deaver, a former high-level aide to President Reagan, has spurred two congressional committee chairmen to call for hearings on how government employees often end up lobbying the federal government.

Later this month Sen. Strom Thurmond, South Carolina Republican, will put the Senate Judiciary Committee to work on a measure that will bar all federal employees from lobbying the government for one year after they quit.

In the House, Rep. Dan Glickman, Kansas Democrat, said he plans to convene the House Judiciary subcommittee on administrative law later this spring in a hearing on government enforcement of the Ethics in Government Act — a law designed to limit the revolving-door opportunities for government workers.

Talk about tightening the law have been brewing for several years, but it took the disclosure about how Mr. Deaver, a deputy chief of staff to Mr. Reagan for four years, used his special access to the administration to lobby on the behalf of clients to draw congressional attention.

For example, last fall two House Democrats — Rep. Marcy Kaptur of Ohio and Rep. Howard Wolpe of Michigan — introduced legislation to tighten the revolving door hinges. They got only seven co-sponsors.

Miss Kaptur said lobbyists, like Mr. Deaver, "are economic quislings — traitors when their country needs them."

After stories about Mr. Deaver's lobbying of senior White House officials began to make it appear he had special — and perhaps improper — access, 60 additional sponsors co-signed the bill, the congressmen said.

After Mr. Deaver left the White House, he set up a lobbying firm that represented clients like the Rockwell International Corp. and the government of Canada. While in the White House, Mr. Deaver did not have substantive responsibility for the development of the B-1 bomber or a policy on acid rain, but the administration did develop policies — at the highest level — on those issues.

After he left the government, Mr. Deaver then took Rockwell's case for building more B-1's to Office of Management and Budget Director James Miller III and worked to change the administration's opposition to acid rain spending.

So far, the General Accounting Office is investigating Mr. Deaver's interest in the Canadian acid-rain issue. And yesterday the Wall Street Journal reported that Mr. Deaver had offered a job in his firm to Fred Fielding — the former White House counsel whose office is investigating the conflict-of-interest matter.

"What this incident will do is ensure we'll hold a hearing on the Wolpe/Kaptur bill," Mr. Glickman said. "There's no question they're using influence on behalf of foreign governments."

The Kaptur/Wolpe bill, nicknamed FACE-IT (for Foreign Agents Compulsory Ethics In Trade act) would place a 10-year ban on former top-level government officials representing or advising foreign governments and businesses in U.S. transactions.

Much of the reasoning behind all the proposed legislation is rooted in a suspicion that former officials selling insider knowledge of government operations is exacerbating the U.S. trade deficit.

Miss Kaptur said lobbyists "are reaping the profits of an economic system affected by forces that have never hit it before. They feel

they can gain from the profits foreign companies are making on our side, and I'm not willing to extend that opportunity to them any longer."

Problems with existing post-employment conflict-of-interest rules in the Ethics in Government Act and the Foreign Agents Registration Act of 1938, as well as lax enforcement of the acts, signal a need for a more comprehensive law, the legislators said.

"The American government has become a finishing school for these people," Mr. Wolpe said. "It compromises the integrity of the agencies themselves."

To find out how much of a problem it is, Miss Kaptur and Mr. Wolpe asked the General Accounting Office to count and list former high-level employees in the executive branch, cabinets and agencies, military, Congress and senior congressional staff members who have left government service to represent foreign governments or corporations before the U.S. government.

"It's a very ambitious project," said Allan I. Mendelowitz, associate director of GAO's national security and international affairs division. Three employees are working full time compiling lists of ex-government officials who have registered with the Justice Department under the Foreign Agent Registration Act. The act, he said, is "very broad" and contains "exemptions for doing strictly legal and commercial work."

The Ethics in Government Act also contains numerous exemptions.

A special assistant in the Justice Department's ethics office said, "These are very complex laws and lots of people think everything fits into little compact compartments, but they don't."

Mr. Thurmond, who plans to open hearings April 22, said "something must be done to clarify ... the confusing mishmash of laws."

"There is something disquieting to me about those individuals, many of whom are privy to some of our government's most sensitive information about national security and trade," Mr. Thurmond said.

The exodus of government workers to lobby for foreigners creates a high turnover rate and morale problems at agencies watching trade issues in the Commerce, State and Justice departments.

Miss Kaptur said her business constituents "complain there's no continuing institutional memory within the government because the turnover is so fast. In Japan, people stay in institutions for a career, but not here."

Critics, like Paula Stern, chairman of the U.S. International Trade Commission, said the Kaptur/Wolpe bill "would drive people away if they were told they would be stopped for 10 years" from working in their field after leaving the government. "Who needs that problem?"

U.S. Trade Representative Office spokesman Roger Bolten said turnover in the office is no higher than at other private-sector organizations.

None of the proposed bills would bar current lobbyists who switched from representing U.S. to foreign interests from continuing their work.

Existing post-employment conflict-of-interest laws have criminal sanctions, with the most severe penalty being a maximum \$10,000 fine and two years in jail. The sanctions were last used in 1963, said Joseph Clarkson, chief of the Justice unit that monitors foreign agent registration.

"We still consider criminal prosecution," Mr. Clarkson said, "but only when there's been a willful, totally covert campaign" to represent foreigners without reporting it to the government.

Lobbying Curbs Sought

Thurmond Would Restrict Former Officials

Senate Judiciary Committee Chairman Strom Thurmond (R-S.C.) announced yesterday that he plans to introduce legislation sharply curtailing former government employees' ability to lobby the government after they leave office.

Thurmond said his proposal would prohibit all employees from lobbying the government for one year and from representing interests of a foreign government for two years. Some Cabinet-level officials would be barred forever from representing foreign governments.

The announcement came amid increasing controversy over reports that former government officials representing corporations and international clients are seeking to influence the administration.

Former White House deputy chief of staff Michael K. Deaver has become a highly visible lobbyist seeking to affect U.S. policies on behalf of corporations and governments.

In a statement yesterday, Thurmond did not mention any lobbyists by name. But he said, "There is something disquieting to me about those individuals, many of whom are privy to some of our government's most sensitive information

about national security and trade, who leave the government and are retained by a foreign power."

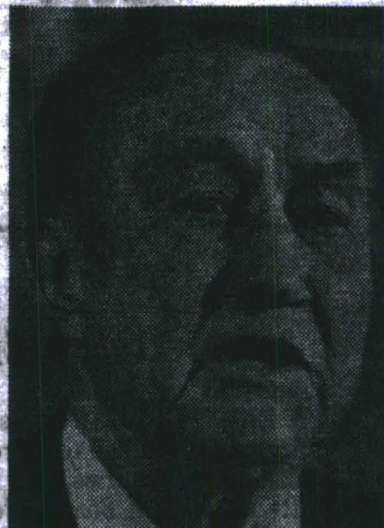
"People should seek work in the federal government as a way to serve their country and their fellow citizens and not to gain information and access that is then used to influence the outcome of issues for the benefit of a client," he added.

Aides said Thurmond is particularly concerned about lobbyists representing foreign governments on trade issues.

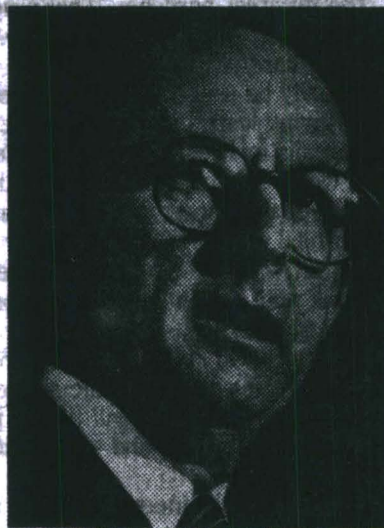
Spokesman Mark Goodin said Thurmond also wants to "restore some rationality" to laws governing lobbying by former officials. "He is in no way singling out any individual or organization," Goodin said.

Goodin said Thurmond's proposals would be a "major departure" from current law, which allows former officials to lobby but restricts what offices and topics they can seek to influence.

Thurmond is expected to introduce the legislation next week and has scheduled a hearing on it April 22. Although still being written, the bill would include criminal penalties for violating the rules, which would apply to all workers in the executive, legislative and judicial branches.



SEN. STROM THURMOND
... schedules a hearing on legislation



MICHAEL K. DEAVER
... now a highly visible lobbyist

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FROM/LOCATION

1. Peter Walliam / Hawaii

TO/LOCATION/TIME OF RECEIPT

1. By Jay Stephens / The White House

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SPECIAL INSTRUCTIONS/REMARKS:

CLASSIFICATION

April 28, 1986

MEMORANDUM FOR JAY STEPHENS

FROM: PETER J. WALLISON
SUBJECT: THURMOND BILL

DOJ's testimony is extremely weak, given the outrage this bill proposes to perpetrate on just about every government employee.

We should attempt to assure that the bill covers Congressional staff -- perhaps that is a comment that should be in OGE's testimony -- and something like the following language should be suggested to Justice.

As we understand this bill, no person currently employed by the government may, for his or her lifetime, be employed by or give advice to any foreign person, including a government, a corporation or an individual. It is hard to imagine what means of livelihood is to be permitted.

An economist could not be employed by an investment banking firm when he is required to give advice about U.S. or world economic trends to foreign clients, and if his firm merges with a foreign company he must seek other employment. A lawyer cannot file a registration statement under the Securities Act for a foreign company, wishing to sell its securities here, and if one of his clients is acquired by a foreign company -- or even if a foreign person becomes chief executive officer of his client -- he must resign the relationship. These are only a few examples of how this bill would affect the lives of everyone who does not intend to end his working life entirely when he or she retires from government.

Indeed, so sweeping are this bill prohibitions, and so unrelated are its prohibitions to any substantiated problem, that it raises constitutional questions -- primarily those involving the First and Fifth Amendments.

THE WHITE HOUSE

WASHINGTON

April 25, 1986

MEMORANDUM FOR JAY B. STEPHENS

FROM:

ROBERT M. KRUGER *rmk*

SUBJECT:

S. 2214: Amending the Ethics in Government Act to
Provide for Exclusive Civil Penalties

Cary Copeland, Attorney-Adviser to the Assistant Attorney General, advised me at 5:30 p.m. this afternoon that DOJ plans to testify on the above-referenced bill but no draft testimony has been prepared. Mr. Copeland expects that DOJ will take an approach similar to that taken by OGE, *i.e.*, that in the case of intentional false filing criminal penalties should be available.

Mr. Copeland noted that the Criminal Division is "on record prosecutorially," having taken this position with regard to Congressman Hanson. Mr. Copeland said the "retroactivity of S. 2214 would be unprecedented." He viewed S. 2214 not as a limitation on the Ethics in Government Act but on criminal prosecution under 18 U.S.C. § 1001. Accordingly, he expressed concern that such a limitation would create some politically indefensible distinctions between persons prosecuted under § 1001.

Mr. Copeland concedes that "others in DOJ, outside the criminal division, do not care for the reporting requirements and are rooting for the bill." As a result, the issue awaits resolution at a meeting next week where, Mr. Copeland expects Messrs. Trott, Jensen, Burns and perhaps the Attorney General will iron out any differences.

Handwritten notes:
1) Foreign lobby
2) Foreign lobby
all fed. are
prohibited completely

99TH CONGRESS
2D SESSION

S. 2214

To clarify that a civil penalty is the exclusive penalty for violations of the Ethics in Government Act.

IN THE SENATE OF THE UNITED STATES

MARCH 20 (legislative day, MARCH 18), 1986

Mr. HATCH (for himself and Mr. CRANSTON) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To clarify that a civil penalty is the exclusive penalty for violations of the Ethics in Government Act.

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

3 SEC. 2. Section 706 of title 2, United States Code, is
4 amended by inserting after the words "not to exceed
5 \$5,000." and before the words "No action" the following:
6 "This civil penalty shall be the exclusive penalty for such
7 knowing and willful violation of section 702 of this title, not-
8 withstanding any other provision of the United States Code,
9 including section 1001 of title 18. This section shall be

1 deemed to be effective on the date of enactment of the Ethics
2 in Government Act.”.

3 SEC. 3. Section 304 of title 28 appendix, United States
4 Code, is amended by inserting after the words “not to exceed
5 \$5,000.” the following: “This civil penalty shall be the ex-
6 clusive penalty for such knowing and willful violation of sec-
7 tion 302 of this title, notwithstanding any other provision of
8 the United States Code, including section 1001 of title 18.
9 This section shall be deemed to be effective on the date of
10 enactment of the Ethics in Government Act.”.

11 SEC. 4. Section 204 of title 5 appendix, United States
12 Code, is amended by inserting after the words “not to exceed
13 \$5,000.” the following: “This civil penalty shall be the ex-
14 clusive penalty for such knowing and willful violation of sec-
15 tion 202 of this title, notwithstanding any other provision of
16 the United States Code, including section 1001 of title 18.
17 This section shall be deemed to be effective on the date of
18 enactment of the Ethics in Government Act.”.

○

United States Government
MEMORANDUM

**Office of
Government Ethics**

Subject: **Testimony of Director, Office of Government Ethics - S. 2214**

From: **David H. Martin**
Director



APR 22 1986

To: **Assistant Director for Legislative Reference**
Office of Management and Budget
Attn: Hilda Schreiber

Attached is a draft copy of my proposed testimony on S. 2214, a bill proposing changes to the Ethics in Government Act of 1978.

Attachment

DRAFT 4/21/86

**FOR RELEASE ON DELIVERY
Expected at 2:00 P.M. EST
April 29, 1986**

STATEMENT OF

**DAVID H. MARTIN
DIRECTOR
OFFICE OF GOVERNMENT ETHICS**

**BEFORE
THE SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT
OF
THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS**

ON

S. 2214

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate the invitation to appear before the Subcommittee to present the views of the Office of Government Ethics (OGE) on S. 2214, a bill proposing that civil penalties be the exclusive remedy for knowing and willful violations of the financial disclosure provisions of the Ethics in Government Act of 1978 (the Act).

Since passage of the Act, OGE has operated as though we have had a variety of options available to ensure proper implementation of the public financial reporting provisions of the Act within the Executive branch. Included in those options were both criminal and civil penalties, as well as a variety of administrative sanctions which could be imposed directly by the head of the agency concerned. Section 206 of the Act includes

such steps as divestiture, requests for exemptions under 18 U.S.C. § 208(b), voluntary transfer or reassignment, limitation of duties or resignations.

Sec. 4 Section 204 of title 5 Appendix, United States Code, containing provisions dealing with failure to file or falsifying information required to be reported by executive branch personnel, has been implemented by OGE regulations which can be found at 5 C.F.R. Part 734.701. In addition, the current instructions for completing the (SF 278), public financial disclosure report contains a statement that knowing or willful falsification of information required to be filed by section 202 of the Act may subject the filer to criminal prosecution under 18 U.S.C. § 1001.

As you know, this Office has normally taken a position that would favor the use of administrative remedies in lieu of stricter criminal penalties when dealing with enforcement issues involving conflict of interest matters. Consequently, we favor the less restrictive civil approach when dealing with noncompliance problems under the Act. However, in the case of section 204 of the Act, we think that there is a distinction between failing to file (noncompliance) and intentionally filing a false report.

Our experience is that a failure to file public financial disclosure reports usually involves "termination reports." The provisions of section 201(e) of the Act require that such reports be filed on or before the thirtieth day after termination of federal employment. It seems that some individuals are reluctant to file once they terminate federal service. Generally, this reluctance to file is overcome by a letter from this Office or the parent agency pointing out the civil penalties for failure to file.

In the case of intentional false filing, however, we are of the opinion that a more stringent approach is in order. While we do not believe that criminal penalties are appropriate in every case of intentional false filing, we think that they should be available. The provisions of 18 U.S.C. § 1001 and 5 U.S.C. § 204 complement each other, and, more importantly, they both complement the entire range of criminal conflict of interest provisions contained in chapter 11 of title 18, United States Code. For example, it is not unusual to use the false statement Provisions of 18 U.S.C. § 1001 when prosecutorial discretion rules out the use of 18 U.S.C. § 208(a) in matters involving official acts which may redound to an individual personal financial interest. The false statement provisions have also be used as a plea bargaining tool.

Also, we have strong reservations on the effect of the retroactive provisions of S. 2214. Our current regulatory approach to public financial disclosure would certainly be disrupted if retroactive effect were given to the compliance provisions. Reliance on precedent, particularly when this reliance is based on court decisions and legislative history, is essential to an ethics program.

In summary, Mr. Chairman, we feel that having available the use of the criminal provisions of section 1001 of title 18, United States Code in egregious situations involving false filing is an option which should remain available to executive branch personnel for the orderly administration of the public financial disclosure program.

Office of
Government Ethics

APR 14 1986

Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your March 24, 1986 letter requesting our comments on S. 2214, a bill proposing that civil penalties be the exclusive sanction for knowing and willful violations of the financial disclosure requirements of the Ethics in Government Act of 1978.

As you know, this Office has normally taken a position that would favor the use of administrative remedies in lieu of stricter criminal penalties when dealing with enforcement issues involving conflict of interest matters. Consequently, we favor the less restrictive civil approach when dealing with noncompliance problems under the Ethics in Government Act. However, in the case of section 204 of the Act, we think that there is a distinction between failing to file (noncompliance) and intentionally filing a false report.

Our experience is that a failure to file public financial disclosure reports usually involves "termination reports." The provisions of section 201(e) of the Act require that such reports be filed on or before the thirtieth day after termination of federal employment. It seems that some individuals are reluctant to file once they terminate federal service. Generally, this reluctance to file is overcome by a letter from this Office or the parent agency pointing out the civil penalties for failure to file.

In the case of intentional false filing, however, we are of the opinion that a more stringent approach is in order. While we do not believe that criminal penalties are appropriate in every case of intentional false filing, we think that they should be available. The provisions of 18 U.S.C. § 1001 and 5 U.S.C. § 204 complement each other, and, more importantly, they both complement the entire range of criminal conflict of interest provisions contained in chapter 11 of title 18, United States Code. For example, it is not unusual to use the false statement provisions of 18 U.S.C. § 1001 when prosecutorial discretion rules out the use of 18 U.S.C. § 208(a) in matters involving official acts which may redound to an individual personal financial interest.

The legislative history of the Ethics in Government Act seems to make clear that "mere inadvertence" should not be the basis for pursuing a matter criminally when dealing with public financial reporting. However, when intentional false reporting is involved, the legislative history reveals no unequivocal intent that criminal penalties should not apply.

Please let me know if I may be of further assistance as you deliberate this matter.

Sincerely,



David H. Martin
Director

99TH CONGRESS
2D SESSION

S. 2334

To amend section 207 of title 18, United States Code, to prohibit Members of Congress and officers and employees of any branch of the United States Government from attempting to influence the United States Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 17 (legislative day, APRIL 8), 1986

Mr. THURMOND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 207 of title 18, United States Code, to prohibit Members of Congress and officers and employees of any branch of the United States Government from attempting to influence the United States Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Integrity in Post Em-
5 ployment Act of 1986".

1 SEC. 2. DISQUALIFICATION OF FORMER MEMBERS, OFFICERS,
2 AND EMPLOYEES FROM ATTEMPTING TO IN-
3 FLUENCE THE UNITED STATES GOVERNMENT
4 OR REPRESENTING OR ADVISING A FOREIGN
5 ENTITY.

6 (a) PROHIBITION.—(1) Section 207 of title 18, United
7 States Code, is amended by striking out subsections (b)
8 through (e) and inserting in lieu thereof the following:

9 “(b) Whoever, having been a Member of Congress, an
10 officer or employee of the United States, including a special
11 Government employee who has served in excess of sixty days
12 during any period of three hundred and sixty-five consecutive
13 days, in the executive, legislative, or judicial branch of the
14 Government, or in any independent agency of the United
15 States, or an officer or employee of a Government corpora-
16 tion, Government controlled corporation, or an independent
17 establishment as defined in section 104 of title 5—

18 “(1) within one year after termination of employ-
19 ment with the intent to influence makes any oral or
20 written communication to any Member of Congress, of-
21 ficer or employee of the United States, including a spe-
22 cial Government employee, in the executive, legisla-
23 tive, or judicial branch of the Government, or in any
24 independent agency of the United States on behalf of
25 another person (other than the United States) for com-
26 pensation, financial gain, or other remuneration; or

1 “(2) within two years after termination of employ-
2 ment—

3 “(A) is employed by, or advises, represents,
4 or assists any foreign entity for compensation, fi-
5 nancial gain, or other remuneration; or

6 “(B) with intent to influence makes any oral
7 or written communication to any Member of Con-
8 gress, officer or employee of the United States,
9 including a special Government employee, in the
10 executive, legislative, or judicial branch of the
11 Government, or in any independent agency of the
12 United States on behalf of any foreign entity for
13 compensation, financial gain, or other remunera-
14 tion,

15 shall be fined not more than \$250,000 or imprisoned
16 not more than two years, or both.

17 “(c) Whoever, having been employed in a position listed
18 in section 5312 or 5313 of title 5 or under section
19 105(a)(2)(A) of title 3, at any time after termination of
20 employment—

21 “(1) is employed by, or advises, represents, or as-
22 sists in any way, directly or indirectly, a foreign entity;
23 or

24 “(2) with intent to influence makes any oral or
25 written communication to any Member of Congress, of-

1 ficer, or employee of the United States, including a
2 special Government employee, in the executive, legisla-
3 tive, or judicial branch of the Government, or in any
4 independent agency of the United States on behalf of
5 any foreign entity,

6 shall be fined not more than \$250,000 or imprisoned not
7 more than two years, or both.

8 “(d)(1) The prohibitions of subsections (a) through (c)
9 shall not apply to a former Member, officer, or employee who
10 is acting in his official capacity as an elected official of a
11 Federal, State, or local government.

12 “(2) The prohibition of subsection (b)(1) shall not apply
13 to an attorney appearing in a judicial proceeding before a
14 court of the United States.”.

15 (2) Section 207 of title 18, United States Code, is fur-
16 ther amended—

17 (A) by striking out subsections (h) and (i);

18 (B) in subsection (f) by designating such subsec-
19 tion as subsection (e) and striking out “subsections (a),
20 (b), and (c)” and inserting in lieu thereof “subsection
21 (a)”;

22 (C) by redesignating subsection (g) as subsection
23 (f);

24 (D) in subsection (j) by redesignating such subsec-
25 tion as subsection (g) and striking out “subsection (a),

(b), or (c)” in the first sentence and inserting in lieu thereof “subsection (a)”; and

(E) by inserting at the end thereof the following:

“(h) For purposes of this section the term ‘foreign entity’ means—

“(1) a foreign country;

“(2) a foreign political party;

“(3) a person outside of the United States, unless it is established that such person is an individual and a citizen of the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; or

“(4) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”.

(3) Subsection (a) of section 207 of title 18, United States Code, is amended by striking out “; or” at the end thereof and inserting in lieu thereof a comma and the following:

“shall be fined not more than \$250,000 or imprisoned not more than two years, or both.”.

1 (b) AMENDMENT TO CAPTION.—(1) Section 207 of title
 2 18, United States Code, is further amended by striking out
 3 the caption for such section and inserting in lieu thereof the
 4 following:

5 “§ 207. Disqualification of former Members and employees and offi-
 6 cers of any branch of Government from attempting to
 7 influence the United States Government or represent-
 8 ing or advising a foreign entity”.

9 (2) The table of sections for chapter 11 of title 18,
 10 United States Code, is amended by striking out the item
 11 relating to section 207 and inserting in lieu thereof the
 12 following:

“207. Disqualification of former Members and employees and officers of any branch
 of Government from attempting to influence the United States
 Government or representing or advising a foreign entity.”.

13 **SEC. 3. EFFECTIVE DATE.**

14 The amendments made by section 2 of this Act shall be
 15 effective upon the date of enactment of this Act.



effort to improve public understanding of the need for these changes.

It is now general knowledge that significant savings—financial as well as social—are associated with early intervention through good prenatal programs and preventive care for infants. As most of my colleagues are already aware, numerous studies have shown that an expenditure of \$1 in prenatal services can yield as much as \$12 in savings through reduced costs of intensive neonatal care and the long-term institutional expenditures that often accompany the handicaps associated with premature birth and low birthweight.

As Governor Riley's task force has shown, 10 of the 11 States with the most severe infant mortality rates are in the Southern region of the United States. In the South, it is estimated that one of every 15 mothers is likely to have a child with a discernible mental or physical handicap. While the national average is 6.8 percent, 7.6 percent of all babies born in the Southern States are low in birthweight—which is, of course, closely correlated with high rates of infant mortality, and the incidence of lifelong handicapping conditions.

Technically, S. 2333 assumes that States will be offered the option of extending coverage to those women and infants whose incomes exceed the current eligibility threshold for Medicaid, but who, nevertheless, are below 100 percent of the poverty level. While I am hopeful that we will be able to provide services to this entire population on enactment, it may be necessary to adjust eligibility to comply with final Congressional Budget Office cost estimates. However, if such a change is needed, I hope that members of the Finance Committee will join me in support of implementing this change as quickly as costs allow.

In sum, Mr. President, passage of S. 2333 will permit States to improve access to health care by restructuring eligibility and benefits under the Medicaid program according to local priorities. I invite my colleagues to join with us in support of that goal.●

Mr. THURMOND. Mr. President, today my colleagues and I are introducing legislation which represents a major initiative toward reducing the high infant mortality rate of this Nation.

The United States has a higher infant mortality rate than many other developed countries such as Sweden, Japan, Denmark, Norway, France, Spain, Canada, East Germany, and the United Kingdom. Recent statistics indicate that for every 1,000 live births, approximately 11 babies will die before the age of 1 year. In my home State of South Carolina the problem is greater, with 15 deaths for every 1,000 live births.

Mr. President, two-thirds of infant deaths occur in the neonatal period—the first month of life. The factor most commonly associated with these

newborn deaths is low birthweight. The smaller the baby, the poorer the chances of healthy survival. A low birthweight baby is more likely to need costly special care. In addition, low birthweight babies also have significantly higher rates of rehospitalization. To address the problem of low birthweight infants, the Medicaid system needs to be improved. This legislation is designed to accomplish that goal.

Mr. President, Medicaid plays a critical role as the Nation's principal financing source for the health care of mothers and children who are financially unable to help themselves. However, as many as 3.4 million poor pregnant women a year are denied vital prenatal care because they are ineligible for Medicaid. Without proper prenatal care, many unnecessary low birthweight babies are born who need significant ongoing medical attention. This, of course, means additional medical expenses. In many cases, the high medical expenses associated with low birth babies drain the financial resources of the mother until she then becomes eligible for Medicaid. Medicaid then must pick up the tab for the expensive institutional medical treatment.

Mr. President, what is needed, and what this legislation provides, is an approach geared toward preventative medicine. Under this legislation, the Medicaid law would be amended to allow States, with an Aid to Families With Dependent Children [AFDC] standard of need above 50 percent of the Federal poverty level, to target Medicaid assistance to pregnant women and infants, without the State also being required to raise AFDC payments to this group. This action would be completely optional with the States. The idea behind this change is to remove a financial obstacle for many States that want to provide a comprehensive maternity and infant health-care package to indigent women, but have not done so because of the high cost of State matching requirements for AFDC payments.

Mr. President, the cost of this bill will be \$100 million to the Federal Government. This amount has already been added to the Domenici-Chiles budget plan to cover the cost of the expansion, after the Budget Committee gave it careful consideration.

Mr. President, I want to emphasize that these moneys spent now will prove cost-effective over the long run. The American Academy of Pediatrics reported in 1984 that for every dollar spent on prenatal care, \$2 to \$10 can be saved down the road. "An ounce of prevention is worth a pound of cure." This is the approach of this legislation, and I urge my colleagues to support this bill.

By Mr. THURMOND:

S. 2334. A bill to amend section 207 of title 18, United States Code, to prohibit Members of Congress and offi-

cers and employees of any branch of the U.S. Government from attempting to influence the U.S. Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes; to the Committee on the Judiciary.

INTEGRITY IN POST EMPLOYMENT ACT

Mr. THURMOND. Mr. President, today, I am introducing tough, new legislation that will restrict all Federal employees from lobbying the Federal Government for 1 year, and from working for a foreign entity for 2 years, after they leave Government service.

This legislation also mandates a complete prohibition on certain high-level Federal officials from ever representing, assisting, advising, or lobbying in behalf of a foreign government or entity.

Mr. President, the potency of this legislation is that it applies to all Federal employees, regardless of rank, grade, or status, and that it mandates criminal penalties for violations—including fines of up to \$250,000 and prison terms of up to 2 years.

It is a proposal whose time has come, and one which seeks to maintain public confidence and integrity in Federal Government service. In its simplest form, it provides a uniform, straightforward, and enforceable way to prevent those who are employed by the Federal Government from leaving public service and marketing their access and influence for private gain. It will also terminate violations of public trust by halting very high-ranking Federal officials, who by the nature of their jobs are privy to some of our Government's most sensitive information about national security and trade, from vending that information to a foreign entity.

There is something very disquieting to me, and I suspect the great majority of Americans, about high-level officials leaving the service of the Federal Government and going to work assisting, advising, lobbying, or in any way representing a foreign power for compensation. The absolute prohibition against this practice would help end the problem of foreign entities gaining knowledge and information, in any way, about such things as our Nation's international trade strategy or defense posture from former officials whose knowledge of those issues could do harm to this country if it is conveyed to others.

The officials affected by a lifelong prohibition would include, among others: Cabinet Secretaries; Director of Central Intelligence Agency; Secretaries of the armed services; U.S. Trade Representative; Director of the Federal Bureau of Investigation; and high-ranking White House officials.

Mr. President, this legislation is a starting place for the Congress to consider much-needed changes to the con-

fusing and oftentimes conflicting laws and regulations now governing former Federal officials who lobby the Federal Government or work for a foreign entity. It is an attempt to restore rationality and effectiveness to the ethics provisions applying to the Federal Government. Toward that end, my bill would apply equally to all branches of the Federal Government and to all Federal employees—including Members of Congress, Government-established corporations, and the military.

The Judiciary Committee has tentatively set a hearing on this bill and other lobbying-related issues on April 29. I look forward to hearing testimony on this issue and to working with my colleagues on this important legislation.

Mr. President, I ask unanimous consent that a copy of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2334

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Integrity in Post Employment Act of 1986".

SEC. 2. DISQUALIFICATION OF FORMER MEMBERS, OFFICERS, AND EMPLOYEES FROM ATTEMPTING TO INFLUENCE THE UNITED STATES GOVERNMENT OR REPRESENTING OR ADVISING A FOREIGN ENTITY.

(a) PROHIBITION.—(1) Section 207 of title 18, United States Code, is amended by striking out subsections (b) through (e) and inserting in lieu thereof the following:

"(b) Whoever, having been a Member of Congress, an officer or employee of the United States, including a special Government employee who has served in excess of sixty days during any period of three hundred and sixty-five consecutive days, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States, or an officer or employee of a Government corporation, Government controlled corporation, or an independent establishment as defined in section 104 of title 5—

"(1) Within one year after termination of employment with the intent to influence makes any oral or written communication to any Member of Congress, officer or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States on behalf of another person (other than the United States) for compensation, financial gain, or other remuneration; or

"(2) within two years after termination of employment—

"(A) is employed by, or advises, represents, or assists any foreign entity for compensation, financial gain, or other remuneration; or

"(B) with intent to influence makes any oral or written communication to any Member of Congress, officer or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States on behalf of any foreign entity for compensation, financial gain, or other remuneration,

shall be fined not more than \$250,000 or imprisoned not more than two years, or both.

"(c) Whoever, having been employed in a position listed in section 5312 or 5313 of title 5 or under section 105(a)(2)(A) of title 3, at any time after termination of employment—

"(1) is employed by, or advises, represents, or assists in any way, directly or indirectly, a foreign entity; or

"(2) with intent to influence makes any oral or written communication to any Member of Congress, officer, or employee of the United States, including a special Government employee, in the executive, legislative, or judicial branch of the Government, or in any independent agency of the United States on behalf of any foreign entity,

shall be fined not more than \$250,000 or imprisoned not more than two years, or both.

"(d)(1) The prohibitions of subsections (a) through (c) shall not apply to a former Member, officer, or employee who is acting in his official capacity as an elected official of a Federal, State, or local government.

"(2) The prohibition of subsection (b)(1) shall not apply to an attorney appearing in a judicial proceeding before a court of the United States."

(2) Section 207 of title 18, United States Code, is further amended—

(A) by striking out subsections (h) and (i);

(B) in subsection (f) by designating such subsection as subsection (e) and striking out "subsections (a), (b), and (c)" and inserting in lieu thereof "subsection (a)";

(C) by redesignating subsection (g) as subsection (f);

(D) in subsection (j) by redesignating such subsection as subsection (g) and striking out "subsection (a), (b), or (c)" in the first sentence and inserting in lieu thereof "subsection (a)"; and

(E) by inserting at the end thereof the following:

"(h) For purposes of this section the term 'foreign entity' means—

"(1) a foreign country;

"(2) a foreign political party;

"(3) a person outside of the United States, unless it is established that such person is an individual and a citizen of the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; or

"(4) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."

(3) Subsection (a) of section 207 of title 18, United States Code, is amended by striking out "or" at the end thereof and inserting in lieu thereof a comma and the following: "shall be fined not more than \$250,000 or imprisoned not more than two years, or both."

(b) AMENDMENT TO CAPTION.—(1) Section 207 of title 18, United States Code, is further amended by striking out the caption for such section and inserting in lieu thereof the following:

"§ 207. Disqualification of former Members and employees and officers of any branch of Government from attempting to influence the United States Government or representing or advising a foreign entity."

(2) The table of sections for chapter 11 of title 18, United States Code, is amended by striking out the item relating to section 207 and inserting in lieu thereof the following:

"207. Disqualification of former Members and employees and officers of any branch of Government from attempting to influence

the United States Government or representing or advising a foreign entity."

SEC. 3. EFFECTIVE DATE.

The amendments made by section 2 of this Act shall be effective upon the date of enactment of this Act.

By Mr. ABDNOR (for himself, Mr. BURDICK, and Mr. PRES-
SLER):

S. 2336. A bill to protect United States cattlemen from imports of live Canadian cattle, and to require the International Trade Commission to conduct a section 201 investigation of such imports; to the Committee on Finance.

MORATORIUM ON BEEF IMPORTS FROM CANADA

● Mr. ABDNOR. Mr. President, cattlemen in my home State of South Dakota and all across the United States have been suffering from years of economic stress. High interest rates, natural disasters, and imports of live cattle have left cattlemen without a profit and many are on the verge of bankruptcy.

Let me remind my colleagues that the American cowboy is a noble man who generally believes that little or no Government involvement in his industry is good. Ranchers do not derive any benefits from Federal farm programs and they don't want any. They haven't asked for handouts; instead, they are just asking for a fair shake.

Unfortunately, cattlemen haven't been getting a fair shake. Imports of live cattle have been streaming across our borders. Some of this beef is subsidized and unfairly undercuts in price the healthy, wholesome beef produced by American cattlemen. And while all beef entering the American market possibly isn't subsidized, this beef enjoys a de facto subsidy due to the high value of the U.S. dollar which allows foreign beef to be priced 20 to 30 percent below U.S. beef.

Of major concern to America's cattle industry is beef being imported from Canada. Canadian cattle have been pouring across our northern border. In my home State of South Dakota, semi-truck loads of live cattle arrive every day. The reason for this glut of Canadian cattle on United States markets is threefold. First, it is the result of an over-valued U.S. dollar. Canadian beef producers enjoy an effective 20 percent or more subsidy in today's market. Second, imports of Canadian cattle are the result of provincial and national beef stabilization programs which give Canadian producers an unfair competitive advantage. Canada's National Beef Stabilization Program as well as provincial programs injure United States producers since our cattlemen do not benefit from such programs. Third, the herds of Canadian cattle on United States markets are the result of Canada's import policies which result in backdoor brokering. Backdoor brokering results when domestic beef in Canada is displaced by imports and when that do-

DRAFT 4/24/86

**FOR RELEASE ON DELIVERY
Expected at 9:00 A.M. EST
April 29, 1986**

STATEMENT OF

**DAVID H. MARTIN
DIRECTOR
OFFICE OF GOVERNMENT ETHICS**

**BEFORE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

ON

**S. 2334
INTEGRITY IN POST EMPLOYMENT ACT OF 1986**

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate the invitation to appear before this Committee to present the views of the Office of Government Ethics on amendments to the post employment provisions of section 207 of title 18, United States Code.

As I understand the provisions of S. 2334, the current provisions of section 207(a) of title 18, United States Code will not be changed. Thus, after leaving government employment, former executive branch employees continue to be restricted from serving as another person's representative to the Government on a case, contractual matter or other similar application or proceeding, formal or informal, in which he or she

participated personally and substantially while a government employee. This is a lifetime ban. There are two important limitations to this prohibition which attack "switching sides." First, the former employee is not restricted unless the matter in which he or she previously participated was (1) a "particular matter involving specific parties" and (2) is the same matter in which he or she now attempts to represent another before the Government. For instance, where an employee's prior involvement was limited to the design of a program policy, general rule-making or technical concepts -- matters which do not involve specific parties -- he or she is not restricted by this prohibition as to any specific matter which may involve his or her prior work. Second, this bar requires that the employee be personally involved in the matter in a substantial way. The kind of representation that is restricted includes not only acting as another's attorney or agent, but any other kind of representation or communication made with the intent to influence the United States. This includes promotional and contract representations. It also includes representations made with or without compensation.

✓
lifetime
ban.

The current provisions of 18 U.S.C. § 207(b) and (c) dealing with prohibitions involving representations on matters under a former employee's "official responsibility" and representations made by a "senior employee" would be replaced S. 2334 as follows:

- (1) A one year restriction, after termination of employment, on all federal employees (executive, legislative and judicial) and Members of Congress, on making any oral or written communication to Congress or any other branch of the federal Government with the intent to influence on behalf of another person for compensation or other remuneration;
- (2) A two year restriction, after termination of employment, on all federal employees (executive, legislative and judicial) and Members of Congress, who

(A) are employed by...advise, represent or assist a foreign entity for compensation or remuneration or (B) with intent to influence make an oral or written communication to Congress or any other branch of government on behalf of a foreign entity for compensation; and

- Lifetime ban
to be employed by
or to represent.*
- (3) A lifetime restriction on those individuals in the executive branch having been employed in or currently serving in Executive Level I or II positions or certain additional positions in the White House Office for which the rate of pay does equal or exceed the rate currently being paid for Executive Level II. This restriction would bar them with or without compensation from being employed by, representing, or assisting in any way a foreign entity or with the intent to influence, make oral or written communications to Congress or any other branch of the federal Government on behalf of the foreign entity.

*Uniformity
preserved.*

Before addressing the merits of any of the proposed restrictions, I commend this Committee for recognizing the need to create a more uniform approach to post-federal employment issues. Too often in the past there has been criticism suggesting that a double standard has been employed in matters involving ethics, standards of conduct, and criminal conflicts of interest matters. Some suggest that congressional rules governing Members of Congress and their staffs are more lax than those applied in the executive branch; others contend that career employees in the executive branch are treated differently than political employees. Recognizing that post employment concerns should not be restricted to officers and employees of the executive branch is viewed very positively by this Office.

However, while we believe that certain of the same concerns regarding the misuse of personal influence are present regardless of which branch of government an individual serves, we cannot support the all-encompassing types of restrictions which this proposal contains for former employees of the executive branch. Many of the following concerns regarding the sweep and coverage of S. 2334 might be held by officers and employees of the judicial and legislative branches as well.

In enacting post employment or any conflict of interest restrictions, we believe that the restriction should have some reasonable relationship to preventing a perceived or actual harm to the Government and that the Government's need to avoid the harm outweighs all other interests involved. We are unaware of any studies or general concerns that would demonstrate a public harm that has a substantive relationship to the breadth of the net this proposal would cast. Post employment restrictions were traditionally enacted to prevent the use of inside information or influence as to specific matters in which the former employee participated or matters which he or she supervised, or prevent the use of personal influence on the part of former senior officials for a period of time so that their former colleagues and subordinates have an opportunity to readjust their professional relationship with the individual. In both kinds of restrictions, there is a direct relationship between duties the former official performed, or information he or she had, and the restriction. Thus, we do not see where there is harm, actual or apparent, in allowing most former officers or employees of any branch of the government to represent someone before another branch of government. A primary purpose of the conflict of interest laws is to protect the integrity of the decision-making process in government. In our view, representations made by an employee who has left one branch of government, to a different branch, will not be perceived as affecting any resulting government action other than as a reasonable, fair and unbiased process. This is true even to restrictions that are

limited to an officer or employee's branch of government. It makes no difference to our analysis whether the person represents a foreign entity or not, or for that matter whether the individual is paid. What is paramount is prohibiting the use of inside information and personal influence, which in some instances may extend to an entire branch of government.

We recognize that restrictions which apply to everyone on all matters are very attractive, especially to those of us who must determine designations and administer restrictions. We also recognize the validity of the types of concerns which are expressed towards the present post employment restrictions. It should be possible, however, to address these concerns without stifling the legitimate career aspirations of the majority of government workers or the ability of our society to achieve healthy benefits from the mobility of workers between the private and public sectors. With this attitude, we have been an advocate within the executive branch for a reformulation of the principles of section 207. From our experience with a program which includes post employment restrictions, we offer for your consideration the following alternative proposal for amending section 207:

alternative subsection (a) — would apply to all former government employees of all three branches: a lifetime ban on representing or assisting another with respect to particular matters involving specific parties in which the employee had been personally and substantially involved.

alternative subsection (b) — would apply to all former government employees of all three branches: a two-year ban on representing or assisting another with respect to particular matters involving specific parties which were actually pending under the employee's official responsibility.

alternatives

1) lifetime ban on representing or assisting another with respect to particular matters involving specific parties in which the employee had been personally and substantially involved

2) 2 yr ban on representing or assisting another with respect to particular matters involving specific parties which were actually pending under the employee's official responsibility

1 yr. ban on
top fed go
govt w/ entire go

alternative subsection (c) — one-year no contact ban (i) for Executive Level and White House staff, 0-9's in the military, and equivalent positions in other branches, as to the entire government, and (ii) for the Senior Executive Service, 0-7's and 0-8's in the military and equivalent positions in other branches, as to their former departments or agencies in the executive branch or equivalent organizational units in other branches.

2 yr. for ban

alternative subsection (d) — two-year employment ban with respect to foreign entities for Executive Level, White House staff, Senior Executive Service, 0-7's and above in uniformed services and equivalent positions in the other branches.

Note that present subsections (d)(1) (senior employee designations) and (c) (separate statutory agency designations) would be deleted.

With regard to our general suggestion for an alternative subsection (d) above, you should note that the ban also includes members of Congress and their staffs. Surely the chairmen and senior staff of certain congressional committees share the same type of information, whether it be in the area of national security, financial or commercial matters, as those individuals who handle such information on behalf of the executive branch.

We note the following technical issues with respect to the present language of S. 2334:

The language of proposed subsection (b) specifically includes the officers and employees of "a government corporation, government controlled corporation, or an independent establishment as defined in section 104 of title 5" Yet in paragraph (1)

of that subsection, the listed entities with respect to which representations are prohibited do not include these same entities. The coverage should be the same. It would be reasonable to apply post employment restrictions to any Member of Congress or any officer or employee of the executive, judicial or legislative branch of the Government, of any independent agency of the United States or any officer or employee of a government corporation who is by the corporation's statutory authority an officer or employee of the federal government. Many individuals who are employees of "mixed ownership corporations" or other corporations established by statute are not by law officers or employees of the federal government. These individuals should not be covered by this one provision of the criminal conflict of interest statutes. Further, the entities or persons to which or to whom representatives are prohibited should include the same entities and individuals who are restricted by the provision.

We note also in the language of subsection (b)(1) and its subparagraphs (A) and (B) that you have used the terms "compensation, financial gain, or other remuneration." If it is the intent that these terms have separate meanings, that should be made clear either by the legislative history or by definition.

We believe that the restriction in subsection (b)(2)(A) encompasses that of (b)(2)(B) and that it is unnecessary to include the latter if you intend that the restriction in subparagraph (A) cover any kind of compensated service whether or not it involves representational services. That is, such activities as compensated representational services and catering services would be prohibited by subparagraph (A).

There are practical objections to the restrictions of subsection (b)(2) if it is applied to all employees as now drafted. It would seem that nonresident aliens should be excluded

from coverage. First, nonresident aliens who are hired as employees of the United States government in their own countries to assist, for example, in servicing the functions of the State Department, Defense Department, AID, and USIA would be severely affected. On the face of this proposal, these individuals would be prohibited from being employed by almost anyone in their own countries upon leaving the U.S. employ. We believe that a post employment provision that would not take this into consideration would substantially impair our government's foreign operations and may very well be unenforceable.

We also observe that because of the manner in which the term "foreign entity" is defined by proposed subsection (h), the apparent intent of proposed subsections (b)(2) and (c) might be easily avoided. The literal prohibitions of these provisions would not be violated if a former government employee were to provide services to a United States corporation or other domestic entity which was controlled by a party described in proposed subsection (h).

Like any rule, these restrictions must have exceptions which apply to special circumstances. However, we are not sure that those embodied in the current proposal cover all the necessary special considerations which may result from the increased restrictions. For instance, present section (d)(1) limits application of the restrictions to former employees who act in this capacity as an elected official of a federal, state, or local government. However, consideration should be given to exceptions for public service with international organizations such as the United Nations or the International Red Cross or to health care institutions or institutions of higher learning which were deemed important to medicine and academia when the present 207 restrictions were enacted.

By striking present subsection (h) you have eliminated the testimony under oath exception for those individuals who may be subject to the lifetime proscriptions under section 207(a). What is a former employee to do when subpoenaed to testify on a matter in which he or she participated while in federal service?

Additionally, section 202 of title 18 contains language regarding section 207 and would require attention with any section 207 amendments.

effective date
due process
concern 7
life ban
Finally, close consideration should be given the effective date of any post employment amendments. Since the restriction will be viewed by some as an encroachment on individual freedom of choice, a delay in the effective date may give some currently employed individuals the option of terminating federal employment in lieu of subjecting themselves to further restriction. Also, we would urge that due process require that no provision, such as the proposed subsection (c), should have a lifetime ban not related to a specific matter nor in fairness apply to any individual who has already terminated government service.

Department of Justice Statement in S 2334

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department of Justice on the operation of one of the conflict-of-interest statutes, 18 U.S.C. §207. I will also discuss S. _____, a bill which would substantially amend 18 U.S.C. §207.

Policy Objectives of Section 207 of Title 18, United States Code

Section 207 of Title 18, United States Code, was enacted in 1962 as part of a comprehensive statutory scheme 1/ which evolved from a number of conflicts-of-interest statutes enacted by Congress more than a century ago in the wake of revelations of rampant corruption in connection with the procurement of goods and services and the handling of claims against the United States during the Civil War. In 1872, legislation was passed which prohibited a former employee of a department of the executive branch from acting as counsel, attorney or agent for a period of two years after leaving office in the prosecution of claims pending in the department at the time the former employee worked there. 2/ Three principal policy considerations supplied much of the motivation for the enactment of this legislation: 3/ first, Congress wanted to minimize the risk that a former employee would use inside information about a claim to the detriment of the government; second, Congress wanted to safeguard Federal funds by preventing a former employee from profiting by his or her

1/ Pub.L. 87-849 (76 Stat. 1119, October 23, 1962).

2/ Act of June 1, 1872, ch. 256 §5, 17 Stat. 202.

3/ See Cong. Globe, 42d Cong., 2d Sess. 1584, 1846-47, 3109-13, 3135 (1872).

knowledge about monies owed by the United States; and third, Congress wanted to minimize the risk that a former employee would exercise a continuing personal influence over his or her former associates.

These early policy considerations, and others similar to them, provided the impetus for the enactment of the major revision to Federal bribery and conflicts-of-interest laws in 1962. 4/ According to the House Report which accompanied the 1962 legislation: 5/

The proper operation of a democratic government requires that officials be independent and impartial; that Government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. The attainment of one or more of these ends is impaired whenever there exists, or appears to exist, an actual or potential conflict between the private interests of a Government employee and his duties as an official. The public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to employee conduct in situations where actual or potential conflicts exist.

It is also fundamental to the effectiveness of democratic government that, to the maximum extent possible, the most qualified individuals in the society serve its government. Accordingly, legal protections against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the Government of those men and women who are most

4/ See n.1, supra.

5/ H.R. Rep. No. 748, 87th Cong., 1st Sess. 5-6 (1961).

qualified to serve it. An essential principle underlying the staffing of our governmental structure is that its employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public cannot be avoided.

Likewise, one prominent commentator has noted the following policy objectives of the 1962 legislation: 6/ (1) impartiality, fairness and equality of treatment toward those dealing with government; (2) assurance that decisions of public importance will not be influenced by private considerations; (3) efficiency and economy in carrying on the business of government; (4) maintenance of public confidence in government; and (5) prevention of the use of public office for private gain. Section 207 of Title 18, United States Code was a major component of the 1962 legislation. Substantial amendments were made to Section 207 by the Ethics in Government Act of 1978; 7/ the section was amended again in 1979. 8/

The Senate Report 9/ accompanying the 1978 amendments notes that Section 207 is designed to ensure government efficiency, eliminate official corruption, promote evenhanded exercise of administrative discretion, prevent use of undue influence over former colleagues, and prevent use of information about

6/ R. Perkins, The New Federal Conflict-of-Interest Law, 76 Harv. L. Rev. 1113, 1118 (1963).

7/ Ethics in Government Act of 1978, Pub. L. 95-521, §501(a), 92 Stat. 1864.

8/ Act of June 22, 1979, Pub. L. 96-28, §§1, 2, 93 Stat. 76.

9/ S.Rep. 95-170, 95th Cong., 1st Sess. 31, 34 (1977).

specific cases gained during government service for a former employee's own benefit and that of private clients. The object of the statute is to promote honest government, and impartial decisions, and to prevent corruption and other official misconduct before it occurs, as well as penalizing it once it is found.

An Overview of Section 207

There are four subsections in Section 207 of Title 18, United States Code, which provide for felony sanctions upon a conviction: §§207(a); 207(b)(1); 207(b)(11); and 207(c). Each of these subsections provides for a maximum sentence of a fine of not more than \$10,000 or imprisonment for not more than two years, or both, but 18 U.S.C. §3623 substantially increases the maximum fine for individuals for offenses committed after December 31, 1984.

Subsection 207(a) and subsection 207(b)(1) each covers all former officers and employees, including special Government employees, of the executive branch, independent agencies, and the District of Columbia, except such officers and employees who left government employment before July 1, 1979. 10/ Subsection 207(b)(11) and subsection 207(c) each covers persons as set forth in subsection 207(d), except such persons who left government employment before July 1, 1979, or, in the case of such persons

10/ Those officers or employees who left their employment prior to July 1, 1979 remain subject to 18 U.S.C. §207(a) (1976) which provides:

Whoever, having been an officer or employee of the executive branch of the United States

who occupied designated positions, prior to the effective date of such designation. In addition, subsection (c) does not cover a special government employee who serves for less than sixty days in a given calendar year.

Specific exceptions to the applicability of subsections 207(a), 207(b)(1) and 207(b)(11) are set forth in subsection 207(f). Likewise, exceptions to the applicability of subsection 207(c) are set forth in subsections 207(d)(2), 207(e), 207(f), 207(h), and 207(i).

Generally, Subsection 207(a) prohibits, for the life of a matter, a person subject to its terms from representing anyone except the United States in a Federal forum or before a Federal official in connection with any particular matter involving a specific party or parties in which the United States or the

(Footnote Continued)

Government, or any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

District of Columbia is a party or has a direct and substantial interest, and in which the person participated personally and substantially as an official.

Subsection 207(b)(i) prohibits a person subject to its terms from representing anyone except the United States in a federal forum or before a federal official in connection with a particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and which particular matter was actually pending under the former official's official responsibility as an such an official within a period of one year prior to the termination of such responsibility. This prohibition is limited to the two years following a former official's employment or, in cases where the former official's responsibilities changed before the official left government service, the two years following the change.

Subsection 207(b)(ii), for two years after their government employment has ceased, bars persons subject to its terms from representing, aiding, counseling, advising, consulting, or assisting in representing anyone except the United States by personal presence at any formal or informal appearance before a federal forum or official, in connection with particular matters involving a specific party or parties in which they participated personally and substantially as government officials.

Subsection 207(c), unlike subsections 207(a), 207(b)(i) and 207(b)(ii), embraces particular matters which do not involve specific parties and which arise after the former officer or

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employee has left government service. The subsection, in general, prohibits persons subject to its terms from representing anyone except the United States before the agency where such person served in connection with any particular matter which is pending before such agency or in which such agency has a direct and substantial interest.

In addition to its four felony provisions, section 207 includes a misdemeanor provision which regulates the conduct of partners of officers or employees of the executive branch, independent Federal agencies and the District of Columbia, including special Government employees. Such partners are barred from acting as agents or attorneys for anyone except the United States before certain Federal forums, or officers or employees thereof, in connection with a particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officers or employees participate or have participated personally and substantially as officers or employees or which is the subject of their official responsibility. The statute provides that an offense under this subsection is punishable by a fine of not more than \$5,000 or imprisonment for not more than one year, or both, but 18 U.S.C. §3623 substantially increases the maximum fine for individuals for offenses committed after December 31, 1984.

Lastly, subsection 207(j) establishes a basis for administrative disciplinary action, pursuant to regulations promulgated under the authority of the subsection, and following a

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determination by the head of a department or agency in which the former officer or employee served that such former officer or employee violated subsection 207(a), 207(b)(1), 207(b)(11) or 207(c).

Compliance With Section 207

The Criminal Division has no evidence which demonstrates that section 207 violations are a significant law enforcement problem. Indeed, the rather sparse number of section 207 investigations and prosecutions reported to the Executive Office for United States Attorneys by the United States Attorneys for the period 1980 through February 1985 would suggest that such offenses occur infrequently. In that five year period, 45 matters involving section 207 issues were reported by the United States Attorneys as closed without prosecution. Nine of these declinations resulted from referrals which were made prior to 1980. In this same period, five section 207 prosecutions were initiated, according to the reports of the United States Attorneys. Three of these prosecutions resulted in guilty pleas. One prosecution resulted in an acquittal. The fifth prosecution was dismissed at the request of the United States Attorney.

Likewise, the Criminal Division's Public Integrity Section's recent experience with matters involving section 207 indicates that there is no widespread failure to comply with the statute. In this regard, the Section received approximately fifty-one referrals of matters involving section 207 in the

period 1980 through February 1985. Criminal prosecution was declined in each of these matters. The Public Integrity Section handled two of these referrals, which involved former Department of Justice attorneys, under the provisions of subsection 207(j).

Enforcement of Section 207

Crime prevention is a major goal of law enforcement. The Office of Government Ethics (OGE) complements the Criminal Division's enforcement of the federal criminal conflicts-of-interest statutes by facilitating understanding among executive branch officials about what the statutes require from them. Such understanding minimizes the risk that an inadvertent offense will be committed. The OGE endeavors to assure that executive branch officials are aware of their responsibilities under the statutes by developing regulations and policies concerning the statutes, issuing advisory opinions about the statutes, reviewing the financial disclosure reports of Presidential nominees, monitoring the adequacy and effectiveness of federal agency ethics programs, and sponsoring training conferences for agency ethics personnel. The Public Integrity Section of the Criminal Division helps the OGE effectively to perform its advisory function by consulting with it, for example, about questions involving statutory construction. The Section, moreover, has twice provided briefings for the OGE staff about the Section's view of the statutes and the manner in which such matters are ordinarily processed in the criminal justice system and participated in a seminar concerning the

conflicts-of-interest statutes with OGE officials in October 1985. An objective of such a dialogue is to assure effective coordination between the advisory and prosecutive components of the executive branch.

There is a Memorandum of Agreement, effective May 19, 1980, between the OGE, the Office of Legal Counsel (OLC) and the Criminal Division. This memorandum provides in part that the Director, OGE, shall consult with the Criminal Division before rendering an advisory opinion on an actual or apparent violation of any conflict of interest law. Should the Criminal Division decide to undertake a criminal investigation, the Director will not render an advisory opinion pending a determination by the Criminal Division not to prosecute.

In summary, the Criminal Division's Public Integrity Section and the OGE have an informal but close relationship regarding the prevention of conflicts-of-interest offenses.

Disciplinary action pursuant to subsection 207(j) is of major importance in the effective enforcement of section 207. Most section 207 violations which we have seen have involved conduct totally unsuited for criminal prosecution, but which might be redressed effectively by means of an administrative sanction commensurate with the seriousness of the conduct.

The potential for criminal prosecution under section 207 enhances enforcement by providing a general deterrent against the conduct the statute is designed to prevent. Allegations of section 207 offenses are investigated mainly by the various Inspectors General, or the Federal Bureau of Investigation or

both. Section 207 matters referred to a United States Attorney's office or to the Public Integrity Section are ordinarily handled by the receiving office. Likewise, prosecutive determinations are made by the receiving office. A Chapter in the United States Attorneys' Manual, which was drafted in the Public Integrity Section, includes an overview of section 207 for the benefit of federal prosecutors who are called on to review a section 207 matter. 11/

S. _____ The Integrity in
Post-Employment Act of 1986

While we share the concerns expressed by the Chairman in his recent statement on the floor of the Senate regarding the introduction of The Integrity in Post-Employment Act of 1986, and would be pleased to work with the Committee to draft legislation addressing that concern, we believe that S. _____ should not be passed in its current form for several reasons.

First, S. _____ would eliminate three felony provisions from 18 U.S.C. §207 (subsections 207(b)(1), 207(b)(11) and 207(c)). We do not believe that there is any reason to eliminate the prohibition set forth in subsection 207(b)(1), but would not oppose the elimination of subsection 207(b)(11) and 207(c). Subsection 207(b)(11) is largely redundant in view of subsection 207(a), and subsection 207(c) is riddled with

11/ 9 USAM §§85.200 through 85.206; 85.240 through 85.249 b.

under

exceptions limiting its effectiveness. Moreover, subsection 207(c) designates as felonious conduct which ordinarily would result in no demonstrable, tangible harm to the United States Government and very well might be beneficial to the Government. The likelihood of a jury conviction in such a case would be virtually nil. Only where there is proof of positive corruption, tangible harm to the Government or some other equally serious collateral circumstance would a felony prosecution under subsection 207(c) have any reasonable likelihood of a successful outcome. Thus, except as a general deterrent, perhaps influencing future conduct, the subsection is of doubtful worth as an enforcement tool.

Second, SEC. 2(b)(1) of the bill would severely restrict the post-employment activities of former federal officials without regard to whether or not such activities in reality would pose any risk of any of the harms conflicts-of-interest statutes have been designed to minimize. SEC. 2(b)(1) would place an unreasonable post-employment burden on a large number of junior to middle-level federal employees who would otherwise immediately after leaving federal service represent other persons before federal agencies in connection with particular matters these employees had nothing to do with during their federal service, either as direct participants or as supervisors. For example, a junior Army officer leaving the military following distinguished service would be barred for one

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year from representing clients before the Securities and Exchange Commission. In addition, a clerk-typist leaving the United States Department of Agriculture would be barred for one year from sending an advertisement of the clerk-typist's new employer to the United States Department of Health and Human Services. Rather than going forward with a bill taking such a broad approach, the Committee may wish to consider amending 18 U.S.C. §207(b)(1) to include the legislative and judicial branches of the Government. Likewise, the Committee may wish to consider amending 18 U.S.C. §207(a) making it applicable to the legislative and judicial branches.

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Third, SEC. 2(b)(2), also, is overly broad. For example, it would seem to prohibit a former federal truck driver from driving a truck for a foreign entity for two years after the truck driver's employment with the federal government. Likewise, SEC. 2(c)(1) is overly broad. For example, it would seem to prohibit a covered person from supplying a doctor's name to a foreign friend abroad in need of medical advice.

We do not presently have specific recommendations regarding how best to revise the bill, nor do we have any empirical data demonstrating the necessity of S. _____ or any provision like it. But because the bill eliminates 18 U.S.C. §207(b)(1) without providing a comparable substitute, and contains overly broad provisions, we recommend that if the Committee should decide that some form of the bill should be passed, the Committee make substantial revisions; we would be pleased to comment about them.

Mr. Chairman, that concludes my prepared remarks and I would be happy to answer any questions you may have.