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HEARINGS

BEFORE THE

ARMED SERVICES INVESTIGATING SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES

HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

FIRST SESSION

UNDER THE AUTHORITY OF

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HEARINGS HELD JULY 20, 21, AND 22, 1971

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MARINE CORPS PROCUREMENT PRACTICES

CONFLICTS OF INTEREST

TUESDAY, JULY 20, 1971

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
ARMED SERVICES INVESTIGATING SUBCOMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2337, Rayburn House Office Building, Hon. Otis G. Pike, presiding.

Members present: Hon. Otis G. Pike, Hon. Alton Lennon, and Hon. Durward G. Hall.

Staff present: John T. M. Reddan, counsel; John F. Lally, assistant counsel; and Richard A. Ransom, professional staff member.

Mr. PIKE. The meeting will come to order.

This morning the subcommittee begins hearings to inquire into certain Marine Corps procurement practices as they relate to particular procurements. Initially we will examine a procurement of 7,140 generators which cost \$28.4 million. These generators were procured between 1966 and 1968 from the Consolidated Diesel Electric Co. of Stamford, Conn., also known as CONDEC. Serious allegations have been received by the subcommittee relative to these and other procurements, ranging from incredibly poor quality end products to possible conflicts of interest on the part of certain Marine Corps procurement personnel. These allegations will be examined in detail during the course of these hearings which we hope we will be able to conclude in the next 3 days.

This has been a rather difficult investigation due to the fact that we have received less cooperation from the Marine Corps, the Navy Department and the Department of Defense than one would normally expect. Perhaps that is putting it too mildly, for a reasonable man might conclude that certain of their actions and inactions, if not specifically intended to obstruct our investigation, were certainly not designed to aid us. In spite of this, I trust that during these hearings we will develop enough factual data to aid these services and the Department in the future performance of their duties.

As usual, we are pressed for time and, therefore, I will not attempt to outline the case in this opening statement. Instead, it will be developed through the testimony of witnesses. Our first three witnesses will be Marine Corps officers. They are Maj. Charles Bridges, technical project manager; Capt. Richard Nailor, former technical project manager; and Capt. John Bell. All three have had firsthand experience with the performance of CONDEC generators in South Vietnam.

However, the testimony of Captain Nailor will, for the most part, be confined to the generator production and preproduction problems.

If these three gentlemen will come to the witness table and be sworn.

(Mr. Hall's prepared statement is as follows:)

ARMED SERVICES—MARINE GENERATORS

Mr. Chairman, as we open these proceedings today, I should like to impress upon all, that our mission will be investigative in nature, with an unemotional look at the process and procedures whereby the U.S. Marine Corps procured series 600 and series 700 generator sets, whose quality of production has apparently been less than satisfactory.

My interest in this matter goes back to April of 1969, when I came in contact with a staff study relating to these pieces of equipment, and subsequent correspondence almost a year to the day later, with the commandant of the Marine Corps, General Chapman, when I posed a series of questions, inquiring into the reliability of the generator sets.

The answers I received from General Chapman, including the fact that the percentage of 600 series generators deadlined, has at times reached almost 50 percent, and that technical evaluations indicate that the primary cause of unreliability is due to quality control and design deficiencies which were not revealed by preproduction testing, led me to make my findings, evaluations and recommendations available to our late chairman, L. Mendel Rivers, who then authorized a study of the matter by the staff of the special investigation subcommittee.

I offer this background information simply to set the stage for the colloquy that we will enter into today.

I have been disturbed, since the beginning of my own personal survey into the purchase of the generator sets, if somewhere along the way, some mistakes in judgment occurred. I refer specifically to the selection of the winning bid, and the justification for awarding it. Hindsight would indicate that the CONDEC Co. has performed in a less than satisfactory manner. It is beyond my comprehension, that a company would produce a piece of defective equipment and then have the temerity to charge the buyer an additional amount for repairing something he thought was workable when he purchased it, and at a price \$700 higher than he could repair it himself.

In pursuing so serious an allegation, I realize that extreme caution must be taken in order to avoid possible irreparable danger to the character and reputation of anyone brought forth or appearing before a subcommittee of this type.

At the same time, Mr. Chairman, I feel it is not only the responsibility, but the obligation of this subcommittee to thoroughly investigate all related matters concerning the procurement, use, and maintenance in the field, of 600 series and 700 series generators.

Therefore, I feel that it is of the utmost importance that we, the members of this investigation committee, pursue our thorough examination of all pertinent information and testimonies of each witness with dedicated responsibility and careful thought.

Whereupon, Maj. Charles Bridges, Capt. Richard Nailor, and Capt. John Bell, having been first duly sworn, testified as follows:

Mr. PIKE. We will start with you, Major Bridges, and I would appreciate your laying the groundwork for our subsequent questions by stating for the record the Marine Corps requirements which led to the generator contracts in question. Then if you will, give us a brief description of the contracts involved in chronological order describing in layman's language the end product being purchased, the number of units procured, and the total dollar figure for each contract.

Captain Nailor can then tell us of his association with the project, and the manner in which it developed, and at the appropriate time we will call on Captain Bell for his testimony. One more thing. I believe that we have in our files, all of the basic documents relating to these

procurements, and should you wish to refer to them at any time during the testimony, we will make them available to you.

Major Bridges, will you give us a short biography of yourself and then a statement and explanation of your present duties?

TESTIMONY OF MAJ. CHARLES R. BRIDGES, HEAD, POWER SECTION, COMM-ELECT SYSTEMS BRANCH, TECHNICAL DIVISION, SUPPLY DEPARTMENT, U.S. MARINE CORPS, WASHINGTON, D.C.; CAPT. RICHARD A. NAILOR, ELECTRONIC OFFICER, DEPOT MAINTENANCE BRANCH, EQUIPMENT MAINTENANCE DIVISION, SUPPLY DEPARTMENT, U.S. MARINE CORPS, WASHINGTON, D.C.; AND CAPT. JOHN R. BELL, EXECUTIVE OFFICER, MAINTENANCE BATTALION, FIRST FORCE SERVICE REGIMENT, FMF PACIFIC, CAMP PENDLETON—FORMERLY ATTACHED TO THE TECHNICAL DIVISION, SUPPLY DEPARTMENT, U.S. MARINE CORPS, WASHINGTON, D.C.

Major BRIDGES. Yes, sir. I will begin, sir. Enlisting in the Marine Corps in 1949, I rose to the rank of Sergeant Major when I was commissioned in 1962. I have approximately 10 years' experience as an officer in the Marine Corps. My educational background is an Associate Degree in Electronics Engineering, and during the past 2 years I have been serving as the Marine Corps Coordinator for Mobile Electric Power. I am head of the Power Section of the Marine Corps Supply Department.

Mr. PIKE. Would you now proceed to tell us what you can about the requirement and background of these CONDEC generator contracts?

Major BRIDGES. Yes, sir. The requirements, sir, were initially stated for the 600 generators, sir—5 and 10 kilowatt generators—on September 18, 1965. The requirement was to provide tactical power requirements—up to 10 kilowatts—and to supply primarily power for communications equipment, within the Marine Fleet Forces. No equipment at that time, sir, of this configuration was available within the Department of Defense inventory. The second series of generators relative to requirements, were the 700 series generators.

Mr. PIKE. Would you establish the time frame that you are talking about, also, when these requirements arose?

Major BRIDGES. Yes, sir. The requirement for the 600 series generators, sir, was stated September 18, 1965. During March of 1966, sir, the Marine Corps determined the need for the new 700 series generators, to meet tactical power requirements (up to 60 kilowatts) within the Fleet Marine Forces. I prepared, sir, a short fact sheet which will give you a biographical summary of all four contracts that are involved. One contract relates to the 600 series, sir, which is Contract NOM-73510. The second three contracts related to the larger generators (the 700 series) Contracts No. M00027-68-C-0120, 0121 and M00027-69-C-0125.

Mr. PIKE. Go right ahead, Major. In your own language tell us what you did and what happened.

Major BRIDGES. Sir, the procurement of the 600 series generators was initiated in 1965, and resulted in contract NOM-73510, awarded to

Consolidated Diesel Electric Company, CONDEC, on March 8, 1966. The generators were procured under a two-step formal advertising procedure authorized under Armed Services Procurement regulations. Four bidders answered step 1, which consisted of requesting technical proposals, then evaluation of the supplies and services offered. Of the four bidders, two were adjudged responsive. CONDEC and the ONAN Corp.

Step 2 consisted of soliciting priced bids from those contractors with an additional requirement for diesel engine qualification. Under this step CONDEC qualified an engine and was low bidder. The contract awarded was a firm, fixed-price contract for multi-year procurement under a performance specification. The original contract ceiling at time of award was \$11,057,969, which was subsequently raised to \$15,196,225 through increases in contract quantities and contract modifications. The first item delivered to the Marine Corps was in May, 1967 and the final generator was received in March, 1969.

Relative to the 700 series generators, sir, the procurements for the 700 series generators were initiated in 1966 and 1969. These procurements resulted in the award of Contracts M00027-68-C-0120, 0121 and M00027-69-C-0125, to Consolidated Diesel Electric Company. The generators under the first two contracts, 0120 and 0121, were procured under two-step formal advertising procedures. The first step consisted of solicitation of technical proposals, evaluation of the proposals, and a determination of the acceptability of the supplies and services offered.

Step 2 consisted of soliciting price bids from those contractors deemed responsible and responsive under Step 1. Contracts 0120 and 0121 were firm, fixed-price contracts for manufacture under a performance specification. The total value of 0120 as amended is \$4,378,324. Total value for 0121 as amended was \$6,177,186. Government furnished engines and governors were utilized in the generator sets.

Contract M00027-69-C-0125, was a sole-source letter contract negotiated during March of 1969. The total value of the contract as amended is \$2,689,899. Government furnished engines and governors were also utilized on these generator sets.

Contracts 0120, and 0121 were awarded simultaneously. Contract 0125 was later awarded but at a time that production line continuity was maintained within CONDEC. First of the deliveries of the generators procured under the three contracts was in March, 1969, and deliveries were completed in November, 1970.

Mr. PIKE. Now, let's go back to the first contract, and tell us what happened when the production of the generators started and how they were received by the Marine Corps and how they performed.

Major BRIDGES. Yes, sir.

Mr. REDDAN. Before you get into that, Major, could you tell us something about the production models and the testing of the preproduction models, how that fared?

Major BRIDGES. Yes, sir. The preproduction models were subjected to the best of my knowledge, to the most rigorous test program any generators the Marine Corps had ever procured up to that time. The requirements for diesel engine operation for instance, required 5,000 hours mean time between overhaul. The particular preproduction versions did meet this requirement and exceeded it.

There were some delays in preproduction approval, based around some of the electrical deficiencies of the generators, sir, which were subsequently corrected. But the performance of the preproduction versions of the 600 series generators was at that time superior to any other known generator in its class within the Department of Defense inventory.

Mr. REDDAN. After you got approval of the preproduction models, then will you tell us what the chairman asked here with respect to the production models?

Major BRIDGES. Yes, sir. Significant quality assurance and quality control problems were encountered during the production phase of the contract, which have precluded the placing of these generators into continuing field service. Attempts by the Marine Corps to place the generator sets in service were additionally hampered by what at the time appeared to be design problems. Both electrical and mechanical (to include engine deficiencies) are involved. Quality control problems were initially brought to the attention of the Contract Administration Service of the Defense Supply Agency in 1968. Recently, the Commandant of the Marine Corps contacted DSA relative to contractor responsibility for the various quality control, quality assurance, and possibly latent defect problems.

Mr. PIKE. Are you speaking regarding these generators, or are you speaking generally, now, regarding the generators?

Major BRIDGES. Only as regards the 600 series generators at this time, sir.

Mr. PIKE. All right.

Mr. REDDAN. When were the first problems discovered with respect to the production models?

Major BRIDGES. The first problems, sir, regarding production, were reported to the Marine Corps by the Defense Contract Administration Service Office charged with the responsibility for inspection on the first production quantity to be shipped. This was in 1967, sir, during August, as I recall.

Mr. REDDAN. In August of 1967?

Major BRIDGES. Yes.

Mr. PIKE. You received notice that there were problems of quality control in the production models?

Major BRIDGES. Yes, sir.

Mr. PIKE. What kind of problems did you find?

Major BRIDGES. At this time, sir, I think it would be proper for Captain Nailor to address this, since he was the technical administrative officer.

Mr. PIKE. Captain Nailor, will you give us a little of your own biographical data and then also tell us what your position was in regard to these generators at that time.

Captain NAILOR. Yes, sir. I enlisted in the Marine Corps in 1954. In 1963 I was appointed to the rank of Warrant Officer. 1965 I returned from duty in the Republic of Vietnam and began a tour of duty at Headquarters Marine Corps. In late April 1967, I was transferred, internally, to take over as the responsible technical Project Officer for engine generators. I had three functions in this capacity. One was the technical Project Officer for generators. Two, I was the Marine Corps' Technical Representative to the Department of De-

fense Committee for the Project Manager of Mobile Electric Power. And three, I functioned internally as a Project Coordinator for the Supply Department on engine generators.

Mr. PIKE. Where were you at this time?

Captain NAILOR. Headquarters Marine Corps, sir.

Mr. PIKE. Right.

Captain NAILOR. In late April 1967, upon assuming my duties in this respect, the contract under discussion, Nom-73510, had completed first the article testing, and was at the point of being approved with exception to four items. It was my responsibility at that time to reconcile these four items with the contractor. These four items were reconciled to the satisfaction of the Marine Corps. On May 17, 1967, technical approval was given by my senior to the Procurement Contracting Officer. We subsequently went into the production phase of the contract. On June 30, 1967, the Defense Contract Administration Services personnel at the plant, the in-house personnel who inspect for the Marine Corps and Armed Services, notified me and my representatives that there were quality control deficiencies of such a serious nature as to preclude shipment of the first 30 generator sets which had been prepared for shipment.

Mr. PIKE. They rejected the whole batch?

Captain NAILOR. Yes, sir.

Mr. REDDAN. Did you give us the date on that, Captain?

Captain NAILOR. June 30, 1967, sir. I was advised by Phoncon.

I immediately dispatched one of my representatives to go to the Connecticut facility which is where this took place, the contractor's Old Greenwich facilities, and he reviewed the problems with the Defense contract personnel at the plant. The problems noted rotated around things such as poor quality welding, defective intake manifolds, oil leaks on the engines, missing and loose hardware, mechanical linkage interference and various and other sundry problems. These deficiencies clearly indicated to my office and to the resident DCAS, if I may use that abbreviation, sir, personnel, a poor quality control system within the corporation. A meeting of the contracting officer and his technical representatives with the Executive management of the Consolidated Diesel Co. served to provide the Marine Corps with assurance that the problems noted would be immediately and permanently corrected. However, despite these assurances from the contractor, quality control deficiencies continued throughout the summer of 1967. There are numerous instances, sir, reported and recorded at Headquarters Marine Corps and by the Defense Contract Administration Services during this period.

Mr. REDDAN. Were any of these generators shipped to a company that was engaged in Counter Mortar Radar production?

Captain NAILOR. Yes, sir.

Mr. REDDAN. Tell us about that, please.

Captain NAILOR. Yes, sir. On August 10, 1967, a notification was given to the company to divert shipment from Albany, Ga., our supply center on the east coast, to the Raytheon Corp. at Andover, Mass. A quantity of two sets by numbers, serial 15 and 16, were delivered to the Raytheon Corp. in Massachusetts for use with some equipment being developed for the Marine Corps for countermortar application. Shortly after arrival of these sets at the Raytheon Corp., an attempt

was made to start the first set. It could not be accomplished. After a considerable amount of troubleshooting the fault was isolated to loose screws short circuiting printed circuit cards. The engine was started but later on other operational problems developed. At this time it was determined that there was a faulty transistor in one of the electronic packages.

Mr. PIKE. Let me back up just a minute. A while back you said that the first 30 production models were rejected. Have we by now accepted some production models, and if so, who made that decision, and why?

Captain NAILOR. Yes, sir. If I may back up in my previous statement. Immediately upon ascertaining that the problem existed, the executive management of the company, in particular Mr. Davis, I believe he is executive vice president of Condec, and his representatives came to Washington, D.C., and met with my superiors within the Technical Division and with the contracting personnel and told us what they would do to correct these problems.

Their discussions and their assurances of correction of these problems were followed up by their personnel at the plant, taking corrective action on these 30 sets. It was determined that we should accept these 30 sets because of the corrective actions that they took.

Mr. PIKE. Who made that determination?

Captain NAILOR. The determination, sir, would be made by the contracting officer based on the technical input provided by the Technical Division.

Mr. PIKE. Who was the contracting officer at the time?

Captain NAILOR. At this point in time, Mr. Daniel Elmore was the contracting officer.

Mr. PIKE. All right. Go ahead, Captain.

Captain NAILOR. Yes, sir. The second set at the Raytheon Corp. also had printed circuit board difficulties and some of the printed circuit boards had to be replaced before normal operation could be obtained. Through the months of September and October 1967 more circuit boards had to be replaced on these two sets.

Throughout the remainder of 1967, we had little comment from the Raytheon Corp. on these sets. Going into 1968, in June of 1968, the next significant event on these two sets occurred when one of the sets went into an overspeed condition, and the flywheel housing disintegrated due to the centrifugal force.

Throughout the Raytheon experience problems developed which contributed to delinquent delivery of the end item equipment by Raytheon. The causes of the problems in the opinion of our office at the time appeared to have been quality control at CONDEC, and to a degree, a lack of maintenance at the Raytheon Corp., and to some degree, design deficiencies.

Mr. REDDAN. Did RCA have any problems with the generators?

Captain NAILOR. Yes, sir; they did. In February 1968, the Marine Corps received information from RCA, from their New Jersey plant, that so many problems had developed with the generators that they were utilizing of this type and class, that they were unable to run any more tests on the end item equipment. The problems included split fuel tanks, frayed wiring in the circuitry, cracked and flaking circuit boards and burnt resistors, (an electrical component).

On the spot repairs were made by the Consolidated Diesel personnel. They did cooperate with us, and at our request they did go to RCA and they did attempt to take corrective action on these sets on several occasions.

After a short while, however, continuing maintenance was required and it became apparent that the RCA engineering staff was unable to provide the maintenance required for these sets. In the process of evaluating these deficiencies at the RCA Co. it was obvious that certain additional quality control measures in the form of specifications would be required to yield more acceptable equipment.

My office attempted to identify the deficiencies and we did identify the deficiencies known at the time and made corrections which we would utilize if we had a subsequent buy.

Mr. PIKE. Well, what did you do with these recommendations as to additional requirements for these generators?

Captain NAILOR. Sir, additional requirements were staffed through the office that I represented in the form of a document called a Procurement Work Order. A Procurement Work Order is a document which goes through an administrative cycle prior to going to the contracting officer wherein an attachment, an administrative form called a Technical Requirements Addendum is attached to it. The Technical Requirements Addendum serves to identify those things considered necessary by the cognizant technical officer for the contracting office to include in the contract.

When this document was staffed through my office, based on our experiences with the sets to date, I made some recommendations for improvements to these generator sets.

Mr. PIKE. What were the recommendations? And to whom did you make them?

Captain NAILOR. Yes, sir. If I may quote directly from my own extract at that time. My technical addendum read: Purchase description HQPD65-17 Alpha with amendment applies. "In addition, (a), the governor linkage shall be completely housed; (b), the reverse power warning light shall reset automatically; (c), MIL-E-55301 VICE MIL-I-11683 applies." This pertains, sir, to radio frequency interference. "Forklift tines shall be 3 by 8 inches. Fording bags shall not be allowed. A lifting hook shall be provided with an inside diameter of 3 inches. Printed circuit wiring shall be in accordance with MIL Standard 454 Alpha. Workmanship shall be in accordance with MIL Standard 454 Alpha. Semiconductors shall be in accordance with MIL Standard 454 Alpha. Where cited for delivery to using unit, packaging shall be level C. Drawings type H, (which are maintenance) are required in accordance with MIL-I-17993(MC) drawings type D for logistical support will be provided."

Mr. PIKE. In three of these recommendations you referred to Military Standard 454A, and I presume that this is a degree of quality of work, is that a correct assumption?

Captain NAILOR. Yes, sir; that is a correct assumption.

Mr. PIKE. Would that not have been a standard without your listing it in these recommendations?

Captain NAILOR. No, sir; it would not.

Mr. PIKE. To whom were these recommendations forwarded?

Captain NAILOR. These recommendations, sir, to the best of my knowledge, were forwarded to the contracting officer as an attachment to the procurement work order.

Mr. PIKE. Who was the contracting officer at that time?

Captain NAILOR. Mr. Daniel Elmore, sir, to the best of my knowledge.

Mr. PIKE. What happened to your recommendations?

Captain NAILOR. I do not know, sir.

Mr. PIKE. Were they embodied in a new contract, as far as you know?

Captain NAILOR. No, sir; they were not.

Mr. PIKE. They were not?

Captain NAILOR. No, sir.

Mr. REDDAN. Do you have anything further on that, Captain, with respect to quality control or problems in production?

Captain NAILOR. Sir, I would prefer to address specific questions. I am sure that the efforts of your research staff have indicated that we had many, many discussions on this particular matter, and I would prefer to address specific questions, sir.

Mr. REDDAN. Then perhaps we should go back to Major Bridges.

There came a time when a certain number of these sets were sent to Vietnam, is that correct, sir?

Major BRIDGES. Yes, sir.

Mr. REDDAN. Could you tell us when that took place and where the sets were sent, how many went over, and what your experience was with these initial deliveries?

Major BRIDGES. Yes, sir. I believe, sir, at this time perhaps a brief summary of the problems that the Marine Corps was experiencing in Vietnam relative to generators might be helpful to the committee.

Mr. REDDAN. You mean generators in general?

Major BRIDGES. Yes, sir. Power problems in general perhaps might be a better term.

Mr. REDDAN. Did this lead into a statement as to why you needed the 600 series?

Major BRIDGES. Yes, sir.

Mr. REDDAN. All right, go ahead, sir.

Major BRIDGES. Due to logistic problems created in the I Corps area, sir, which was the northern end of South Vietnam and was under the control at that time of Commanding General, 3d Marine Amphibious Force, by the influx of South Vietnamese, South Korean, and Australian troops, plus the U.S. Army's XXIV Corps Headquarters with its three divisions, power generating equipment was at a premium during late 1967 and 1968.

Since this was the responsibility of the Commanding General of the 3d Marine Amphibious Force to provide logistic power support, in an effort to resolve these shortages a pool of equipment was created and issued only on an "as needed" priority basis. Normally this equipment would have been assigned permanently to the various Marine Corps units that were operating in the I Corps area of operations.

During February 1968, just prior to the beginning of the Tet offensive, the Commanding General, Fleet Marine Forces, Pacific, urgently requested additional generating equipment to alleviate the shortage. While production deliveries of the generators were being

made from CONDEC, spare parts were not yet available within the Marine Corps supply system, and maintenance technicians trained in this equipment were not available.

Despite these shortcomings and a warning from Headquarters, Marine Corps, the Field Commander elected to accept the generators and 30 of them were immediately flown to Danang. As predicted, they rapidly failed and were placed in what we call deadline storage.

By November of 1968, repair parts and trained operators and technicians were available in Vietnam. Issues of approximately 300 generators were made to using organizations. Recognizing the excessively high failure rates and amount of maintenance necessary to keep these equipments operational, and in accordance with standard Marine Corps policy, the Marine Corps Logistics Command conducted an in-depth study on the problems of these generators.

On April 1, 1969, the report, sir, helped to confirm and amplify the experiences previously recorded and reported by the Marine Corps at both Raytheon and RCA—in Vietnam an abundance of equipment failures had created an extensive parts shortage, had overtaxed available maintenance personnel and had hampered operations in certain Marine Corps units.

This will be later amplified, sir.

At the time of this report of the original 300 generators issued, only 175 remained in Vietnam and of those, approximately 50 percent were deadlined for major repairs. The remainder had been shipped to an Okinawa maintenance facility for repairs. By the end of May 1969, all 300 sets were deadlined and could no longer provide useful service.

Mr. PIKE. Major Bridges, in the I Corps area you mentioned that there were not only Marines stationed, there were also Army troops there.

Major BRIDGES. Yes, sir.

Mr. PIKE. Had the Army the same requirement for generators that the Marines had, and had the Army looked at this particular line of generators?

Major BRIDGES. Yes, sir; they had.

Mr. PIKE. Can you tell us what the Army's opinion on these generators was?

Major BRIDGES. Yes, sir. The Army requested a test of 600 series generators, sir, during late 1967, or early 1968. I would have to refresh my memory when their original request was received by Headquarters, Marine Corps, but it was during that period. Subsequently, testing was conducted by the Mobility Equipment Research and Development Command, Fort Belvoir, Va. The Army test——

Mr. PIKE. Did they issue a formal report on that?

Major BRIDGES. Yes, sir.

Mr. PIKE. Can you tell us what the language of that report was?

Major BRIDGES. Yes, sir. Following is a direct excerpt from that report.

"Three major defects were found on both sizes of the sets tested; that is, the 5-kilowatt and 10-kilowatt generators. They were of such nature and magnitude as to prevent taking of reliable test data. The adverse effects encountered from these defects were the cause for termination. The adverse effects were unstable frequency control,

engine overheating, and the inability to carry full generator load and electric circuitry controls varied excessively with ambient temperature changes."

And then the Army concluded that the sets could not be used by the Army without redesign of the equipment.

Mr. PIKE. Had the Air Force had any similar experience with these generators or similar generators?

Major BRIDGES. Yes, sir.

Mr. PIKE. What can you tell us about that, Major Bridges?

Major BRIDGES. The Air Force—again I would have to refresh my memory, sir, to find when they procured these generators, but I believe it was in late 1967—procured a generator called the EMU-19, which was very similar to the Marine Corps 600 series generators.

Mr. PIKE. The same company?

Major BRIDGES. From CONDEC; yes, sir.

And in May 1968, a letter was received by Headquarters, Marine Corps, stating that the Air Force had experienced similar problems with the CONDEC EMU-19 generators which were similar to the generators provided to the Marine Corps by CONDEC. These problems enumerated were: engine overheating, the inability to operate on JP-4 fuel, which was a specific Air Force requirement, not a Marine Corps requirement, poor quality welding, poor quality electronics assembly, and sheared coupling keys between flywheel and crankshaft. The Air Force at that time stated that it had only limited field experience, but requested Marine Corps field experiences which might be used as an advance warning to the Air Force of other problem areas they may encounter with the EMU-19. This data was subsequently furnished.

Mr. PIKE. Now, Major Bridges, you have got us up to May 1969, and every one of the 300 generators which had gone over to Vietnam has been deadlined. Would you tell us what the Marine Corps did about this problem at that time?

Major BRIDGES. Yes, sir.

During this period of time, sir, when we were attempting to place the generator sets in service, the Defense Contract Administrative Services Office charged with inspection responsibility and the contractor were both kept fully aware of the problem areas the Marine Corps was encountering, and CONDEC offered to conduct a product improvement program at his expense, and from July 1969, to April 1970, this program was in effect.

It was determined by the Marine Corps at this time that his proposed corrections were not adequate, so in April 1970, on an expedited basis, the Marine Corps proceeded to develop a product improvement kit which was based on experience gained from our early initial issues of these generators in a combat environment, and we utilized our own expertise to correct the known deficiencies.

The initial kits were tested by the Marine Corps Development Center, Quantico, Va. Some changes were introduced, and then based on these tests 120 kits were assembled. This quantity of kits was recommended by the two major field commanders in Fleet Marine Corps, Pacific and Atlantic, as that quantity necessary to take immediate, urgent generator requirements.

After the validation of the modification kit serviceability the balance of the kits required will be assembled. The reports from the major field commands based on a liaison visit by myself to Camp Pendleton, Calif., on July 8-9, 1970, indicate the modified generators are providing satisfactory performance. Installation kits are easily installed at our own field maintenance units.

Mr. REDDAN. Major, could you tell us the cost per unit and the total cost of that product improvement program?

Major BRIDGES. The total cost, sir, is estimated at \$1.6 million.

Mr. REDDAN. Who picks up the tab for that?

Major BRIDGES. At this time the Marine Corps will, sir. However, sir, I would like to amplify that and state we are presently working with the Defense Supply Agency to determine contractor responsibility in this area.

Mr. REDDAN. How long ago did these defects occur?

Major BRIDGES. Some began as early as 1967, sir.

Mr. REDDAN. And this is now 1971. Has any consideration been given to the possibility of the statute of limitations running against any action against the contractor?

Major BRIDGES. Yes, sir. This has been discussed. I am no legal expert in this area, Mr. Reddan.

Mr. REDDAN. Yes. I am just asking you if consideration has been given to that possibility?

Major BRIDGES. Yes, sir.

Mr. PIKE. Major Bridges, as I understand it, one of the purposes of this equipment in Vietnam was to operate the radars with which we attempted to locate enemy mortars, is that correct?

Major BRIDGES. Yes, sir; that is correct.

Mr. PIKE. Can you tell us what the nature of the success of these operations using these generators was? Did they perform satisfactorily or how did they perform, or what kind of reports did you get back from the field? Tell us what you can tell us about it.

Major BRIDGES. Sir, at the time the generators were issued, I was the maintenance operations officer for our maintenance battalion in Vietnam.

Mr. PIKE. In Vietnam?

Major BRIDGES. Yes, sir. While I maintained the generators that were used by the counter mortar radar teams, Captain Bell was in charge of the radar teams. I prefer Captain Bell answer the question directly.

Mr. REDDAN. Before Captain Bell answers that question, with respect to maintenance, you mentioned the fact that there were problems because of the lack of spare parts and provisioning in Vietnam, is that correct, on your initial 30?

Major BRIDGES. On our initial 30; yes, sir. However, before we made this issue we notified the field commander that this problem was existent and he said regardless of the problems, he wanted the generator sets.

Mr. REDDAN. That is right. My question, sir, is why were there not adequate spare parts?

Major BRIDGES. At that time, sir?

Mr. REDDAN. Yes, sir.

Major BRIDGES. The generator sets were just coming off the production line, sir. Our provisioning schedule would not have provided the initial delivery of repair parts in adequate quantity necessary to support the generators at that time, sir.

Mr. REDDAN. Was your original schedule such that had it been met that the spare parts would have been ready when the generators were shipped to Vietnam—that is, the original 30? In other words, was the contractor delinquent in his delivery?

Mr. PIKE. Maybe Captain Nailor was closer to that particular issue.

Major BRIDGES. If I may, sir, I have the documents relating to that. May I refresh my memory?

Mr. PIKE. Certainly.

Mr. REDDAN. While you are doing that, Captain, perhaps you could answer the chairman's question.

Mr. PIKE. Captain Bell, give us a little about your own background and tell us what your position was in connection with these counter mortar teams over in Vietnam, please?

Captain BELL. Yes, sir. I initially joined the Marine Corps in July, 1942, was discharged in 1945 as a tech sergeant. I came back to the Marine Corps in 1954, was commissioned in 1963. From 1966, the latter part of 1966 through the mid part of 1968, I was at Headquarters Marine Corps, head of the detection section, and had some knowledge of the generator problem at the time through the fact that the contract of the counter mortar at Raytheon was my contract technically and I was aware of the problems up there.

In October of 1968 I went to Camp Pendleton where we formed up five counter mortar radar teams, subsequent to augmentation of the counter mortar teams already in Vietnam. This was an additional requirement that they wanted more teams over there, so we built the teams up, equipment, manpower, and so forth, and poured them into Vietnam. We arrived there during the month of January.

The three counter mortar sets in question here are the three that were manufactured by the Raytheon Company. We took them out there as operational equipment with nine generators, three with each equipment. These generators had been checked out at Camp Pendleton. They were put in first-class shape before we ever deployed them, so we didn't go out with an unknown product or something that had not run. They were run at Camp Pendleton.

I have a summation here of the problems that we encountered although they are not documented extensively. Most of them are reports reflecting the performance of the radar sets.

Mr. PIKE. You were making up reports on the performance at this time?

Captain BELL. Right, of the radar sets mainly.

Mr. PIKE. What do your reports show regarding generators?

Captain BELL. During the month of February all teams experienced numerous problems with the PU-670 generators which had compiled at this time an average operational time of about 250 hours each.

During the month of March, one team had none of the three allocated PU-670 generators operational for 147 hours, when they had no prime power whatsoever. These are 24-hour-a-day teams. The addition of one PU-296 generator, which is one of the older generators,

which one of the teams acquired for use, and the addition of one Army PU-304C to another team, increased the capability of onsite power for these particular teams.

During the month of April the PU-296 and the PU-304C carried the bulk of the power requirements at two of the three sites. At the end of this month all nine PU-670 generators were inoperative. All of the nine I took over. In addition I borrowed one other from Major Bridges, who was working down at the maintenance facility at that time. I did not have any time during the month of April when I didn't have some power. But I am talking about the nine issued; they were down.

During the month of May, one team had no operational PU-670 generator for 180 hours.

During the month of June, one team had no PU-670 generators operational and relied entirely on the PU-296 generator which was also inoperative for 51 hours.

Mr. PIKE. The 296, this is an older model for which the 670 had been designed as a replacement, is that correct?

Captain BELL. No, sir. The 296 is 45 kilowatts. It is really over-rated for what we had, but it is a lot more reliable. It just happened to be available, and they got it. One other team had no operational 670 for 68 hours.

During the month of July the CMR Platoon received two shipments of additional PU-670 generators to support four additional radar sets and to provide all radar equipments with an additional backup generator. Each of the six operational radar sets is now authorized four generators. This is in addition to the PU-296 at one of the radar sites. The PU-304C had previously been returned to the Army.

Prior to placing these new generators at the sites one team had no operational PU-670 for 21 hours and one team had no PU-670 generators operational throughout the month and no operational PU-296 for 77 hours. These 12 that we did receive, a shipment of seven and five, did come in in crates, and these things had to be wrung out at the main installation before we put them on site.

As I said, the other nine we had wrung out at Pendleton prior to departing.

During the month of August one team had no operational PU-670 generators throughout the month and no operational PU-296 for 23 hours.

During the month of September one team had no operational PU-670 generators, of the four allocated, for a 7 day period.

During the month of October, one team had no operational PU-670 for 74 hours and another team had no operational PU-670 generator for 204 hours.

Mr. PIKE. Every time we talk about "no operational" now in a team, you are talking about none out of four?

Captain BELL. None out of four, or no other generator that would do it.

Mr. PIKE. Right.

Captain BELL. The site was completely devoid of power. Of the four, they may not be onsite, but we did have four that were allo-

cated to a site. Some of them may have had to go back to a maintenance facility. Some of them may have been onsite at that time.

During the month of November and December, due to the shift in Marine forces in Vietnam, three of the radar sites were closed and the northern equipment sent to Danang for subsequent relocation. Consequently, during this period the requirement for field power decreased, and the operational PU-670 generators which we had could be consolidated at the three remaining radar sites. We took the best ones and put them where they could do some good.

This ends up my last report that I submitted on this year's use with the PU-670.

Mr. PIKE. Can you tell us how many separate reports you submitted detailing the lack of availability of these 670 generators?

Captain BELL. These were sent in on a monthly basis. Each one of these reports I covered on a monthly report, as I said, mainly on the TPS-31, but I did put in the problems that we had. This included test equipment, it included power generators, operational facilities or anything else we thought would give Headquarters Marine Corps a look at our problems.

Mr. PIKE. Does that clear the reports that went to Marine Headquarters?

Captain BELL. Yes, sir.

Mr. PIKE. Doctor Hall.

Mr. HALL. I think at this point, Mr. Chairman, we ought to ask the \$64 question of the captain.

Is it fair and reasonable, and if it is presumptive I want you to say so, to assume that there were some U.S. casualties attributable to the down and nonready state of these generators at the time you and your command were on site?

Captain BELL. It would be purely a presumption, Mr. Hall.

Mr. HALL. It would be presumptive?

Captain BELL. Right.

Mr. HALL. Is there any way to measure whether or not there were U.S. casualties because of this nonavailability of power for the radars?

Captain BELL. I do not have that information, and it was not available to me out there.

Mr. HALL. Even though you think it is presumptive, did you hear such attribution made by anyone you considered responsible?

Captain BELL. Not in regard to our counter mortars not being operational, in this particular narrow thing that I have here, the counter mortar radar. No, I did not hear it.

Mr. HALL. It seems to me, Mr. Chairman, as though that is an unusual number of hours of outage for any kind of a sensor detection or surveillance device for them to be down, as I understand it, in the outposts north of Danang in a critical area at a critical time in our operations there, and that perhaps we might attribute some of our regretful casualties to this outage.

Mr. PIKE. Let's approach the same question in a different way, if you will yield.

Mr. HALL. I would like for you lawyers to do it. But first may I ask permission to file a statement, because I was unavoidably detained, immediately following your opening statement?

Mr. PIKE. Without objection, it will be placed in the record immediately after the opening statement.

Were there any after-action reports, Major Bridges, generated within the Marine Corps which talked about the results of different combat situations over there in terms of the nonavailability of these generators, or which mentioned the nonavailability of these generators in these counter mortar radar units?

Major BRIDGES. To the best of my knowledge, Mr. Chairman, there was only one.

Mr. PIKE. What did that one say in regard to these generators, or the lack of these counter mortar radars, as it affected these combat situations?

Major BRIDGES. Sir, the report which I specifically addressed didn't cover counter mortar radar systems as described by Captain Bell.

Mr. PIKE. What did it cover as far as these generators were concerned?

Major BRIDGES. An air support radar team, sir, which might require some explanation as to what it is.

Mr. PIKE. Go ahead.

Major BRIDGES. Well, sir, during poor weather or night operations, for direct air support, an air support radar team can direct certain of our attack fighter bombers in very close proximity to infantry troops on the ground, or select any predetermined target on the ground and direct the aircraft into that for the delivery of ordnance.

Mr. PIKE. So go ahead. What did the report say about this particular combat operation?

Major BRIDGES. The report, sir, which I viewed—and I can't quote it, unfortunately I don't have a copy of it—essentially stated that the lack of availability of the PU-608 generators in particular, generators which were also built by CONDEC and not related to this series under discussion here, sir, were not available at a critical time, and the regimental commander of that unit attributed, in part, his casualties to the lack of the Air Support Radar Team being able to direct air support.

Mr. PIKE. Do you recall what casualties he suffered in that engagement?

Major BRIDGES. Sir, I don't.

Mr. HALL. Going back to Captain Bell, and this report of what I may be erroneously referring to, Mr. Chairman, as outage, or being down in the field, deadlined for lack of power, for the generators and/or the radars, you have given us quite a number of days that certain units or total units or sites were out, or down, or deadlined. Can you give us an average running time of these generators at the sites before they failed?

Captain BELL. I am sorry, Mr. Hall, I can't do that. I did not document the generators that well.

Mr. HALL. What is your personal impression?

Captain BELL. These failed frequently. They failed for numerous causes.

Mr. HALL. Even the ones you had checked before you took them out there?

Captain BELL. Right. Failures many times occurred when the generator and the radar set had been functioning very normally the night

before, and though some of the sites worked only during the night, some of them worked day and night.

Mr. HALL. Is it your impression for all of these reasons given, the lack of housing on the governor, the failure of the circuit board, all the production investigations and so forth, that the running time would be on the low side of normal, according to the specifications and contract in anticipation of the Marine Corps when they placed the order, on the low side of normal before they failed?

Captain BELL. Now that I know what the specifications called for—the 1,000 hours between failures—it was excessively low.

Mr. HALL. Thank you.

Captain BELL. Also based on previous experiences with other generators, the failure was very high in comparison to our older ones.

Mr. HALL. The running time before failure was low?

Captain BELL. Right.

Mr. HALL. Thank you.

Mr. PIKE. I don't know whether to address this question to you, Major Bridges, or to Captain Nailor, but you were having all of these failures of these generators, and did you at any time, other than the time mentioned by you, Captain Nailor, when you asked for an upgrade in the contract requirements—did either of you at any time attempt to do anything to either cancel this contract, or change this contract, and if so, what did you do?

Major BRIDGES. There were several actions taken, Mr. Chairman, during this period of time, sir, that I think I will turn over to Captain Nailor.

Mr. PIKE. Captain Nailor, will you tell us what you attempted to do regarding these generators?

Captain NAILOR. Yes, sir; if I may.

As I previously discussed, in late 1967, with the early deliveries to Raytheon and subsequently to RCA, it became quite obvious we had a serious problem. In February 1968, we examined very closely with the Defense Contract personnel at the plant, the inspection procedures, and we learned that we—we found it necessary, if I may correct myself, to make a correction to the inspection procedures, utilizing the administrative vehicle of the Mandatory A inspection which is provided for by the DCAS manual referred to as DSAM 8200.1. We elected to enforce a Mandatory A inspection procedure.

The simplest thing I may say, sir, is every single quality control deficiency that I was aware of, or being made aware of, was incorporated into this Mandatory A inspection, which directs through the contracting officer to the administrative contracting officer at the plant's facility area, that the DCAS quality assurance personnel physically inspect each individual generator set for specific purposes.

For example, if I might, I would tell him to check a resistor designated as R-9 for tightness. I had now made it mandatory for that man to check R-9 on every single set produced.

Mr. PIKE. Was this done?

Captain NAILOR. Yes, sir, this was done.

Mr. PIKE. In the process of all of your difficulties with this line of generators, one of the things you mentioned was leaky fuel tanks. Have your inspection procedures cured this particular deficiency?

Captain NAILOR. No, sir, they did not, because leaking fuel tank problem is not of a nature to detect on the assembly line. The fuel tank is a type of plastic composition, the exact nature I am not free to discuss. I don't know simply, sir.

But it is a kind of defect that requires time. In other words, on the production line it would look fine, with rare exception, where an impact had cracked one. It is the type of defect that requires the set be delivered to some point in the field or otherwise and literally aged.

Mr. PIKE. Fatigued?

Captain NAILOR. Yes.

Mr. PIKE. Fatigue crack?

Captain NAILOR. Yes, sir. We did alert and did ask the representatives to check fuel cracks. I might say this, that in the early time frame of the cracking fuel tank problem it was misjudged to be one of the mating of metal and plastic. Our first analysis made it appear to us that the screwing in of the metal threads into the heavy plastic boss was clearly a case of metal against plastic, the plastic must give. This analysis turned out to be incorrect. Furthermore, this was the contractor's analysis and appeared reasonable to us. We went through a learning curve, sir.

Mr. PIKE. Major Bridges, did you ever have experience with one of these generators in which they found they couldn't start it, and they found subsequently that the reason they could not start it was there was a missing piston?

Major BRIDGES. Yes, sir.

Mr. PIKE. Can you tell us about that situation?

Major BRIDGES. Yes, sir.

Mr. PIKE. How did this come about?

Major BRIDGES. I don't recall the date, sir, but I received a telephone call from the quality assurance manager of our Supply Center in Barstow, Calif. He explained to me, sir, that in attempting to start one of the 600 series, I don't recall which one it was, sir, that they couldn't get the engine run up to normal speed. There is a protective device in the generator which will cause the generator to shut itself down if the engine won't come up to speed.

Upon troubleshooting the generator and tearing down of the engine, they found that the three cylinder engine, sir, only contained one piston and one connecting rod, that two connecting rods and pistons were in fact missing. The cylinders were there and, all external appearances indicated that the engine was all right.

Mr. PIKE. Did this particular situation arise after you had instituted this tighter inspection procedure at the plant?

Major BRIDGES. The serial number of the delivered set would indicate that, yes, sir. I did check that at the time, sir, to see where it fell in the production line deliveries.

Mr. PIKE. I think we have covered your problems with the 600 series generators pretty well, Major. Would you now go to the other contracts that you had for the 700 series generators and tell us what happened with them?

Major BRIDGES. Yes, sir. By the time of the 700 series award, sir, we had learned of the quality assurance quality control problems we were encountering on the 600 series, so a Mandatory A inspection was

placed as an initial requirement. In other words, as soon as production began, the Mandatory A inspection was required by the Defense Supply Agency representative.

Mr. PIKE. Would you tell us—back up a little bit. By the time you awarded the contract for the 700 series, you had already had some fair experience, troubles with the 600 series, is that correct?

Major BRIDGES. Yes, sir.

Mr. PIKE. When you put out the 700 series, was this a competitive bid contract?

Major BRIDGES. Yes, sir.

Mr. PIKE. How many competitors were there on this one?

Major BRIDGES. As I recall, sir, there were eight. Again I would have to refresh my memory. There were eight judged responsive.

Mr. PIKE. Eight responsive competitors?

Major BRIDGES. Yes, sir.

Mr. PIKE. Was the contract awarded to the low bidder?

Major BRIDGES. The contract was awarded, sir, to the low responsive bidder, which was CONDEC.

Mr. PIKE. Who made the decision? How many lower bidders were there than CONDEC?

Major BRIDGES. Two, sir.

Mr. PIKE. What were the names of those two lower bidders?

Major BRIDGES. I would turn this over to Captain Nailor to answer.

Mr. PIKE. Fine.

Captain NAILOR. To the best of my knowledge, because my office was not involved directly with funds and that relative to funds such as the amount of money bid by a contractor, two companies bid lower than the Consolidated Diesel Co. on both contracts involved. You must remember there were two contracts involved, sir.

Mr. HALL. When was this?

Captain NAILOR. Approximately September 1967, sir. I don't know, it was within this time frame. The first low bidder to the best of my understanding was Electromagnetic Industries of Moultrie, Ga. The second low bidder was the John Adt Co. of Timonium, Md. And then the third low bidder was the Consolidated Diesel Electric Co. of Old Greenwich, Conn.

Mr. PIKE. Who made the decision that the two lower bidders were not responsive?

Captain NAILOR. The contracting officer would make such a decision, sir.

Mr. PIKE. Who was the contracting officer, at that time?

Captain NAILOR. The contracting officer was Daniel Elmore, sir.

Mr. PIKE. What sort of a conference, or meeting, or in what sort of an environment would that particular decision be made?

Captain NAILOR. I don't honestly know, sir. The decision of this nature would be made within the contracting division, and I wouldn't be privy, normally, to such a decision.

Mr. PIKE. You were no part of the decisionmaking process which resulted in the conclusion that the lower bids were nonresponsive?

Captain NAILOR. No, sir.

Mr. PIKE. All right.

Mr. REDDAN. Excuse me, Mr. Chairman. Did you participate in the evaluation of the bids?

Captain NAILOR. Sir, myself and my assistants evaluated the technical proposals only.

Mr. REDDAN. Did you participate in any meeting which was held for the purpose of evaluating the bids and the award of the contract to CONDEC?

Captain NAILOR. I participated at the request of the contracting officer in a meeting in late December that evaluated a particular contractor's ability to meet the performance requirements relative to provisioning and so forth; yes, I believe that is what you are addressing.

Mr. REDDAN. But only with respect to the provisioning?

Captain NAILOR. The chief subject of the meeting, sir, was provisioning requirements.

Mr. PIKE. At that particular meeting, was the subject matter whether CONDEC could perform a contract or whether someone else could perform a contract?

Captain NAILOR. Sir, to the best of my recollection the specific purpose of that meeting appeared to be for the contractor representative to illustrate his company's ability to meet the requirements of the contract in time.

Mr. PIKE. Had the contract been awarded at that time?

Captain NAILOR. No, sir; it had not.

Mr. PIKE. And were there representatives from more than one of the contractors there?

Captain NAILOR. No, sir; there were not.

Mr. PIKE. There was a representative of only one contractor?

Captain NAILOR. Yes, sir.

Mr. PIKE. Who was that representative, and what was that contractor?

Captain NAILOR. Daniel Ross was the representative. The contractor he represented was the Consolidated Diesel Electric Co. The contracts involved are 0120, and 0121, for the procurement of the 700 series generators.

Mr. PIKE. In the course of your work, have you frequently participated in meetings of this kind to evaluate the ability of a contractor to perform?

Captain NAILOR. I frequently conducted meetings with contractors. I did in this case, sir, with the 700 series, relative to discussions in their technical proposals. I had never before, and I have not since participated in a meeting of this nature.

Mr. PIKE. What was different about this particular meeting from the normal one which you have with contractors?

Captain NAILOR. I am not sure how to answer the question, sir. I don't mean to evade you, but the contractor representative gave a dissertation on his ability to meet the provisioning requirements and the time requirements of the contract.

Mr. REDDAN. Excuse me, could you tell us when and where this meeting took place, and who were present?

Captain NAILOR. Yes, sir. This meeting took place at the Donata Building in the offices of the Procurement Division in the offices directly adjacent to the Director's office. The meeting was attended by Mr. McLain, the Director of the Division, Mr. Elmore, the Contracting Officer, Daniel Ross, Consolidated Diesel Electric, and I don't

specifically recall, but it seems that Mr. Shaner was present. Doral Hupp, Contracting Officer, and myself, sir.

Mr. HALL. At that time, Mr. Chairman, did you call to the attention of the group assembled the technical failures experienced in the field and otherwise of the 600 series made by the same company?

Captain NAILOR. At this particular meeting, sir, I did not. I didn't feel it had any bearing on the meeting.

Mr. HALL. Well, now, I understand you were there by invitation, Captain. I certainly don't mean to embarrass you. But it seems illogical to me that you would say it had no bearing inasmuch as this company was in consideration, and its representative was putting its "best foot forward," to be the most generous that I can phrase it; that some one who knows about technical requirements and failures would not have felt constrained to speak up and say, well, how about all these other failures, how about the deadlining, in the field? Explain to the Committee why you didn't so feel.

Captain NAILOR. Yes, sir. I understand your logic, sir, but may I point out, if I may, please, that for months preceding this meeting, on numerous occasions, I can unhesitatingly say, on dozens, perhaps hundreds of occasions, I had alerted the contracting officer by phone call, by memo, by meetings, that he participated in, there is no doubt in my mind, sir, that the contracting officer was well aware of our quality control problems. Furthermore, on August 22, 1967, we forwarded a memorandum advising the contracting officer of our technical concern about this contractor. So, my point, if I may, sir, is at this particular meeting, I saw no reason to state that, because I had been doing all this prior, and it was an adjunct to the meeting.

Mr. HALL. It simply would have been redundant?

Captain NAILOR. Yes, sir; and not for discussion in front of the contractor representative himself.

Mr. HALL. Thank you, Mr. Chairman.

Mr. PIKE. Did anyone at this particular meeting raise any question about the disqualification of the two lower bidders?

Captain NAILOR. I honestly don't know, sir. Whether I ever even knew at this time that the two lower bidders had been disqualified. I don't think they had, but that is strictly memory, sir.

Mr. PIKE. They had not been at this time?

Captain NAILOR. I don't recall that they had, sir.

Mr. PIKE. Did Mr. Ross at this meeting say anything about whether the two lower bidders should be disqualified?

Captain NAILOR. I honestly don't recall that, sir. Mr. Ross presented his case for his company, but whether he discussed the other contractors, or not, I don't recall.

Mr. PIKE. There were no representatives of the two lower bidders there?

Captain NAILOR. No, sir; there were not.

Mr. PIKE. You had some part in the technical evaluation of these bids, is that correct?

Captain NAILOR. I was responsible for the technical evaluation of these bids, sir.

Mr. PIKE. Had the evaluation been completed at that time?

Captain NAILOR. Yes.

Mr. PIKE. The technical evaluation?

Captain NAILOR. Yes, sir; I forwarded the technical evaluation on September 29, 3 months prior.

Mr. PIKE. You said the two low bidders were the John Adt Manufacturing Co., and Electromagnetic Industries, is that correct?

Captain NAILOR. Yes, sir.

Mr. PIKE. Did either of those lower bidders have a better technological rating?

Captain NAILOR. In the opinion of my office, the John Adt Co. presented a better technical proposal.

Mr. PIKE. Go ahead from there, Captain, and then tell us what happened at that meeting, if you will. And then what happened with the contract award itself?

Captain NAILOR. I honestly don't know, sir. I would have to refer you to our contracting officer. I was requested to attend the meeting. I, frankly, at the time of the meeting didn't place enough significance on the meeting—because I don't remember it very well—obviously it was significant. I left the meeting and returned to my office. I had an awful lot of work to take care of and I put the matter aside. Subsequently I was advised by the contracting officer the contracts, both of them, had been awarded to the Consolidated Diesel Electric Co.

Mr. PIKE. Mr. Elmore?

Captain NAILOR. Not directly, Mr. Hupp was the contracting officer, I believe. I don't know who signed the contract.

Mr. PIKE. Would you tell us, then, what you can about this. Was this first generator tested, and how did that perform, and run through the 700 series story for us.

Captain NAILOR. Yes, sir. The 700 series, sir, is different than the 600 series in that we utilized a Government-furnished engine, governor package, and some of the accessories. Therefore, there is no requirement to test the set for 5,000 hours. The primary purpose of the test of 5,000 hours is the check-out of an unknown engine.

Mr. PIKE. Who made the engine?

Captain NAILOR. Detroit Diesel Division of General Motors. The basic engine of the 600 series, the block, is made by the Lister Co. of England, and brought to the United States by the Monarch Engine Company which I believe you would refer to as a subsidiary of CONDEC. We tested the 700 series extensively. In fact, we ran some tests on these sets that had never been previously run on sets of this size and class. Throughout the test, throughout the entire test, the set performed very well, sir. There were difficulties but no more difficulties than I expected. I was very pleased with the sets.

Mr. PIKE. What happened when you got into production?

Captain NAILOR. We got into production with the Mandatory-A inspections enforceable from the first set. We found on some occasions some loose hardware, and so forth, but at this point, sir, I was transferred and returned for a second tour in Vietnam. I don't recall directly any particular problems with the quality control in the production line of the 700 series.

Mr. PIKE. Can you add anything to that, Major Bridges?

Major BRIDGES. Yes, sir. Problems with the generator sets, upon attempting to place them in service, sir, I think, began shortly after Captain Nailor's departure for Vietnam in 1969. This is in answer to your question you did ask me earlier, sir, we discovered a large

number of both mechanical and electrical deficiencies in the generator sets, most of which were correctable and were corrected in fact by our own field maintenance facilities. However, the magnitude of these deficiencies were such that during March of 1970, we ordered all 700 series generators to be placed in our field maintenance activity run for a minimum of 100 hours, and the deficiencies hopefully would occur and be discovered and corrected during this 100-hour period. Subsequently, in all fairness, sir, this seemed to take care of the 700 series generators, and this particular series is providing excellent service in the field.

Mr. PIKE. Major Bridges, did you have any part in the input which went into the technical evaluation of the 700 series generator?

Major BRIDGES. No, sir. At that time—let's see, that was December—no, sir, I was not. I didn't assume this job, sir, until September of 1969.

Mr. PIKE. Major Bridges, has anyone contacted you, outside of normal Marine Corps personnel, and attempted, in your judgment, to deter you in any manner from testifying on this subject?

Major BRIDGES. Mr. Chairman, that is a matter which in my best judgment, yes, sir, has arisen.

Mr. PIKE. Would you tell the committee exactly what happened as far as this issue is concerned?

Major BRIDGES. Yes, sir. If I may preface this with saying in what I am going to tell you, sir, has no direct connection with what we are talking about here, sir, only in my judgment.

Mr. PIKE. Please proceed, Major Bridges.

Major BRIDGES. All right, sir. At approximately 9 p.m., on Monday, June 14, 1971, I received a telephone call at my home in Manassas, Va., and the substance of the call was as follows: I was involved in something much larger than I could handle and that if I valued my future security I better back off from taking any further action. That is all that was said, sir.

Mr. PIKE. Do you know who the caller was?

Major BRIDGES. I have no idea, sir. I requested the caller to identify himself at that time, who as I said, was a male voice. I didn't recognize who he was, and he hung up.

Mr. PIKE. Did you receive any subsequent message of any kind?

Major BRIDGES. Yes, sir; at approximately the same time, the following night, on Tuesday, June 15, 1971, I had a second call, which in substance was, to me, considerably more serious. The subsequent caller said I have a wife and three children to think about, and it would be a shame if anything happened to one or all of them. And further, that if I didn't want that to happen, I should cool it. My reply—may I go off the record here, sir?

Mr. PIKE. If it is simply profanity, I don't see any reason not to put it on the record. But if you want to go off the record for some other purpose, certainly you can go off the record.

Major BRIDGES. That is the only reason, sir.

Mr. PIKE. What was your reply?

Major BRIDGES. I said if I found out who he was or who was threatening me and my family I would shoot him low in the belly and watch him gurgle and that he was a son of a bitch.

Mr. HALL. Is this time for applause? [Applause.]

Mr. PIKE. Did you report these phone calls to any officials of the Marine Corps or any other governmental official?

Major BRIDGES. Yes, sir; I did. The following morning on June 16th I reported this to Colonel Ostby, who is a member of the Marine Corps Judge Advocate General's Office. He referred me to the Naval Intelligence Service who subsequently referred me to the FBI. And as far as I know, sir; I signed a release, and said a line lock, whatever this would be, could be put on my telephone and that is the best that I can tell you, Mr. Chairman.

Mr. HALL. I would like to go back just a little bit, Mr. Chairman. From this very provocative questioning on your part to the 700 series again. I would really like to ask two questions about their evolution. This is simply for my information. Was it or was it not the 700 series, and this 100-hour test running that you described to the committee, wherein we found that we could keep them on the line by a number of dollars in-house preparation, testing, upgrading, and maintenance—I believe it was down in Georgia; or contract with the originating company of the power producing complex to do the same thing, or was that the old 600 series? Where we made that investigation and found that for a certain sum we could correct each power unit in-house, and it would cost another and larger sum to contract with the company to do it?

Major BRIDGES. Mr. Hall, sir; I believe that you have the 700 series and the 600 series reversed. The situation on those two, sir—

Mr. HALL. It was the 600 series where we found we could update them and make them fairly satisfactory for use in the field by in-house work?

Major BRIDGES. Yes, sir.

Mr. HALL. Well, now what happened with those remaining 600 series? Did they repair them in-house in the Marine Corps, or was a contract let to do it by the originating company?

Major BRIDGES. No, sir; we didn't let a contract to the originating company, because we felt that the cost proposal was unsound, both technically and monetarily. It was too expensive a program.

Mr. HALL. It would have cost more to have them repair what they built wrong in the first place, or didn't complete properly in the first place, than it would for you to have done it in-house?

Major BRIDGES. Sir, let me say we could correct them at a considerably lower cost than the contractor offered.

Mr. HALL. So you did not give a contract for this "fix" to the mother company?

Major BRIDGES. No, sir; we did not.

Mr. HALL. All right, then I am back on the 700 series again, and I have that straight in my mind. I think the proper timing and correlation in view of the 700 difficulties, that you did find, even though they were correctable with your 100-hour runup and adjustment, and maintenance, prior to issue is interesting. Did you receive any word from Vietnam as to their desires about the new 700 series? Did they want them so bad they wanted them directly from the factory? Did they object to your using this 100-hour test and upgrading, or did they not want them at all in view of these past experiences with the 600 series from the same company?

Major BRIDGES. Sir, to put it in sequence of events, in the proper order, for you, relative to the 700 series, we began our first issues to Vietnam in October 1969.

Mr. HALL. After placing the order in January of 1969?

Major BRIDGES. The first contract was let in 1967, sir.

Mr. HALL. For the 700 series?

Major BRIDGES. Yes, sir. Either late in 1967, in December, or early in 1968, sir; I don't recall the date of the first contract.

Mr. HALL. Was there much slippage on the 700 series as far as time of delivery is concerned based on the contract as there was on the 600 series?

Major BRIDGES. No, sir.

Mr. HALL. But there was some slippage?

Major BRIDGES. Yes, sir.

Mr. HALL. All right; go ahead.

Major BRIDGES. The original generators, sir, the 700 series, were placed in service in Vietnam in October, 1969. During November and December, and early in January of 1970 we received a number of unsatisfactory equipment reports from our field units in Vietnam relative to the 700 series. A number of these deficiencies, sir, were—I wouldn't say of a serious nature, that is not the terminology I am searching for, Mr. Hall—I will say that they were correctable in the field, but of such a quantity, that the units felt we should know that we had some serious quality control problems.

All the deficiencies, as a matter of fact, were subsequently corrected in the field. During early February of 1970, we held an extensive meeting with the contractor, representatives from the DCAS Bridgeport office, from the Defense Supply Agency Contracting Officer, to make everyone aware of this massive number of deficiencies that we were experiencing. On March 18, of that year, 1970, the generators of course were continuing to flow into Vietnam, and the Commanding General FMFPAC stated officially to us at that time that the deficiencies were of such a magnitude that these generators were not satisfactory for field service. And at that time, we decided, sir, that we had to do something which was out of the ordinary, and that, sir, is when we began the 100-hour checkout within our own maintenance facilities of new equipment that was destined for a using unit, but was, rather, diverted to a maintenance facility, checked out, repaired, then delivered to the using unit.

Mr. HALL. In other words, our personnel in Vietnam said they didn't want the new 700 series until they were fixed, after their initial experiences?

Major BRIDGES. They didn't say they didn't want them, sir. No, they wanted them all right, but they wanted them repaired, sir. We subsequently did exactly that.

Mr. HALL. Parenthetically, Mr. Chairman, it was about this same time that I learned from troops stationed in the Republic of Korea that the deficiencies were bad enough that power units had been taken from radar and surveillance outposts in that nation, on loan, to our effort in South Vietnam to the point where they were out on the hilltops, on their site locations in South Korea, without power equipment, too. This is a logical decision of command, but this makes one very interested in these outages, or deadline cases.

Mr. PIKE. I think it might be appropriate to say, Dr. Hall, at this point in the record, that the reason this hearing has been generated in the first place came as a result of the inquiry to you, or the allegations to you about the deficiencies of these generators in the field. It has led us down some very interesting paths, since that initial letter to you.

Mr. HALL. I might just say that original information from South Korea was from the Army who has charge of these particular radar sites and outposts in the Republic of Korea or South Korea, not from the Marine Corps. Thank you, Mr. Chairman.

Mr. PIKE. Captain Nailor, were any of the contracts awarded to CONDEC on a noncompetitive basis?

Captain NAILOR. Yes, sir. It was a contract that was an option for increased quantities that was done by letter contract. I think I understand you are referring to 0125, the third contract of the three contracts of the 700 series?

Mr. PIKE. But this was simply an increased buy of a generator already in production?

Captain NAILOR. Yes, sir. We had a requirement for additional quantities of these particular sets. We have in our contract vehicle a capability, increased option capability, which I would rather our contracting people will discuss at length with you, if you wish.

Mr. PIKE. Was this done on a noncompetitive basis on your recommendation?

Captain NAILOR. Our recommendation, sir, was that these generators, the requirement having been cited to us, should be added to the existent contracts. In other words, it was our understanding that the option clause of the contract was available to us to merely exercise the option for additional quantities.

Mr. PIKE. And you didn't need a new contract?

Captain NAILOR. To our knowledge, sir.

Mr. PIKE. In your judgment.

Captain NAILOR. Yes, sir.

Mr. PIKE. And if the option had been exercised to acquire the additional generators under the existing contract, would that have been at a lower price than they were acquired under the new letter contract?

Captain NAILOR. Sir, I don't know. I am not qualified to answer that question.

Mr. PIKE. Was there, in your judgment, any military requirement or critical need at that time which required that these additional generators be obtained on a noncompetitive basis?

Captain NAILOR. Yes, sir; in my judgment there was, and I gave a sole-source presentation for that purpose, sir.

Mr. PIKE. Major Bridges, is there anything additional in the realm of facts that you have involving the procurement of these generators which you think should be brought to the committee's attention?

Major BRIDGES. Are you referring, sir, to the generators on the 0125 contract? Or just the generators in general, sir?

Mr. PIKE. The procurement between the Marine Corps and CONDEC in general.

Major BRIDGES. No, sir; not at this time, sir.

Mr. PIKE. Major Bridges, are you aware, or I will rephrase that—were you aware at any time of any relationship between the contract-

ing officer and CONDEC personnel which was in violation of the Armed Services Procurement regulations?

Major BRIDGES. No, sir. No factual information.

Mr. PIKE. I will ask the same question of you, Captain Nailor.

Captain NAILOR. No, sir; I was not.

Mr. PIKE. All right, I think then we are through with these gentlemen. Mr. Lennon.

Mr. LENNON. Thank you. Captain Nailor, I think you said earlier the only meeting of this kind that you had attended before this particular meeting was on December 28, 1967, and you had not attended one of that same nature since, in evaluation. Who invited you to attend that meeting?

Captain NAILOR. I don't recall exactly, sir. To the best of my knowledge, I believe it was Mr. Hupp.

Mr. LENNON. Mr. Hupp?

Captain NAILOR. Yes, sir.

Mr. LENNON. Do you recall the objection made by Mr. Hupp at that meeting, and the suggestion that all bids should be rejected, and he gave his reasons therefor? Did that take place prior to your leaving the meeting or not?

Captain NAILOR. Sir, I don't recall what Mr. Hupp was questioning in particular. I can only say in honesty to my best recollection that Mr. Hupp was asking questions. The specific questions I honestly don't recall.

Mr. LENNON. Do you recall his suggestion that all of this should be rejected and he gave his reasons therefor? Do you remember that part of the discussion?

Captain NAILOR. I'm afraid I do not, sir.

Mr. LENNON. Do you recall the response of anyone there to his suggestion, as to how it should be treated?

Captain NAILOR. Sir, whatever the purpose was, sir, as I say, I don't recall exactly what he said, but for whatever purpose it was, Mr. Hupp was told in so many words—

Mr. LENNON. What were the words, your best recollection?

Captain NAILOR. Something to the effect he should shut up.

Mr. LENNON. By whom?

Captain NAILOR. By Mr. McLain, sir. The Director of the Procurement Division.

Mr. LENNON. Director of Procurement Division Services at that time. Now, you said you do not recall who invited you to participate in this meeting. But do you recall who told you that Mr. Daniel Ross, the Washington Counsel, of CONDEC, would be there. Were you advised of that?

Captain NAILOR. No, sir, I didn't know he would be there until I got there.

Mr. LENNON. Did he make any effort, to your recollection, to point out the inability of the other bidders to respond to the procurement under the time frame of the provisions of the bid?

Captain NAILOR. I honestly don't recall that he did, sir.

Mr. LENNON. You don't recall that part? Do you recall what his part in this meeting was, to any degree?

Captain NAILOR. Mr. Ross made a presentation. He had some papers, and so forth. He made a presentation so to speak. He even stood

at the blackboard, about his company's capacity to produce. His company's capability to meet the time-frame requirements, dictated to by the invitation for bid. His company's capacity to meet the provisioning requirements, a parallel path with the production path. In relation to the timing of the IFB.

Mr. LENNON. Do you recall how many days it was before this particular meeting which you attended that the bids were actually open, and it was determined that CONDEC was not the lowest bidder?

Captain NAILOR. Sir, I did not attend the bid openings.

Mr. LENNON. I believe that was on December 22, 1967, does that refresh your memory?

Captain NAILOR. As I said, I wasn't there, sir. That would be about the right point in time, but I can't fix the exact date, sir.

Mr. LENNON. Do you have any knowledge there was a meeting 2 or 3 days later, following the opening of the bids on December 22, 1967—in which you did not participate?

Captain NAILOR. I have no knowledge of such a meeting.

Mr. LENNON. You have no information a meeting was held prior to the opening of the bids on December 22, until the time that you met some 4 days later?

Captain NAILOR. Sir, I have not.

Mr. LENNON. You have no information about that?

Captain NAILOR. No, sir.

Mr. LENNON. I figure, Mr. Chairman, these witnesses, that is, Major Bridges, Captain Bell, and Captain Nailor, will be available?

Mr. PIKE. I will direct the major and the two captains to remain available in the room or in the vicinity—you don't have to listen to all this as it is familiar to you—in case we need to call you back.

Mr. LENNON. I am not speaking so much about today, I think at some point in time, the questions might be asked.

Mr. PIKE. Are there any questions, Mr. Lennon?

Mr. LENNON. No, sir.

Mr. PIKE. From the staff people?

Mr. LALLY. Yes, sir; I have one or two for Captain Bell. Captain, were the counter mortar radar teams manned with personnel trained in the operation and maintenance of the 670 generators?

Captain BELL. Yes, sir. We had one engineer equipment man assigned to the platoon, a staff sergeant. Prior to deploying to Vietnam, he worked with the CONDEC technical representative at Camp Pendleton, a Mr. Musante, on numerous occasions. In fact, I think he went down there for a 2-week period to work with him to familiarize himself with the 600 series. Also, all of the operators which we had assigned, these are lance corporals, and corporal types, a minimum of one, on each site, whose responsibility it is to stop, start, and so forth, the generator. All went through an instruction period and were issued generator operators' permits in accordance with Marine Corps regulations.

Mr. LALLY. Is it fair to say, then, Captain, the extensive downtime of the generators could not be attributed to inexperienced personnel?

Captain BELL. I would say so.

Mr. LALLY. Did you attempt to analyze the causes of the difficulties with the generators in the counter mortar platoon?

Captain BELL. No, sir; not as such. We were more or less limited with the echelon of maintenance that we could do on the generators. The radars were a different story. We devoted our time on maintenance. The generators we were limited to second, limited to third, of what this one staff sergeant could provide.

Mr. LALLY. Were some of the defects found to be attributable to faulty quality control in production?

Captain BELL. Very possibly; could be. We had experienced short-circuits within the wiring harnesses, where bolts or nuts had come loose, and drifted around in the electronic package when they came to rest against the live circuit and had shorted-out. We have had components which are physically too heavy to be secured in the manner in which they were, due to the vibration, half broken, severing their connections and effecting an outage of that particular circuit which cut the generator, shut the generator down.

On other times we had failed components on the board numerous times. This was our most prevalent cause, these components on the cards the committee has up there, failing, the electrical components, due to seemingly no apparent cause, unless it is a possible circuit deficiency or possibly the components not being properly selected for their function in the set.

Mr. LALLY. Thank you, Captain.

Mr. LENNON. Thank you, Mr. Chairman. I note this is in the record but I want to recapitulate for the record. The first contract was in 1966 with CONDEC, at a price of \$11,057,969. Now, that was on March 8, 1966. And it was in June of 1967, that you, Captain, and others, in your area of responsibility, advised the corporation of serious—and I quote you, “serious deficiencies in several areas of the 600 series generators.” That is correct, isn’t it?

Captain NAILOR. Yes, sir.

Mr. LENNON. Now, however, in spite of that, on November 9, 1967, the Marine Corps exercised an option, on this contract, for additional units, bringing the total to 4,394, at a total cost of \$15,196,225. Now, who had the authority to exercise that option in spite of the fact that they had been advised and counseled and made crystal clear of the deficiencies in the several areas of the 600 generator—who had the authority and who did exercise that option to procure more of the same type of generators?

Captain NAILOR. Are you asking me, sir?

Mr. LENNON. I am asking anyone who wants to answer.

Captain NAILOR. The contracting officer has that option. That is Mr. Daniel Elmore.

Mr. LENNON. Thank you very much.

Mr. PIKE. Major Bridges.

Major BRIDGES. Earlier Mr. Reddan asked me a question which I didn’t answer, sir, relative to the placement of the 30 generators in service in Vietnam in February 1968. And I believe, Mr. Reddan, the question was were spare parts available at that time, sir. I told you to the best of my recollection they were not. The spare parts repair orders were placed by the Marine Corps Supply Activity, in Philadelphia, on June 7, 1968, sir, some 5 months after these 30 generators were sent.

Mr. PIKE. Thank you very much. I want to say to all of you, that I think you have been most forthright and fair in your testimony, and we appreciate it.

Who is our next witness, Mr. Reddan?

Mr. REDDAN. Mr. Hupp.

Whereupon, Doral A. Hupp, having been first duly sworn, testified as follows:

Mr. PIKE. Be seated. Give your name and residence to the reporter, please.

TESTIMONY OF MR. DORAL A. HUPP, FORMER CONTRACTING OFFICER, MARINE CORPS PROCUREMENT DIVISION, WASHINGTON, D.C.

Mr. HUPP. Doral A. Hupp, I live at 6330 Linway Terrace, McLean, Va.

Mr. REDDAN. Mr. Hupp, there was a time during which you were employed, I believe, by the Marine Corps in a civilian capacity?

Mr. HUPP. Yes, sir.

Mr. REDDAN. Could you tell us when that was and what your duties were, sir?

Mr. HUPP. I came to the Marine Corps from the Air Force at Wright Field on April 11, 1967. I retired from the Marine Corps in November 1970. My capacity was Contracting Officer, Section Head, and Contracting Negotiator during the various periods of time.

Mr. REDDAN. What experience had you had prior to coming to the Marine Corps in the role of contracting officer?

Mr. HUPP. I had worked for the Air Force for 17½ years at Wright Field in the Procurement Division, of which all of my time was in Procurement Division, and when I left there I was a contracting officer, and I had been approximately 2 years prior to that.

Mr. REDDAN. You have been present in the room this morning and heard the testimony?

Mr. HUPP. Yes, sir.

Mr. REDDAN. Did you have anything whatever to do with the 600 series generators?

Mr. HUPP. Primarily contract administration after approximately August 1967.

Mr. REDDAN. You had nothing to do with the award of those contracts?

Mr. HUPP. No, sir. I did not.

Mr. REDDAN. Did you have anything to do with the letter contract which was subsequently entered into with the contractor?

Mr. HUPP. I believe that was handled by Mr. Elmore.

Mr. REDDAN. Were you assigned to CONDEC contracts? In other words, were the CONDEC contracts particularly within your purview?

Mr. HUPP. Yes, sir.

Mr. REDDAN. Would the exercise of an option and the award of a letter contract normally have been your function?

Mr. HUPP. Yes, sir.

Mr. REDDAN. Could you tell the committee why this was done by Mr. Elmore, rather than by you?

Mr. HUPP. The only reason I could think of, probably would have been my workload.

Mr. REDDAN. Did you ever discuss it with him?

Mr. HUPP. I don't know, we never discussed it.

Mr. PIKE. Just to clear up your status. Was Mr. Elmore your superior in that office or were you coequals or what?

Mr. HUPP. Mr. Elmore was the branch chief and contracting officer or Section Head when I went in. I worked with him, under him, for approximately 6 months during sort of a phase-in period. My first function actually was the rewriting of the IFB, of the 700 series contracts, which Mr. Elmore was still contracting officer.

Mr. PIKE. At the time that you were preparing the IFB, were you aware of all of the complaints of the deficiencies which had been forthcoming on the 600 series generators?

Mr. HUPP. I had heard some complaints. I wasn't completely familiar with all of them. Mr. Elmore was handling this, and had been working with technical people.

Mr. REDDAN. Did you prepare the IFB's for the 700 series or did Mr. Elmore?

Mr. HUPP. Mr. Elmore prepared them. It was prepared when I arrived there. I rewrote things because of the additional requirements that had come in.

Mr. REDDAN. Now, do you recall approximately when the bids came in, and were opened for the 700 series?

Mr. HUPP. December 22 was the opening of the bids.

Mr. REDDAN. Did you have anything to do with the opening and the preparation of the abstract?

Mr. HUPP. I sat in on it. I had nothing to do with it. We had an office that opened the bids and prepared the abstracts for the branches.

Mr. REDDAN. What happened after the abstracts were prepared? What did they show with respect to responsibility and responsiveness of bidders?

Mr. HUPP. Well, the abstract indicated that Electromagnetic was the low bidder dollar-wise. They indicated that a John Adt Co., was the second low bidder, and CONDEC was the next or third low bidder. Speaking dollar-wise.

Mr. REDDAN. Did you have a meeting to discuss these matters with a Mr. McLain?

Mr. HUPP. Yes, sir, we did.

Mr. REDDAN. What was the outcome of that meeting?

Mr. HUPP. We had several meetings. In a procurement of this size, you would normally have several meetings to discuss the thing completely. There were questions. Primarily the one question was whether or not any source, any bidder who was responsive on the provision, we discussed many aspects of the award.

Mr. REDDAN. Did you discuss what the relative merits were of the three low bidders?

Mr. HUPP. Sir, yes; we did.

Mr. REDDAN. What conclusions were reached, if any, with respect to the principal differences between those contractors?

Mr. HUPP. If I recall right, one of the principal differences was one of the contractors had not specified on one item a specific cost, or any

way that he would provide that item. The other areas that we questioned were in how would they meet the provision schedule—that is, spare parts, how would they deliver them, could they deliver them at the same time as they would deliver the end items, which were the 700 generators.

Mr. REDDAN. What was your position with respect to the provisioning capabilities of the contractors?

Mr. HUPP. I didn't feel but that there was one source I believe, that actually indicated they could meet the delivery schedule of both concurrent items.

Mr. REDDAN. Who was that, sir?

Mr. HUPP. I believe at this time it was Kurz and Root.

Mr. REDDAN. Had you had any reason to question the provisioning capability of CONDEC?

Mr. HUPP. At that time I did not; no, sir.

Mr. REDDAN. Now, did there come a time in December of 1967, when you had a meeting in Mr. McLain's office, which was attended by Mr. Daniel Ross, the Washington representative?

Mr. HUPP. Yes, sir; we did have.

Mr. REDDAN. Could you tell us approximately the date of that meeting, and who was present, sir?

Mr. HUPP. I can't tell you the date. It would be—it would have been approximately the 23d, or maybe immediately after Christmas, but approximately a week after the award, within a week—within a week after the opening.

Mr. REDDAN. Who was present, sir?

Mr. HUPP. Mr. McLain chaired the meeting. I was present. Captain Nailor was present. Mr. Gemmell was present; Daniel Elmore; Dan Ross; and Joe Lungren.

Mr. REDDAN. What was the purpose of the meeting, sir?

Mr. HUPP. To discuss the three low bidders and their capabilities in meeting or being responsive to the bid.

Mr. REDDAN. Could you tell us, please, how this meeting developed, and what decisions, if any, were made? You say Mr. McLain chaired the meeting.

Mr. HUPP. Well, on the day of the opening, Mr. McLain was advised of the dollar amounts and who was low. We didn't discuss it—just briefly—because it was late in the evening. We had a meeting the next day after the abstracts had been prepared, and we briefly discussed the entire bid opening and all of the bids. Then we had another meeting, the one that you are referring to, 2 or 3 days later.

Mr. REDDAN. What took place at that meeting?

Mr. HUPP. This was where we discussed the award of the bid to one of the three low bidders, and qualifying each of the bids.

Mr. REDDAN. What part did Mr. Ross play in this meeting?

Mr. HUPP. Mr. McLain called the meeting. I contacted the technical people, brought them over, Captain Nailor, and we met in his office. I don't know that there were any conclusions made that day. Mr. Ross had prepared a sheet, which indicated how each of the companies, the three companies involved—how he felt they did or did not meet the provisioning requirements.

Mr. PIKE. Who made the decision that this determination should be made not among the two low bidders, or among the four low bidders, but among the three low bidders?

Mr. HUPP. I don't know that there was—I couldn't answer that, sir.

Mr. PIKE. Would it not be normal procedure to first make the determination of whether the low bidder in fact was responsive and in fact could perform the contract?

Mr. HUPP. Yes, sir; it would be.

Mr. PIKE. And would it not be normal procedure if you are going to have a discussion among the three low bidders, to have representatives from all three of the low bidders there?

Mr. HUPP. Yes, sir.

Mr. PIKE. And there was, as I understand it, a representative only from the third lowest bidder at the meeting?

Mr. HUPP. Yes, sir.

Mr. PIKE. Was there any discussion of why the representatives of the two low bidders were not there?

Mr. HUPP. No, sir.

Mr. PIKE. Do you know who invited Mr. Ross, the representative of CONDEC to attend that meeting?

Mr. HUPP. No, sir; I do not.

Mr. REDDAN. Had you ever attended a meeting of this sort at which contractor representatives appeared?

Mr. HUPP. No, sir.

Mr. REDDAN. Have you ever since?

Mr. HUPP. No, sir.

Mr. REDDAN. Did you, in that meeting, question—you and the other members of your group question—the ability of CONDEC to meet the provisioning requirements?

Mr. HUPP. Yes, sir; we did.

Mr. REDDAN. What, if anything, did Mr. McLain say to you at that time?

Mr. HUPP. Well, we discussed—not in the meeting with Mr. Ross—I am not referring to that now. We had prior meetings where we discussed each one of the bids. Whether or not they came up in this meeting or in the other one, I am not certain. But we questioned the ability of all bidders to meet the delivery schedules, both on provisioning and on the end items.

Mr. REDDAN. Did you hear the testimony of Captain Nailor with respect to this meeting?

Mr. HUPP. Yes, sir; I did.

Mr. REDDAN. And he stated to the effect that at one point in the meeting Mr. McLain told you to "Shut up."

Mr. HUPP. Yes, sir; I did.

Mr. REDDAN. Is that a fact?

Mr. HUPP. Yes, sir; it is.

Mr. REDDAN. What occasioned this admonition?

Mr. HUPP. I recommended we cancel all bids and go out and resolicit the IFB.

Mr. REDDAN. Why did you recommend that?

Mr. HUPP. Because I didn't feel any of the sources really understood the specification and the IFB. I think it was pretty obvious. I had pre-

pared with Daniel Elmore a chart that had certain time schedules for each one of these people to prepare a spare parts list, submit the parts list, have it approved by our Division—provisioning people, and it indicated—this chart indicated that only one source really—and I believe, as I mentioned before, I believe it was Kurz and Root, really met the time schedule. And I believe they were the fourth low bidder.

Mr. REDDAN. Did Mr. McLain, after he exclaimed to you “Shut up,” did he give you any reasons then, how he was going to handle this thing himself?

Mr. HUPP. No; but he mentioned that the procurement had been drawn out so long that he wanted to get these things on contract, because of the urgent requirement for them.

Mr. REDDAN. As I understand your testimony, Mr. Ross had prepared a spread sheet of some sort in which he compared the three low contractors, the three low bids, and set forth why his client should receive the contract, is that right?

Mr. HUPP. Yes.

Mr. REDDAN. Did anyone buy this presentation? Was he convincing?

Mr. HUPP. I don't believe there were any conclusions reached in this meeting.

Mr. REDDAN. What finally happened with respect to the award?

Mr. HUPP. The award was made to CONDEC.

Mr. REDDAN. Who made that, sir?

Mr. HUPP. It would have been made by Mr. McLain, Director of Procurement.

Mr. REDDAN. Did this recommendation surprise you?

Mr. HUPP. I don't know—

Mr. REDDAN. What was the difference between the bid submitted by CONDEC and the next lowest bidder, or Electromagnetic Industries, which was the lowest bidder?

Mr. HUPP. Approximately a quarter of a million dollars between Electromagnetic and CONDEC. I don't know what the second low bid was.

Mr. REDDAN. After the meeting, did you prepare a memorandum of the meeting?

Mr. HUPP. Some time later, approximately a week later, a memorandum was prepared by me of that meeting and other meetings that we had had prior to the award.

Mr. REDDAN. What did you do with that memorandum?

Mr. HUPP. It was made a part of the file.

Mr. REDDAN. Did you subsequently seek to obtain that memorandum?

Mr. HUPP. I had looked in the file for it after that time, approximately a year after.

Mr. REDDAN. About a year after you looked in the file for your memorandum. Was it there?

Mr. HUPP. No, sir; I couldn't find it.

Mr. REDDAN. Were any copies made of the memorandum?

Mr. HUPP. To my knowledge, there were none.

Mr. REDDAN. What did your memorandum contain, to the best of your recollection?

Mr. HUPP. It contained my recommendations on the award. It contained a statement where Mr. McLain had advised after we received a

couple of protests that any phone calls regarding this award, this procurement, he be immediately advised of it, and that the phone calls regarding the award were to be channeled to him personally.

Mr. REDDAN. Was there anything else in your memorandum?

Mr. HUPP. I don't recall it at this time.

Mr. REDDAN. Did you circulate that memorandum to anyone in the office?

Mr. HUPP. No, sir, I did not.

Mr. REDDAN. Did you show it to Mr. Elmore or Mr. Lungren?

Mr. HUPP. Mr. Elmore has seen the memorandum.

Mr. REDDAN. Did you show it to him?

Mr. HUPP. Yes, sir, I did.

Mr. REDDAN. Did Mr. McLain see it?

Mr. HUPP. I am not certain he did or not. I didn't circulate it.

Mr. REDDAN. Now, the contract was awarded to CONDEC, I believe, on December 29. Did you prepare that award?

Mr. HUPP. Yes, sir. I signed the award.

Mr. REDDAN. In view of the feelings which you expressed at that meeting, how do you reconcile the making of the award which, as contracting officer, you were opposed to?

Mr. HUPP. At the direction of Mr. McLain.

Mr. REDDAN. This was not your independent action, but under Mr. McLain's direction?

Mr. HUPP. I prepared the award, I signed it at the instruction of Mr. McLain.

Mr. PIKE. Were you aware at that time of any personal friendship or personal relationship between Mr. McLain or Mr. Elmore with CONDEC as a corporation, or with their Washington representative, Mr. Ross?

Mr. HUPP. Nothing more than any other representative at that time.

Mr. PIKE. Did you subsequently become aware of any relationship between Mr. Ross and Mr. McLain, or Mr. Elmore, which might be considered something other than the normal relationship with a manufacturer's representative?

Mr. HUPP. I don't believe so.

Mr. LALLY. Mr. Hupp, on what date was the contract awarded, do you recall?

Mr. HUPP. December 29, 1967.

Mr. LALLY. I show you two certificates of award, and ask if you can identify those, Mr. Hupp?

Mr. HUPP. Yes, sir. These are the statements and certificate award of contract M00027-68-C-0121 and 0120.

Mr. LALLY. What date do they bear, Mr. Hupp?

Mr. HUPP. December 29, 1967. They were signed by me.

Mr. LALLY. Is that the date on which you signed those documents, sir?

Mr. HUPP. Yes, sir.

Mr. LALLY. That is the date of the award of the contract?

Mr. HUPP. Yes, sir.

Mr. LALLY. Now, Mr. Hupp, subsequent to the award of the contract on December 29, did you have any further meetings with other bidders for these contracts?

Mr. HUPP. One of the representatives of EMI, Electromagnetic, came in to my office and briefly discussed their position as they submitted their bid.

Mr. LALLY. Who was that representative?

Mr. HUPP. I don't recall his name, sir.

Mr. LALLY. Do you recall when that meeting occurred, Mr. Hupp?

Mr. HUPP. It was approximately December 28, I believe it was the 29th.

Mr. LALLY. Mr. Hupp, I show you a document containing some handwritten notes and ask you if you can identify that, sir?

Mr. HUPP. Yes, sir.

Mr. LALLY. What does that refer to, Mr. Hupp?

Mr. HUPP. This refers to a meeting that we had on January 2, 1968, where we had a briefing with Mr. Joe Rendizo. This was after the meeting where he came to my office.

Mr. LALLY. Was this the meeting at which you explained to him why his corporation was disqualified?

Mr. HUPP. Yes, sir; it was.

Mr. LALLY. Did Mr. Rendizio indicate he had any other meetings with Procurement Division personnel?

Mr. HUPP. To my recollection, no. Although he had discussed it with me approximately the 28th.

Mr. LALLY. Mr. Hupp, was it the practice of the office to furnish Congressional Members with a notification of procurement of a contract of this magnitude?

Mr. HUPP. Yes, sir.

Mr. LALLY. I show you now a document captioned "Determination Under IFB1027," and ask if that is the Congressional notification?

Mr. HUPP. This is a determination under circumstances where the low bidder is not responsive and does not get the award, and the award goes to another source, and a determination made they did not meet the requirements of the IFB.

Mr. LALLY. What is the date of that document, Mr. Hupp?

Mr. HUPP. January 5, 1968.

Mr. LALLY. Do you recall the date on which you signed the contracts for the 700 series generators, Mr. Hupp?

Mr. HUPP. No, sir; I don't recall the exact date, but it would have been approximately December 29.

Mr. LALLY. December 29?

Mr. HUPP. 1967.

Mr. LALLY. The actual signing of the contract?

Mr. HUPP. Yes—no, not the actual—this statement here, the contract was actually signed later.

Mr. LALLY. Do you recall the date of the signing of the contract?

Mr. HUPP. No, sir; I don't recall that date.

Mr. LALLY. Mr. Hupp, I now show you another document captioned "Memorandum for the Record," dated January 25, 1968, and ask if you can identify that document, sir?

Mr. HUPP. This is a memorandum for the record, dated January 25, 1968, subject "Award to Other Than the Low Bidder on the Two IFB's."

Mr. LALLY. Did you prepare that document, sir?

Mr. HUPP. Yes, sir.

Mr. LALLY. Does that document contain a statement that the low bidders were disqualified?

Mr. HUPP. Yes, sir; it does.

Mr. LALLY. Now, was that your feeling, Mr. Hupp, or was this placed in there at the instruction of somebody else?

Mr. HUPP. Well, I don't believe that I was instructed to do this. This was normal procedure, and after a determination had been made that the award was not going to the low bidder, I would normally do this anyway.

Mr. LALLY. This memorandum does, then, contain your decision with respect to the award of the contract, is that correct, sir?

Mr. HUPP. I don't know this really was a—the actual decision on the award was Director of Procurement.

Mr. LALLY. Does the memorandum reflect what your decision was, Mr. Hupp?

Mr. HUPP. This memorandum would indicate this was my decision, yes sir; it would, when I signed it. Yes, sir, it would.

Mr. LALLY. Did you agree with the decision?

Mr. HUPP. No, sir; I did not.

Mr. LALLY. Why did you sign it then?

Mr. HUPP. It had been determined that the award would be made to a higher bidder, and under the ASPR requirements this is required as a part of a file before an award can be made.

Mr. LALLY. The date of that document, Mr. Hupp, is January 25. You previously testified that the award of the contract occurred on December 29. Is there any explanation for the passage of approximately 1 month between the award and the drafting of this memorandum?

Mr. HUPP. I believe that the real answer is that we had these two other protests. We had two protests under the IFB, and we were trying to resolve them prior to writing the contract, although the award actually had been made to CONDEC.

Mr. PIKE. Do you have any questions, Mr. Lennon?

Mr. LENNON. Yes. Just one, Mr. Chairman.

Coming back to the memorandum that you prepared that you inserted in the file. In that memorandum you noted your objections to the award, and noted, also, your specific recommendations for the cancellation of the invitation for bid, and your recommendation for a resolicitation of a new invitation for bids, that was in the memorandum that you placed in that file?

Mr. HUPP. Yes, sir; it was.

Mr. LENNON. That was the memorandum you attempted to get approximately a year later and you found that it had been taken from the file?

Mr. HUPP. It was not in the file.

Mr. LENNON. Not in the file?

Mr. HUPP. Right.

Mr. LENNON. Did you search for it in the file?

Mr. HUPP. Yes, sir; I did.

Mr. LENNON. Does anyone have the authority to withdraw such a memorandum from such a file?

Mr. HUPP. No, sir.

Mr. LENNON. You know of no authority anyone had at any level?

Mr. HUPP. No, sir.

Mr. LENNON. To distort that file.

Now, in the protests that were filed by the two low bidders that you just referred to, which you said caused the delay of approximately a month from the time of the awarding of the contract, or more specifically to January 25, were there any hearings held by the people in charge at the procurement level, or the award contract level, for these protestors?

Mr. HUPP. You mean at our office?

Mr. LENNON. It is your information that protests were filed by the two low bidders, and that was the reason for the delay in preparing the final memorandum explaining why the contract was awarded to CONDEC. Were there any hearings on the part of these protestors? Were they awarded any opportunity to come in and be heard?

Mr. HUPP. Yes, sir.

Mr. LENNON. Were they?

Mr. HUPP. And they were discussed over here, I am not certain as to what office it was, but they were discussed on the Hill.

Mr. LENNON. They were discussed on the Hill?

Mr. HUPP. Yes, sir.

Mr. LENNON. Were you available as a witness at those?

Mr. HUPP. Yes, sir; this was Electromagnetic, Inc. and their representatives, and representatives from our office, and I believe our technical people.

Mr. LENNON. You made it crystal clear at that time why you had objected to the awarding of the contract to CONDEC?

Mr. HUPP. I don't know that this was ever discussed with the other company, my objections.

Mr. LENNON. You said it was over here on the Hill. What do you mean "over here on the Hill"—this part of the Hill or down in the Pentagon?

Mr. HUPP. No. I am not certain as to the exact office that we came over here and discussed it, but it was under the direction of the Representative—the Senator, I believe, from Georgia.

Mr. LENNON. On the Senate side, in Senator Russell's Office?

Mr. HUPP. Yes, sir.

Mr. LENNON. At that time did you recapitulate what you had put in the memorandum to the effect that you had objected to the awarding of this contract, and the reasons therefor, and you had recommended invitations for bids be reissued?

Mr. HUPP. That wasn't the question, sir.

Mr. LENNON. It wasn't the question how it was done, it was the question whether it was done.

Mr. HUPP. The question we discussed was why EMI did not get the award, and our reasons for not making the award to them.

Mr. LENNON. I see.

No further questions.

Mr. RANSOM. Mr. Hupp, in the course of your activities, were you involved in exercise of the option for the 600 series which occurred about the same time?

Mr. HUPP. I believe Mr. Elmore handled that.

Mr. RANSOM. Thank you.

Mr. PIKE. Mr. Lally.

Mr. LALLY. Mr. Hupp, in your efforts to locate the memorandum, when you found it was not in the file, did you seek the assistance of your secretary or any other person to locate it?

Mr. HUPP. No. There was another girl that was reviewing the files at the same time, and a contract administrator was there. She helped me.

Mr. LALLY. She also was unable to locate the memorandum?

Mr. HUPP. Yes, sir.

Mr. LALLY. Thank you.

Mr. PIKE. One last question, Mr. Hupp. I believe it was Captain Nailor in referring to this meeting which was held, at which Mr. Ross was present, who said that Mr. Ross sort of ran this meeting. Would you characterize the meeting in that manner?

Mr. HUPP. I don't believe so. I believe Mr. McLain ran the meeting. Mr. McLain opened the meeting—

Mr. PIKE. Did Mr. McLain start to run the meeting and then did Mr. Ross kind of take over?

Mr. HUPP. No. Mr. Ross, I believe, was asked by Mr. McLain to explain his position and his opinions, and he did. He went to the board and he explained how he felt that their bid was responsive and the others were not.

Mr. PIKE. Did you or anyone else raise any questions as to why representatives from the two low bidders were not there?

Mr. HUPP. It was not openly discussed; no.

Mr. PIKE. That is all.

The committee will recess at this point for lunch. I think we are through with you, Mr. Hupp. You need not remain available. We thank you very much for coming to testify before us.

We will stand recessed until 2 o'clock this afternoon.

(Whereupon, at 12:30 the subcommittee adjourned, to reconvene at 2 p.m.)

AFTERNOON SESSION

Mr. PIKE. We will proceed with the afternoon session of this meeting now.

Who do you have for your next witness, Mr. Reddan?

Mr. REDDAN. Mr. Lally.

Mr. PIKE. Mr. Lally, will you come and be sworn, please?

(Whereupon, John F. Lally was sworn and testified as follows:)

Mr. PIKE. Would you give your full name, address, and occupation to the reporter?

TESTIMONY OF MR. JOHN F. LALLY, ASSISTANT COUNSEL, ARMED SERVICES INVESTIGATING SUBCOMMITTEE, COMMITTEE ON ARMED SERVICES, U.S. HOUSE OF REPRESENTATIVES

Mr. LALLY. John Lally, Assistant Counsel, House Armed Services Investigating Subcommittee.

Mr. REDDAN. Mr. Lally, pursuant to your duties as Assistant Counsel, did you participate in an interview with Mr. Joseph Lungren?

Mr. LALLY. I did.

Mr. REDDAN. When and where did that interview take place, and who was present?

Mr. LALLY. On July 7, here at the subcommittee offices, Mr. Ransom and I interviewed Mr. Lungren. With Mr. Lungren's permission, that interview was recorded on a tape recorder, and from the transcript prepared of that recording, I have prepared a memorandum of the pertinent portions of the interview.

Mr. REDDAN. Has an attempt been made to locate Mr. Lungren?

Mr. LALLY. Yes, it has. Last week I contacted the Office of Legislative Assistant of the Marine Corps and requested them to make the various Marine Corps personnel, both military and civilian, available for testimony. At that time I was informed that Mr. Lungren had already left on a 1-month vacation, that he was traveling throughout the United States on a camping trip, and they did not have any idea how they could get in touch with Mr. Lungren.

Mr. REDDAN. Mr. Chairman, under the circumstances, in order to proceed with this matter, it is requested that Mr. Lally be permitted at this time to give the committee a résumé of Mr. Lungren's testimony, and we can incorporate such part of his interview as may be pertinent.

Mr. PIKE. Well, I don't think we have much of an alternative. I don't like to proceed in this manner, because we can't cross-examine a man in absentia. But I don't think we have any alternative but to proceed this way. Obviously we couldn't do it in a court of law. We have great liberties in Congressional investigations, on the other hand.

Please proceed.

Mr. LALLY. Thank you, sir.

Mr. Lungren stated that he was the head of the Contract Branch in the Marine Corps Procurement Division and that he had held that position since approximately December 1966. He said that he had participated in evaluation of the bids for the 700 series generator con-

tracts. He recalled that all but one of the bidders was deficient in the provisioning schedules of their bids. He said that at the time it was decided that the two bidders who were lower than CONDEC were nonresponsive.

He recalls a meeting attended by Mr. McLain, Mr. Gemmell, Mr. Elmore. He doesn't recall if Mr. Hupp was at that meeting, nor does he recall Mr. Ross having attended the meeting. He said Ross would have no reason to be there, that that meeting was just an evaluation meeting, evaluation of bids. There was no decision on the award of the contract at that meeting.

Mr. Lungren stated that he had no further participation in the awarding of the contracts. He said that generators were given special handling, and said that he wasn't one of those assigned special handling. He said Mr. McLain had designated Mr. Elmore to handle generators.

Mr. Lungren said that on many occasions Mr. Hupp protested to him that he was forced to do things he didn't want to do. On several occasions Mr. Hupp protested that Elmore was interfering with him and his duties. Mr. Lungren believed that there was merit to Hupp's complaints. He said he felt Elmore was doing a lot of business Hupp should have been doing himself.

Mr. Lungren said that he and others at Procurement Division were concerned about Elmore's friendliness with contractor representatives. He said that he knew it wasn't right, and tried to control the freedom the contractor representatives had in their office. He was particularly concerned with Elmore's close relationship with Mike Kemple, representative of Dewey Electronics Corp.

He said he was also concerned with Elmore's association with Dan Ross and Shelley Matzkin, attorneys for several contractors. He said he heard rumors that Elmore partied with those people.

Mr. Lungren said that he told Mr. McLain of his concern over those associations because he didn't think it was proper. Mr. Lungren said that Robert Fink, a contracting officer in the Procurement Division, complained to him that he believed contractors might be receiving bidding information from someone inside Procurement Division on a competitive procurement which he handled. He showed Mr. Lungren a bid of Dewey Electronics Corp., which he said had aroused his suspicions.

Mr. REDDAN. Do you have that letter before you?

Mr. LALLY. It is in Mr. Fink's file over there.

This letter is dated May 29, 1969, on the letterhead of The G. C. Dewey Corp., and signed M. M. Kemple, Vice President, and is the letter which Mr. Fink brought to the attention of Mr. Lungren in connection with that bid.

Mr. REDDAN. Why did he bring that letter to Mr. Lungren's attention?

Mr. PIKE. I would simply suggest that the letter be placed in the record at this point.

(The letter referred to is as follows:)

	THE G.C. DEWEY CORPORATION 111 EAST 118th STREET, NEW YORK, N.Y. 10035 • TEL. (212) 681-7261 • TWX 710 581-5421
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May 29, 1969

Headquarters, U.S. Marine Corps
Code CSG 5
Washington, D.C. 20380

Attention: Mr. Danial E. Elmore Jr.

Reference: Your Telegram 211810Z and RFP M000-27-69-R-0251

Gentlemen:

In reply to referenced telegram and subject RFP we have reviewed the UPS-1 radar and the terms of the RFP. We have been able to reduce the labor hours involved while still complying fully with the RFP and IRAN specification. This reduction is due to the elimination of some of the test and re-work efforts proposed by this corporation which were in excess of the requirements of the specification.

We therefore offer as our best and final price for item #1 \$7,200.00 per unit for a total price of \$186,000.00 all other items and terms remain unchanged.

Sincerely,

M.M. Kemple
M.M. Kemple

Vice-President

Mr. PIKE. Go ahead.

Mr. LALLY. Mr. Lungren said the bid was peculiar in that the entire letter was typed with the exception of the bid amounts which had been written in. He said this was an unusual manner for a bid to be submitted to their office.

That is the extent of the pertinent portions of the interview with Mr. Lungren.

Mr. REDDAN. Was anything discussed with Mr. Lungren about whether or not the letter he questioned had any incoming date stamp on it, or anything of that sort?

Mr. LALLY. It was not discussed with Mr. Lungren.

Mr. REDDAN. Did Mr. Lungren state whether or not he had received complaints concerning the conduct of any members of the Procurement Division?

Mr. LALLY. Yes. Mr. Lungren stated that there was one instance where Mr. Elmore was called to the office of Deputy Quartermaster

General Forward, to discuss his relationship with certain contractors.

Mr. Lungren was asked whether any instructions had been distributed concerning contracting officer relationships with contractors. He said just the normal instructions that were passed around every year, that is relating to conflict of interest. He said that there was no special effort made to emphasize the regulations, but that recently there has been an effort to emphasize the proper relationships between the contracting officers and contractors.

Mr. PIKE. That is all, Mr. Lally.

Mr. LALLY. Thank you.

Mr. PIKE. Mr. Fink.

(Whereupon, Robert Fink was sworn and testified as follows:)

Mr. PIKE. Please sit down. Give your name and address to the reporter.

TESTIMONY OF MR. ROBERT P. FINK, SUPERVISORY CONTRACT SPECIALIST, PURCHASING SECTION A, CONTRACT BRANCH, PROCUREMENT DIVISION, SUPPLY DEPARTMENT, U.S. MARINE CORPS, WASHINGTON, D.C.

Mr. FINK. My name is Robert P. Fink. I live at 6,000 Lebanon Drive, Falls Church, Va.

Mr. REDDAN. What is your present occupation, Mr. Fink?

Mr. FINK. I am a contract specialist at Headquarters Marine Corps.

Mr. REDDAN. How long have you been so employed, sir?

Mr. FINK. Almost 4 years.

Mr. REDDAN. Is your title that of contracting officer?

Mr. FINK. I am a contractor officer, and head of the purchasing section.

Mr. REDDAN. Did you have anything to do with a competitive procurement conducted in 1969 by the Marine Corps on the contract to inspect and repair certain radar sets?

Mr. FINK. No, sir; I don't believe so.

Mr. LALLY. I show you, Mr. Fink, a telegram dated May 28, 1969, from Don R. Bushnell, Electronic Services, Inc., and ask you if you can identify that, sir?

Mr. FINK. I may have seen it. I think I know which procurement it is. I am not sure.

Mr. LALLY. I show you another message, Mr. Fink, bearing the handwritten date of May 29, 1969, 1430, and this is directed to the attention of Mr. Jack Clair for delivery to Contracting Officer, U.S. Marine Corps, and bears the name of A. E. Ross, Vice President and General Manager, Applied Devices Corp., and ask if you can identify that telegram or message?

Mr. FINK. I may have seen it, but right at the moment I don't recognize the particular procurement that it is applicable to.

Mr. LALLY. The third document, Mr. Fink, is a letter dated May 29, 1969, on the letterhead of The G. C. Dewey Corp., signed M. M. Kemple, Vice President, and I ask if you can identify that?

Mr. FINK. Yes, I remember this letter.

Mr. REDDAN. What procurement does that relate to, Mr. Fink?

Mr. FINK. This request is for Proposal M000-27-69-R-0251, as the other messages here are related to.

Mr. REDDAN. Now, with that letter in hand, does that in any way refresh your recollection now with respect to the other two documents that Mr. Lally showed you?

Mr. FINK. Well, I do remember in checking the file that there were two messages that had come in in connection with this particular procurement. The two messages came in as I recall, a few days prior to the required date for receipt. The message, one of them, is dated the 28th of May, and the other is dated May 29.

The letter is dated May 29. If I recall correctly, May 29 was the date that was established for receipt of best and final offers on this particular procurement.

Mr. REDDAN. Was there anything about that letter of the 29th of May from The G. C. Dewey Co. that caused you any concern?

Mr. FINK. Yes, sir. The fact that it was typewritten, with the exception of the dollar amounts which were written in with pen and ink.

Mr. REDDAN. What was there about that that bothered you?

Mr. FINK. Well, it is unusual that you would get a proposal such as this. Normally speaking, the contractor would type the information in complete. In this particular case I recall Mr. Kemple hand carrying it in. He passed by my office, and I happened to see him on this particular day, and I knew it was hand carried into the office.

Mr. REDDAN. Who is Mr. Kemple?

Mr. FINK. He is the Vice President for G. C. Dewey.

Mr. REDDAN. Do you know what time of day that letter was brought in?

Mr. FINK. No, sir; I wouldn't want to say for sure. I just know it was sometime during that day.

Mr. PIKE. When a letter in the form of a bid is received, and there is a deadline for the submission of bids—in this case I believe it was 4 p.m. on the 29th—

Mr. FINK. It was 4 or 4:30, I am not sure, sir.

Mr. PIKE (continuing). Of May, wouldn't it be standard practice to put the date, not only the date but also the hour when it is received on the letter?

Mr. FINK. That is my practice.

Mr. PIKE. Wouldn't that be a requirement so that you will know whether the bid was received in a timely manner or not?

Mr. FINK. Well, I would say that should be a requirement; yes, sir, and that is my policy. When I receive a bid which is hand carried in, we have a date and time clock stamp. We either use that or we write on the envelope the date and time it is received.

Mr. PIKE. This was not done in the case of this particular bid from The G. C. Dewey Corp?

Mr. FINK. Not to my knowledge. I only saw the letter. I don't know whether there was anything on the envelope or not.

Mr. REDDAN. How about the other two documents you have there? Is that bidding information submitted by the other contractors in connection with this particular procurement?

Mr. FINK. Yes. This is their revised proposal.

Mr. REDDAN. Is there any indication on there of the time and date that those revised proposals were received?

Mr. FINK. On this one there is—

Mr. REDDAN. Which one are you talking about now, Mr. Fink?

Mr. FINK. This one from Applied Devices Corp. Evidently it was received by Mr. Shaner at 1430, on the 29th of May 1969.

Mr. REDDAN. Is that a handwritten notation on there?

Mr. FINK. This is an initial here. I am presuming it is Mr. Shaner's initial.

Mr. REDDAN. How about the telegram you received from the other company revising their bid? Look at the second page, please, sir.

Mr. FINK. There is a time and date stamp here, dated the 29th of May, 1969, at 9:43 a.m.

Mr. REDDAN. What was the date on the other one that Mr. Shaner initialed?

Mr. FINK. May 29, 1969, at 1430.

Mr. REDDAN. Now, can you tell us whether it was before or after 1430 that you received the G. C. Dewey letter?

Mr. FINK. I did not receive it. I was not handling the procurement.

Mr. REDDAN. Do you have any idea whether that letter came in before or after the 1430 date stamped that you referred to?

Mr. FINK. I would not be able to say for sure. I just remember seeing the man pass the door.

Mr. REDDAN. All right.

Now, what did you do about the letter from The G. C. Dewey Co.?

Mr. FINK. Well, the way this letter came to my attention, we have a review board that reviews the clearances that are written by the various buyers in the office before they are authorized to go ahead and proceed with an award. A clearance was written in this particular case and I was acting as a board member on the case.

As a board member I had reviewed the file, and I found this letter. That is how it came to my attention.

Mr. REDDAN. So what did you do?

Mr. FINK. I showed it to Mr. Lungren and Mr. Gemmell, I believe, who were also on the board—well, I won't speak for them.

Mr. REDDAN. Tell us what you told them? You showed them the letter. Now what did you say?

Mr. FINK. I didn't say very much, really. I just said something to the effect that isn't this unusual that the figures are in here in ink, when the rest of the letter is typewritten?

Mr. REDDAN. Did you say anything to them about any thoughts that you might have as to how this happened to be in this particular form?

Mr. FINK. I really don't recall. As I recall this, there was not much said by anyone after I showed this letter to Mr. Lungren and Mr. Gemmell.

Mr. PIKE. Mr. Fink, was it your judgment at that time that someone had provided The G. C. Dewey Corp. with information as to competitive bids before they submitted their bid?

Mr. FINK. I thought that it was a possibility.

Mr. PIKE. Did you have any judgment as to what the source of that information might have been?

Mr. FINK. No, sir. I really couldn't say. I have no idea.

Mr. REDDAN. Had you at any time in the past, Mr. Fink, had reason to suspect that someone may have been leaking information from the Procurement Office to certain contractors?

Mr. FINK. Yes. On one occasion, I think it has been about 3 years ago now, a procurement I had on the street, a request for proposal, and

I received two proposals, one from Hi-Gain Electronics, I believe it is, and Granger Associates; it was for antennas.

The proposal came in at the required time. I called in the two contractors at a later date for discussions with respect to our requirement. It was to be a negotiated procurement. And a few days after the technical discussions, one of the representatives—the representative of Granger Associates, a Mr. Sheldon Matzkin, came into the office and wanted to revise his bid. Granger Associates were considerably high as compared to Hi-Gain.

The new figures that he gave the buyer that was working for me at the time were somewhat less than Hi-Gain. In addition to that, I had noticed on the buyer's desk a section cut out of each of the DD-633 forms, if you are familiar with the form, which is the cost breakdown. She had cut out the section of each of the two companies' proposals, and taped them together so that there would be a direct comparison of the dollar amounts for each element of cost.

I questioned her as to why she had cut these out and pasted them together, and she told me that Mr. Elmore had requested the information. He wanted to take a look at the figures and compare them.

Mr. PIKE. Was Mr. Elmore your superior at that time?

Mr. FINK. Yes, sir; he was assistant head of the branch.

Mr. PIKE. But he was not responsible for that particular contract?

Mr. FINK. No, sir.

Mr. PIKE. In this contract here that we are discussing, whereby the Dewey Corp. came in with an undated bid, and the suspicion crossed your mind that they might have had access to competitor figures, did Mr. Elmore have access to those figures at that time?

Mr. FINK. I didn't quite follow you. I am assuming you are talking about this—

Mr. PIKE. This radar competition. Did Mr. Elmore have access to those figures?

Mr. FINK. As I recall Mr. Elmore and Mr. Shaner were handling the procurement. Mr. Elmore was the Contracting Officer, Mr. Shaner was the Buyer.

Mr. PIKE. In this radar case, was there any time at which all of the bidders were given an opportunity to lower their previous bids?

Mr. FINK. I think that that is what this is.

Mr. PIKE. That is what that document is?

Mr. FINK. Yes.

Mr. PIKE. Do you know what The G. C. Dewey Corp. lowered its bid from and to?

Mr. FINK. No, sir, I couldn't say at this time.

Mr. PIKE. Mr. Fink, we show you a document and ask you whether that is one of the documents which you reviewed in your capacity as a member of the review board on this procurement?

Mr. FINK. Yes, sir, I think this is the document.

Mr. PIKE. All right. Now, using that document to refresh your recollection, can you tell us what The G. C. Dewey Corp. bid in its initial submission on that contract?

Mr. FINK. \$268,751.40.

Mr. PIKE. At the time of the initial submission, was that the low bid?

Mr. FINK. No, sir.

Mr. PIKE. Now would you tell us what their final bid was?

Mr. FINK. The final bid was \$186,000.

Mr. PIKE. Down from \$268,000?

Mr. FINK. Yes, sir.

Mr. PIKE. Did this constitute the low bid, the lower figure?

Mr. FINK. Yes. This was the low bid of the three who submitted final bids.

Mr. REDDAN. What was the next higher bid on the revised bids?

Mr. FINK. \$191,200.

Mr. REDDAN. So Dewey got under the next bidder by how much?

Mr. FINK. Approximately—I can tell you exactly, \$5,000.

Mr. PIKE. That is all, Mr. Fink.

Mr. FINK. Thank you.

Mr. PIKE. Mr. Forward.

(Whereupon, M. H. Forward was sworn and testified as follows.)

Mr. PIKE. Please sit down. Give your name and address to the reporter.

TESTIMONY OF MR. MYRON H. FORWARD, DEPUTY QUARTERMASTER GENERAL OF THE MARINE CORPS, SUPPLY DEPARTMENT, U.S. MARINE CORPS, WASHINGTON, D.C.

Mr. FORWARD. My name is Myron H. Forward, Box 7-B, Route 1, Washington, Va.

Mr. REDDAN. What is your present occupation, Mr. Forward?

Mr. FORWARD. Deputy Quartermaster General of the Marine Corps.

Mr. REDDAN. How long have you held that position, sir?

Mr. FORWARD. I honestly don't—can't say. I have been sitting here trying to recall and I don't recall. Several years, but I really don't know how long.

Mr. REDDAN. Well, were you in that position, say, in 1969?

Mr. FORWARD. Yes, sir; I'm sure I was.

Mr. REDDAN. Now, in connection with your duties as Deputy Quartermaster General, did you have anything to do with the conduct—official conduct of procurement personnel?

Mr. FORWARD. Yes, sir.

Mr. REDDAN. What were your duties in that respect, sir?

Mr. FORWARD. Well, as Deputy Quartermaster General, I am No. 2 in charge of the Supply Department. Within the Supply Department, we have a Procurement Division, which at one time was under an Assistant Quartermaster General for Supply and Maintenance. So I bear the responsibility for the overall operational management control of the Supply Department, including the Procurement Division in the organizational capacity that I have just indicated.

Mr. REDDAN. Did there ever come a time when you received any complaints about possible relationships between personnel in the Procurement Division and contractors and/or contractor representatives?

Mr. FORWARD. Yes, sir.

Mr. REDDAN. Would you tell us those, Mr. Forward, in chronological order, please?

Mr. FORWARD. The only time I recall, specifically getting a complaint of that nature was, I would estimate December or January, and this

was December of 1969 or January of 1970. I received a call at home one night, approximately 9 o'clock, from an employee of the Supply Department who asked that he not be identified, indicating that an employee of the Procurement Division was having luncheons with contractor personnel and socializing with contractor personnel in the evening. This individual was identified as Mr. Elmore.

Mr. REDDAN. What did you do, sir?

Mr. FORWARD. The next morning I called in the assistant, the Acting Assistant Quartermaster General for Supply and Maintenance, who at that time was a civilian.

Mr. REDDAN. Who was that, sir?

Mr. FORWARD. Mr. Francoise. Acting head of the Procurement Division, a Mr. Gemmell, related the content of the telephone conversation without revealing the identity of the caller. I specifically directed them immediately to investigate the matter, and to determine to the best of their ability if this allegation were true, and if so, initiate the necessary corrective measures or action. After this conversation I notified my superior, the Quartermaster General.

Mr. REDDAN. Did you ever get a report back from Mr. Gemmell or anyone else?

Mr. FORWARD. Yes, sir; within a matter of a few hours, Mr. Gemmell called and said he had discussed the matter with Mr. Elmore, and Mr. Elmore wanted to see me personally. So I told Mr. Gemmell to bring Mr. Elmore over to my office immediately.

Mr. REDDAN. What took place and who was present?

Mr. FORWARD. As I recall, in addition to myself it had been Mr. Francoise, Mr. Gemmell, and Mr. Elmore. Mr. Elmore asked that the identity of the caller be given him and that he be given an opportunity to face his, quote, "accusers." I told Mr. Elmore that if he had not been guilty of any wrong doings he had nothing to be concerned about. And that he was to go back to his job and forget the matter. On the other hand, if he were guilty, then he could be expected eventually to suffer the consequences. And that I would not reveal the identity of the caller.

Mr. REDDAN. How were you going to resolve this? You said if he were not guilty there were no problems. If he were guilty, he had to suffer the consequences. Now, how were you going to determine whether or not he was guilty?

Mr. FORWARD. I had no way at the moment except to ask his immediate supervisor, Mr. Gemmell, and his second echelon supervisor, Mr. Francoise, to observe and do what they could to determine whether or not there were any grounds to this information that I had received. And until proven guilty, Mr. Elmore would be considered innocent.

Mr. REDDAN. What was their report to you?

Mr. FORWARD. Mr. Gemmell and Mr. Francoise reported back that they could determine no factual evidence that such was the case.

Mr. REDDAN. Did they tell you what investigation, if any, they had made?

Mr. FORWARD. No; they did not, except Mr. Gemmell had talked to someone like Mr. Elmore, and I gathered the impression from other people, employees of the Procurement Division.

Mr. REDDAN. Did he tell you that? Did he tell you that that is what he had done?

Mr. FORWARD. Mr. Gemmell told me he had talked at great length to Mr. Elmore, and that—I don't recall specifically what he told me on the other point.

Mr. REDDAN. Is it fair to say that he told you he talked to Mr. Elmore and Mr. Elmore denied it?

Mr. FORWARD. I think that would be fair.

Mr. REDDAN. Now, would it be fair to say he didn't talk to anyone else?

Mr. FORWARD. No; I don't think that would be fair.

Mr. REDDAN. Well, fine, you tell us what would be fair, then, sir. Who did they talk to?

Mr. FORWARD. I don't know.

Mr. REDDAN. Did he tell you he talked to anyone else?

Mr. FORWARD. I don't recall.

Mr. REDDAN. Did you report this to anyone else?

Mr. FORWARD. I reported the whole matter to the Quartermaster General.

Mr. REDDAN. Did you report it to the Head of the Procurement Office, Mr. McLain?

Mr. FORWARD. Mr. McLain was not the Director of the Procurement Division at that time. Mr. Gemmell was the Acting Director. Mr. McLain had, at that point in time, retired from the Marine Corps.

Mr. REDDAN. Had you ever had discussions with Mr. McLain relative to the quality of personnel in the Procurement Division?

Mr. FORWARD. Yes, sir; there had been times when I discussed with Mr. McLain the possibility of attempting to increase the quality, the level of quality of the personnel within the Division.

Mr. REDDAN. Did you ever have any discussions with him relative to possible conflicts of interests on the part of any of the procurement personnel?

Mr. FORWARD. I can recall no conversation of that nature concerning any individual, specifically. We talked many times about the importance of adhering to the standards of conduct, that the procurement operation was a very sensitive operation, and it was most important we do nothing that would be subject to criticism.

Mr. PIKE. Mr. Forward, when you first got this phone call from a source who, for obvious reasons, did not want to be revealed, did the source just generalize about associations between Mr. Elmore and contractors' representatives, or did the source mention any particular contractors' representative?

Mr. FORWARD. First the source gave no specific cases of either luncheons or evening engagements. But as I do recall, the source did mention Consolidated Diesel in particular.

Mr. PIKE. Did the source mention Mr. Daniel Ross in particular?

Mr. FORWARD. I honestly can't recall.

Mr. PIKE. Do you know who Consolidated Diesel's Washington representative was?

Mr. FORWARD. Yes, sir.

Mr. PIKE. Who was it?

Mr. FORWARD. Mr. Daniel Ross.

Mr. PIKE. Now, did you ask Mr. Elmore when he came in to speak to you about whether he had any personal relationship with Mr. Daniel Ross?

Mr. FORWARD. I specifically asked Mr. Elmore, in my office, if in fact he had been doing what had been alleged by this telephone conversation. He stolidly denied it.

Mr. PIKE. Did you ask him about any personal friendship or relationship with Daniel Ross?

Mr. FORWARD. No, sir. My only questions had to do with whether or not he was engaging in these luncheons or social activities, in the evening, with representatives of Consolidated Diesel or other contractors.

Mr. PIKE. Were you aware of how long he had known Mr. Daniel Ross?

Mr. FORWARD. No, sir.

Mr. PIKE. Were you aware that Mr. Daniel Ross had helped him get his job in Marine Corps procurement?

Mr. FORWARD. I had no idea.

Mr. PIKE. You didn't ask?

Mr. FORWARD. I had no reason for asking such a question; no, sir.

Mr. PIKE. Well, you had had an allegation that he was unduly friendly, perhaps, with Consolidated Diesel. Mr. Ross was Consolidated Diesel's representative.

Mr. FORWARD. Mr. Pike, it never would have occurred to me that Consolidated Diesel or any representative would have anything to do with Mr. Ross getting a job with the Marine Corps, so I would have had no reason to ask that.

Mr. PIKE. It was Mr. Elmore.

Mr. FORWARD. Mr. Elmore, pardon me.

Mr. PIKE. And you didn't ask him anything specific about what his relations were with Mr. Ross?

Mr. FORWARD. No, sir.

Mr. REDDAN. Did you ever have any conversations with Mr. McLain relative to abnormally long lunch hours being taken by the Procurement Division personnel?

Mr. FORWARD. I have had such conversations with Mr. McLain and many other personnel in the Supply Department; yes, sir.

Mr. REDDAN. Were any particular problems involved in this connection with procurement personnel?

Mr. FORWARD. No, sir. None specifically.

Mr. REDDAN. Had you received any allegations of extended lunch hours at which perhaps there had been too much drinking?

Mr. FORWARD. No, sir; except the one that I mentioned during the telephone conversation.

Mr. REDDAN. That is the only allegation of that sort you had ever received?

Mr. FORWARD. If you are referring to the Procurement Division specifically.

Mr. REDDAN. Yes, sir; I am.

Mr. FORWARD. I don't recall any.

Mr. PIKE. Mr. Forward, did you ever ask Mr. McLain whether he had any outside relationship with Mr. Ross?

Mr. FORWARD. No, sir; not to my knowledge.

Mr. PIKE. Did you ever ask that question of Mr. Gemmell?

Mr. FORWARD. No, sir.

Mr. PIKE. That is all.

(Whereupon, Jennings McLain, having been first duly sworn, testified as follows:)

Mr. PIKE. Please be seated. Give your name and address.

TESTIMONY OF MR. JENNINGS W. McLAIN, FORMER DIRECTOR, PROCUREMENT DIVISION, SUPPLY DEPARTMENT, U.S. MARINE CORPS, WASHINGTON, D.C.

Mr. McLAIN. My name is Jennings W. McLain. My address is 5444 North 19th Street, Arlington, Va.

Mr. REDDAN. What is your present occupation, Mr. McLain?

Mr. McLAIN. I am retired.

Mr. REDDAN. When did you retire, and from what position did you retire?

Mr. McLAIN. I retired as Director of Procurement Division, Headquarters Marine Corps, October 31, 1969.

Mr. REDDAN. What was your position with the Marine Corps at the time of your—you said Director of Procurement?

Mr. McLAIN. Director of Procurement.

Mr. REDDAN. How long had you held that position?

Mr. McLAIN. As Director, of course, the titles changed, but in fact I ran the business for the last 16 or 17 years.

Mr. REDDAN. Could you give us just a brief biographical background, Mr. McLain? You were in the Marine Corps, were you not, sir?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. Would you start with your entrance on duty, and just run it up for us, please?

Mr. McLAIN. I enlisted in the Marine Corps in 1942, Marine Corps' birthday, I served until 1946. I was commissioned in 1944 at Quantico. I went back to General Accounting Office in June of 1946. I had a total of 16 years in the General Accounting Office and approximately the same length of time as an officer on active duty in the procurement work, and as a civilian.

Mr. REDDAN. Wait a minute, I sort of missed some of that. You say you had 16 years with GAO and 16 years with the Marine Corps?

Mr. McLAIN. Yes, sir. A little better than that. I would have to say I had a total of 36 years' service when I retired—total GAO and Marine Corps.

Mr. REDDAN. Now, you first became associated with the Marine Corps procurement when, sir?

Mr. McLAIN. Approximately January 1951.

Mr. REDDAN. In what capacity?

Mr. McLAIN. I was brought in to the Procurement Division from transportation work, to train work, and I believe I was a Captain at the time. I stayed on active duty until, I believe, January 1953, at which time I assumed the civilian job as Assistant Director of Procurement at the time we had a General in charge.

Mr. REDDAN. Who was in charge at that time?

Mr. McLAIN. General Bethel.

Mr. REDDAN. How long did you remain as an assistant?

Mr. McLAIN. I remained as an assistant about 4 years, I believe it was, at which time they decided to make that a civilian billet, and I was put in charge. I remained in charge until I retired.

Mr. REDDAN. I see. Who was your assistant?

Mr. McLAIN. Mr. Gemmell in the latter days, I guess for the past, until prior to retirement, approximately 4 or 5 years.

Mr. REDDAN. Who was the assistant prior to that?

Mr. McLAIN. I didn't have one—oh, yes, I did, I had a man by the name of Towverman, who had come from the General Accounting Office as a GS-14, a lateral transfer.

Mr. REDDAN. Are they the only assistants you ever had?

Mr. McLAIN. I believe with that title; yes, sir.

Mr. REDDAN. Do you know Mr. Daniel Ross?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. When did you first meet him, sir?

Mr. McLAIN. I first met him in the old 15th Infantry Battalion organized reserve, here in town, about 1947.

Mr. REDDAN. Did your periods of training, or your billets in the Marine Corps, keep you in close proximity or not?

Mr. McLAIN. We were both platoon commanders at one time, and then we were, I think I was a company commander and I think he had a platoon in my company on active duty three summers, and continuously through the winter period.

Mr. REDDAN. Do you know whether or not Mr. Ross eventually came into the Marine Corps procurement?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. When was that, sir?

Mr. McLAIN. Our battalion was called to active duty in July 1950. We took the battalion to Camp Lejeune. He had applied for, in his regular course of things, for a procurement billet based on his work with Internal Revenue, on the Excess Profits Tax Council. He wanted to be a contract negotiator. Some time prior to my leaving Camp Lejeune, getting on the troop train movements, he was transferred to Headquarters Marine Corps and put in the Procurement Division.

Mr. REDDAN. Was he ever in the Procurement Division while you were associated with him?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. During what period?

Mr. McLAIN. I can't—I came in in January of 1951, he was there when I got there, of course. He completed 18 months' active duty, so I would say we were together at least then a little better than a year.

Mr. REDDAN. And then where did he go?

Mr. McLAIN. Where did he go?

Mr. REDDAN. Yes, sir.

Mr. McLAIN. He resigned his commission and took the bar examination, and started practicing law.

Mr. REDDAN. He left the procurement at that time?

Mr. McLAIN. Yes.

Mr. REDDAN. Now, have you maintained contact with Mr. Ross over the intervening years?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. How would you characterize your relationship with Mr. ROSS?

Mr. McLAIN. A very discreet friendship. Each with respect for each other.

Mr. REDDAN. I mean, you had social contacts, business contacts? What were they during the period that you were in the Marine Corps procurement?

Mr. McLAIN. Very limited. He had two boys, and I had two boys. They grew up together.

Mr. PIKE. Did you visit his home, Mr. McLain?

Mr. McLAIN. Occasionally; yes, sir.

Mr. PIKE. Let's pin "occasionally" down a little bit. How frequently in the course of a year would you visit him?

Mr. McLAIN. Three times a year.

Mr. PIKE. Three times a year?

Mr. McLAIN. Yes.

Mr. PIKE. Would he visit your home, Mr. McLain?

Mr. McLAIN. I would say less than that. I could recall only one or two occasions he came to my home. We recognized this relationship would cause talk. We had no desire to break off the friendship; I still don't.

Mr. PIKE. When you say you recognized this relationship would cause talk, are you indicating that you felt anyone who didn't realize your relationship, would interpret it to be in violation of some regulation of the Marine Corps perhaps?

Mr. McLAIN. To third persons it might appear the relationship might create some conflict; yes.

Mr. PIKE. Did Mr. Ross ever give you any gifts?

Mr. McLAIN. Never.

Mr. PIKE. Did you ever give him any gifts?

Mr. McLAIN. No, sir.

Mr. PIKE. When you retired from the Marine Corps, what did you do?

Mr. McLAIN. I looked for a job, for one thing.

Mr. PIKE. Did you have difficulty in finding one?

Mr. McLAIN. Nobody offered me any.

Mr. PIKE. Did you eventually find one?

Mr. McLAIN. Yes.

Mr. PIKE. What job was that?

Mr. McLAIN. Well, I did get a call from one firm that I did some work for occasionally, and it gradually grew into a regular retainer arrangement.

Mr. PIKE. What firm was that?

Mr. McLAIN. That was Stuart Avionics, in Linden, N.J.

Mr. PIKE. Did you ever do any work for Mr. Ross?

Mr. McLAIN. Yes, sir; I did.

Mr. PIKE. Did that develop into any kind of retainer?

Mr. McLAIN. I was using his law library.

Mr. PIKE. Were you getting paid by him?

Mr. McLAIN. Not at that time I was not. I started using his law library, I guess, in December. I retired in October. I started using his law library when I was retained by this company in New Jersey. I have a legal background. I have a law degree. I have no access to a

library other than friends. I started to use his library over at 1100 Connecticut Avenue. He asked me on several occasions, would I handle some work for him, and I said yes, I would for a price. And I did. And beginning in January of 1970, I worked for him for a year.

Mr. PIKE. Did you work for him full-time?

Mr. McLAIN. No, sir. It was only when he had—well, it would run in spells. He had quite a lot of protest work, with the General Accounting Office, which he asked me to do some work on. It was spasmodic, and then it became rather a regular thing, and then it dwindled off and then would build up again over the period of a year.

Mr. PIKE. Well, then, as it went up and down, did your pay from him go up and down?

Mr. McLAIN. We agreed on a \$500 a month payment.

Mr. PIKE. So you were getting \$500 a month from him?

Mr. McLAIN. That is right.

Mr. PIKE. Whether the work was up or whether the work was down; is that correct?

Mr. McLAIN. Yes, sir; it evened off.

Mr. PIKE. That lasted for just the 1 year?

Mr. McLAIN. Yes, sir.

Mr. PIKE. What happened at the end of that year?

Mr. McLAIN. Nothing. I didn't—when he needed me, he needed me in a hurry, and there was considerable pressure on the cases that he had to get work out in a hurry. I was involved at that time in some other things, and I decided to just stop the arrangement. It was a very friendly arrangement.

Mr. PIKE. At the end of that year, that was when, January of what, 1971?

Mr. McLAIN. No, sir; this ran from January 1970, through December.

Mr. PIKE. Through December?

Mr. McLAIN. Yes.

Mr. PIKE. Now, in addition to the \$500 a month that he paid you, did he give you any other money?

Mr. McLAIN. No, sir.

Mr. PIKE. Did he write any checks to you?

Mr. McLAIN. Yes, he did.

Mr. PIKE. Did he write a check to you on June 12, 1970? In the sum of \$5,000?

Mr. McLAIN. I thought it was \$10,000. I can be wrong. No, I beg your pardon. Oh, yes, there were two payments, apparently, then. He either gave me a check for \$10,000 or he gave me a check for \$5,000, and an additional \$5,000 later on.

Mr. PIKE. This wasn't so very long ago. We are talking about June 1970. Did he give you \$5,000 at that time?

Mr. McLAIN. I can't recall whether it was \$5,000 then or \$10,000 then. I will let the record speak for itself. He paid me \$10,000 for stock in a bank that I helped start in Rosslyn, I think.

Mr. PIKE. The record will speak for itself. I have here a checkbook which shows—Mr. Ross' checkbook—which shows on the stub a check to your order on June 12, 1970, for \$5,000 and then another one, not until October, for \$5,000.

Mr. McLAIN. Well, that is the correct situation. The \$5,000, I sold the stock, 100,000 shares of capital stock of a Bank of Arlington. I collected from everybody.

Mr. PIKE. You sold 100,000 shares of stock in a Bank of Arlington. You owned 100,000?

Mr. McLAIN. No, sir, for the Bank of Arlington. I helped get it chartered. We organized the bank in Rosslyn, by the name of the Bank of Arlington.

Mr. PIKE. All right.

Mr. McLAIN. I sold all the stock, collected the money for it, and each subscriber for stock, paid only as the usual rule, I didn't know whether this was \$5,000 or \$10,000, some of them paid all of it at the time they purchased it to make sure they got it. Others were only required to pay half the deposit then, and with the agreement in the subscription agreement that they would pay the other half for the purchase of the stock before we opened the bank. And that call would probably come in September or October 1970. So he paid \$5,000, you say in June, he paid the other \$5,000 before we opened. I just don't recall the date.

Mr. PIKE. When did Mr. Ross get the stock for which he had paid you the money?

Mr. McLAIN. We issued the stock—we opened the first of February, some time after the first of February.

Mr. PIKE. First of February this year?

Mr. McLAIN. Yes, sir.

Mr. PIKE. He got his stock at that time?

Mr. McLAIN. Yes, sir.

Mr. PIKE. The stock, then is issued in Mr. Ross' name?

Mr. McLAIN. In Mr. Ross' name. I beg your pardon, I beg your pardon. The stock was issued in my name.

Mr. PIKE. The stock is still issued in your name?

Mr. McLAIN. The stock is carried on the books still in my name, right.

Mr. PIKE. Why is the stock carried in your name, if Mr. Ross paid you \$10,000 for this stock?

Mr. McLAIN. Because I transferred it to him. The stock was endorsed in blank. The reason that the stock was not issued, it was not issued to anybody until February, approximately February 1—maybe a few days before February 1 when we opened.

Mr. PIKE. February 1 is the date on this document.

Mr. McLAIN. All right. The stock was issued in my name because he had bought, I don't know how many shares, I would say as much as maybe 1,200 or 1,500, maybe 1,800 shares. I wouldn't say, maybe 2,000 shares. It might be more. It might even be double that. In his children's name, in his wife's name, in a holding company name, all because I was a little restricted at the time in what I would sell. I was trying to build up a big number of stockholders. I finally wound up with 348. I let him have the stock for his children or his wife and his friends in the name of a company, I think it is a holding company he is involved in. And at the time I sold him the stock for his family and others, I was restricting the sale not to exceed 500 shares in an individual's name. This is just a rule I established, myself.

Mr. PIKE. So there was no law against him buying all the stock he wanted, was there?

Mr. McLAIN. No law against it. It was simply I was trying to get as many stockholders as I could.

Mr. PIKE. You thought you got more stockholders by holding the stock in your name?

Mr. McLAIN. No, sir. I sold him the stock—I bought the stock in his name—in my name, and then transferred it to him when it was issued, simply because there was a restriction, I didn't want to sell too much to any one person.

Mr. PIKE. When you say you transferred it to him when it was issued, the stock is still registered in your name, is it not?

Mr. McLAIN. Well, it is transferred to him.

Mr. PIKE. Is it transferred on the bank's books?

Mr. McLAIN. No, sir; not to my knowledge.

Mr. PIKE. So the bank thinks that you own the stock?

Mr. McLAIN. They probably do. This doesn't—there is really nothing wrong with this. I would say—

Mr. PIKE. There wasn't anything wrong with Mr. Ross having the stock in his own name either.

Mr. McLAIN. Well, at the time he gave me the first check for it, I didn't want to sell it to him. That is why—

Mr. PIKE. You didn't really have to sell it to him, did you?

Mr. McLAIN. I didn't have to sell it to anybody, Mr. Pike. I was trying to get as many stockholders as I could. That is why I held off on him, and put it in my name, and held off on him. Now, I would say that half—I wouldn't say half—half—I would say maybe 35 or 40 percent of the stock in that bank is in people's names that didn't put the money up for it. But there is nothing wrong with that either.

Mr. PIKE. I don't know whether there is or not, because I am not familiar with the relationships with the people.

Mr. McLAIN. I was told it was not.

Mr. PIKE. What we are concerned about that there just may be something wrong with, is a procurement officer of the Marine Corps dealing with a man with whom he is a personal friend, making decisions on contract procurements where the personal friend is involved as a contractor's representative, taking employment from the man when he leaves the Marine Corps, and now winding up with a stock in his name which allegedly belongs to the man, which the man paid for.

It may look all right to you, Mr. McLain, but I have a little trouble with it.

Mr. McLAIN. Could I say that this is all after I left the Marine Corps, and I was under no compulsion whatsoever as to the type of employment I would take, except I didn't sell things to the Marine Corps.

Mr. PIKE. Did you participate in the decisionmaking process involving contractors represented by Mr. Ross?

Mr. McLAIN. I sure did, yes, sir.

Mr. PIKE. Did you participate in the decisionmaking process in situations where the result of your decisions were to benefit Mr. Ross' clients?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. Mr. McLain, to get back to the stock just a moment, you said you transferred this stock to Mr. Ross. I think that was the term you used, was it not, sir?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. How did you do that?

Mr. McLAIN. On a regular stock transfer form. Whether he changes it over to his name or not, I don't care. It really doesn't matter. It doesn't belong to me, it belongs to him.

Mr. REDDAN. When did you do that, sir?

Mr. McLAIN. Sometime after February 1. I don't recall the date. I have got the document. Sure I have got it. I am sure he has got it.

Mr. REDDAN. Is there any way you can fix the date?

Mr. McLAIN. All I can say it was shortly after it was issued.

Mr. REDDAN. How did you come to sign it? Where did you get this form that you used?

Mr. McLAIN. Well, first he receipted for the stock when I gave it to him.

Mr. REDDAN. Do you have a receipt for the stock?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. Do you have it with you, sir.

Mr. McLAIN. No, sir; I do not. I could produce it. I would be glad to produce it.

Mr. REDDAN. Would you furnish it to the committee?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. What is the date on that?

Mr. McLAIN. I don't recall.

Mr. REDDAN. You physically turned the stock over to him?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. All right. How did you make the transfer?

Mr. McLAIN. In blank, on a transfer in blank form, simply signed it over to him.

Mr. REDDAN. Where did this transaction take place?

Mr. McLAIN. He left the form off at the bank, and I signed it and got my wife to sign it, and either he picked it up or I left it off in his office.

Mr. REDDAN. Would it have been more than a month ago?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. How much more than a month ago, would you estimate?

Mr. McLAIN. I would say it was sometime in February.

Mr. REDDAN. Do you recall what this transfer, or this assignment document looked like?

Mr. McLAIN. Yes; it was a type of, as he said, as he explained it to me, it was a regular transfer of the ownership of the stock, authorization transferring it.

Mr. REDDAN. Did you date it, and describe the stock you were transferring?

Mr. McLAIN. I am sure it was. I am sure it was.

Mr. REDDAN. Mr. McLain, I would like to show you a photostat of a document which contains apparently your signature and perhaps that of your wife's, and ask you if you ever saw the original of that.

Mr. McLAIN. Yes, sir. It looks like it. It is my signature.

Mr. REDDAN. What is that document, sir?

Mr. McLAIN. Assignment, separate from certificate it says here. Value received here, sell, assign, transfer unto blank so many shares, capital stock, and so and so.

Mr. REDDAN. What kind of stock are you transferring according to that?

Mr. McLAIN. Capital stock.

Mr. REDDAN. Of what?

Mr. McLAIN. Bank of Arlington.

Mr. REDDAN. Where does it say that?

Mr. McLAIN. Well, the one I signed has all that in that, Mr. Reddan. That was completely filled out when I signed it. Completely filled out.

Mr. REDDAN. Did you fill it out yourself?

Mr. McLAIN. No, sir.

Mr. REDDAN. Who filled it out, do you know?

Mr. McLAIN. It was filled out when I signed it. I don't know who filled it out. I assume Ross filled it out.

Mr. REDDAN. Was it handwritten or typed?

Mr. McLAIN. I don't recall, but I have a copy, and I am assuming the original is available. I would like to see the original.

Mr. REDDAN. So would we.

Mr. PIKE. Mr. Ross provided the committee with this document and alleged that this was the so-called transfer of the stock. Then he is not accurately stating the case; is that correct?

Mr. McLAIN. Mr. Pike, all I can say is——

Mr. PIKE. The one you signed was filled out?

Mr. McLAIN. Yes, sir; as I recall it was; yes, sir.

Mr. PIKE. It had the name of the bank on it?

Mr. McLAIN. I am sure it was.

Mr. PIKE. Dated?

Mr. McLAIN. I am pretty sure it was—I am also positive it was. If I could see the original document I would know.

Mr. PIKE. Did you ever sign one in blank?

Mr. McLAIN. No, sir; I don't think so.

Mr. PIKE. So if this signature which a minute ago you said was your signature——

Mr. McLAIN. That is my signature.

Mr. PIKE. Is not your signature——

Mr. McLAIN. That is my signature.

Mr. REDDAN. How would it get on the blank document?

Mr. McLAIN. I don't know.

Mr. REDDAN. You didn't sign it?

Mr. McLAIN. Not to my knowledge. I am almost positive.

Mr. REDDAN. Is that your wife's signature on there?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. Mr. McLain, did Mr. Ross ever recommend anyone for employment by the Marine Corps?

Mr. McLAIN. Yes, sir. I don't agree with the term "recommended for employment." Good procurement people were hard to find in those days.

Mr. REDDAN. Did he ever find any good procurement people?

Mr. McLAIN. If you want to call it recommended I will agree with that.

Mr. REDDAN. All right. Who were the good procurement people he recommended?

Mr. McLAIN. One was Daniel Elmore. He told me there was a vacancy down in the Procurement Division back some years ago, 8 or 9 or 10 years ago, maybe 11.

Mr. REDDAN. Did he speak to you about Mr. Elmore?

Mr. McLAIN. I don't recall him speaking to me about him, but he showed up for an interview and he was interviewed along with, I think, maybe a couple other people at the time, including people in-house that were eligible for promotion, and we hired him.

Mr. REDDAN. You hired Mr. Elmore?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. Did Mr. Ross recommend anyone else to you?

Mr. McLAIN. In a way he recommended Doral Hupp.

Mr. REDDAN. Before we get there, what was Mr. Elmore's procurement background?

Mr. McLAIN. He had been in the Inspector of Naval Materials Office in Bridgeport, Conn., or someplace up there, and he had been involved in some negotiations and various contract matters, the type of thing that is normally handled by contract administration people.

Mr. REDDAN. Whatever it was, you felt it would make him a good procurement person?

Mr. McLAIN. He met the qualifications for the job, Civil Service standards.

Mr. REDDAN. Those seeking in-house promotion did not have the qualifications?

Mr. McLAIN. I don't recall who by name was involved at the time, but we first tried to promote them from within.

Mr. REDDAN. Now, how about Mr. Neuman?

Mr. McLAIN. Neuman—I wouldn't say no, Ross didn't recommend him.

Mr. REDDAN. Did he have any discussions with you about him at all?

Mr. McLAIN. Oh, I am sure we probably discussed it.

Neuman called me and I introduced him to the then counsel of the Marine Corps.

Mr. REDDAN. Had you known Neuman before?

Mr. McLAIN. Yes, sir, I had; I had met him on a couple of occasions.

Mr. REDDAN. Where did you meet Mr. Neuman?

Mr. McLAIN. I had met him—Ross had introduced him.

Mr. REDDAN. Whereabouts?

Mr. McLAIN. I think in Ross' office, most likely.

Mr. REDDAN. Actually he was working for Ross, wasn't he?

Mr. McLAIN. No, sir.

Mr. REDDAN. He was working in Ross' office?

Mr. McLAIN. I never knew what the arrangement was. I would rather he speak to that or Mr. Ross.

Mr. REDDAN. You said he wasn't working for him. Do you know whether he was or not?

Mr. McLAIN. My information, Mr. Reddan, is that he rented space in Ross' building.

Mr. REDDAN. Who told you that?

Mr. McLAIN. Ross and Neuman.

Mr. REDDAN. Now, when Neuman came down to apply for a job, did you feel that you knew enough about him to recommend him to your people down there?

Mr. McLAIN. I simply introduced him to the counsel at the time, and he presented a résumé which showed that he had engaged in Board of Contract Appeals trial work for several years with the Air Force, and I left it entirely with Mr. Hatch, and Mr. Hatch, who was counsel then, took it from there, and he introduced him to the general counsel and they interviewed him and possibly other candidates for the job and he was eventually hired.

Mr. REDDAN. Do you know whether in that case they were also considering in-house appointments?

Mr. McLAIN. They had nobody in-house.

Mr. REDDAN. Is it your testimony you never talked to Mr. Ross about Mr. Neuman's employment?

Mr. McLAIN. About his employment?

Mr. REDDAN. Yes, sir.

Mr. McLAIN. No, sir; I wouldn't say I never talked to him about it.

Mr. REDDAN. What would you say?

Mr. McLAIN. I would say Ross and I probably agreed he certainly had a good background for that type of work, contract appeals work, the Board of Appeals is an excellent background for that.

Mr. REDDAN. Now, anybody else down there that Mr. Ross helped you find?

Mr. McLAIN. Well, Mr. Ross denies it, but I first heard of Mr. Hupp when he showed up and applied for a job.

Mr. REDDAN. You first what, sir?

Mr. McLAIN. I first met Hupp when he showed up asking for a job, and he told me that Ross had told him that we had vacancies, and he was hired about the same time as Mr. Fink was hired. I don't think Ross recommended him. I don't think he gave him as a reference, as I recall, but he was interviewed along—hiring was a little easier at that time, and Fink and Hupp were both hired.

We had possibly six or seven candidates for the vacancies at that time.

Mr. PIKE. When did Mr. Neuman come to work at Marine Corps procurement?

Mr. McLAIN. That would be sort of hard to say, Mr. Pike. I would say he was there about 3 years, I believe, before I left.

Mr. PIKE. And you left in 1969?

Mr. McLAIN. October 1969.

Mr. PIKE. Did Mr. Neuman participate in any way in any of the matters pertaining to Consolidated Diesel?

Mr. McLAIN. I really couldn't answer that. I would say that with the business that they had, that my division had with Consolidated Diesel, I am sure he was involved in work with them.

Mr. PIKE. Were you aware that he was a stockholder in Consolidated Diesel?

Mr. McLAIN. No, sir; not until I heard it a short time ago.

Mr. PIKE. Were you aware that he had any financial arrangements with Mr. Ross at the time that he was hired by the Marine Corps?

Mr. McLAIN. No, sir; I didn't hire him, Mr. Pike. I didn't have a thing to do with hiring the man.

Mr. PIKE. Except that you introduced him?

Mr. McLAIN. I introduced him, and he applied for the job along with others. He did not work for me.

Mr. PIKE. Were you aware that Mr. Ross' law firm carried Mr. Neuman's name on its letterhead as one of the associates?

Mr. McLAIN. I don't think I ever saw it.

Mr. PIKE. You never got a letter from Mr. Ross on the firm's stationery?

Mr. McLAIN. All I am saying is I don't remember ever seeing his name on the stationery. I would not say it wasn't on there. I would say I didn't know it was on there. You understand, Mr. Chairman, he didn't work for me. He worked for the Counsel to the Commandant. He was simply assigned over there out of counsel's office. He wasn't required to advise me if I knew he had stock. I had no way of knowing him unless I asked him.

I thought he had trouble paying the rent. I didn't know he owned stock in anything. I thought he was like I was. The only way I would have known that any of my people had stock, unless it occurred to me to ask them specifically, was once a year, my people were required to submit a certificate to me showing ownership of stock.

And I did police that very thoroughly. But Mr. Neuman was not required to provide me with a certificate. He wasn't even required to provide it to anybody.

Mr. PIKE. Did you require your people, in addition to showing stock ownership, to show other interests, for example, interests in a corporation speculating in real estate, perhaps?

Mr. McLAIN. They were required to show me, or furnish me with certificates which I furnished to the Quartermaster General. I believe it was annually. This just started about 2 years before I left there. This was certainly well distributed.

It was well known that if anybody owned any stock, and they were involved in any way with a company in which they owned stock, any time during that period of time, in addition to the certificate that they filed, they were required to advise their superiors of any ownership of stock in any company they were doing business with for the Government.

Mr. PIKE. Oh, in any company they were doing business with for the Government?

Mr. McLAIN. Yes.

Mr. PIKE. Not in any—

Mr. McLAIN. This annual thing covered everything.

Mr. PIKE. I see.

Mr. McLAIN. But the periodical report that they were required to make, and it was published and it was discussed and everybody knew about it—

Mr. PIKE. Now, did Mr. Gemmell, in his annual statement—would you have seen his annual statement?

Mr. McLAIN. I saw all of them, yes, sir.

Mr. PIKE. Did he show you that he had stock in a corporation called the Quorum Land Corp.?

Mr. McLAIN. I discussed this with him and he said he did show it to me, and he said he showed it to Mr. Hatch who was the counsel at

the time, and got a clearance on it. I don't recall the situation but I would not deny he showed it to me.

Mr. PIKE. Were you aware who constituted the Quorum Land Corp.?

Mr. McLAIN. I thought it was Marine officers that bought land down in Quantico. I didn't know until later Mr. Ross was also a stockholder.

Mr. PIKE. Mr. Neuman would not have—his stock declaration would not have come to your attention, is that correct?

Mr. McLAIN. Lawyers were not required to file that.

Mr. PIKE. Was Mr. Gemmell under your supervision?

Mr. McLAIN. Yes, sir; he was my deputy.

Mr. PIKE. Had you and he been in the Marines together?

Mr. McLAIN. Yes, sir.

Mr. PIKE. So he and Mr. Ross had also been in the Marines?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. Let's go back to this bank stock just a moment, Mr. McLain. As I understand, you say it is immaterial to you whether that stock is in your name or Mr. Ross' name, is that right?

Mr. McLAIN. Well, it is material in this way, Mr. Reddan. I started that bank. I didn't have any money of my own to speak of. I think I bought 100 shares. I am still working with the bank. I try to help in every way I can. It is doing real well.

Hopefully, I look forward to some sort of a financial arrangement with the bank, and knowing full well that other stockholders—and I mean large stockholders in the bank had not bought the stock in their name, either, I saw nothing wrong with this, and I still see nothing wrong with it.

At least two of these gentlemen I speak of now are employees of the bank at pretty good salaries. This is a line of work I would like to get into. I would like to get out of the procurement business. It is a risky business. I didn't want to participate any more in it than I had to, even on the outside.

Hopefully, I would wind up with some sort of a financial arrangement with this bank. It helped me in a way to have \$10,000 invested in it. I am sure it helps the present officers in the bank, who I am sure don't have that kind of money either.

I would say if I looked over my stockholders' list at least a third of them didn't put up money for that stock. I am assured there is nothing wrong with this at all carrying it on the transfer agent's books in the name of the person who has bought it.

Mr. REDDAN. It is not clear to me how it is of any benefit to you to have your name on a stock certificate if you don't own the stock, or you don't get the dividends.

Mr. McLAIN. I don't get anything, Mr. Reddan.

Mr. REDDAN. Why is it a benefit to you to have this stock in your name?

Mr. McLAIN. I would hope until this hearing produced this, which I am really not ashamed of, that I would be the next director on the board of directors.

Mr. PIKE. Because they believed that you were the owner of \$10,000 worth of stock?

Mr. McLAIN. Mr. Pike, I don't know who in that bank owns their own stock. And I don't see anything wrong with it.

Mr. REDDAN. Mr. McLain, you have been in the hearing room all day, sir, have you?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. You heard the testimony this morning, I assume, relative to the meetings prior to the award of the contract of the 700 series generators?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. And there was testimony to the effect that there came a time when you had a meeting, some time between Christmas and New Year's 1967, in which you discussed the relative abilities of the three lowest contractors, to meet the provisioning requirements of the procurement, is that right, sir?

Mr. McLAIN. I heard the discussion you mentioned, yes, sir.

Mr. REDDAN. Is that correct?

Mr. McLAIN. It involved more than that, Mr. Reddan.

Mr. REDDAN. Yes, I assume it did. But was that one of the matters discussed?

Mr. McLAIN. That was one of the requirements of the invitations for bids, that qualified or disqualified the bidder, whether or not he bid in response to the invitation.

Mr. REDDAN. Would you say that in the award of the contract, that particular contract, the award turned on whether or not the contractor could meet the provisioning requirements?

Mr. McLAIN. In a way, the way you express it is correct. To put it a little more simply, the Government, through its solicitation document, the invitation to bid, specified what the provisioning would be along with the other requirements that the bidders had to meet.

One of the specifications involving the provisioning, specified certain cycles that the provisioning went through, it specified certain events which the contractor was required to perform, and certain events which the Government had to perform.

The computation of these cycles, the total days encompassed in these cycles determined whether or not the bid was responsive.

Mr. REDDAN. On this particular procurement, Mr. McLain, do you recall who the three low bidders were?

Mr. McLAIN. Just vaguely I remember the names. As you understand, I haven't been in the office. I haven't had access to these files. It was some time ago but I will do the best I can.

Mr. REDDAN. CONDEC was one?

Mr. McLAIN. CONDEC was one.

Mr. REDDAN. CONDEC was not the low bidder?

Mr. McLAIN. CONDEC was not the low bidder.

Mr. REDDAN. Didn't the testimony this morning refresh your recollection?

Mr. McLAIN. It did, yes, sir.

Mr. REDDAN. With your refreshed recollection, just tell us, please, who the three low bidders were.

Mr. McLAIN. I don't know what the order was, but I believe it was a firm in Georgia, I haven't remembered their name. It is Electro-Mechanical, or something like that in Moultrie, Ga., was the low bidder.

Mr. REDDAN. I show you a copy of the spread sheet, to help you refresh your recollection.

Mr. McLAIN. I recall, the three low bidders were Moultrie, Ga., firm, which would have been Electromagnetic Industries.

Mr. REDDAN. What was their bid, sir?

Mr. McLAIN. You mean the price?

Mr. REDDAN. Yes.

Mr. McLAIN. These are unit prices, I presume. On this particular item their bid was \$3,557.50, with a half percent time discount.

Mr. REDDAN. That is the unit price?

Mr. McLAIN. Yes.

Mr. REDDAN. And you were buying how many at that time?

Mr. McLAIN. That item, well, let's see—you have got—

Mr. REDDAN. Let's put it this way, Mr. McLain. Can you tell from looking at that sheet whether or not there was about \$1,500,000 difference between the low bidder and CONDEC?

Mr. McLAIN. I heard the testimony this morning, and I am trying to add several columns at once here, but I think there is no question but what Electromagnetics was low, Adt was second low, and Consolidated Diesel was third low.

Mr. REDDAN. You had this meeting some time between Christmas and New Year's, and it was testified here that among others that were present were Mr. Elmore, yourself, Mr. Hupp and Mr. Ross. Do you recall that meeting, sir?

Mr. McLAIN. It is hard to recall a particular meeting. Hearing their testimony this morning, I would say yes, there was such a meeting.

Mr. REDDAN. Let me put it this way. Did you ever have a meeting such as that where a contractor representative was present?

Mr. McLAIN. Yes, sir; many times.

Mr. REDDAN. You just name me one or two others so we can check them.

Mr. McLAIN. I would say that was the normal way of doing business.

Mr. REDDAN. Go ahead, tell us about other occasions.

Mr. PIKE. It would be the normal way of doing business to have one out of the three low bidders' contractors' representatives present, the high of the three, but not the two lowest bidders' contractors' representative present? That is the normal way of doing business?

Mr. McLAIN. I am saying that anybody who is within—anywhere within range, and by this he wouldn't have to be the low bidder, he could be fifth low bidder, and he could come in there and argue that the bids who bid lower than he was should be discarded and his bid should be honored.

Mr. PIKE. Without the low bidder's representatives being present?

Mr. McLAIN. Absolutely. Yes, sir; I heard this testimony this morning. I am surprised experienced procurement people would leave that impression with this committee.

Mr. PIKE. Why wouldn't you give the low bidder an opportunity to come in?

Mr. McLAIN. All of them have exactly the same opportunity, Mr. Pike.

Mr. PIKE. Was the low bidder invited to do what Mr. Ross was invited to do?

Mr. McLAIN. Mr. Pike, I explained this to your staff. Some of them don't even talk to the contracting officer. They go directly into court and ask for injunctive relief.

Mr. PIKE. You didn't answer my question. I am asking you in this case were the low bidders invited to come in with their contractors' representatives?

Mr. McLAIN. They were in there.

Mr. PIKE. In there at that meeting?

Mr. McLAIN. Not at that meeting. You wouldn't have a meeting like that and have all the bidders in there discussing one man's bid.

Mr. PIKE. I can't understand why you had one of the contractors' representatives in the meeting.

Mr. McLAIN. He asked for the meeting.

Mr. PIKE. I bet he did.

Mr. McLAIN. And by every right, sir—by every right. And this is done every day in this business. This is surprising to me that this committee was left with the impression that any bidder couldn't go in and see that contracting officer.

He has three avenues, Mr. Chairman. He could go to the contracting officer, make any kind of pitch he wants about his own bid or about the other bidders' buy, what is wrong with it, the bids are out there on the table. I was even asked by your staff if my people permitted people to see other people's bid. I told them at the time that the street people out on Lynn Street came in and looked at those bids. This is public knowledge.

Mr. PIKE. Public knowledge after bids are opened?

Mr. McLAIN. After bids are opened; yes, sir. They can come in there, their bids stay out. Not any procurement officers leave their bids out on the table, but we did. This was a good rule and should be followed by every procurement officer. So every bidder polices this system. That is the way they police it. They look at each other's bid.

They can complain to the contracting officer. They could have gone up to the Commandant if they wanted to complain about any of the bids lower than theirs, or anything that would lead to the award of that contract, and they could go and make their pitch.

Mr. PIKE. Suppose one of the lower bidders had come in and said, we want this bid reviewed because we don't think anybody who is in the Marines with Mr. Ross ought to be sitting in judgment on this particular contract award. What would the decision have been?

Mr. McLAIN. The decision would have been they had the same right to do the same thing Mr. Ross was doing. It is perfectly normal. They have three ways to protest, Mr. Congressman. They can come in and convince the contracting officer of anything they have got to make a pitch about. They could go to the General Accounting Office, and file a formal protest.

Mr. PIKE. Contracting officer was Mr. Elmore? Is that correct?

Mr. McLAIN. Whoever the contracting officer is. This is usually their first approach. And then it depends on—

Mr. PIKE. The Contracting Officer was Mr. Elmore?

Mr. McLAIN. All right. Then—

Mr. PIKE. Whom Mr. Ross had recommended for his job.

Mr. McLAIN. Well—

Mr. PIKE. Is that correct?

Mr. McLAIN. I would say Mr. Ross had nothing to do with Mr. Elmore being hired, other than telling him that there was a vacancy there and he applied for it and he complied with all the qualifications set out by civil service and the Marine Corps, and the decision was made to hire him. And I do not for a moment agree that by virtue of Elmore going to work there that Mr. Ross had anything to do with the decision to hire him.

Mr. PIKE. All I can say is, Mr. McLain, that if this is your idea of a fair procurement practice in the Marine Corps, then I can account for an awful lot of the procurement outrages that we see all the time.

Mr. McLAIN. Mr. Pike, I would like to know where did we violate either propriety or procurement procedures in the order of these contracts. I have to tell you there that everybody was in fighting for that business. Everybody was going off wherever they wanted to go. This low bidder went to Senator Russell.

Mr. PIKE. I simply suggest to you, Mr. McLain, that you just stick around and listen to the rest of the testimony, and I think you will find where all kinds of proper procurement practices were violated. If you see no impropriety in it, to me that is the saddest thing which I have seen in the whole hearing.

Mr. McLAIN. Could I ask the record to show this award of the 700 series was reviewed by the Comptroller General of the United States and a formal decision rendered which said the award was proper.

Mr. PIKE. I don't expect that the Comptroller General of the United States knew all we know about the relationship between Mr. Ross and Mr. Elmore and yourself, and I expect that if he looked at the thing again, and had the knowledge which we know, and which we have today, about this relationship, he wouldn't come to that conclusion.

Mr. McLAIN. I would deny to the last that there was any favoritism shown in the award of that contract by the Marine Corps. And I would subject it to any experienced procurement review board to look at it.

Mr. HALL. Mr. Chairman—

Mr. PIKE. Dr. Hall.

Mr. HALL. At this same meeting was Mr. Hupp present?

Mr. McLAIN. He says that he was; yes, sir. I would agree that he was there.

Mr. HALL. Did he recommend at this meeting all bids be rejected and a new invitation should be submitted for bids?

Mr. McLAIN. I would take his word for it that he did recommend it. We didn't want to do that. The Comptroller General claps you down every time you do that. You don't do that in a reckless way. The Comptroller General of the United States has criticized many people for doing that. After you reveal the price of these bids, particularly on these big procurements, you do not readvertise it for a reason such as was advocated at the time.

Mr. HALL. At the time of that recommendation, did you or did you not tell Mr. Hupp to "shut up"?

Mr. McLAIN. I did not. I never spoke to an employee of mine in my life like that.

Mr. HALL. Was this the only meeting to discuss the award of this contract, in which a representative of any company was present?

Mr. McLAIN. It is hard to recall, but I know that there were people swarming all over that place during this time, trying to get that business.

Mr. HALL. But you cannot testify to this committee that there was another similar meeting, apropos the awarding of the contract, in which there were other company representatives?

Mr. McLAIN. Yes, sir; I'm positive there was one or more meetings with the Electromagnetic people. I saw them in there, day in and day out. They were there. They were swarming all over the place.

Mr. HALL. Were their representatives present?

Mr. McLAIN. I saw the president of the company and I saw his people and I know—

Mr. HALL. Did you have a formal meeting similar to this meeting for their representatives?

Mr. McLAIN. I understand there were meetings. I didn't attend them, but they were having meetings.

Mr. HALL. After this meeting did you direct Hupp to award the generator contract to CONDEC?

Mr. McLAIN. The decision was reached not after that meeting; it seems there were several discussions with my own people, including going over to the General Accounting Office which we do on all controversial procurements and asked for what we call the horseback opinion, which Armed Services procurement regulations tells us we will do. And I got the opinion of the General Accounting Office that the award should be made to them, and then the decision was made to give the award to CONDEC.

Mr. HALL. What day was the decision made?

Mr. McLAIN. I couldn't recall that at all. It would have been subsequent to our meeting with the General Accounting Office.

Mr. HALL. Not even with the help of this spread sheet?

Mr. McLAIN. That wouldn't reveal it.

Mr. HALL. Did you personally permit Mr. Ross to be present in the decisionmaking meeting, whereas no other company representative was there?

Mr. McLAIN. No, sir; positively not. Mr. Ross was not in the meeting where we decided to make the award—absolutely not.

Mr. HALL. When did you decide to make the award?

Mr. McLAIN. I would have to say it would follow, probably, the day after or it might have been on the same day, that we cleared it with the General Accounting Office.

Mr. HALL. Would that have been before or after, or on December 29, 1967?

Mr. McLAIN. It had to be before the date of the award, which I understand was the 29th.

Mr. HALL. Would that have been before or after, or on December 29,

Mr. McLAIN. It had to be at least the several days—or possibly a week prior to that.

Mr. HALL. Who prepared the spread sheet, a copy of which you have before you?

Mr. McLAIN. Whoever opened the bids. The name should be on there. Margaret H. Deering.

Mr. HALL. Did you discuss that at this meeting?

Mr. McLAIN. The spread sheet?

Mr. HALL. Yes.

Mr. McLAIN. The prices, of course, yes, sir, were discussed.

Mr. HALL. You have to have the spread sheet in order to make this discussion?

Mr. McLAIN. Yes, sir.

Mr. HALL. But you can't tell me the day of that meeting?

Mr. McLAIN. No, sir; I could not.

Mr. HALL. When did you retire?

Mr. McLAIN. October 31, 1969.

Mr. HALL. Almost 2 years after?

Mr. McLAIN. Yes, sir.

Mr. HALL. I think that is all I have at this time, Mr. Chairman.

Mr. REDDAN. Mr. McLain, during this meeting, or at any time prior to the award of the contract to CONDEC, for the 700-series generators, did anyone raise the question of CONDEC's ability to meet the provisioning requirements of the contract?

Mr. McLAIN. I don't recall any such thing being mentioned. This was, of course, the very issue in regard to whether or not their bid was responsive along with the other two. There was a complete review of the dates which they inserted in their bid to make the same determination as to whether they could or could not.

Mr. REDDAN. Do you know when the protests of the two low bidders were filed with GAO?

Mr. McLAIN. When the other low bidders protested?

Mr. REDDAN. Yes, sir.

Mr. McLAIN. Well, they could protest before or after award. I just have to let the record speak. I don't know when. I am not even sure a formal protest was filed by Adt. I believe one was filed by the Georgia firm, Electromagnetic Industries.

Mr. REDDAN. On January 5, did you recommend the award of the contract to CONDEC?

Mr. McLAIN. I understand this was awarded on December 29.

Mr. REDDAN. What is that?

Mr. McLAIN. I thought this was awarded the 29th of December, the previous December.

Mr. REDDAN. This is the determination under IFB-M0002, and this is signed by Doral Hupp, and approved by you on January 5, 1968.

Mr. McLAIN. I am not sure what that document is, Mr. Reddan. I would like to look at it.

Mr. REDDAN. It is my understanding from your testimony that at least prior to January 1968 you say you had an informal opinion from the General Accounting Office you should award this contract to CONDEC, is that right, sir?

Mr. McLAIN. I missed a part of your question. I guess it was did I have the informal decision from GAO to award it.

Mr. REDDAN. That is right.

Mr. McLAIN. Yes, sir.

Mr. REDDAN. Who gave you that decision?

Mr. McLAIN. It was either—it had to be most likely Mr. Goldstein's office. There were several attorneys involved in it. I believe it was Mr. Goldstein.

Mr. REDDAN. Is Mr. Goldstein the General Counsel?

Mr. McLAIN. Yes, sir.

Mr. REDDAN. Would you look at that document, please?

Mr. McLAIN. This is a statement of certificate award. It is signed by Doral Hupp, as the Contracting Officer, and it shows an award was made on the 29th of December 1967. And it shows that Consolidated Diesel Electric was awarded all items. It shows that Electromagnetic Industries was nonresponsive, and that Adt Manufacturing Co. was nonresponsive to the invitation to bids. It also shows that a determination has been made that Consolidated Diesel Electric Co. is a responsible contractor.

Mr. HALL. Mr. Chairman, at that point, did you say that indicates to you that the other two companies, the low bidders, were nonresponsive or nonresponsible?

Mr. McLAIN. Nonresponsive, and it certifies that CONDEC is a responsive contractor. This is required by the contract.

Mr. HALL. I understand that. I understood you to say they protested and stormed all over the place because they were the low bidders, and they had similar meetings with their representatives.

Mr. McLAIN. They protested on the basis that they were the low bidder, and contended that they were responsive. But the finding by the Marine Corps and the General Accounting Office was that these other two bidders were not responsive.

Mr. HALL. I am sorry I didn't hear—not responsive?

Mr. McLAIN. Nonresponsive, yes, sir. In other words, if a bidder is determined to be nonresponsive to the bid, you ignore his bid. And the reason for that is he bid on different terms than what the invitation to bid asked him to bid on. As a matter of fact this Electromagnetics actually crossed out a portion of the invitation to bid everybody was bidding on, and write in his own terms. It was a flagrant nonresponsive bid.

Mr. HALL. Well, I will have to leave it to my legally trained members on the committee, which I am not, as to whether that is good usage of semantics or not, Mr. McLain, but I find it hard to understand why people that swarmed all over the Pentagon, or your then-existing office, and objected to not being given the award, when they were in fact lower bidders than the final assignee of the award, were not responsive in ordinary English language. There may be a legal term or connotation I don't understand, or it may be a common usage term I am not familiar with.

Mr. McLAIN. It is, sir.

Mr. HALL. They certainly did respond to your invitations for bid. The bids were opened on a date certain. There are all these meetings that you say are common practice, I am constrained to agree with the chairman are certainly unusual if the others were not invited to be present simultaneously, or sequentially, and I have a fair knowledge of the English language too, to say that two would be nonresponsive on your final statement of award.

Mr. McLAIN. Well, that is the case, sir. It is a technical term that is required. It is a finding that is required by the contracting officer, and this document goes to the General Accounting Office. Nonresponsive simply means—

Mr. HALL. You had no trouble with GAO?

Mr. McLAIN. No, sir.

Mr. HALL. As to that designation even after they had learned all the facts?

Mr. McLAIN. Yes, sir. Nonresponsive simply means they did not bid on what we asked for, therefore, they could not be considered for award.

Mr. PIKE. The committee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 4:05 p.m. the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, July 21, 1971.)

MARINE CORPS PROCUREMENT PRACTICES CONFLICTS OF INTEREST

WEDNESDAY, JULY 21, 1971

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
ARMED SERVICES INVESTIGATING SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 10:07 a.m. in room 2339, Rayburn House Office Building, the Honorable Otis G. Pike presiding.

Members present: Hon. Otis G. Pike, Hon. Alton Lennon and Hon. Durward G. Hall.

Staff Present: John T. M. Reddan, Counsel; John F. Lally, Assistant Counsel; and Richard A. Ransom, Professional Staff Member.

Mr. REDDAN. Mr. Holmes.

Whereupon Page H. Holmes was sworn and testified as follows:

Mr. PIKE. Please give your name and address to the reporter.

TESTIMONY OF MR. PAGE H. HOLMES, FORMER REPRESENTATIVE, DEWEY ELECTRONICS CORP., PARAMUS, N.J.

Mr. HOLMES. Page H. Holmes. My present address is Holiday Inn, Burlington, Mass.

Mr. REDDAN. What is your present occupation, Mr. Holmes?

Mr. HOLMES. I am a communications systems specialist for General Electric.

Mr. REDDAN. How long have you held that position?

Mr. HOLMES. About 2 months.

Mr. REDDAN. Prior to that time, where were you employed?

Mr. HOLMES. I worked for the Dewey Electronics Corp.

Mr. REDDAN. During what period, sir?

Mr. HOLMES. From August 1965 until about May of this year.

Mr. REDDAN. And what were your duties?

Mr. HOLMES. I was a troubleshooter, expeditor, getting marketing information, technical assistant.

Mr. REDDAN. Where was your office?

Mr. HOLMES. In Arlington Towers, in Rosslyn, Va.

Mr. REDDAN. Who else was in that office?

Mr. HOLMES. There were several people. Mr. Duke Snyder, Mike Kemple was there quite often. He wasn't permanently there. Mr. Chuck Wood, Charles Spencer. There was another man, I can't remember his name.

Mr. REDDAN. Now, prior to going with the Dewey Corp. you were an officer in the Marine Corps?

Mr. HOLMES. Yes, sir.

Mr. REDDAN. What rank, sir?

Mr. HOLMES. I retired as a Major.

Mr. REDDAN. In 1965?

Mr. HOLMES. Yes, sir.

Mr. REDDAN. Who did you report to in your normal operations?

Mr. HOLMES. Mr. Kemple.

Mr. REDDAN. What was Mr. Kemple's position with the Dewey company?

Mr. HOLMES. He was a vice president of the company.

Mr. REDDAN. Was his office normally in New York or New Jersey?

Mr. HOLMES. Normally in New York and New Jersey.

Mr. REDDAN. In connection with your work in the Washington office, did you have any opportunity to observe Mr. Kemple in his association with Mr. Elmore?

Mr. HOLMES. Yes, sir.

Mr. REDDAN. Would you tell the committee briefly what your observation was?

Mr. HOLMES. Mr. Kemple did the negotiating and was the contract officer with the company, and when he would have negotiations with Mr. Elmore, they would leave the office. I would leave the office and come back usually if it ran through noon, pick them up, and generally we would have a business luncheon.

Mr. REDDAN. Did Mr. Kemple deal with anyone besides Mr. Elmore, to your knowledge, in the Marine Procurement Office?

Mr. HOLMES. Mr. Fink and Mr.—well, two or three, I can't remember their names.

Mr. REDDAN. Do you know Captain O'Brien?

Mr. HOLMES. Yes; I do.

Mr. REDDAN. Did Mr. Kemple ever have any dealings with Captain O'Brien to your knowledge?

Mr. HOLMES. Yes. We had a radar contract with Captain O'Brien. He dealt with him on that matter.

Mr. REDDAN. Could you describe the physical setup of your offices. They were over in the Arlington Towers?

Mr. HOLMES. Yes.

Mr. REDDAN. What was the physical setup there? What did you have?

Mr. HOLMES. Generally when I was first there, we had mostly living room furniture, and we had a bedroom in the back, and then we got rid of that and we put in all furniture in the office.

Mr. REDDAN. At one time, then, you had it fixed up as an office-apartment combination?

Mr. HOLMES. Originally, yes; it was, sir.

Mr. REDDAN. Over what period of time did that condition continue?

Mr. HOLMES. I would say about a year.

Mr. REDDAN. During that time, did anyone, other than Dewey employees, have access to the apartment with the Dewey company's consent?

Mr. HOLMES. Yes; they did.

Mr. REDDAN. Do you know who?

Mr. HOLMES. Mr. Kemple's sons were there several times and their wives, I understand.

Mr. REDDAN. Anyone else?

Mr. HOLMES. Other than the employees?

Mr. REDDAN. Yes.

Mr. HOLMES. No.

Mr. REDDAN. Did anyone furnish keys to the apartment?

Mr. HOLMES. Yes; Mr. Kemple's sons had keys, I believe, and the employees had keys. Those were given out to the people entertained.

Mr. REDDAN. Given to what people, sir?

Mr. HOLMES. The employees and some of Mr. Kemple's relatives.

Mr. REDDAN. Was the apartment ever made available to anyone in the Marine Corps Procurement Office?

Mr. HOLMES. Not that I have direct knowledge, sir.

Mr. REDDAN. Had you ever had an occasion to be in the apartment when someone from the Marine Corps Procurement Office was there?

Mr. HOLMES. Yes; I was.

Mr. REDDAN. Under what circumstances?

Mr. HOLMES. I received a call one night, somewhere around 9 or 10 o'clock, from Mr. Elmore. He said he was hurt, and he asked me if I could meet him at the office and help him. I went down there and I was concerned, his voice was strained, and when I went in the office he had a towel wrapped around his hand with blood on it. I asked him what happened, he said he cut his hand.

Mr. REDDAN. Did he tell you how?

Mr. HOLMES. I believe he said it was on a bottle. He unwrapped the towel and showed me he had a bad cut on, I believe it was his right hand—I am not sure—and I was concerned, it was bleeding very badly, and he asked me to get him to a doctor. I told him to come on, I would take him to the hospital.

Mr. REDDAN. Was anyone with you at the time?

Mr. HOLMES. No; there was not.

Mr. REDDAN. Was your wife with you?

Mr. HOLMES. No, sir; she was not.

Mr. REDDAN. She was not?

Mr. HOLMES. No.

Mr. REDDAN. Was anyone with Elmore?

Mr. HOLMES. Yes; there was.

Mr. REDDAN. How many people?

Mr. HOLMES. One.

Mr. REDDAN. Do you know who the other person was?

Mr. HOLMES. I do not.

Mr. REDDAN. Have you since learned?

Mr. HOLMES. I have not learned her name, no.

Mr. REDDAN. Was that the only occasion on which you saw Mr. Elmore in that apartment?

Mr. HOLMES. Yes.

Mr. REDDAN. Did you ever see anyone else from the Marine Corps Procurement Office in that apartment?

Mr. HOLMES. No, sir; I don't believe so.

Mr. REDDAN. Mr. Holmes, I would like to direct your attention to 1968, and ask you if there came a time during that period when a company car was loaned to Mr. Elmore?

Mr. HOLMES. Yes, sir. I don't remember the date, but I remember a company car being loaned to Mr. Elmore.

Mr. REDDAN. Will you tell us the circumstances of that, what you know about it, please, sir?

Mr. HOLMES. To my knowledge, Mr. Elmore's car had been stolen. He was there without transportation.

Mr. REDDAN. Mr. Lally is showing you some documents there.

John, will you have them identified, please?

Mr. LALLY. Yes. The first page is an Aero of Washington, D.C. Rent-A-Car Co., rental agreement No. A4599. The second page is the same District of Columbia Rent-A-Car Co. rental agreement A440. The third page is the same District of Columbia Rent-A-Car agreement A1280, and two American Express charge cards in the name of Page H. Holmes, The G. C. Dewey Corp., containing notations in the upper right hand corner of A4599, and A440.

Mr. HOLMES. Yes, this is a car that was rented for Mr. Snyder who was an employee of the company.

Mr. REDDAN. Would you tell us the circumstances, please? Does this rental of this car have anything to do with the loaning of the car to Mr. Elmore?

Mr. HOLMES. Yes. Mr. Snyder had a company car, and I don't remember, either I was directed or Mr. Snyder was directed to let Mr. Elmore use the car, and then was told to rent Mr. Snyder a car.

Mr. REDDAN. Excuse me, sir. Who directed you to do that?

Mr. HOLMES. Mr. Kemple. I was directed to—

Mr. REDDAN. Did he do this in writing or verbally?

Mr. HOLMES. Verbally.

Mr. REDDAN. Where did this take place? Where was it? Was he in the Washington office?

Mr. HOLMES. The Washington office, yes.

Mr. REDDAN. Would you tell, as precisely as you can, what Mr. Kemple told you to do?

Mr. HOLMES. Well, as I say I don't really remember what he told me, but the circumstances, as I remember, were to have Mr. Snyder let Mr. Elmore use his car and to rent a rental car for Mr. Snyder.

Mr. REDDAN. In other words, Mr. Elmore was to have use of The G. C. Dewey Co. car?

Mr. HOLMES. No, sir.

Mr. REDDAN. Mr. Snyder was then to go out and rent a car for himself during the period of time Mr. Elmore had the company car, is that right?

Mr. HOLMES. Yes.

Mr. REDDAN. How long did Mr. Elmore have the company car?

Mr. HOLMES. My recollection it was 2 or 3 weeks, but Mr. Lally showed me this, and possibly it was this period.

Mr. REDDAN. You said he was showing you this, what do you have before you?

Mr. HOLMES. This car rental statement, which appears to be November 3.

Mr. REDDAN. November 3, 1968?

Mr. HOLMES. 1968. October 3, I guess. There is an October 3 date here. There is a date November 3.

Mr. REDDAN. October 3, I believe, if you will look closely.

Mr. HOLMES. Yes, October 3.

Mr. REDDAN. And it runs through—the rental runs through what period, sir—flip over to page 3 there.

Mr. HOLMES. Will return by January 3, 1968.

Mr. REDDAN. The date was what, sir?

Mr. HOLMES. January 3, 1968, it says will return by, and date and time he has December 9.

Mr. REDDAN. Does it show the charge for that car to the Dewey Co.?

Mr. HOLMES. This says total charge is \$293.28.

Mr. REDDAN. There are two copies of credit charges there alongside of you? Can you tell us what the two credit charges show?

Mr. HOLMES. One says \$275.42, one says \$293.28.

Mr. REDDAN. That is a charge by what company to Dewey?

Mr. HOLMES. Aero Rent-A-Car.

Mr. REDDAN. What is the total of the two?

Mr. HOLMES. On the two charges?

Mr. REDDAN. Yes, sir.

Mr. HOLMES. \$568.70.

Mr. REDDAN. Is that the payment for the car that was rented by the Dewey Co. during the period of time?

Mr. HOLMES. On this charge, this car?

Mr. REDDAN. Yes.

Mr. HOLMES. I don't know.

Mr. REDDAN. What does it say there?

Mr. HOLMES. This says \$293.28. There is no charge for \$275 that I can see—I am sorry, here is another one. There are two bills here apparently.

Mr. REDDAN. Yes.

Mr. HOLMES. One is \$275.42, yes and the other is \$293.28.

Mr. REDDAN. John.

Mr. LALLY. Mr. Holmes, did you make any trip on which you were accompanied by personnel of the Marine Corps Procurement or Technical Branch?

Mr. HOLMES. Yes, sir; several.

Mr. LALLY. On any of those trips, did the Dewey Corp. pick up the hotel bills of those people?

Mr. HOLMES. Yes, sir.

Mr. LALLY. Do you recall who the people were that accompanied you on those trips, sir?

Mr. HOLMES. On one trip, as I recall, there was a Major Martino, Dick Paulsen, Mr. Kobatosky—I think a Bill Sadowsky, and one other man, Leo—I can't remember his last name, as I recall.

On one of the other trips a Warrant Officer Stivers, and Captain O'Brien.

Mr. LALLY. Did you pick up the tabs for all of these people at the motel?

Mr. HOLMES. No, sir; I did not.

Mr. LALLY. For whom did you pick up the check, Mr. Holmes?

Mr. HOLMES. I was staying with Dick Paulsen. We doubled up in a room, and I paid his bill, and I checked out, it was on my card, so I just gave them my card.

The other trip was at Paramus, N.J., and Warrant Officer Stivers and Captain O'Brien were the only ones. I left the motel, I think I was there 2 days. They stayed on, and when I checked out they put

their bill on my card. I gave them a credit card. Their bill is on it. So I just went ahead and gave my card and signed it and left. They stayed there. I don't know when they left or what happened.

Mr. LALLY. I show you, Mr. Holmes, a copy of a G. C. Dewey Corp. voucher No. 10158, dated March 12, 1969, and its attachments. I direct your attention to a motel bill from the Holiday Motor Lodge, Jacksonville, N.C., and ask if this is the one trip that you referred to?

Mr. HOLMES. This appears to be the document, yes.

Mr. LALLY. This is one of your expense vouchers, is it, sir?

Mr. HOLMES. Yes, I believe it appears to be.

Mr. LALLY. I direct your attention to G. C. Dewey Corp. voucher No. 10390, dated September 2, 1969. Is that one of your expense vouchers, Mr. Holmes?

Mr. HOLMES. Yes, it appears to be.

Mr. LALLY. Directing your attention to the bill of the Howard Johnson Motor Lodge, Saddle Brook, N.J., dated August 26, 1969, is this the other trip you referred to, and on which you were accompanied by Marine Corps personnel?

Mr. HOLMES. This appears to be the same—you mean the one to New Jersey?

Mr. LALLY. Yes, sir.

Mr. HOLMES. Yes, sir.

Mr. LALLY. Mr. Holmes, did you ever learn while you were employed by G. C. Dewey Corp. that any Marine Corps personnel had the use of a credit card or credit cards of the Dewey Corp.?

Mr. HOLMES. No, sir.

Mr. LALLY. Did you ever hear that?

Mr. HOLMES. I heard a rumor to that effect, yes, sir.

Mr. LALLY. Whom did you hear had the use of those cards?

Mr. HOLMES. Well, I heard a rumor that Mr. Elmore had use of a card.

Mr. LENNON. Mr. Holmes, you retired from the Marine Corps when, in 1965?

Mr. HOLMES. In August.

Mr. LENNON. In August?

Mr. HOLMES. Yes.

Mr. LENNON. When did you go to work for the Dewey Corp., that same year?

Mr. HOLMES. In August.

Mr. LENNON. How long after you left the Marine Corps in days?

Mr. HOLMES. It would be probably the next day.

Mr. LENNON. Probably the next day.

Mr. HOLMES. After I retired.

Mr. LENNON. You responded to a question by the counsel that one evening you received a call from Mr. Dan Elmore. Did Mr. Dan Elmore say where he was when he called you?

Mr. HOLMES. He asked me to meet him at our office.

Mr. LENNON. Meet him at your office?

Mr. HOLMES. Yes.

Mr. LENNON. You are talking about the Dewey Corp. apartment complex in the Arlington Towers?

Mr. HOLMES. Yes, sir.

Mr. LENNON. When you arrived, he was there?

Mr. HOLMES. Yes, sir.

Mr. LENNON. Not alone, but with a lady?

Mr. HOLMES. Yes, sir.

Mr. LENNON. You were the only three there?

Mr. HOLMES. I didn't see anyone else.

Mr. LENNON. You didn't see anyone else, so naturally we would assume when you say you saw no one else, no one else was there?

Mr. HOLMES. Yes, sir.

Mr. LENNON. You say he had a rather severe cut?

Mr. HOLMES. Yes, sir.

Mr. LENNON. He had his hand bound in a towel, I believe you identified it?

Mr. HOLMES. Yes, sir.

Mr. LENNON. When you left to take him to the hospital did you leave the lady there?

Mr. HOLMES. I left both of them there and went out to get my car. Mr. Elmore drove his car and followed me to the hospital.

Mr. LENNON. He just followed you, and you drove your own car to the hospital?

Mr. HOLMES. Yes, I did.

Mr. LENNON. They were not familiar with the hospital facilities in that area?

Mr. HOLMES. No.

Mr. LENNON. So you left them in the apartment-office complex when you went to get the car?

Mr. HOLMES. Yes, sir.

Mr. LENNON. And you say you have no information that either Elmore or O'Brien were furnished keys to this apartment office complex?

Mr. HOLMES. No, sir; I have information that there were some keys left in an envelope.

Mr. LENNON. Envelope for whom?

Mr. HOLMES. Mr. Elmore and Capt. O'Brien.

Mr. LENNON. For Mr. Elmore—left where?

Mr. HOLMES. In our post office box at the desk in the Arlington Towers.

Mr. LENNON. It would be acceptable the same as if you had one on the key ring, wouldn't it?

Mr. HOLMES. Yes, sir.

Mr. LENNON. There is no question about that, is there?

Mr. HOLMES. No, sir.

Mr. LENNON. You conclude by saying both Mr. Elmore and Mr. O'Brien did have access to the apartment office complex owned by the corporation, the Dewey Corp., by simply going to the box where they were found in envelopes, they could have access to the box?

Mr. HOLMES. I would say the keys were in the mail box.

Mr. LENNON. That is all.

Mr. PIKE. No further questions. You are excused, Mr. Holmes.

Mr. HOLMES. Thank you.

Mr. LENNON. I would ask you this, sir. You left the corporation on May 7 of this year?

Mr. HOLMES. Yes, sir.

Mr. LENNON. Where are you now employed?

Mr. HOLMES. General Electric Co.

Mr. LENNON. General Electric, I believe?

Mr. HOLMES. Yes, sir.

Mr. LENNON. Did you move from the Dewey Corp. the following day to General Electric as you did from the Marine Corps to the Dewey Corp.?

Mr. HOLMES. Yes, I did.

Mr. LENNON. Thank you.

Mr. HOLMES. Can I go back to Massachusetts now?

Mr. PIKE. You are excused. We will have no further need for you, Mr. Holmes. Thank you very much.

Mr. HOLMES. Thank you.

Mr. PIKE. Captain Thomas O'Brien.

(No response.)

Mr. REDDAN. I guess he is not here. We will take Mr. Elmore.

(Whereupon, Daniel Elmore, having been first duly sworn, testified as follows:)

Mr. PIKE. Would you, and I take it this is your counsel——

Mr. ELMORE. Yes, sir.

Mr. PIKE (continuing). Both give your names and addresses, for the record?

**TESTIMONY OF MR. DANIEL E. ELMORE, JR., ASSISTANT HEAD,
CONTRACT BRANCH, PROCUREMENT DIVISION, SUPPLY DEPARTMENT,
U.S. MARINE CORPS, WASHINGTON, D.C.**

Mr. ELMORE. Daniel E. Elmore, Jr., 7418 Jervis Street, Springfield, Va.

Mr. MURPHY. Walter J. Murphy, 1511 K Street, Mr. Chairman. Mr. Chairman, before we get to the testimony itself, there are a couple of things I would like to ask the committee. The subpoena asks Mr. Elmore to bring his tax returns. He does not have copies of his tax returns. He has previously submitted to the committee apparently his work sheets which are all he has. Mr. Elmore has requested the Internal Revenue to send him copies. He does not yet have them. We have no objection to supplementing the record with them.

Mr. PIKE. When was this request to the Internal Revenue made? Was it made in writing?

Mr. MURPHY. Yes; the 16th, I believe it was.

Mr. PIKE. The 16th of this month?

Mr. MURPHY. Of this month. The subpoena, I think, was served on the 12th, and he wrote on the 16th for the tax return.

The next situation I would like to bring up, I raise this, I think I raised it with Mr. Lally yesterday, I'm not too familiar with proceedings on the Hill so I asked Mr. Lally about the possibility of an executive session as to at least a part of Mr. Elmore's testimony. It is my understanding, from the investigation, that tangentially to the real questions that the committee might want to know, there would be a

lady's name involved, which might be damaging to her personally, and she has no relationship to the actual investigation, except she happened to accompany Mr. Elmore on one occasion. I request that the committee consider an executive session to protect the lady's name.

Mr. PIKE. Well, I would respond to that as follows: I think if my information is not incorrect, the lady in question has not in any manner requested her name be protected. She has been quite cooperative with the committee, and it is my basic policy to hold open sessions wherever possible, and it is my intention to continue to do so. If the request had come from the lady, we might consider it in some other light, sir.

Mr. MURPHY. Certainly.

Mr. PIKE. She has not indicated any such desire.

Mr. MURPHY. Certainly, Mr. Chairman, if she has no objection, we didn't know and don't know. Mr. Elmore thought he ought to make this request.

The next request is sort of a personal request. Mr. Elmore retained me yesterday, and I have had no opportunity to even consider whether we should want to submit a statement which is apparently an option we might have under the rules, but which would have to be submitted 48 hours before the hearing. Inasmuch as I was not even retained that far in advance, I would ask if we might have the opportunity to consider submitting a statement after the testimony.

Mr. PIKE. I wouldn't have any objection to a statement being submitted after the testimony.

Mr. HALL. No objection.

Mr. MURPHY. Thank you.

Mr. PIKE. I see no particular reason to object to that. I'm not at all sure you are going to want to, but you may want to after the hearing is over.

Mr. LENNON. Mr. Chairman, may I just raise this question, with the right to interrogate the witness, subsequent to his furnishing the committee a supplemental statement to the statement he makes here today?

Mr. MURPHY. That would be agreeable with me, certainly.

Mr. LENNON. On the basis of that statement there might be other developments which the committee might like to inquire into after the statement.

Mr. PIKE. I think we would always reserve that right to reconvene the committee.

Mr. LENNON. All right.

Mr. PIKE. We might want to do so, depending on what the supplemental statement said. But the answer is, yes, you may submit a supplemental statement after Mr. Elmore has testified, if you wish to do so.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. REDDAN. Mr. Elmore, where are you employed at the present time?

Mr. ELMORE. Headquarters. Marine Corps.

Mr. REDDAN. In what capacity, sir?

Mr. ELMORE. As the Assistant Head of the Contract Branch, and also as a contracting officer.

Mr. REDDAN. Incidentally, have you been furnished with a copy of the rules of the committee?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. And your attorney has been given a copy, also?

Mr. ELMORE. I gave him my copy, sir.

Mr. MURPHY. He gave it to me yesterday.

Mr. REDDAN. What are your present duties in your position?

Mr. ELMORE. My present duties as the Assistant Head of the Contract Branch are all-encompassing relative to management functions in the branch, which consists of four sections, which is made up of purchasing sections, contract administration sections, and the preparation and award sections.

Mr. REDDAN. Who is the head of the Contract Administration Section?

Mr. ELMORE. Contract Administration Section is Major Sawyer.

Mr. REDDAN. Major whom, sir?

Mr. ELMORE. Sawyer.

Mr. REDDAN. Before we get into the questions we would like to ask you, could you give us the benefit of a brief biographical background? What was your background before you came with the Marine Corps Procurement Section?

Mr. ELMORE. Well, after being discharged from the Marine Corps in—

Mr. REDDAN. How long were you in the Marine Corps, sir?

Mr. ELMORE. Four years.

Mr. REDDAN. During what period of time?

Mr. ELMORE. 1941-45.

Mr. REDDAN. What were your duties in the Marine corps?

Mr. ELMORE. I was with Marine Corps Aviation.

Mr. REDDAN. Did you ever know Mr. Ross when you were in the Marine Corps?

Mr. ELMORE. No, sir.

Mr. REDDAN. Mr. McLain? Real well?

Mr. ELMORE. No, sir.

Mr. REDDAN. After you got out of the Marine Corps, what did you do?

Mr. ELMORE. I took advantage of the GI bill of rights, attended college, and received an associate degree, and then I went to—

Mr. REDDAN. What school, sir?

Mr. ELMORE. Becker College, in Worcester, Mass. I then went to work for Harrington, Richardson's, an arms company. Then I became aware that they were seeking people to go to Canada to work for the Government.

Mr. REDDAN. Canada was seeking the people?

Mr. ELMORE. The United States, this is going back to 1951, where we had an inspector of ordinance, I believe the title of the agency, I filed then a 51, down in Boston, Mass. I was called down for an interview.

I was hired. And I went to Canada for about 3 years and worked for the Government. At the conclusion of the contract in Canada, I was fortunate enough to get a job down in Bridgeport, Conn., in the offices at that time it was known as Inspector Naval Material, INSMAT. After putting in 8 years there, I then came down here to work and I have been down here for about 9½ years.

Mr. REDDAN. How did you happen to come down here, will you tell us, please?

Mr. ELMORE. Yes, sir. One of my accounts, when I left Bridgeport, was a company by the name of Mite Corp. Mite Corp., in Connecticut, I think on three occasions over a period of time of maybe 6 months, I had occasion to be in meetings where a Mr. Ross was present.

Mr. REDDAN. Is that Mr. Daniel Ross?

Mr. ELMORE. Yes, sir. I believe on one of these occasions I had talked to him and asked him if he knew of any positions that might be open in Washington that I would be interested in. I believe at a later meeting he advised me that there was an opening down at the Headquarters Marine Corps, for which I filed a form, and was called in for an interview and sat before a panel of about five people for a period of about, as I recall, a period of about 7 or 7½ hours the interview lasted.

Mr. REDDAN. You were thereafter employed by the Marine Corps, is that right?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Do you know whether Mr. Ross made any recommendations to the Marine Corps on your behalf?

Mr. ELMORE. Not to my knowledge. I'm not aware of it.

Mr. REDDAN. Have you since had any contacts with Mr. Ross, of either a business or a social relationship?

Mr. ELMORE. I would say both, but mainly business. Very little social.

Mr. REDDAN. What were your business relationships with Mr. Ross? On what matters?

Mr. ELMORE. Relative to matters pertaining to contracts that he was representing for his clients.

Mr. REDDAN. Did he represent the Dewey Corp.?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Did he represent CONDEC?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Did he represent Mite Corp.?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Did he represent Kurz & Root?

Mr. ELMORE. I believe just recently, yes, sir.

Mr. REDDAN. Do you know Mr. Matzkin?

Mr. ELMORE. Yes.

Mr. REDDAN. Who is Mr. Matzkin?

Mr. ELMORE. Mr. Matzkin is a former associate of Mr. Ross.

Mr. REDDAN. You say a former associate?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. When did he become a former associate?

Mr. ELMORE. I do not know the time frame, but I would estimate 2½, or 3 years ago. Perhaps longer.

Mr. REDDAN. Did he represent Kurz & Root, do you know?

Mr. ELMORE. Relative to my dealings?

Mr. REDDAN. No, was he a Washington representative for Kurz & Root on any matters?

Mr. ELMORE. Relative to the Marine Corps?

Mr. REDDAN. Yes, sir.

Mr. ELMORE. No, sir.

Mr. REDDAN. Do you know Mr. McLain?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. When did you first meet him?

Mr. ELMORE. When I came down for my interview. I believe it was in 1962.

Mr. REDDAN. When you became employed by the Marine Corps, was he then your superior?

Mr. ELMORE. He was not my immediate superior. He was the director of the division.

Mr. REDDAN. Who was your immediate superior?

Mr. ELMORE. At that time, seniority was a—it was a Major Gemmell.

Mr. REDDAN. Major Gemmell?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Is he still in the Marine Corps?

Mr. ELMORE. No, sir; he is retired.

Mr. REDDAN. After retiring, did he—was he associated with the Marine Corps in a civilian capacity?

Mr. ELMORE. I would say approximately a year, give or take a few months, he came back in a civilian capacity.

Mr. REDDAN. Was he again your immediate superior?

Mr. ELMORE. No, sir. Let's see, when he came back—no, I believe a Mr. McGuire was my immediate superior at that time. But he subsequently did.

Mr. REDDAN. Do you know Mr. Neuman?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. When did you first meet him?

Mr. ELMORE. I think when he was in the Air Force, I think the first time I met Mr. Neuman he was in the Air Force and he was trying a case, and I met him in the Annex, the Navy Annex down at the cafeteria, and I was introduced to him.

Mr. REDDAN. Do you know where he went after he left the Marine Corps?

Mr. ELMORE. Only from, you know, recently talking to him, that he went—I think he rented space or something in the office facilities of Ross, Stark, Matzkin & Day.

Mr. REDDAN. He had office space in Daniel Ross' law firm, is that right?

Mr. ELMORE. I don't know whether it was Daniel Ross' law firm——
Mr. REDDAN. The space occupied by Daniel Ross and associate attorneys?

Mr. ELMORE. And others, yes, sir.

Mr. REDDAN. Incidentally, when did you last talk to him?

Mr. ELMORE. A week ago Monday.

Mr. REDDAN. Where was he when you talked to him?

Mr. ELMORE. At his home.

Mr. REDDAN. Did he tell you what his immediate plans were?

Mr. ELMORE. Relative to what, sir?

Mr. REDDAN. Relative to where he might be for the next week?

Mr. ELMORE. No, sir. In fact we had made arrangements to meet for lunch that Thursday.

Mr. REDDAN. Did he show up?

Mr. ELMORE. No, sir.

Mr. REDDAN. Did you inquire as to where he might be?

Mr. ELMORE. Did I inquire?

Mr. REDDAN. Yes.

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Whom did you ask?

Mr. ELMORE. I called and talked to his wife.

Mr. REDDAN. This was last Thursday? This past Thursday?

Mr. ELMORE. No, sir; I believe that was either Friday or Saturday.

Mr. REDDAN. This past week?

Mr. ELMORE. Yes.

Mr. REDDAN. This past week—Friday or Saturday?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. What did she tell you, sir?

Mr. ELMORE. She just informed me Art said he had to get away for a few days, but he would be in touch.

Mr. REDDAN. Did she know where he was?

Mr. ELMORE. No, sir, in fact she asked me if I knew.

Mr. REDDAN. The reason I ask, we would like to know, too. We have been hunting for him all over. Did you inquire at his office?

Mr. ELMORE. Did I inquire?

Mr. REDDAN. Yes.

Mr. ELMORE. When he did not call me for the luncheon, he said he would call me that Thursday, but he did not call me. Yes, sir, I did call his office and there was no answer.

Mr. REDDAN. Did anyone suggest to you that he may have gone to Florida?

Mr. ELMORE. Where, sir?

Mr. REDDAN. Did anyone suggest to you he may have gone to Florida?

Mr. ELMORE. No, sir.

Mr. REDDAN. Did anyone suggest he may have gone to Alaska?

Mr. ELMORE. Well, not to be facetious, but I think he has been talking, wanting to get up there for a long time.

Mr. REDDAN. I think he might be there, too, but I wondered if anyone told you.

Mr. ELMORE. If you are saying is this a possibility?

Mr. REDDAN. Yes.

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Do you have any reason to believe that it might be more than a possibility?

Mr. ELMORE. No, sir; I don't. I really don't.

Mr. REDDAN. Does he have business interests in Alaska, do you know?

Mr. ELMORE. Yes, sir. I believe he has gold interests up there in Alaska.

Mr. REDDAN. A gold mine?

Mr. ELMORE. I believe he told me one time that he did, plus they have numerous claims that they have filed.

Mr. REDDAN. Now, in connection with your official duties in the Marine Corps. Did you ever have occasion to work on any contracts or claims or bid proposals by CONDEC?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Could you tell the committee how often, approximately?

Mr. ELMORE. Well, relative to just Consolidated Diesel actions?

Mr. REDDAN. Yes.

Mr. ELMORE. Oh, I don't know. I probably was involved. I went out prior to becoming the contracting officer. I was probably involved in negotiations. Later on, I believe I was involved in certain meetings relative to their response, and up until recently here I made a final determination relative to the 700-series generator sets denying their claim for hump tests, and also made a determination on a hose problem.

Mr. REDDAN. Did you say you denied the claim?

Mr. ELMORE. Yes, sir.

Mr. PIKE. On this hump test claim that you denied, can you explain what the claim was.

Mr. ELMORE. Yes, sir. In summary, it revolved around the GFE. The Marine Corps furnished defective equipment.

Mr. PIKE. How much money was involved in this claim that you denied?

Mr. ELMORE. Not having looked at the records for a period of time, sir, I would say maybe in round figures \$300,000, give or take.

Mr. PIKE. When did you make this decision?

Mr. ELMORE. I don't have it before me, and I don't recall. But I would say the early part of 1971, or the latter part of 1970.

Mr. PIKE. You referred to a "hose" claim of some sort, which you also made the determination on. What was your determination on that claim?

Mr. ELMORE. No, sir. If I used the word claim, I apologize. Hose problem.

Mr. PIKE. What was the hose problem?

Mr. ELMORE. We have not received a claim as yet.

Mr. PIKE. What was the hose problem and what determination did you make with regard to it?

Mr. ELMORE. The hoses that were furnished, on the 700 series, were defective hoses.

Mr. PIKE. And so on that one you made the decision in favor of CONDEC? On the other one you made—

Mr. ELMORE. No, sir. On both of them I made a determination in favor of the government, which is now before the Armed Services Board of Contract Appeals for a determination as to the validity of the government's position or the validity of CONDEC's position.

Mr. PIKE. Who furnished the hoses?

Mr. ELMORE. Consolidated Diesel.

Mr. PIKE. That was not Government-furnished equipment?

Mr. ELMORE. That is correct.

Mr. PIKE. When was that determination made?

Mr. ELMORE. I believe the both of them were made at the same time, sir. Or maybe within a week.

Mr. PIKE. Now, let's get to the \$64 question. Were these decisions made after you were aware that this investigation had started?

Mr. ELMORE. No, sir.

Mr. PIKE. When did you first become aware this investigation had started?

Mr. ELMORE. When Mr. Underwood, who is now the Director of the Procurement Division, advised me that a Mr. Ransom was coming over to the office and for me to make any contracts available to him that he wanted to look at.

Mr. PIKE. You stated earlier that—and I think I wrote your words down—you had, quote, "Very little social contact," with Mr. Ross. I would like to explore that a little bit. Did you go to his home?

Mr. ELMORE. I would say over a period of 9 years, I might have been there six times.

Mr. PIKE. Did he come to your home?

Mr. ELMORE. Yes, sir.

Mr. PIKE. How frequently?

Mr. ELMORE. On a limited basis.

Mr. PIKE. How frequently, let's say this year—let's make it last year. How frequently last year did Mr. Ross come to your home?

Mr. ELMORE. Oh, I don't know, maybe a couple of times, give or take. I don't know the exact amount of times.

Mr. PIKE. When did he come to your home last?

Mr. ELMORE. Monday evening.

Mr. PIKE. Monday evening?

Mr. ELMORE. Yes.

Mr. PIKE. Was that a business meeting or a social meeting?

Mr. ELMORE. It was a situation to try to determine and discuss what this investigation was about.

Mr. PIKE. Until Monday evening, you had no idea, or you weren't aware of what this investigation was about?

Mr. ELMORE. Well, as to the extent of it, sir.

Mr. PIKE. Wasn't it really for the purpose of discussing what testimony would be given at this hearing?

Mr. ELMORE. No, sir.

Mr. PIKE. And that subject matter was not discussed?

Mr. ELMORE. No sir.

Mr. PIKE. What people were going to testify to at this hearing?

Mr. ELMORE. No, sir, we discussed other matters.

Mr. PIKE. Who was there?

Mr. ELMORE. Captain O'Brien and Mr. Kemple.

Mr. PIKE. Captain O'Brien, Mr. Kemple, Mr. Ross had a meeting at your home. Did you call for that meeting?

Mr. ELMORE. Did I call for that meeting?

Mr. PIKE. Yes.

Mr. ELMORE. At my home?

Mr. PIKE. Yes.

Mr. ELMORE. No; I just think——

Mr. PIKE. Who called for the meeting at your home?

Mr. ELMORE. Well, Mr. Kemple, and Captain O'Brien and I agreed to meet and discuss a certain matter.

Mr. PIKE. You are the host. You didn't call these people up and invite them to your home? If you didn't, who did?

Mr. ELMORE. As I said, sir, we met someplace else, and as a result of that meeting we decided to go to my home.

Mr. PIKE. Where was the other place that you met before the meeting at your home?

Mr. ELMORE. I believe it was at the Charter House.

Mr. REDDAN. What is that, sir?

Mr. ELMORE. I believe that is a hotel or motel.

Mr. REDDAN. Where did you meet?

Mr. ELMORE. In the lounge.

Mr. REDDAN. Who was present at that time?

Mr. ELMORE. Mr. Kemple, Captain O'Brien, and myself.

Mr. REDDAN. Would you give us the date of that meeting?

Mr. ELMORE. Monday.

Mr. REDDAN. That was Monday also?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. You had two meetings, then, on Monday? Maybe I have gotten lost here someplace.

Mr. ELMORE. No; as I told Mr. Pike, as a result of that meeting we decided to go over to my home.

Mr. REDDAN. I see.

Mr. PIKE. Have you ever owned any stock in the Mite Corp.?

Mr. ELMORE. No, sir.

Mr. PIKE. Have you ever owned any stock in the CONDEC Corp.?

Mr. ELMORE. No, sir.

Mr. PIKE. Have you ever owned any stock in the bank which Mr. McLain testified as to yesterday?

Mr. ELMORE. No, sir.

Mr. REDDAN. You state, you know Mr. McLain, Mr. Kemple, and do you know Mr. Lungren?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Who is he?

Mr. ELMORE. He is my immediate supervisor.

Mr. REDDAN. How long has he held that post?

Mr. ELMORE. I think for about 3 or 4 years now.

Mr. REDDAN. When was the last time you talked to Mr. Lungren?

Mr. ELMORE. The day before he left for vacation.

Mr. REDDAN. Did you know where he was going?

Mr. ELMORE. As far as I knew he was going to take a trip to the Rockies.

Mr. REDDAN. Did he have any particular destination in mind?

Mr. ELMORE. No, sir.

Mr. REDDAN. Do you know of any way of contacting him?

Mr. ELMORE. No, sir. In fact, Mr. Underwood mentioned that he was to appear here as a witness, and I asked around to a few people who rode with him in a car who knew him fairly well if they had any idea where he was going, and they had no idea.

Mr. REDDAN. Now, you stated too, that Mr. Kemple attended these meetings that you held on Monday. When did you first meet Mr. Kemple?

Mr. ELMORE. I believe some time around 1963.

Mr. REDDAN. Under what circumstances, sir?

Mr. ELMORE. I believe he was representing another company, other than the one he is representing at the present.

Mr. REDDAN. Excuse me?

Mr. ELMORE. He was representing another firm, other than the one he is representing at the present time.

Mr. REDDAN. Who was he representing then?

Mr. ELMORE. I don't recall, sir.

Mr. REDDAN. Do you know when he became representative for The G. C. Dewey Co.?

Mr. ELMORE. Either the latter part of 1963 or 1964, somewhere around there.

Mr. REDDAN. Did you have matters involving the G. C. Dewey Co. before you in your official capacity with the Marine Corps?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Could you give the subcommittee some idea of how often Mr. Kemple would be there on official business, in your office?

Mr. MURPHY. Excuse me, Mr. Reddan. The question raises some problem in my mind, I don't know whether it does in the witness' mind. Do you mean in connection with Mr. Elmore personally, or in that office?

Mr. REDDAN. With Mr. Elmore personally.

Mr. ELMORE. Well, depending upon the occasion, what I mean by "the occasion," problems relative to a contract, or for negotiations, or fact finding sessions, or whatever you may have. This varied.

Mr. REDDAN. Did you ever have occasion to meet with Mr. Kemple on matters, on a purely social basis?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. How often would this occur, would you estimate, during the last 2 years?

Mr. ELMORE. Well, I would say over the period of time since I met Mr. Kemple, him and I have become close friends because we have certain things in common, and we enjoy talking about certain things.

Mr. REDDAN. Would you characterize it as a close personal relationship?

Mr. ELMORE. I would say, yes, sir.

Mr. PIKE. What company does Mr. Kemple represent?

Mr. ELMORE. G. C. Dewey.

Mr. PIKE. Did you ever own any stock in The G. C. Dewey Co.?

Mr. ELMORE. Yes, sir.

Mr. PIKE. When did you purchase the stock in The G. C. Dewey Co.?

Mr. ELMORE. I think it was either in 1964 or 1965, 100 shares, valued at about \$175, which I held on for 6 months and sold and probably made \$75 on it.

Mr. PIKE. Was Mr. Kemple representing The G. C. Dewey Co. at that time?

Mr. ELMORE. I believe so, yes, sir.

Mr. PIKE. Was The G. C. Dewey Co. doing any business through Marine Corps procurement office at that time?

Mr. ELMORE. I believe they had a contract at that time; yes, sir.

Mr. PIKE. Did you consider it appropriate in your position to buy stock in a corporation which was doing business through your office?

Mr. ELMORE. Considering the amount, no, sir. If we had been talking here of thousands of dollars, yes, sir. We are talking here approximately of \$175.

Mr. PIKE. Who was the broker that handled that stock?

Mr. ELMORE. I don't recall, sir. Mr. Lally asked me that question, and I don't have any—I don't even have a record of it.

Mr. PIKE. Did you buy it on the open market in some manner, or did you buy it privately in some manner?

Mr. ELMORE. No; I went through a broker.

Mr. PIKE. And you don't know who the broker was?

Mr. ELMORE. I don't recall who it was; no, sir.

Mr. PIKE. Do you own a lot of stock, Mr. Elmore?

Mr. ELMORE. That is the only stock I have ever owned in my life, sir.

Mr. PIKE. The only stock you ever owned in your life and you can't remember where you went to buy it?

Mr. ELMORE. No, sir.

Mr. REDDAN. How did you happen to buy it?

Mr. ELMORE. I beg your pardon?

Mr. REDDAN. How did you happen to buy it?

Mr. ELMORE. I just thought this was an up-and-coming company, and I said a minimum amount of shares does not affect—

Mr. REDDAN. How many shares?

Mr. ELMORE. One hundred shares.

Mr. REDDAN. You bought 100 shares?

Mr. ELMORE. Yes, sir. I said the total value of those 100 shares, I believe, was about \$175.

Mr. REDDAN. You mean you paid \$1.75 a share for them?

Mr. ELMORE. Yes, sir, something like that, I believe.

Mr. REDDAN. Was Mr. Kemple formally in the Washington office of The G.C. Dewey Co.? That was not his home base, was it?

Mr. ELMORE. Well, for a period of time over the years, he was here quite frequently, yes, sir.

Mr. REDDAN. Yes, he visited here quite frequently in the Washington office, is that right?

Mr. ELMORE. He not only visited but he stayed here weeks on end.

Mr. REDDAN. When you met with Mr. Kemple, did you often go to lunch or dinner?

Mr. ELMORE. Sir?

Mr. REDDAN. Did you often go to lunch or dinner?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Was there any place in particular that you would normally go?

Mr. ELMORE. Well, we used to go down to the Market Inn quite often.

Mr. REDDAN. Any place else?

Mr. ELMORE. Oh, I think the Rotunda, or maybe Sarris', maybe just across the street in the cafeteria for a sandwich—I mean in the drugstore for a sandwich or something.

Mr. REDDAN. For instance, when you went to the Market Inn, who would go with you generally, say you went to lunch? Just you and Mr. Kemple, or would you normally take someone else with you?

Mr. ELMORE. I would say generally that, or maybe Mr. Kemple might have one of his associates along with him.

Mr. REDDAN. Did Mr. Lungren ever accompany you?

Mr. ELMORE. No, sir.

Mr. REDDAN. Did Captain O'Brien ever accompany you?

Mr. ELMORE. I believe he did, on occasion, yes, sir.

Mr. REDDAN. How would you handle the bill on these luncheons or dinners that you had at the Market Inn?

Mr. ELMORE. Well, I believe Mr. Kemple would either pay for the check or possibly if he had an associate with him, they would pay for the check, and there were occasions where I would reimburse him for my share of it. I don't think that I could probably say on all occasions.

Mr. REDDAN. Did Mr. Kemple use cash or did he use a credit card?

Mr. ELMORE. I believe both, sir—credit card part of the time.

Mr. REDDAN. Did you go to the Market Inn very often when Mr. Kemple was not there?

Mr. ELMORE. Oh, yes, sir.

Mr. REDDAN. Were there ever any occasions when Mr. Kemple asked you to take care of his bill for him?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. How often did that occur, sir?

Mr. ELMORE. Over the period of time, sir, I just couldn't even come close to a guess. Maybe a dozen or more times.

- Mr. REDDAN. What was the maximum you would estimate?
- Mr. ELMORE. I don't know, maybe 25.
- Mr. REDDAN. Twenty-five times?
- Mr. ELMORE. Give or take, spread one way or the other.
- Mr. REDDAN. How much do you want to give?
- Mr. ELMORE. I don't know, sir.
- Mr. REDDAN. You got up from a dozen to 25.
- Mr. ELMORE. You said the maximum.
- Mr. REDDAN. That is right, the maximum would be 25, is that it?
- Mr. ELMORE. I would think that is a reasonable estimate. But I'm not sure exactly how many times.
- Mr. REDDAN. Could it have been 50?
- Mr. ELMORE. I don't believe it could have been that many times, no, sir.
- Mr. REDDAN. Forty?
- Mr. ELMORE. I don't recall, sir.
- Mr. REDDAN. OK. Now, has there ever been a time when Mr. Kemple authorized you to use his credit card?
- Mr. ELMORE. Yes, sir.
- Mr. REDDAN. Would you tell the subcommittee about that, please?
- Mr. ELMORE. Sir?
- Mr. REDDAN. Would you tell the subcommittee about that, please?
- Mr. ELMORE. Yes, sir. There were frequent occasions where there was a group of people around and Mr. Kemple, he had to catch a plane, or he wanted to go meet someone, he asked me to take care of the bill, and which I did, and at a subsequent period of time when I saw him, I would return his card and pay him what I thought my portion of the bill was.
- Mr. REDDAN. How did you pay him?
- Mr. ELMORE. Cash.
- Mr. REDDAN. Did you always keep the card in your possession?
- Mr. ELMORE. Until I saw him.
- Mr. REDDAN. Until you saw him and then you personally gave it back to him, is that right?
- Mr. ELMORE. Yes.
- Mr. REDDAN. Your answer is "Yes"?
- Mr. ELMORE. Yes.
- Mr. REDDAN. Is it your testimony that on no occasion did you ever give the card to anyone else to use?
- Mr. ELMORE. No, sir; that is not my testimony.
- Mr. REDDAN. What is your testimony, sir?
- Mr. ELMORE. I believe there are occasions that I gave the card to Captain O'Brien.
- Mr. REDDAN. Tell us about that. How did you happen to give it to Captain O'Brien?
- Mr. ELMORE. Well, I believe there was an occasion where Mr. Kemple was going to visit his office.
- Mr. REDDAN. Visit O'Brien's office?
- Mr. ELMORE. Yes, sir. I happened to have been with Captain O'Brien.

Mr. REDDAN. Excuse me, I couldn't hear you.

Mr. ELMORE. I said I happened to have been with Captain O'Brien, and I asked Captain O'Brien if he wouldn't return the card when he saw Mr. Kemple.

Mr. REDDAN. How did you do that? Did you just hand him the card?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Did he ask you how you happened to have it?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. What did you tell him?

Mr. ELMORE. Exactly what I just said previously.

Mr. REDDAN. You just handed him the card——

Mr. ELMORE. And asked him to give it to Mike, or Mr. Kemple.

Mr. PIKE. How often did this happen that you asked Captain O'Brien to give Mr. Kemple the credit card back to him?

Mr. ELMORE. That is hard to say. I don't know, sir.

Mr. PIKE. Well, would it have been 10 times?

Mr. ELMORE. I don't think—it could have been. I don't know, sir.

Mr. PIKE. I want to explore this situation whereby, you said the way you got the card in the first place was there would be a whole group of you around, and Mr. Kemple would have to catch a plane and so he would give you the card to pay the check.

Mr. ELMORE. Yes.

Mr. PIKE. And you took the card, Mr. Kemple's card, and paid the check. Then when you subsequently handed the card to him, you repaid him in cash for your share of the bill. Is that right?

Mr. ELMORE. What I thought was my reasonable share.

Mr. PIKE. When you handed the card to Captain O'Brien, did you hand Captain O'Brien some cash, to pay your share of the bill with?

Mr. ELMORE. No, sir. This was strictly between Mr. Kemple and myself.

Mr. PIKE. So on those occasions, when you handed the card to Captain O'Brien, you just never did get to pay your share of the bill, is that it?

Mr. ELMORE. I didn't say that, sir.

Mr. PIKE. I'm asking.

Mr. ELMORE. No, sir. I said later when I saw Mr. Kemple myself, I said that that was strictly between Mr. Kemple and myself.

Mr. PIKE. How much of the time did you have Mr. Kemple's card in your possession?

Mr. ELMORE. I don't understand the question, when you say "how much of the time."

Mr. PIKE. Yes.

Mr. ELMORE. Are we talking about——

Mr. PIKE. Let's say in the last 5 years, how much of the time have you had Mr. Kemple's credit card in your possession?

Mr. ELMORE. Well, let's say that if an occasion happened this evening, and I didn't see him for a week. I would have it in my possession for a week. If I didn't see him for 2 days——

Mr. PIKE. That is not what I asked you. Mr. Elmore. I'm asking you over the last 5 years, for what portion of that period have you had Mr. Kemple's credit card in your possession?

Mr. MURPHY. Mr. Chairman, if I might——

Mr. ELMORE. I'm lost on the question, sir.

Mr. MURPHY. I think what may be causing some of the problems for the witness, I think it varied because of certain periods of time within the 5 years.

Mr. PIKE. All I'm asking is the total. Did you have it 1 year out of the five, in your possession? Did you have it half the time in your possession?

Mr. ELMORE. I don't know. Maybe a year out of the 5 years.

Mr. PIKE. You never used that credit card except to pay bills on occasions when Mr. Kemple requested you to, is that right?

Mr. ELMORE. No, sir.

Mr. PIKE. You did use that card to pay bills on other occasions?

Mr. ELMORE. Yes, sir.

Mr. PIKE. Would these "other occasions" have to do with Mr. Kemple's business?

Mr. ELMORE. No, sir.

Mr. PIKE. Were these occasions that had to do with Marine Corps business?

Mr. ELMORE. No, sir.

Mr. PIKE. Were these simply your own social concerns?

Mr. ELMORE. Yes, sir.

Mr. PIKE. So that over a period of time how often did you use Mr. Kemple's card for your own personal entertainment?

Mr. ELMORE. Over a period of time, maybe 40 or 50 times. Also, on these occasions, I would reimburse Mr. Kemple.

Mr. PIKE. You also reimbursed him?

Mr. ELMORE. To the best of my knowledge. There might have been times that I didn't but to the best of my knowledge I did.

Mr. PIKE. Mr. Elmore, let's establish the reason for this. You were a pretty good customer, say, at the Market Inn, right?

Mr. ELMORE. Yes, sir.

Mr. PIKE. Did you have any credit card that you could use?

Mr. ELMORE. No, sir.

Mr. PIKE. The only way that you could put this on a charge account was to use Mr. Kemple's card?

Mr. ELMORE. No, sir. These occasions I'm addressing myself to is when I didn't have it available, and I had asked Mr. Kemple; there were occasions when I did not have cash available or I had possibly over-extended myself, and he said, "could you use it?"

Mr. PIKE. What kind of card was it?

Mr. ELMORE. Diners.

Mr. PIKE. Did you ever think of getting your own Diners card?

Mr. ELMORE. No, sir.

Mr. PIKE. It never occurred to you?

Mr. ELMORE. Not to this day did I have one.

Mr. PIKE. You didn't have much need for it as long as you had Mr. Kemple's, isn't that the fact of the matter?

Mr. ELMORE. I think what the Chairman is saying I have possession of the card.

Mr. PIKE. I don't believe you have possession of it at this moment, Mr. Elmore. You are smarter than that.

But it never occurred to you to get your own Diners Club card, because Mr. Kemple let you use his when you needed it?

Mr. ELMORE. No, sir.

Mr. REDDAN. Did you ever repay Mr. Kemple by check?

Mr. ELMORE. No, sir; not that I recall.

Mr. REDDAN. It was always in cash?

Mr. ELMORE. I believe so; yes, sir.

Mr. REDDAN. Did you ever get a receipt from Mr. Kemple?

Mr. ELMORE. No, sir.

Mr. REDDAN. Do you have any idea how much you might have paid him over the last 5 years?

Mr. ELMORE. In looking back over it, trying to estimate the number of times, the involvement and so forth, I would probably estimate that my share was maybe less than \$1,000.

Mr. REDDAN. When you gave this cash to Mr. Kemple, did you also give him the receipt that you had received for the use of the card?

Mr. ELMORE. At times; yes, sir.

Mr. REDDAN. Didn't you always do that?

Mr. ELMORE. No, sir. Sometimes I misplaced it, because there were periods of time that I didn't see him for a week or a couple of weeks.

Mr. REDDAN. Didn't this create problems for Mr. Kemple in accounting for the use of his card? This was a company card; was it not, sir?

Mr. ELMORE. No, sir; I believe that it was his own personal card.

Mr. REDDAN. Did he tell you it was his own personal card?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Do you know whether or not Mr. Kemple authorized anyone besides you to use the card?

Mr. ELMORE. I am not aware of it, sir.

Mr. PIKE. Mr. Elmore, aside from lending you a credit card, did Mr. Kemple ever lend you anything else?

Mr. ELMORE. Yes, sir. Back in, I believe it was December 1966, we had a severe snowstorm here, and I was on my way up to see my family in Massachusetts.

Mr. PIKE. You were on your way to see your family?

Mr. ELMORE. Yes, sir. I couldn't get out of the area until Christmas Day. I got as far as New York. There were no planes going out of New York. I went to Rent-A-Car; a car was not available. I called over to Mr. Kemple in New Jersey and asked him if I could borrow his car to drive up.

Mr. PIKE. He drove his car to LaGuardia Field?

Mr. ELMORE. Yes, sir.

Mr. PIKE. You took it there?

Mr. ELMORE. Yes, sir; and then I returned it to his home.

Mr. PIKE. How did he get back home after he drove his car to LaGuardia Field?

Mr. ELMORE. I believe his son followed with another car.

Mr. PIKE. How long did you keep his car that time?

Mr. ELMORE. I believe I came back the next day, or no more than 2 days. But I would say it is my recollection I came back the next day.

Mr. PIKE. You heard Mr. Holmes testify here earlier today, did you not?

Mr. ELMORE. Yes, sir.

Mr. PIKE. Did you ever get a car through Mr. Kemple in 1968?

Mr. ELMORE. I don't recall the time—the dates—but I do recall at

one period of time I called Mr. Kemple, told him that I needed a car for a couple of weeks, could his friend up in Beltsville that sells used cars and other type cars—if he could get me a car up there to use. He called me back and said he had a car, and I used the car for about 14 days, approximately 14 days, give or take a day or two.

Mr. PIKE. Are there any ASPR regulations which would address themselves specifically to this course of conduct which you have just described to us? Are there any ASPR regulations which might tell you whether or not it would be proper for you to call Mr. Kemple and ask him if he could get you a car?

Mr. ELMORE. Well, there is one thing that the Chairman must also understand, at the end of the 14-day period, I believe—I don't know the amount—but I think I paid for the use of that car about \$90.

Mr. PIKE. Did you pay for that with a check?

Mr. ELMORE. No, sir. I believe this was cash.

Mr. PIKE. Do you have a checking account?

Mr. ELMORE. Yes, sir.

Mr. PIKE. You had \$90 cash with you?

Mr. ELMORE. Yes, sir. As I do sitting here today.

Mr. PIKE. You are a fortunate man, Mr. Elmore.

Mr. ELMORE. No, sir; I have an attorney who must be reimbursed.

Mr. PIKE. You think then the ASPR regulations are such that you can, under those regulations, call up, in your position as a procurement contracting officer, a manufacturer's representative, ask him to provide you with an automobile, and as long as you subsequently pay for it, this is all right?

Mr. ELMORE. No, sir. I believe that the standards of conduct, under that it is not permissible. It was probably poor judgment on my part.

Mr. PIKE. Did you pay him for the use of his car when he drove over to LaGuardia Field, and loaned you his personal car?

Mr. ELMORE. No, sir.

Mr. PIKE. How did you compute the \$90 which you paid him for the use of the car down here?

Mr. ELMORE. Because I asked him what I owed for the period of time I had it, and I believe this is what he advised me. Whether it was \$90, give or take \$10 one way or the other. I have no idea.

Mr. PIKE. How frequently did you use—I won't say Mr. Kemple's office/apartment, but the G. C. Dewey Co.'s office/apartment here in Washington?

Mr. ELMORE. Used for what purpose, sir?

Mr. PIKE. I don't really care. How frequently did you use it?

Mr. ELMORE. To my knowledge, I don't believe I have ever used it other than to sit and discuss or have conversation or attend parties.

Mr. PIKE. Well, that is about all you can ever—well, no I will take that back, that is not all. [Laughter.]

Mr. PIKE. On the occasion referred to earlier, when you cut your hand, was that a business conference going on at that apartment at that time?

Mr. ELMORE. No, sir. It was rather a social conference. I believe, if I recall the incident, Mr. Kemple and his son was there, and I believe his son was attending a prep school for the Naval Academy, and I went over to the apartment with a friend. We sat around and talked in general, talked about the boy and everything, talked about his

other sons. He had two other sons that had gone through the Academy, and he had to leave to take his son back to the school.

Mr. PIKE. What time did he have to leave?

Mr. ELMORE. I don't recall the time. Mr. Holmes came up sometime around 9 o'clock, so I would say any time prior to that. I told him to go ahead and my friend and I would clean up the place.

Mr. PIKE. And it was after he and his son left that you cut your hand; is that correct?

Mr. ELMORE. Yes, sir; in cleaning up the place.

Mr. PIKE. You cut it in the process of cleaning up the place?

Mr. ELMORE. Yes, sir.

Mr. PIKE. You did not cut it in the process of opening a bottle?

Mr. ELMORE. Opening a bottle?

Mr. PIKE. Yes.

Mr. ELMORE. No, sir. If I recall the incident, I was handling the bottle, and you know, taking it, holding it, and it dropped and that is when it happened.

Mr. PIKE. Oh, but was it a champagne bottle?

Mr. ELMORE. It could have been.

Mr. PIKE. But it was not in the process of opening, you were just cleaning up the place?

Mr. ELMORE. I think so. Either putting a cap on it, or just moving it to its proper place.

Mr. PIKE. Were you aware that there was a key to that office/apartment in the mailbox downstairs?

Mr. ELMORE. Yes, sir.

Mr. PIKE. Had you been advised you could use that whenever you wanted to?

Mr. ELMORE. I believe that there were indications that if I needed it, or wanted to use it, yes, sir.

Mr. PIKE. Did you ever use it on other occasions, other social occasions, nonbusiness occasions?

Mr. ELMORE. I don't believe that I have said that I have used it, Mr. Chairman.

Mr. PIKE. I am asking.

Mr. ELMORE. No, sir. I did not ever go to that mailbox and take that key out of that box.

Mr. PIKE. Did you ever use the apartment on other occasions, social occasions, perhaps when someone else went to the mailbox and got the key out of the box?

Mr. ELMORE. I believe I answered that question previously. To the best of my knowledge, I was there at parties or on the occasion we are addressing ourselves to here, and other occasions when I have been up there to pick up some papers or something else.

Mr. PIKE. Did you ever spend the night there?

Mr. ELMORE. I think maybe after one or two parties, I might have, yes, sir.

Mr. HALL. Mr. Elmore, I am a nonlegally-trained Member of this Committee. As I understand the situation, you freely admit you had to do with the contracting, including the negotiations, adjusting, and even the review of bids for the power diesel generators, the 600 series and the 700 series made by CONDEC—we all understand what that is—for the Marine Corps, is that correct?

Mr. ELMORE. Yes, sir, one way or another I believe that there was participation by myself.

Mr. HALL. You had a long history of participation for the U.S. Marine Corps?

Mr. ELMORE. Yes, sir.

Mr. HALL. In these contractual arrangements?

Mr. ELMORE. Yes, sir.

Mr. HALL. Give or take—

Mr. ELMORE. I would say due to the structure of the organization at the time, I was a section head, and as a section head, the section that I headed up, generator sets, across the board, were assigned to this particular section, not just CONDEC, other generator set manufacturers.

Mr. HALL. I think you have been forthright and honest according to your sworn testimony here, admitting what you have done, even as far as the Chairman's question concerning the ASPR regulations, if I recall your statement, you think maybe it was poor judgment as far as that is concerned.

Mr. ELMORE. Yes, sir.

Mr. HALL. You are forthright with the committee.

I would like to go into that just a little bit further, Didn't you know at the time that you were using these credit cards of the officer of the corporation that had an interest in these contracts and/or bids, that there was a conflict of interest and that this was subject to disciplinary action or at least censure at a later date?

Mr. ELMORE. Again, sir, going back to what I earlier said, it was certainly poor judgment, but at the time I was going through a rather climactic situation, I was going through a divorce, and again I say, I guess I just didn't use the right judgment. Certainly, yes, I am aware if I had to do it over again, of course it wouldn't happen.

Mr. HALL. We can't—

Mr. ELMORE. We can't turn the clock back.

Mr. HALL. We can't turn the clock back, and I am not interested in that. I am certainly not wanting to persecute.

Did you use the word "climactic" or "climacteric" situation?

Mr. ELMORE. What did I use?

Mr. MURPHY. Climactic.

Mr. ELMORE. Climactic.

Mr. HALL. I am a doctor.

I think that is all I have, Mr. Chairman.

Mr. PIKE. Do you have anything further?

Mr. REDDAN. Mr. Elmore, I believe you have already stated that you handled matters which involved Kurz & Root?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Did you handle any such matters when they were represented by Mr. Ross?

Mr. ELMORE. One occasion, yes, sir.

Mr. REDDAN. When was that, sir?

Mr. ELMORE. I believe under a claim.

Mr. REDDAN. Can you fix the date approximately?

Mr. ELMORE. Of what, sir, now?

Mr. REDDAN. The date that the claim was pending.

Mr. ELMORE. It is still pending, sir.

Mr. REDDAN. You are talking now about this most recent claim?

Mr. ELMORE. That is the only one, sir.

Mr. REDDAN. All right. Did you have occasion in April of 1967 to handle a matter involving Kurz & Root?

Mr. ELMORE. Yes, sir, I believe I attended the facility for the purpose of reviewing production, and at the same time negotiating or resolving certain outstanding change orders.

Mr. REDDAN. You say you visited the facility. You went to Kurz & Root's plant or office?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Where would that be, sir?

Mr. ELMORE. I believe that was in Appleton.

Mr. REDDAN. Wisconsin?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Where did you stay?

Mr. ELMORE. I think there is only one hotel in town, if I recall.

Mr. REDDAN. What that the Pfister Hotel?

Mr. ELMORE. That could be it, yes, sir.

Mr. REDDAN. How long were you there?

Mr. ELMORE. I don't know whether it was 2 days or 3 days that I was there.

Mr. REDDAN. Who else attended those meetings?

Mr. ELMORE. From the technical side of the house I had Captain Nailor along, and I believe DCAS personnel were also available.

Mr. REDDAN. Who made your reservations for you at the Pfister Hotel?

Mr. ELMORE. I believe a member of the company.

Mr. REDDAN. Mr. Whipple?

Mr. ELMORE. It could have been, yes, sir.

Mr. REDDAN. Do you know Mr. Whipple?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Was he with you at the meeting?

Mr. ELMORE. Yes, sir, in fact I conducted the negotiations, I believe, with him.

Mr. REDDAN. Did he stay at the same hotel you did?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Was Captain Nailor on that trip too, did you say?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Did he stay at the same hotel?

Mr. ELMORE. I believe so.

Mr. REDDAN. How did you pay your bill?

Mr. ELMORE. Sir?

Mr. REDDAN. How did you pay your bill?

Mr. ELMORE. I paid Mr. Whipple in cash.

Mr. REDDAN. Mr. Whipple paid your bills and you repaid him in cash?

Mr. ELMORE. That is right. When we were checking out, Mr. Whipple and I went down to the desk about the same time. I went to make arrangements, because we had to catch a plane, made arrangements for somebody to pick up the bags. I walked back over to the desk and Mr. Whipple said he had just written out a check. I said "How much was it?"

He told me, and I paid him.

Mr. REDDAN. You were anxious to catch a plane?

Mr. ELMORE. Yes, sir. In fact we were running behind, because we had a scheduled flight to go to Kansas City.

Mr. REDDAN. Did it occur to you to call from your room to have them come up and pick up your bags?

Mr. ELMORE. No, sir, because we were going down to pay the bill and make the arrangements at the same time, because I believe the parties were still in the process of packing.

Mr. REDDAN. You were the party, weren't you?

Mr. ELMORE. Sir?

Mr. REDDAN. You were the party?

Mr. ELMORE. No, sir. I believe the record shows I had someone else with me.

Mr. REDDAN. And they were still packing then, that is why you didn't call room service?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. But your testimony under oath is that you repaid him in cash, is that right?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Did he offer to pay your bill ahead of time?

Mr. ELMORE. No, sir.

Mr. REDDAN. Well, now, when you arrived there, did he tell you he was going to pay your bill?

Mr. ELMORE. No, sir.

Mr. REDDAN. Well, I have before me, Mr. Elmore, the records of the Pfister Hotel that we subpoenaed, and I will be very happy to show it to you or your attorney, if you wish to see it. It states that Whipple made your reservation for you and asked for adjoining rooms. Did Mr. Whipple's room adjoin yours?

Mr. ELMORE. I believe so.

Mr. REDDAN. The special instructions on this document are that the entire account is to be charged to Mr. Whipple.

Did you know that he had done that?

Mr. ELMORE. No, sir.

Mr. REDDAN. Does it come as a surprise to you to learn it here today?

Mr. ELMORE. This does; yes, sir.

Mr. REDDAN. You didn't know there was a record of that?

Mr. ELMORE. No, I am saying this statement.

Mr. REDDAN. This is the first time that you knew he had planned to pay your bill even before you got there?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Can you tell the committee how much you repaid Mr. Whipple?

Mr. ELMORE. I don't recall what the amount of the bill was, sir. Whatever it was.

Mr. HALL. Mr. Chairman, may I ask one additional question?

Mr. PIKE. Of course.

Mr. HALL. Mr. Elmore, do you still have, as an employee of the U.S. Marine Corps, your former authority as a procurement officer?

Mr. ELMORE. Yes, sir.

Mr. HALL. At no time has any part of your authority in your position been removed by the Navy Judge Advocate General since this investigation started?

Mr. ELMORE. Not by that office; no, sir.

Mr. HALL. By any office, including the Commandant or otherwise?

Mr. ELMORE. No, sir; just the Director of Procurement Division, I believe in April, as a result of the discussion that I had with him, limited my actions to five companies.

Mr. HALL. To five companies?

Mr. ELMORE. I believe that was it; yes, sir.

Mr. HALL. Or precluded you from acting in the instance of five companies, which was it?

Mr. ELMORE. The latter.

Mr. HALL. Then your answer to my first question was incorrect. You have been limited, not precluded?

Mr. ELMORE. I am sorry, Mr. Hall, I thought you said it had been taken away from me, that is what I understood what you initially said. I thought you meant *carte blanche*.

Mr. HALL. It has not been taken away *carte blanche*, but you have been limited?

Mr. ELMORE. That was my answer to your first question; yes, sir.

Mr. HALL. Thank you, Mr. Chairman.

Mr. PIKE. At this point the committee is going to stand adjourned until 2 p.m. this afternoon.

We will want you back at that time, Mr. Elmore.

Mr. ELMORE. Yes, sir.

(Whereupon, at 11:44 a.m. the subcommittee recessed, to reconvene at 2 p.m.)

AFTERNOON SESSION

Mr. REDDAN. Mr. Elmore, come up please.

Mr. PIKE. Will you take the stand here? I apologize for the delay. It is just from time to time those bells ring and we have to go vote. This is one of those times.

Mr. REDDAN. Mr. Elmore, when we suspended, I believe we were discussing this trip that you took out West, at the time you stopped at the Pfister Hotel; is that right, is that where we were?

Mr. ELMORE. I believe so.

Mr. REDDAN. Where did you go from there?

Mr. ELMORE. Kansas City.

Mr. REDDAN. Did Captain Nailor accompany you to Kansas City?

Mr. ELMORE. Yes; he did.

Mr. REDDAN. Anyone else from the office there?

Mr. ELMORE. From my office?

Mr. REDDAN. Yes.

Mr. ELMORE. No, sir.

Mr. REDDAN. Was any contract representative with you at that time?

Mr. ELMORE. No. We met in Kansas City.

Mr. REDDAN. Who did you meet there?

Mr. ELMORE. The representative for the company.

Mr. REDDAN. What company was that, sir?

Mr. ELMORE. I think—

Mr. REDDAN. Is that the Libby Welding?

Mr. ELMORE. Libby Welding, yes, sir.

Mr. REDDAN. Who was the representative of that company?

Mr. ELMORE. I believe Mr. Tooney.

Mr. REDDAN. Was Mr. Ross there?

Mr. ELMORE. No, sir.

Mr. REDDAN. From Kansas City you went where, sir?

Mr. ELMORE. San Francisco.

Mr. REDDAN. You were on company business at that point?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. What company?

Mr. ELMORE. Consolidated Diesel, their Stockton facility.

Mr. REDDAN. Their Stockton facility?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. What was the problem out there?

Mr. ELMORE. We were going out looking into generator set production and associated problems.

Mr. REDDAN. Was Mr. Ross with you there?

Mr. ELMORE. I met with him in San Francisco.

Mr. REDDAN. Was Captain Nailor there?

Mr. ELMORE. Yes, sir. I believe he was Lieutenant Nailor at the time.

Mr. REDDAN. Lieutenant Nailor?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Was anyone else there from Washington?

Mr. ELMORE. At San Francisco, no, sir.

Mr. REDDAN. Any other contractor representatives there?

Mr. ELMORE. No, sir.

Mr. REDDAN. From San Francisco, where did you go?

Mr. ELMORE. Out to Los Angeles.

Mr. REDDAN. Was that again on business?

Mr. ELMORE. Yes, sir; to meet with Captain O'Brien.

Mr. REDDAN. On official business?

Mr. ELMORE. The purpose to talk to Captain O'Brien was to generate some back information that was lacking because of the pressures we were under during the procurement cycle, that certain business memorandums that I had not prepared, and there was certain information he had that I needed.

Mr. REDDAN. Was he stationed in the Los Angeles area at that time?

Mr. ELMORE. No, he was down farther.

Mr. REDDAN. To go back to San Francisco, did you stay overnight there?

Mr. ELMORE. In L.A.?

Mr. REDDAN. No, in San Francisco.

Mr. ELMORE. Yes, sir.

Mr. REDDAN. In what hotel?

Mr. ELMORE. Sir?

Mr. REDDAN. In what hotel?

Mr. ELMORE. I don't recall.

Mr. REDDAN. The Mark Hopkins?

Mr. ELMORE. It could be, sir.

Mr. REDDAN. Did Mr. Ross stay there with you?

Mr. ELMORE. No, sir.

Mr. REDDAN. How was your bill paid there?

Mr. ELMORE. I paid for it.

Mr. REDDAN. You paid the hotel bill yourself?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. How about in Los Angeles?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Who paid it?

Mr. ELMORE. The same thing.

Mr. REDDAN. Did you pay either of those hotel bills with checks?

Mr. ELMORE. No, sir.

Mr. REDDAN. You are sure? Don't you ever pay your bills with checks?

Mr. ELMORE. No, sir. I believe on April 10 I withdrew from my savings account \$500. On April 14 I withdrew from my savings account \$400, a total of \$900, plus I withdrew, I had an advance of approximately \$100 from the Marine Corps, so I had approximately \$1,000.

Mr. REDDAN. What bank was your savings account in at the time, sir?

Mr. ELMORE. I believe that was from the Navy Credit Union.

Mr. REDDAN. Navy Credit Union?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Did you ever take any other trips on which you were accompanied by Mr. Ross?

Mr. ELMORE. Yes, sir. Trips relative to G. C. Dewey, trips relative to CONDEC, trips relative to Mite Corp., trips relative to Kurz & Root.

Mr. REDDAN. On any of those trips, did anyone pay your hotel bill, other than yourself?

Mr. ELMORE. No, sir.

Mr. REDDAN. Did anyone pay your hotel bill and then you reimbursed them in cash?

Mr. ELMORE. Only in the instance we talked about.

Mr. REDDAN. Only in this instance?

Mr. ELMORE. To my knowledge, yes, sir; that is the only instance involved.

Mr. REDDAN. All others, you paid your bill yourself and did not reimburse somebody else for picking that up, is that right?

Mr. ELMORE. No. If I could put this into the context that counsel is asking. The counsel asked me trips relative with Mr. Ross.

Mr. REDDAN. That is right.

Mr. ELMORE. Is this correct?

Mr. REDDAN. That is right.

Mr. ELMORE. The answer on those trips, yes, sir, he did not, I did.

Mr. REDDAN. Did you take trips with other contract representatives where you did not pay your bill directly, but only indirectly?

Mr. ELMORE. Not that I recall, sir.

Mr. REDDAN. Did you ever take any trips with any other contractor representative other than Mr. Ross?

Mr. ELMORE. Not that I recall. I would have to go back and look at the record.

Mr. REDDAN. Well, what record would you look at, sir?

Mr. ELMORE. I beg your pardon?

Mr. REDDAN. What record would you look at?

Mr. ELMORE. Probably my travel vouchers.

Mr. REDDAN. Would that show you who was with you?

Mr. ELMORE. It would give me an indication if there were others.

Mr. PIKE. Did you have, Mr. Elmore, Mr. Kemple's credit card during the year 1970?

Mr. ELMORE. 1970? I may have, sir.

Mr. PIKE. Did you participate in either December 1969 or January 1970, in a discussion with Mr. Forward regarding relations between you and various contractor representatives?

Mr. ELMORE. No, sir. The conversation revolved around one individual, to my recollection.

Mr. PIKE. Who was that individual, Mr. Ross?

Mr. ELMORE. Yes, sir.

Mr. PIKE. You didn't discuss the question of the relations between yourself and the contractor representatives, other than in connection with Mr. Ross?

Mr. ELMORE. No, sir. I believe that conversation was limited to Mr. Ross, as I recall.

Mr. PIKE. Mr. Lennon, do you have questions?

Mr. LENNON. No questions.

Mr. PIKE. Mr. Elmore, that is all we have for you at this time, but I would request that you remain available for the rest of the afternoon, at least for other questions which might arise.

Mr. ELMORE. Yes, sir.

Mr. MURPHY. May I ask the chairman if I could be excused and come back if you call him? As I say, I was retained just at the last minute on this matter and I have been trying to get a criminal case ready for Monday.

Mr. PIKE. I understand, and the answer would be "Yes," and the probability is we will not recall Mr. Elmore. The answer is "Yes."

Mr. MURPHY. Thank you. I will be available in my office.

Mr. REDDAN. Will you tell the secretary where we can reach you, give her your phone number.

Mr. PIKE. In the next room.

Mr. MURPHY. Yes, I will.

Mr. PIKE. Who is the next witness?

Mr. REDDAN. Mr. Kemple.

Mr. PIKE. Mr. Kemple.

(Whereupon M. M. Kemple was sworn and testified as follows:)

Mr. PIKE. Be seated and give your name and address to the reporter.

**TESTIMONY OF MR. M. M. KEMPLE, SENIOR VICE PRESIDENT,
DEWEY ELECTRONICS CORP., PARAMUS, N.J.**

Mr. KEMPLE. Morris M. Kemple, 4 Erskine Road, Ringwood, N.J.

Mr. PIKE. You are represented by counsel here, Mr. Kemple?

Mr. KEMPLE. Yes, sir.

Mr. PIKE. Would you give your name, please?

Mr. MISLER. My name is Albert D. Misler.

Mr. REDDAN. Does the reporter have your address?

Mr. MISLER. Yes, he has my card right there.

Mr. REDDAN. Are you counsel for the Dewey Corp., Mr. Misler?

Mr. MISLER. Yes, in these proceedings.

Mr. REDDAN. In these proceedings?

Mr. MISLER. In these proceedings.

Mr. REDDAN. You are not house counsel?

Mr. MISLER. No, I am not house counsel.

Mr. REDDAN. Mr. Kemple, you are presently employed by The G. C. Dewey Corp.?

Mr. KEMPLE. That is correct.

Mr. REDDAN. In what capacity, sir?

Mr. KEMPLE. Senior Vice President.

Mr. REDDAN. How long have you held this office?

Mr. KEMPLE. About 3 years.

Mr. REDDAN. Prior to that time?

Mr. KEMPLE. I was Vice President. Prior to that Director of Marketing.

Mr. REDDAN. You were Director of——

Mr. KEMPLE. Marketing.

Mr. REDDAN. You were Director of Marketing during what period, sir?

Mr. KEMPLE. I am just going to have to approximate, sir. About the middle of 1963 till, I would say, late 1965.

Mr. REDDAN. And then you moved up to Vice President.

Mr. KEMPLE. That is correct.

Mr. REDDAN. And you are presently Senior Vice President?

Mr. KEMPLE. That is correct.

Mr. REDDAN. How long were you Vice President? You say you have been Senior Vice President for the last 3 years?

Mr. KEMPLE. Approximately, yes, sir. I am the Senior Vice President. I am the only person in the corporation allowed to sign checks and act, other than the President.

Mr. REDDAN. After you left as Director of Marketing and became Vice President, what were your duties at that time?

Mr. KEMPLE. I didn't leave. You mean prior to my promotion?

Mr. REDDAN. As I understand, you terminated your position as director of marketing, some time at the end of 1965, and became vice president?

Mr. KEMPLE. I didn't terminate it, sir, I still kept the duties and was given additional duties.

Mr. REDDAN. I see. Fine, then, what were your overall duties during that period?

Mr. KEMPLE. I was responsible for the marketing efforts of the company, determining what programs to go after, trying to find out as much information as possible about the requirements of the services, on the particular programs they went after, for the civilian organization should it be a civilian program. I was responsible for the proposal preparation. And, also, in many cases, responsible for the negotiations that resulted when we were successful.

Mr. REDDAN. And you worked both in Washington and New York?

Mr. KEMPLE. That is correct.

Mr. REDDAN. About how much of your time did you spend a week in Washington?

Mr. KEMPLE. When I originally started I spent over half my time in Washington. Today I spend, oh, 3 or 4 days a month.

Mr. REDDAN. Now, you visited the services, with which you were doing business, and talked to the people that were knowledgeable in the procurement field with the services. Was that part of your duties?

Mr. KEMPLE. Yes, sir, and also visited with the engineering personnel.

Mr. REDDAN. You had business with the Marine Corps?

Mr. KEMPLE. That is correct—not when I first started with the company. Approximately 18 months after I started with the company we received the Marine Corps award.

Mr. REDDAN. This would have been in 1967?

Mr. KEMPLE. No, sir, I would say in 1964 or 1965.

Mr. REDDAN. Oh, I thought you said after you became vice president—1964 or 1965.

Mr. KEMPLE. That is correct.

Mr. REDDAN. Who did you deal with principally in the Marine Corps?

Mr. KEMPLE. There are many persons, sir. If you would like me to name names, I will be glad to give you a list of them.

Mr. REDDAN. If you would, please, yes.

Mr. KEMPLE. Since they are here I will mention them first. Daniel Elmore and Captain O'Brien.

Mr. REDDAN. When did you first meet Mr. Elmore?

Mr. KEMPLE. I would say some time before I joined the Dewey Corp. I was with another company called "PRD", and I was calling at the Marine Corps discussing a unit we were making for the Marine Corps and I met him during that time.

Mr. REDDAN. When did you meet Captain O'Brien?

Mr. KEMPLE. Oh, my best recollection, sir, was around 1953, in San Diego, when I was in the service.

Mr. REDDAN. I see, were you in the Marines also?

Mr. KEMPLE. No, sir; I'm a retired Navy Chief Petty Officer.

Mr. REDDAN. I see. Do you know Mr. Lungren?

Mr. KEMPLE. I know him, yes, sir. I have done business with him, I was associated with him on business occasionally.

Mr. REDDAN. I see.

Mr. KEMPLE. Would you like some more names, sir, or is that enough? I only started. I have another 50 for you.

Mr. REDDAN. Well, we may want to get to those 50 before we are finished, but I think this is perhaps enough to start with, because I want to bring you down to a matter that we have just been discussing with Mr. Elmore.

Mr. KEMPLE. All right, sir.

Mr. REDDAN. And that is this matter of credit cards.

Mr. KEMPLE. Yes, sir.

Mr. REDDAN. Tell the committee, if you will, please, sir, what was the company's policy at that time with respect to the use of credit cards by officers of the company?

Mr. KEMPLE. The credit cards were issued to us to use as we saw fit for business purposes. We were allowed on occasion to use them for ourselves personally.

Mr. REDDAN. Did you ever attach the receipts to your expense accounts?

Mr. KEMPLE. Sometimes I did, sometimes I did not.

Mr. REDDAN. What rule governed when you would attach them and when you wouldn't?

Mr. KEMPLE. When I made out my expense account, if I had the expense account receipt with me, I would attach it. If I did not have it with me, I did not attach it, and many of my expense accounts con-

tained none at all. The reason being that if it were a charge, it was billed to the company elsewhere anyway. I was more concerned with cash expenditures, because those were the ones that I would get back.

Mr. REDDAN. Well, did the company require any supporting data for the credit charge?

Mr. KEMPLE. Not in most cases. Hotel bills, generally, were required.

Mr. REDDAN. Who were permitted to use the company credit cards?

Mr. KEMPLE. The people they were issued to.

Mr. REDDAN. Yes, I'm sure. But who were they issued to?

Mr. KEMPLE. I don't know all of them, sir. The company Comptroller—

Mr. REDDAN. Were they issued to any persons other than the officers of the corporation?

Mr. KEMPLE. They were.

Mr. REDDAN. They were?

Mr. KEMPLE. Yes, sir.

Mr. REDDAN. How far down the line did they go?

Mr. KEMPLE. Every man that worked for me had a credit card, just about. I can't remember any that didn't.

Mr. REDDAN. Any have more than one credit card?

Mr. KEMPLE. Most of them.

Mr. REDDAN. Most of them had more than one?

Mr. KEMPLE. Yes.

Mr. REDDAN. What would be the point of issuing more than one credit card?

Mr. KEMPLE. You will always be at a place which accepts one type of credit card.

Mr. REDDAN. Excuse me. Is more than one credit card of the same credit organization issued?

Mr. KEMPLE. To my knowledge no one was issued more than one credit card for the same organization.

Mr. REDDAN. What credit cards did you have?

Mr. KEMPLE. Air Travel, Diners, American Express. I believe at one time I had a Carte Blanche card.

Mr. REDDAN. Were these all furnished by the company?

Mr. KEMPLE. Yes.

Mr. REDDAN. In addition to that, did you have any credit cards of your own?

Mr. KEMPLE. Yes, sir.

Mr. REDDAN. What credit cards of your own did you have?

Mr. KEMPLE. American Express, Diners, Master Charge.

Mr. REDDAN. Can you tell the committee what your personal credit card numerals were?

Mr. KEMPLE. I have one with me.

Mr. REDDAN. No. Do you have a record of them?

Mr. KEMPLE. No, sir, I do not.

Mr. REDDAN. Did you ever authorize Mr. Elmore to use any of your credit cards?

Mr. KEMPLE. Yes, sir; I did.

Mr. REDDAN. Were these personal credit cards or company credit cards?

Mr. KEMPLE. Company credit cards.

Mr. REDDAN. Would you tell the committee the circumstances which led to that authorization?

Mr. KEMPLE. Yes, sir. I will try and put this in the perspective as I remember it. The first time that I remember authorizing Mr. Elmore to use the credit card was when my son returned from Vietnam, I asked him to take my son and daughter-in-law out to dinner, and I gave him a credit card to take to Baltimore. The next time I asked him to use my credit card was when I had to get up and leave a group of five or six of us at the Market Inn. I had to get up and leave to catch an airplane. And at that time I asked him to please pay the bill. I gave him my credit card to pay it with. And I repeated that procedure a number of times after that, in addition to which he took my children out at least one other time that I can remember.

Mr. REDDAN. How many times would you say that you authorized him to use your credit card?

Mr. KEMPLE. The number of times that I authorized him to use it or the number of times that he signed checks?

Mr. REDDAN. That is my next question.

Mr. KEMPLE. I will answer both of them for you, sir. I would say I probably authorized him to use it somewhere between 12 and 24 times. The number of times that he signed, we made an effort Monday night to determine the exact checks. To the best of my knowledge and his, there were between 75 and 80 checks signed by Mr. Elmore.

Mr. REDDAN. How were these handled by the company?

Mr. KEMPLE. On occasions Mr. Elmore did repay me for these checks. Did you mean how they were handled in the plant?

Mr. REDDAN. Yes.

Mr. KEMPLE. I don't know; the credit card accounts went to the company Comptrollers who paid the bills.

Mr. REDDAN. Who were the Comptrollers?

Mr. KEMPLE. We had three, Mr. Jones, Mr. Ruffett, and Mr. Axt.

Mr. REDDAN. Is Mr. Ruffett still with the company?

Mr. KEMPLE. I have no—no, sir.

Mr. REDDAN. Do you know where he is?

Mr. KEMPLE. I have no idea, sir.

Mr. REDDAN. Was there a time when a question was raised as to the signatures appearing on these slips which were stamped with your credit card?

Mr. KEMPLE. I remember on one occasion Mr. Jones saying this doesn't look like your signature. He said what happened. I said don't worry about it. I said it is all right, pay it. That is on one of the occasions I let Mr. Elmore use my card.

Mr. REDDAN. You said you determined that Mr. Elmore used your card 80 or 75 times.

Mr. KEMPLE. That is correct, sir.

Mr. REDDAN. How did you reach that conclusion?

Mr. KEMPLE. We took 3 years' slips and went through them and saw what signatures appeared to be Mr. Elmore's and what appeared to be mine, and what ones we were uncertain. Of the ones that appeared to be Mr. Elmore's, that is the number that we determined. We couldn't be sure on all of them. That is why we came up with between 75 and 80.

Mr. REDDAN. How many did you determine were your signature?

Mr. KEMPLE. About 150, was my guess, sir.

Mr. REDDAN. Did you guess, or did you have any real basis for that? Did you pick up the number that you couldn't identify as Elmore, would you say the rest were your own?

Mr. KEMPLE. No, I didn't. Obviously there were some that were not my own, they didn't look like my signature, we put those aside and said we didn't know whose those were. Since I let people who worked for me use my credit card particularly when they first reported in, and at times when they forget them, I can't determine which are which.

Mr. PIKE. Did you attribute any of these credit card usages to Captain O'Brien?

Mr. KEMPLE. Let me say this: I suspected some of them were. I never knew for sure. There were a couple of times that—I guess I shouldn't say "suspected", but—

Mr. PIKE. Believed?

Mr. KEMPLE. OK. There were a couple of times that Captain O'Brien returned the card to me, and as I recall the first time that he returned it to me, it was just after he got back from Vietnam, and he said, "is it all right with you if I use it." He says, "if I'm short of money." I said, yes, go ahead, square it away with me when you get a chance. I can't say how many times Captain O'Brien used it, because I was not able to determine what his signature might be.

Mr. PIKE. You say that you looked at these cards over a 3-year period.

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

Mr. PIKE. These signature checks over a 3-year period. Between 75 and 80 of them you attributed to Mr. Elmore, you said what, 150 or 160 were your own?

Mr. KEMPLE. That is what I estimated.

Mr. PIKE. How many were there altogether?

Mr. KEMPLE. May I refresh my memory?

Mr. PIKE. Of course.

Mr. KEMPLE. I believe I have the paper here—I hope. There were seven that we couldn't make out. There were 148 that were mine. There were 20 that were doubtful. And there were 255, according to my count. That is ones with my signature.

Mr. PIKE. When these vouchers came through, the corporation would pay them?

Mr. KEMPLE. That is correct.

Mr. PIKE. When Mr. Elmore reimbursed you, did you reimburse the corporation?

Mr. KEMPLE. Yes, I did, Mr. Chairman, indirectly. Let me put it this way. I flew my own airplane at my own expense back and forth from Washington. I had my own automobile down here, that I used when I was in the Washington area, a good part of the time. These charges were never put on my expense account. The costs more than exceeded the amount that I received from Mr. Elmore.

Mr. PIKE. Did you ever, in any manner, return to the corporation, the amounts of cash which Mr. Elmore has testified that he gave to you?

Mr. KEMPLE. I did not, as cash, sir. No, sir.

Mr. PIKE. Did the president, or whoever your superior in the corporation was, ever authorize you to use your credit card in a manner under which the corporation would pay for it, you would get reimbursed, but the reimbursement would not get back to the corporation?

Mr. KEMPLE. No, sir. But as I stated, I felt reimbursement did get back to the corporation.

Mr. PIKE. What you are saying is you were paying for an airplane, and you were paying for an automobile. Because the corporation didn't pay you for that, you didn't feel that you had to return this money to them, but this was not part of the agreement you had with the corporation?

Mr. KEMPLE. No, sir; but a round-trip ticket to Washington is \$54, sir, and I made at least 100 in my own airplane.

Mr. PIKE. Did you ever discuss this with the head of the corporation?

Mr. KEMPLE. No, sir; I did not.

Mr. REDDAN. Have you discussed it with him prior to your testimony here today?

Mr. KEMPLE. I have discussed certain aspects of it, yes, sir. I have had discussions with him since the investigation.

Mr. REDDAN. Yes, but have you, prior to your testimony today, told him how you were reimbursing yourself?

Mr. KEMPLE. I don't believe I have told him exactly how. I said the company had been reimbursed, I had left amounts out of my expense account that were more than equal and he was satisfied.

Mr. REDDAN. You say Captain O'Brien asked you if he could use this credit card?

Mr. KEMPLE. Yes, sir; he did.

Mr. REDDAN. When was that, sir?

Mr. KEMPLE. To the best of my recollection it was immediately after he returned from Vietnam.

Mr. REDDAN. What year?

Mr. KEMPLE. I would say 1968.

Mr. REDDAN. 1968?

Mr. KEMPLE. Yes, sir.

Mr. REDDAN. How long did he continue to use it?

Mr. KEMPLE. Sir, I can't answer that. I can't tell you how many times he did use it. I did not know for certain that Captain O'Brien used that card until today. I had suspected it, but I did not know for sure until today.

Mr. REDDAN. Didn't you learn it before today?

Mr. KEMPLE. I suspected it before today.

Mr. REDDAN. Didn't you learn it the other night when you had the meeting at Mr. Elmore's house?

Mr. KEMPLE. No, sir; at the meeting at Mr. Elmore's house, Captain O'Brien did not say he had signed any of the checks. He was quizzed about it. But he did not say that he had signed any of them.

Mr. REDDAN. What period of time was covered by the Diners card charges that you reviewed the other night?

Mr. KEMPLE. From 1967 through 1970.

Mr. REDDAN. It would run at least from April of 1967 through October of 1970, is that right?

Mr. KEMPLE. I can't say that, sir. I don't believe I have April of 1967. I think I started with June or July of 1967. I'm not sure which.

Mr. REDDAN. Where are your June and July records—I mean, your April records?

Mr. KEMPLE. I do not know, sir. I have never been able to find them. They have not been made available to me.

Mr. REDDAN. I believe you told us you examined a total of 255 cards?

Mr. KEMPLE. That is correct.

Mr. REDDAN. 255 charges for the period I have just given you, April 27, 1967, through October 21, 1970; we have 313 Diners card slips.

Mr. KEMPLE. You have 70 more than I have, sir. I don't know where they come from.

Mr. REDDAN. I wonder what happened to those?

Mr. KEMPLE. I don't know, sir. The ones I have were all I was able to obtain.

Mr. REDDAN. Did you total up the amount of those charges?

Mr. KEMPLE. Yes, sir, I did.

Mr. REDDAN. What did they come to?

Mr. KEMPLE. Mr. Elmore's charges were somewhere between \$2,000 and \$2,600. Mine were in the neighborhood of \$4,000, and the unknown, as I remember, was about \$800 or \$900.

Mr. REDDAN. Now, the charge tickets, through the period I have just mentioned to you, totalled better than \$9,000.

Mr. KEMPLE. Once again, sir.

Mr. REDDAN. \$9,249.41.

Mr. KEMPLE. That is more than I have, sir.

Mr. REDDAN. Now, do you think you were out of pocket during that period of time \$9,249?

Mr. KEMPLE. Sir, to start with, let's say half of the expenses were other people's. If they were—let's say that half of them were not mine, as I told you, sir, I made at least the 100 trips in an airplane which is \$54 apiece. So that I feel, yes, that I have more than reimbursed the company.

Mr. REDDAN. Who bought the plane, is that your private plane?

Mr. KEMPLE. I did.

Mr. REDDAN. That is your own private plane?

Mr. KEMPLE. Yes, sir.

Mr. REDDAN. You pay for the gas, maintenance, and upkeep?

Mr. KEMPLE. That is correct, sir.

Mr. REDDAN. This was your contribution to the corporate effort?

Mr. KEMPLE. That is correct, yes.

Mr. REDDAN. You were never reimbursed for any of this?

Mr. KEMPLE. That is correct.

Mr. REDDAN. For the cost of any of the operation of that plane?

Mr. KEMPLE. That is correct.

Mr. REDDAN. On company business?

Mr. KEMPLE. That is correct—you have the records.

Mr. REDDAN. How did you handle this tax-wise on the reimbursement of expenses?

Mr. KEMPLE. Since the money that I received was less than the money that I was reimbursed, on my tax returns I reported that I was reimbursed for out-of-pocket expenses as they were made.

Mr. REDDAN. In toto?

Mr. KEMPLE. In toto, that is correct.

Mr. PIKE. You did not claim any deduction for the cost of the operating of the aircraft?

Mr. KEMPLE. I claimed no deductions for operating the airplane. I claimed no deductions for any of this.

Mr. REDDAN. Did you ever pick up the hotel bill for anyone employed by the Marine Corps procurement office?

Mr. KEMPLE. Not to my recollection, no, sir. It is possible that I did, but I cannot recall it.

Mr. REDDAN. Did you tell us how you were reimbursed? Did Captain O'Brien ever reimburse you for the use of the card?

Mr. KEMPLE. Yes, sir. In October of last year, to the best of my knowledge or recollection—again I'm not sure it was October, but I believe it was October—Captain O'Brien gave me \$800, and I said, "What is this for?" He said, "Just don't ask me any questions about it. This is money that is owed to you." I said, "Well, is it for the credit card?" And he said "Yes," so at that time I assumed that it was money from Mr. Elmore to me for the credit card. I did not know at that time it was Captain O'Brien's money. I have since been informed by him that that was his money, that he paid me for his use of the credit card. To my knowledge that is the only time I can remember him ever giving me anything in connection with it.

Mr. REDDAN. Well, now, when did Mr. Elmore reimburse you for his use of the credit card?

Mr. KEMPLE. This was from time to time, sir. When I got the card back, he would usually give me a few bucks toward it. I felt he was giving me what he considered to be his fair share. I never knew what his fair share really was.

Mr. REDDAN. Well, then, you were under the impression that his accounts with you were kept on a rather current basis, is that right?

Mr. KEMPLE. Fairly close, yes, sir.

Mr. REDDAN. So that when in October of last year, Captain O'Brien gave you \$800, you say you thought it was from—

Mr. KEMPLE. That is correct.

Mr. REDDAN. Did you ever speak to Mr. Elmore about that?

Mr. KEMPLE. I didn't discuss it with him. I was told not to discuss it, "here it is."

Mr. REDDAN. Captain O'Brien told you not to discuss it?

Mr. KEMPLE. He says, "just don't ask any questions about it. It is owed to you, and here it is."

Mr. REDDAN. You thought it was something Mr. Elmore owed you?

Mr. KEMPLE. I thought I had miscalculated and Mr. Elmore figured he owed me that much, that is correct.

Mr. REDDAN. What did you do with the money?

Mr. KEMPLE. I put it in my pocket.

Mr. REDDAN. Did you deposit it any place?

Mr. KEMPLE. No, sir. I have cash deposits considerably in excess of that, sir, but I did not deposit that money. No, sir, I spent it.

Mr. PIKE. Was that money paid in the form of a check or in the form of cash?

Mr. KEMPLE. It was cash.

Mr. REDDAN. What size bills?

Mr. KEMPLE. I can't even tell you that, sir, but as I recall there were a couple of hundreds, some fifties, and some twenties, I can't be sure.

Mr. REDDAN. Where did this take place?

Mr. KEMPLE. I met Captain O'Brien in Marine Corps Headquarters. I can't remember whether we went out and went somewhere in his car

and he gave it to me when we were riding, or whether it was at Headquarters, I just can't remember, sir.

Mr. PIKE. Where did you keep your private aircraft?

Mr. KEMPLE. I kept it at Greenwood Lake Airport, or at Aircraft Radio Field, in Brewton, N.J. When it was here it was parked at Gaithersburg, and I kept the car at Gaithersburg.

Mr. PIKE. I would like you to look at that travel expense report there, and tell me whether it is familiar to you or not.

Mr. KEMPLE. That is correct.

Mr. PIKE. Is that your travel expense report?

Mr. KEMPLE. I signed it, sir. It must be mine.

Mr. PIKE. Does it show the use of the private aircraft as an expense?

Mr. KEMPLE. Yes, sir; it certainly does.

Mr. PIKE. Is that your private aircraft?

Mr. KEMPLE. I honestly can't tell you, sir, I have to see the date on the thing and maybe I can tell. November 6 and November 9—what year—is this 1965, sir?

Mr. RANSOM. This is 1968; it is on the check.

Mr. REDDAN. Look at the copy of the invoice.

Mr. KEMPLE. I never—1968—it says plus Bolas—are you sure this isn't 1965, sir? I'm looking at that \$7 per hour for private aircraft.

Mr. PIKE. That is pretty cheap; isn't it?

Mr. KEMPLE. Yes; it is. It is not the cost, and I don't know why. I can't remember the trip, and I can't remember the reasons, but I assure you that nobody can operate an aircraft for \$7 an hour. You can't even buy gas for that.

Mr. PIKE. On the other hand, it is your voucher, and it is your trip presumably.

Mr. KEMPLE. Yes, sir; but I did also say, sir, I had approximately 100 trips from New York City to Washington that I did not charge for that were with my airplane. It does appear that I charged for an airplane. I will not deny it. I did not remember this, or I would have mentioned it to you.

Mr. REDDAN. Do you think there may have been other charges for your plane?

Mr. KEMPLE. Possibly, sir, but certainly there is more than the differences we are talking about. Just on the plane, let alone the car use down here.

Mr. REDDAN. Could you just tell us quickly why you did this?

Mr. KEMPLE. Two reasons, sir. The fastest way for me to get here was by private plane.

Mr. REDDAN. No; what I mean is why you were contributing this sum—in effect contributing this sum to the corporate effort? Why were you doing this?

Mr. KEMPLE. There were several reasons, sir. The corporation has been good to me. I have been paid well by the company and treated well by the company. It was an expenditure that would have been excess had I put it in, and I figured there were other things that I was getting in return, such as my expenses when I was out for a night on the town. And that this was equalizing. It is my way of playing fair, sir.

Mr. PIKE. How often would you say, Mr. Kemple, that you left your credit card with Mr. Elmore because you had to leave, or for some other reasons?

Mr. KEMPLE. As I said, sir, over the 3-year period, in my estimation, it was between 12 and 24 times.

Mr. PIKE. If you left it with him between 12 and 24 times, did you tell him that he could use it on his own, for other purposes?

Mr. KEMPLE. Yes, sir; I did.

Mr. PIKE. He was completely free to use that credit card for anything he wanted to; is that correct?

Mr. KEMPLE. That is correct, sir. As far as I was concerned.

Mr. PIKE. Was he also free to use the office apartment which you had here in Washington?

Mr. KEMPLE. Had he have wanted to, sir, I would have had no objections. He never directly ever asked me to use the apartment.

Mr. PIKE. Did he ever use the apartment with or without asking you? Without your presence?

Mr. KEMPLE. Without my presence? Not to my knowledge, sir. There was one time I did give Mr. Elmore the key to that apartment and he had it for 5 days, but there was a definite reason, sir. I was sick in bed up there and he was taking care of me.

Mr. PIKE. Well, did you also leave a key in the mailbox?

Mr. KEMPLE. There was a key in the mailbox at almost all times, sir. And the reason for that was so that if one of our employees came in to Washington, he would be able to get the key to get into the office.

Mr. PIKE. How far is it from your home to LaGuardia Airport?

Mr. KEMPLE. In time, or in hours, sir?

Mr. PIKE. Let's make it time.

Mr. KEMPLE. In time, just over an hour.

Mr. PIKE. Did you consider it somewhat presumptuous on his part when he called you and asked you to lend him a car when it involved you driving over an hour, and your son driving over an hour, to come pick you up and take you back just so you could lend him a car?

Mr. KEMPLE. Sir, Mr. Elmore is a good friend of mine. I knew how bad he wanted to see his father, because I had asked him to spend the weekend with me, and he said, no, he wanted to go see his father. When he got snowed in and couldn't get out, that is the weekend when the terminals were all full, and Life came out with a big story on it. When he asked me if he could use my car to go to Worcester, I naturally said yes.

Mr. PIKE. How long did he keep your car that weekend?

Mr. KEMPLE. To the best of my knowledge, a couple of days, sir.

Mr. PIKE. I would like to show you a photograph, and ask you whether that is a picture of the car which you loaned him?

Mr. KEMPLE. Yes, sir; it sure is. It looks like it. I can't recognize the license plate but it is the same make and model and it is probably the same car; yes, sir.

Mr. PIKE. There does appear to be a little snow—there is snow on the side of the road, but the road is completely clear in that photograph; is it not?

Mr. KEMPLE. Yes, sir; but the record as I stated to you, will stand. The terminals were full of people on that weekend, that couldn't get

out. There were pictures in the magazines of them sleeping on the benches.

Mr. PIKE. I recall that particular instance.

Mr. KEMPLE. That was that weekend, and it was Christmas.

Mr. LALLY. Mr. Kemple, did Captain O'Brien sell a boat to you some time before he left for the West Coast in 1967?

Mr. KEMPLE. Yes; he did.

Mr. LALLY. How much did you pay him for that boat?

Mr. KEMPLE. I have been trying to remember. To the best of my recollection it was \$2,200. I can't say for sure, sir.

Mr. LALLY. Did you pay him the full amount on the boat?

Mr. KEMPLE. I have paid him the full amount, yes, sir.

Mr. LALLY. When did you finish paying him?

Mr. KEMPLE. To the best of my recollection, it was last year sometime.

Mr. LALLY. Well, would it be incorrect to say that in June of this year, June 1971, you still owed Captain O'Brien \$1,000 on that boat?

Mr. KEMPLE. It would be incorrect, yes, sir.

Mr. LALLY. If Captain O'Brien said that, he would have been in error?

Mr. KEMPLE. If Captain O'Brien said that, he would have been in error, yes, sir.

Mr. LALLY. How did you pay Captain O'Brien?

Mr. KEMPLE. Gee, I can't remember, sir, whether it was a check or cash. You are asking about an awfully long time ago. Incidentally, sir, if it does make a difference, I sold the boat at least for as much as I paid for it just a couple of years ago.

Mr. REDDAN. To whom did you sell it?

Mr. KEMPLE. I sold it to an aircraft dealer in Flemington, N.J. I traded it and \$1,000 for a 1966 Cessna airplane, which is worth \$3,500 bucks.

Mr. REDDAN. When did you make this trade?

Mr. KEMPLE. About 2 years ago.

Mr. REDDAN. Is this the plane you have been flying back and forth to Washington?

Mr. KEMPLE. No, sir.

Mr. REDDAN. This is another plane?

Mr. KEMPLE. Yes, sir.

Mr. REDDAN. You don't remember whether you paid him with a check or cash?

Mr. KEMPLE. I'm sorry, sir, I can't.

Mr. REDDAN. Would your check book record disclose that?

Mr. KEMPLE. Sir, I wouldn't have a check book record that far back. You are asking me about 1965 or 1966, and I don't maintain records for that long.

Mr. REDDAN. How long do you keep them?

Mr. KEMPLE. A couple of years.

Mr. REDDAN. Do you ever have any problem with Internal Revenue keeping them only for 2 years?

Mr. KEMPLE. No, sir.

Mr. REDDAN. Have you ever been audited?

Mr. KEMPLE. Yes, sir.

Mr. REDDAN. Do you also have the records back as far as they wanted them?

Mr. KEMPLE. I have, yes, sir. I haven't had any problems.

Mr. PIKE. Do you have any questions, Mr. Lennon?

Mr. LENNON. No.

Mr. PIKE. Mr. Lally?

Mr. LALLY. No, sir.

Mr. PIKE. That is all, Mr. Kemple.

Mr. KEMPLE. All right, sir. May I go back to the plant then, or do you want me to stay around?

Mr. PIKE. I would have to ask you to stay around for the rest of this afternoon, Mr. Kemple.

Mr. KEMPLE. Could I ask you this then, sir, would you take Mr. Axt through. If somebody doesn't sign the payroll checks before tonight our employees will not be paid tomorrow and we will be in trouble.

Mr. PIKE. All right.

Mr. KEMPLE. Thank you, sir.

Mr. PIKE. We will call him next.

Whereupon Harry S. Axt was sworn and testified as follows:

Mr. PIKE. Sit down. Give your name and address to the reporter, please.

**TESTIMONY OF MR. HARRY S. AXT, COMPTROLLER, DEWEY
ELECTRONICS CORP., PARAMUS, N.J.**

Mr. AXT. Harry S. Axt, 3 Manor Avenue, Pompton Plains, N.J.

Mr. REDDAN. What is your present occupation, Mr. Axt?

Mr. AXT. I am Comptroller of Dewey Electronics Corp.

Mr. REDDAN. How long have you held that position?

Mr. AXT. Since February, 1970.

Mr. REDDAN. What did you do prior to that time?

Mr. AXT. I was Comptroller for Aircraft Radio Division of Cessna Aircraft Co.

Mr. REDDAN. As Comptroller, did you have any responsibility for the examination and processing of credit card charges to the company?

Mr. AXT. Yes.

Mr. REDDAN. What were your duties, sir?

Mr. AXT. Pardon?

Mr. REDDAN. What did you do?

Mr. AXT. I reviewed the charges prior to submission to Mr. Dewey for signature on the checks.

Mr. REDDAN. What sort of support did you use to make a determination whether these were proper charges?

Mr. AXT. I just used the card that was sent back by the particular credit card company, to see that the signature was one of our employees.

Mr. REDDAN. How did you check the signature?

Mr. AXT. I just looked at the signature.

Mr. REDDAN. Did you have a master file of signatures against which you checked it?

Mr. AXT. No; I just checked the names, seeing that the person signing it was authorized to sign it—in other words, had a credit card.

Mr. REDDAN. As long as the same name was on there, were you concerned at all?

Mr. AXT. No.

Mr. REDDAN. As to who had signed it.

Mr. AXT. No.

Mr. REDDAN. Did you ever discuss this with anybody in the company?

Mr. AXT. No.

Mr. REDDAN. How would you know whether or not you were paying phony charges? Suppose somebody lost a credit card and ran up \$10,000 worth of bills?

Mr. AXT. I would expect them to report it to me if they lost the card.

Mr. REDDAN. If they didn't report it you went ahead and paid the bills anyway?

Mr. AXT. That is correct.

Mr. REDDAN. Did you ever discuss the possible problems with Mr. Dewey?

Mr. AXT. No.

Mr. REDDAN. Did you ever discuss them with Mr. Kemple?

Mr. AXT. No.

Mr. REDDAN. Did you ever find any of Mr. Kemple's cards with a misspelled signature on it?

Mr. AXT. No; not to the best of my recollection.

Mr. REDDAN. Did you keep any track of the number of charges on these credit cards assigned to the various employees?

Mr. AXT. No.

Mr. REDDAN. You just sort of stamped them as they came through and said okay?

Mr. AXT. No; I didn't stamp them. As I say, I reviewed them.

Mr. REDDAN. You gave them a Good Housekeeping seal of approval, and paid them.

You were the Comptroller of the company?

Mr. AXT. Yes.

Mr. REDDAN. Did you make any effort to control the use of these cards?

Mr. AXT. The number of cards that are given out are controlled. Their use by me is not controlled.

Mr. REDDAN. Were you told, in effect, you were not to inquire too deeply into how the cards were used?

Mr. AXT. All checks were signed over by Mr. Dewey. It was my job to see that the cards that came in had signatures on, people who were authorized to have cards.

Mr. REDDAN. You mean names?

Mr. AXT. Yes.

Mr. REDDAN. You didn't know whether they were authentic signatures or not?

Mr. AXT. I never compared the signatures to see.

Mr. REDDAN. What I am asking you, were you ever told that you didn't have to concern yourself?

Mr. AXT. No; I was not.

Mr. PIKE. When did you take over in your present job, Mr. Axt?

Mr. AXT. February 1970.

Mr. PIKE. In the course of that time, have you examined travel vouchers submitted by Mr. Kemple?

Mr. AXT. Yes.

Mr. PIKE. Have these included travel vouchers between New Jersey and Washington, D.C.?

Mr. AXT. Yes.

Mr. PIKE. Did these travel vouchers ever include air transportation?

Mr. AXT. Mr. Kemple has an air travel card. We also have facilities to write our own tickets. It would be possible that Mr. Kemple included in the credit card of the expense—in the credit portions of the expense report a copy of an air travel bill or something like that; yes.

Mr. PIKE. Did they ever include air travel by private aircraft?

Mr. AXT. Not to the best of my recollection; no, sir.

Mr. PIKE. Have you, since this investigation came up, made any effort to look at the travel vouchers and the expense vouchers from the period prior to when you became Comptroller of the corporation?

Mr. AXT. I have seen them, sir, but I have never investigated them. As I pulled out the copies for Mr. Ransom and Mr. Lally, I looked at them, but I didn't go back and spend any time in reviewing them.

Mr. PIKE. Do you have any knowledge of credit card charges made purporting to be the signature of officers of the Dewey Corp., which were in fact not signatures of officers of the Dewey Corp., or employees of the Dewey Corp.?

Mr. AXT. Not prior to this investigation.

Mr. PIKE. Mr. Lennon, do you have any questions?

Mr. LENNON. No questions.

Mr. PIKE. Mr. Lally?

Mr. LALLY. No, sir.

Mr. PIKE. Mr. Axt, I think that is all we have for you, and you are free to leave.

Mr. AXT. Thank you, sir.

Michael H. Kipp and Bahman Naghshineh were sworn, and testified as follows:

Mr. REDDAN. Will you give your name to the reporter and your address?

TESTIMONY OF MR. MICHAEL H. KIPP, DAY MANAGER, AND MR. BAHMAN NAGHSHINEH, NIGHT MANAGER, MARKET INN RESTAURANT, WASHINGTON, D.C.

Mr. KIPP. Michael H. Kipp. Home address?

Mr. REDDAN. Please.

Mr. KIPP. 7403 Monticello Boulevard, Springfield, Va.

Mr. NAGHSHINEH. Bahman Naghshineh, address is 3902 Flagstone Terrace, Alexandria, Va.

Mr. REDDAN. Mr. Kipp, what is your present occupation?

Mr. KIPP. Manager of the Market Inn Restaurant in the daytime.

Mr. REDDAN. You are the day manager?

Mr. KIPP. Yes.

Mr. REDDAN. For what period of time have you held that position?

Mr. KIPP. About 3½ years.

Mr. REDDAN. And Mr. Naghshineh, what is your position?

Mr. NAGHSHINEH. The night manager of Market Inn. I have been manager for the past 11 years.

Mr. REDDAN. The past what?

Mr. NAGHSHINEH. Eleven years.

Mr. REDDAN. Eleven years.

Mr. NAGHSHINEH. Right.

Mr. REDDAN. I will address my questions mainly to you, Mr. Naghshineh, but Mr. Kipp, any time you can fill in, please do so.

Do you know Mr. Daniel Elmore?

Mr. NAGHSHINEH. Yes; I do.

Mr. REDDAN. Do you know him also?

Mr. KIPP. Yes.

Mr. REDDAN. Is he here in the room today?

Mr. NAGHSHINEH. Yes; he is.

Mr. REDDAN. Point him out to me?

Mr. NAGHSHINEH. The gentleman with the gray hair sitting over there.

Mr. REDDAN. Did Mr. Elmore visit your establishment on occasion?

Mr. KIPP. Yes.

Mr. REDDAN. How frequently?

Mr. NAGHSHINEH. I can say that for the past 6 or 8 months, I haven't seen him as I used to a few years back.

Mr. REDDAN. When he used to frequent it, how often was he there?

Mr. NAGHSHINEH. I would say 2 or 3 nights a week he was at Market Inn, about 6 or 7 o'clock at night.

Mr. REDDAN. Do you know how he usually paid his check?

Mr. NAGHSHINEH. By credit card.

Mr. REDDAN. What credit card did he use?

Mr. NAGHSHINEH. That I don't know, sir. I know that he signed a credit card. Question came up, years back——

Mr. REDDAN. Could you keep your voice up a little bit, please?

Mr. NAGHSHINEH. I said the question came up a few years back, about 4 or 5 years back. Mr. Elmore signed a different credit card, but I personally didn't have any objection to that. At the time I brought this subject up to the office, and I was told that when I don't see any bad credit card on the books of the credit card companies, I should have no objection, I don't investigate it. If you come over there and present me with a credit card, the first thing I will do is look at my booklet. If that credit card name is not in that booklet, I will let you sign and go. I will not ask you any questions who you are, as long as you show me identification.

Mr. REDDAN. Do you know Captain O'Brien?

Mr. NAGHSHINEH. No, I do not know Captain O'Brien.

Mr. REDDAN. Do you know Captain O'Brien, Mr. Kipp?

Mr. KIPP. I know him by the name O'Brien; yes.

Mr. REDDAN. Was there a period of time when he visited Market Inn rather frequently?

Mr. KIPP. Yes, frequently. I can recall seeing him with Dan Elmore on several occasions several years ago. Occasionally he would be in by himself or with other guests.

Mr. REDDAN. Did Captain O'Brien ever use a credit card to pay his bills?

Mr. KIPP. I wouldn't know whether he did or not.

Mr. REDDAN. Mr. Naghshineh, do you know?

Mr. NAGHSHINEH. No, sir; I do not recall that.

Mr. REDDAN. Do you know Mr. Ross?

Mr. NAGHSHINEH. No, sir. I do not know anybody in Mr. Dan Elmore's party but himself.

Mr. PIKE. Well, do you know, either of you, the name of the person on the credit card which Mr. Elmore used?

Mr. NAGHSHINEH. Yes; I do.

Mr. PIKE. What was the name?

Mr. NAGHSHINEH. Kemple.

Mr. PIKE. Kemple?

Mr. NAGHSHINEH. Right, Kemple.

Mr. PIKE. Are there any questions, Mr. Lennon?

Mr. LENNON. No, sir.

Mr. PIKE. Mr. Lally?

Mr. LALLY. No, sir.

Mr. PIKE. That is all, gentlemen.

Mr. NAGHSHINEH. Thank you.

Mr. PIKE. Mr. Jones.

Arthur M. Jones, Jr., was sworn, and testified as follows:

Mr. REDDAN. Please give the reporter your name and address, Mr. Jones.

**TESTIMONY OF MR. ARTHUR M. JONES, JR., FORMER COMPTROLLER,
DEWEY ELECTRONICS CORP., PARAMUS, N.J.**

Mr. JONES. My name is Arthur M. Jones, Jr., No. 1 Meadowbrook Village, Plainfield, N.J.

Mr. REDDAN. What is your present employment, Mr. Jones?

Mr. JONES. I am the Comptroller of the Winston A. Burnett Construction Co. of New York.

Mr. REDDAN. How long have you been so employed?

Mr. JONES. Only about a month.

Mr. REDDAN. You are appearing here today under subpoena?

Mr. JONES. I am.

Mr. REDDAN. Are you represented by counsel?

Mr. JONES. I am.

Mr. REDDAN. Did you employ your own counsel?

Mr. JONES. No, sir.

Mr. REDDAN. Who furnished you with counsel?

Mr. JONES. The Dewey Electronics Corp.

Mr. REDDAN. How was this arrangement made?

Mr. JONES. Through Mr. Kemple.

Mr. REDDAN. Would you tell us how this was done, please?

Mr. JONES. I informed Mr. Kemple that I had been subpoenaed to appear, and he said that a law firm was representing the company, and if I wished, the firm would also represent me. Since I felt the investigation was covering a period of time when I was employed by The Dewey Electronics Corp., I thought I would avail myself of these services.

Mr. REDDAN. Is the service free to you?

Mr. JONES. Yes, sir.

Mr. REDDAN. During what period of time, Mr. Jones, were you Comptroller for the Dewey Corp.?

Mr. JONES. From November 1966, through September of 1969.

MR. REDDAN. Now, as Comptroller of the company, it was a part of your duties, I assume, to review the travel and expense accounts submitted by the officers and employees of the company; is that correct?

MR. JONES. It is.

MR. REDDAN. Did you make final approval, or did someone else make final approval?

MR. JONES. It would depend on who turned in the expense voucher, sir. I would make final approval of those people who are responsible to me and to certain other people in the corporation. If Mr. Dewey were available, he would make final approval of the officers' expense vouchers. If he were not available, I would do so.

MR. REDDAN. Now, how did the officers and employees handle these credit card slips? Were they attached to expense vouchers?

MR. JONES. Normally; yes, sir. The expense account voucher at Dewey, as you probably can see from having some in your possession, have two columns for each day of the week. One is a cash column and the other is a credit column. Cash expenditures for anything over, if I recall correctly, \$15, were supposed to be accompanied with a receipt. The credit items were to be accompanied with a receipt if the receipt were available.

MR. REDDAN. Now, did there come a time when you raised any questions concerning the credit charges of Mr. Kemple?

MR. JONES. Yes, sir.

MR. REDDAN. Would you tell the committee about that, please, sir?

MR. JONES. I think it probably was sometime within maybe 6 months after I started to be employed with Mr. Dewey. It appeared to me that the signatures on the Diners Club cards that accompanied the Diners Club billing were not those of Mr. Kemple, and I asked him about it.

MR. REDDAN. What did he say?

MR. JONES. He replied that the charges were all right, that someone else was using the card and I should approve the bill for payment.

MR. REDDAN. How long did this practice continue?

MR. JONES. To the best of my knowledge, it seemed to go on most of the time I was there.

MR. REDDAN. Did you ever discuss it with Mr. Dewey?

MR. JONES. Yes, I did. I didn't go in to Mr. Dewey to discuss this particular thing with him originally.

MR. REDDAN. Mr. Dewey was present when you talked to Mr. Kemple about it, is that what you mean?

MR. JONES. I don't know.

MR. REDDAN. When did you discuss it with Mr. Dewey?

MR. JONES. Sometime later. I think perhaps maybe a year after I started with the company, a year to a year and a half; it became apparent to me that the control of expenditures through expense vouchers and the billings from credit card companies was practically nonexistent.

I went in to Mr. Dewey to suggest to him that we establish individual accounts, or individual controls to cover not only cash advances, but to cover the items that were charged on credit cards. After some discussion, Mr. Dewey's decision was that he did not want me to pursue this; number one, I didn't have the staff for it, it would have meant having to add a clerk or two to handle the volume; and num-

ber two, that some of the items which come through from the credit companies would not necessarily fit into the system, since the corporation's officers were not required to account completely.

Mr. REDDAN. To what extent were they required to account?

Mr. JONES. Well, in the Dewey Corp. there was some distinction between officers and employees. Employees were required to account for everything that they spent, as I mentioned before, above \$15 cash, and all the credit items. The officers, since they were allowed to use credit cards for their personal expenditures from time to time, these were not charged to the company, should not be charged to the company, and were not turned in on expense vouchers.

So that what came in with the billings from the credit card company didn't always agree with what was turned in on the expense items.

Mr. REDDAN. Well, now——

Mr. JONES. Are you confused?

Mr. REDDAN. Not quite, but almost.

You questioned the use of Kemple's credit cards as I understand it, because there were so many charges which were not attached to his expense account; is that right?

Mr. JONES. No; that wasn't the reason I first brought it to his attention at all. The discrepancy in signatures was the reason I brought it to his attention.

Mr. REDDAN. I see. After that, were you ever concerned about the volume of charges which were not accounted for in his expense account?

Mr. JONES. No; I would not say that the volume compared to the overall volume coming into the company was large enough to be that concerned about.

Mr. REDDAN. Did the same condition obtain with the other officers of the company and the use of their credit cards as you noted happening in Kemple's case?

Mr. JONES. Which condition?

Mr. REDDAN. That there were a large number of charges which were not put into their expense accounts?

Mr. JONES. "Large" is a relative word. There were some charges on all of the officers——

Mr. REDDAN. "Some" is also a relative term. Give us some idea percentage-wise, or dollar-wise. I don't care how you do it.

Mr. JONES. You take percentage-wise the dollar volume, I would say Mr. Kemple's unaccounted for items were no larger than the other officers.

Mr. REDDAN. The other side of the coin, then, the others had just as many unaccounted items as Mr. Kemple?

Mr. JONES. Not by number of items. Mr. Kemple is the largest expender, or was the largest expender of company funds through these mediums.

Mr. REDDAN. Were you ever told who was using Mr. Kemple's credit card?

Mr. JONES. No, sir.

Mr. REDDAN. Were you ever told that anyone else, any other officer in the company, was permitting his credit card to be used by someone else?

Mr. JONES. No, sir.

Mr. REDDAN. Did you ever know that any other credit card charges on the cards of any other officers had questionable signatures on them?

Mr. JONES. No, sir.

Mr. PIKE. Were you aware that some of the items which you were approving payment for out-of-company expenses were in fact being reimbursed? For example, when Mr. Kemple and Mr. Elmore testified, they both testified that Mr. Elmore paid back in cash Mr. Kemple for some of these items.

Were you ever advised these payments were made?

Mr. JONES. No, sir.

Mr. PIKE. If you had been advised that these payments had been made, or repayments in cash had been made to Mr. Kemple, would you, as Comptroller, have approved of this business operation?

Mr. JONES. No, sir.

Mr. REDDAN. Were you ever told or did you ever learn—

Mr. MISLER. Pardon me.

Mr. JONES. I should make the comment I probably would not have had the authority to approve or disapprove the fact.

Mr. PIKE. Go ahead.

Mr. REDDAN. Mr. Jones, did you ever learn or were you ever told that something other than a credit card had been made available to Mr. Elmore?

Mr. JONES. No, sir.

Mr. REDDAN. I will ask you specifically about a television set?

Mr. JONES. I was never told Mr. Elmore had been given a television set; no, sir.

Mr. REDDAN. Did you hear anything about Mr. Elmore and the television set?

Mr. JONES. I heard a rumor.

Mr. REDDAN. From whom did you hear it?

Mr. JONES. I honestly don't remember.

Mr. REDDAN. Now, did you ever have occasion to pay any hotel bills for Mr. Elmore?

Mr. JONES. Yes, sir.

Mr. REDDAN. Were you reimbursed for these?

Mr. JONES. No, sir.

Mr. REDDAN. Would you tell us, if you will, please, sir, when these hotel charges occurred and the occasion, if you can?

Mr. JONES. I believe that it was in November of 1968, when Mr. Elmore was visiting New York on Government business in regard to a contract held by Dewey Corp. He had a reservation at the Americana and I had a reservation at the Beekman Towers Hotel. During the evening he preferred not to stay at the Americana, and I offered my room at the Beekman, which he occupied. Since I was staying there for two nights, and if I recall, Mr. Elmore only stayed one night, when I checked out I picked up the tab for both nights.

Mr. REDDAN. Was there any charge at the Americana?

Mr. JONES. I did not pick up any charge from the Americana, no.

Mr. REDDAN. You don't know whether there was any charge for Mr. Elmore?

Mr. JONES. No, sir; I don't.

Mr. REDDAN. Was there any other occasion?

Mr. JONES. To pick up a hotel room?

Mr. REDDAN. Yes.

Mr. JONES. No, sir.

Mr. REDDAN. Now, was any contractor representative with Mr. Elmore on that occasion?

Mr. JONES. At the hotel?

Mr. REDDAN. Yes, sir.

Mr. JONES. At the Americana, yes, sir.

Mr. REDDAN. Who was that?

Mr. JONES. Dan Ross.

Mr. REDDAN. I see. What was the purpose of Mr. Elmore and Mr. Ross being in New York?

Mr. JONES. Dan Ross was the Dewey Corp. representative, or counsel—I will back off a minute—the contract that was mentioned a minute ago had some charges against it which had been questioned by the Marine Corps, and it was due to go to the Armed Services Board of Contract Appeals for decision.

Mr. Ross was the Dewey Corp. representative who was going to appear in front of the Contract Board of Appeals.

Mr. REDDAN. You were present at the meeting, were you not, sir?

Mr. JONES. I was present, yes.

Mr. REDDAN. Who else was present?

Mr. JONES. Mr. Ross, Mr. Elmore, myself, Mr. Kemple and a young lady.

Mr. REDDAN. Was Mr. Neuman present?

Mr. JONES. Not at that time; no, sir.

Mr. REDDAN. Where did the meeting take place, sir?

Mr. JONES. Well, we met at the Americana.

Mr. REDDAN. In what part?

Mr. JONES. I believe it was the lounge, and we had a business dinner at the Chateau Henry the Fourth, the restaurant in New York City.

Mr. REDDAN. What did Mr. Elmore contribute to this meeting?

Mr. JONES. There had been a meeting during that day at the offices of the Dewey Corp.

Mr. REDDAN. Attended by whom?

Mr. JONES. Attended by the same people, plus a DCASR representative from Manhattan Region, plus some other Dewey employees. This meeting was the result of a previous meeting, also in the Dewey offices, where a DCASR representative had been unprepared, Mr. Elmore had asked DCASR to supply certain information in regard to the claim. The DCASR representative during the first meeting was not prepared and did not have what Mr. Elmore had requested.

Mr. Elmore requested him and asked him to go back and do it over again, get what he wanted and let him know when he would be ready to have another meeting. I presume that the DCASR personnel did so inform Mr. Elmore. A meeting was held and at this time the discussion was in regard to the DCASR people's findings relative to the Dewey claim.

Mr. REDDAN. This was the meeting—

Mr. JONES. That was in the offices.

Mr. REDDAN. This was the trip to New York during which Mr. Elmore stayed at the Americana and then switched hotels?

Mr. JONES. That is correct. This is the second meeting.

Mr. REDDAN. The first meeting, where did he stay?

Mr. JONES. At the Doral.

Mr. REDDAN. How long was he there?

Mr. JONES. At least one night. I cannot remember whether it was two or not.

Mr. REDDAN. Did you pay that hotel bill?

Mr. JONES. I did not.

Mr. REDDAN. You did not pay the hotel bill. Did you ever pay any bill other than the one at the Beekman Towers?

Mr. JONES. For whom or to whom?

Mr. REDDAN. Any bill of Mr. Elmore's, for hotel accommodations.

Mr. JONES. Yes. On the first trip at the Doral, there was a bar bill which I paid.

Mr. REDDAN. Who was present at that time?

Mr. JONES. Mr. Elmore, Mr. Neuman, Mr. Ross and myself. I don't recall if there was anyone else.

Mr. REDDAN. Were you repaid for that?

Mr. JONES. Was I repaid for that? No, sir.

Mr. REDDAN. Were you reimbursed?

Mr. JONES. No, sir.

Mr. REDDAN. John.

Mr. LALLY. Mr. Jones, what, if anything, did Mr. Elmore do for the Dewey Corp.?

Mr. MISLER. Do you understand the question?

Mr. JONES. I am not sure I do.

Mr. MISLER. I don't think he understands the question.

Mr. REDDAN. Let him tell us if he understands. You are here to protect his constitutional rights. If he has any questions he can address them to you.

Mr. MISLER. Okay.

Mr. REDDAN. Please do not coach the witness and ask him if he doesn't understand.

Do you understand the question, sir?

Mr. JONES. No, I don't. In what relation?

Mr. REDDAN. Counsel will rephrase it.

Mr. LALLY. Did Mr. Elmore, to your knowledge, perform any service for the Dewey Corp.?

Mr. JONES. Improper service?

Mr. LALLY. Yes.

Mr. JONES. Not to my knowledge; no.

Mr. LALLY. Did he perform any service for the Dewey Corp.?

Mr. JONES. What a contract officer would provide to the company, he would provide information that was proper. I think Mr. Elmore was cooperative but not improperly cooperative.

Mr. LALLY. Let me direct your attention to a specific situation in which DCASR had held up progress payments.

Mr. JONES. Yes.

Mr. LALLY. Did Dewey protest the holding up of those progress payments?

Mr. JONES. By "Dewey" you mean Mr. Dewey?

Mr. LALLY. The corporation.

Mr. JONES. Yes; I protested it myself personally.

Mr. LALLY. To whom did you protest it?

Mr. JONES. I protested it to DCASR where I got no satisfaction. DCASR had made determination no payments were to proceed. I protested to the Director. I received no satisfaction.

I asked my contract administration manager who reported to me at the time, to see if he could pursue the matter with Doral Hupp. He had no success. I then asked Dan Ross to see if he could explain our position, perhaps more clearly than I was ever able to do. An amendment was forthcoming.

Mr. LALLY. Who authorized that amendment?

Mr. JONES. Who signed it?

Mr. LALLY. Yes.

Mr. JONES. Dan Elmore.

Mr. LALLY. Thank you, Mr. Jones.

Mr. RANSOM. Mr. Jones, when you talked to Mr. Dewey about instituting a system to check on the credit card usage, was the use of Mr. Kemple's card brought up in the conversation?

Mr. JONES. Yes.

Mr. RANSOM. What did Mr. Dewey say?

Mr. JONES. He said certain charges of Mike's would not fit into the system I was suggesting.

Mr. RANSOM. Did he offer any suggestion that the matter be investigated?

Mr. JONES. No, sir.

Mr. RANSOM. That is all.

Mr. LENNON. Mr. Jones, did Mr. Kemple ever submit a voucher through your office that raised a suspicion in your mind that a procurement was being made for the Dewey complex here in Washington for a piece of furniture, office equipment, which in fact was not delivered to that complex?

Mr. JONES. No, sir.

Mr. LENNON. Furniture?

Mr. JONES. No, sir.

Mr. LENNON. You had nothing but a rumor then that you heard to substantiate to any meaningful degree that a television was procured by the Dewey Corp. for the benefit of Mr. Elmore?

Mr. JONES. That is true, sir.

Mr. LENNON. The same thing is true with reference to a stereo, too, isn't it?

Mr. JONES. That is true, sir.

Mr. LENNON. Where were you when you heard these rumors, I know you can't identify them.

Mr. JONES. I couldn't tell you, sir.

Mr. LENNON. You just recall that there was such a rumor?

Mr. JONES. Yes, sir.

Mr. LENNON. I don't think there are any other questions at this time. I think the Committee will excuse you, Mr. Jones.

Mr. JONES. Thank you.

Mr. REDDAN. Mr. Whipple.

TESTIMONY OF MR. BYRON L. WHIPPLE, EXECUTIVE VICE PRESIDENT, KURZ & ROOT CO., APPLETON, WIS.

Byron L. Whipple was sworn and testified as follows:

Mr. LENNON. Thank you.

Mr. REDDAN. Will you please give the reporter your name and your home address, sir?

Mr. WHIPPLE. Byron L. Whipple, 1018 Briarcliff Drive, Appleton, Wis.

Mr. REDDAN. What is your present occupation, Mr. Whipple?

Mr. WHIPPLE. I am Executive Vice President of Kurz & Root Co. in Appleton, Wis.

Mr. REDDAN. How long have you held that position?

Mr. WHIPPLE. Five years.

Mr. REDDAN. I would like to direct your attention to a period in April of 1967, when a post award conference was held in Milwaukee in connection with a Marine Corps contract. Do you recall that incident?

Mr. WHIPPLE. Yes, sir.

Mr. REDDAN. Could you tell us who attended that conference?

Mr. WHIPPLE. May I make a comment on your reference to the conference?

Mr. REDDAN. Yes.

Mr. WHIPPLE. To me, I have heard the words "post award conference" before, and this is a long "post" because the contract was awarded to Kurz & Root before I came with the company. This was a meeting to go over a number of changes that had been caused in specs; since the beginning when I took over to administer the contract we had submitted our data.

They had sent it to DCAS to audit, they had come in to audit. Technical contract people, Mr. Elmore, and then Lieutenant Nailor, wanted to make a visit and finalize this change order. It kept pending and pending and pending, and I didn't like things just up in the air, so a date was set for them to come.

I would like to correct something which I heard in previous testimony. It was not in Appleton. We met in Milwaukee, and our plant at the time we were working the contract was Cedarburg, since being closed due to problems in that contract being stretched out, et cetera. So just with that little foreword, I will answer your questions.

Mr. REDDAN. Is your home, Appleton?

Mr. WHIPPLE. My home is Appleton. We went to Milwaukee.

Mr. REDDAN. Milwaukee; yes, sir.

Mr. WHIPPLE. I was advised—Cedarburg is much closer to Milwaukee. Really you can consider it outside the suburbs.

I would guess Cedarburg is 20 miles from downtown, and Appleton is 100.

Mr. REDDAN. So that you went over and stayed in Milwaukee for the purposes of the conference?

Mr. WHIPPLE. In Milwaukee.

Mr. REDDAN. Who attended the conference, sir?

Mr. WHIPPLE. From Washington came Mr. Elmore and, then, Lieutenant Nailor, now Captain, and then I don't recall the name of the people from DCAS that were present, but there were DCAS representatives that came up there by car to Cedarburg on Monday morning, and then our engineering and plant manager and the people that were familiar with the contract, since I was not that greatly familiar with it.

Mr. REDDAN. Who was your Washington representative at that time?

Mr. WHIPPLE. Legal representative, not representative for business?

Mr. REDDAN. Yes.

Mr. WHIPPLE. To my knowledge, Mr. Dan Ross.

Mr. REDDAN. Did he attend the conference?

Mr. WHIPPLE. No, sir.

Mr. REDDAN. He was not present?

Mr. WHIPPLE. No, sir. This was, as I say, more to settle all these little changes which was an accumulation, had been audited.

Mr. REDDAN. Did you make the reservations for Mr. Nailor and Mr. Elmore?

Mr. WHIPPLE. I did, sir, at the request of Mr. Elmore. He said "Would you take care of making the reservations?", and they told me their arrival, and I said I would meet them.

Mr. REDDAN. Did they tell you what sort of reservations they wanted?

Mr. WHIPPLE. Well, Mr. Elmore told me he was bringing a lady guest with him, if I had any personal objection. I said "No, it is none of my business." He wanted nice accommodations.

Mr. REDDAN. Did he specify the Pfister Hotel?

Mr. WHIPPLE. No, that was my choice.

Mr. REDDAN. That was your choice?

Mr. WHIPPLE. That is my preference when I stay in Milwaukee.

Mr. REDDAN. How did you make these reservations, sir?

Mr. WHIPPLE. By telephone, and guaranteed them.

Mr. REDDAN. Where was your room with respect to Mr. Elmore's?

Mr. WHIPPLE. Next to Mr. Elmore's.

Mr. REDDAN. This you requested?

Mr. WHIPPLE. Yes, sir. I saw nothing wrong with requesting accommodations close by because we were going to meet after the meeting. We were going to meet to go over this change.

Mr. REDDAN. Did you give any special instructions to the person you were talking to at the time you made the reservation?

Mr. WHIPPLE. No, sir, and may I refer to, since I have been present, to former testimony, or former comments.

Mr. REDDAN. Yes, but what is your answer to that question? You did not?

Mr. WHIPPLE. No, no special instructions, outside of having the rooms close by, next to each other.

Now, if I may refer to——

Mr. REDDAN. Before you refer to something else, let me have you refer to that photostatic copy of a record of the Pfister Hotel, which is the photostatic copy of the registration that you requested. I call your particular attention to the part halfway down, it says, "Special Instructions."

Mr. WHIPPLE. Right.

Mr. REDDAN. What does that show, sir?

Mr. WHIPPLE. It says, entire account was checked, and my name too. The only thing I can comment on here——

Mr. REDDAN. You left out one word, it says "charge." The big word in capitals there.

Mr. WHIPPLE. Yes, here on the left.

Mr. REDDAN. That is right. So the special instructions, the fellow that took the reservation thought he was supposed to charge all these expenses to you.

Mr. WHIPPLE. Well, evidently he was in error, sir. The only thing I can think, and this was brought up in former testimony, that when you do make a reservation, and I make them for other clients that are coming to town, someone has got to guarantee them, and I guaranteed it. And if they didn't we weren't going to, so I would have to call and cancel it, or I would have to pay the bill.

Mr. REDDAN. Well, now as a matter of fact you did pay the bill, did you not, sir?

Mr. WHIPPLE. I paid it by check.

Mr. REDDAN. So at least that didn't foul up the hotel's records. They were supposed to charge you, they did, and you paid it?

Mr. WHIPPLE. They didn't charge me. I asked for both accounts. At the time we were checking out I asked for that to expedite us getting out of there, and this is not uncommon. I have done it with our people and with other people.

Mr. REDDAN. Were you repaid?

Mr. WHIPPLE. Yes, sir, I gave Mr. Elmore his receipt.

Mr. REDDAN. What sort of receipt did you give him?

Mr. WHIPPLE. The hotel receipt.

Mr. REDDAN. Which showed what?

Mr. WHIPPLE. Showed his charges.

Mr. REDDAN. Yes, but I thought you meant you received a receipt. You gave him a receipt for money he paid you?

Mr. WHIPPLE. Oh, no, I paid for the two accounts with one single check, a personal check, and then said I checked out for you, and gave him the hotel receipt and he reimbursed me. And may I add, as he did, on his visit there, for any other entertaining or dinners that we had together.

Mr. REDDAN. Had he visited there before?

Mr. WHIPPLE. No, sir.

Mr. REDDAN. Then I misunderstood you. I thought you said you handled it the same as you did on the others.

Mr. WHIPPLE. We were there Sunday. They came in on Sunday, they came in Sunday, they were there Sunday night, and Monday night, we had dinner together both Sunday night and Monday night.

Mr. REDDAN. You came in on Saturday, did you not?

Mr. WHIPPLE. Yes; I guess it was Saturday.

Mr. REDDAN. And they came in Sunday?

Mr. WHIPPLE. Right.

Mr. REDDAN. I assume you checked your accounts since you received the subpoena to come in here?

Mr. WHIPPLE. Yes, sir.

Mr. REDDAN. Mr. Nailor was at the hotel?

Mr. WHIPPLE. Yes, sir.

Mr. REDDAN. Did you offer to pay his bill?

Mr. WHIPPLE. No, sir; I presumed he had checked out because we were all separated. We came down together, Mr. Elmore and I.

Mr. REDDAN. Your testimony under oath is that you did not offer to pay Lt. Nailor's bill?

Mr. WHIPPLE. No, sir; I did not.

Mr. REDDAN. You did not?

Mr. WHIPPLE. No. I presumed he had checked out when I went up to the counter.

Mr. REDDAN. I ask you specifically if you offered to pay his bill and he said, "No," he would pay it himself?

Mr. WHIPPLE. Oh, no, sir.

Mr. REDDAN. You deny that conversation took place?

Mr. WHIPPLE. Yes, sir.

Mr. REDDAN. How much was your bill?

Mr. WHIPPLE. I don't recall, sir.

Mr. REDDAN. How much was Mr. Elmore's bill?

Mr. WHIPPLE. I don't recall, sir, without having the papers in front of me.

Mr. REDDAN. Do you think \$99.50 would be about right?

Mr. WHIPPLE. May I see that?

Mr. REDDAN. Yes. I show you a copy of the three bills for the Pfister Hotel, for Nailor, yourself, and Elmore.

Mr. LALLY. This is yours and this is Lieutenant Nailor's.

Mr. WHIPPLE. This is mine.

Mr. LALLY. Yes.

Mr. REDDAN. How much was Lt. Nailor's bill for that period of time?

Mr. WHIPPLE. Lt. Nailor's bill is, it looks like \$17.52, sir.

Mr. REDDAN. How much was your bill?

Mr. WHIPPLE. My bill?

Mr. REDDAN. Yes, sir.

Mr. WHIPPLE. \$115.40.

Mr. REDDAN. \$115.40?

Mr. WHIPPLE. Yes.

Mr. REDDAN. How much was Mr. Elmore's bill?

Mr. WHIPPLE. \$99.50.

Mr. REDDAN. How did Mr. Elmore repay you?

Mr. WHIPPLE. In cash.

Mr. REDDAN. In cash?

Mr. WHIPPLE. Yes, sir.

Mr. REDDAN. Where did he pay you?

Mr. WHIPPLE. I don't recall. I don't remember the instant place, but it was in a hotel. After I left the desk I got back with him and he was heading to the desk, and I said, "I've already checked out for us, let's go."

Mr. REDDAN. Did you file expense accounts with the company for any expenses that you might have incurred in the performance of your duties?

Mr. WHIPPLE. Yes, sir; I did.

Mr. REDDAN. What was the policy of the company with respect to supporting any claimed expenses?

Mr. WHIPPLE. Oh, receipts, usually furnish receipts of expenses of \$25, in that area. Certainly all hotel bills.

Mr. REDDAN. This was the standard policy of the company?

Mr. WHIPPLE. Yes; sort of unwritten, you know.

Mr. REDDAN. Now, I have some of your expense accounts here that were made out during this same period, April 1, April 7, April 14, April 20, April 18, and I would just like to show these to you, Mr. Whipple.

Mr. WHIPPLE. Do you want these others back, sir?

Mr. REDDAN. Yes. There is one dated April 1. Is that your signature on there, sir?

Mr. WHIPPLE. Yes.

Mr. REDDAN. That is your expense account for the period ending April 1?

Mr. WHIPPLE. I guess it is, sir.

Mr. REDDAN. And it is approved by whom, sir?

Mr. WHIPPLE. Mr. Brownell.

Mr. REDDAN. I see. At the bottom of this sheet it says "explanation of expenses"; is that right, sir?

Mr. WHIPPLE. Yes, sir.

Mr. REDDAN. And you have——

Mr. WHIPPLE. "Luncheon interviews for sales personnel."

Mr. REDDAN. That is right. You have them marked "1," "2," "3," and "4." Here you have a meal for \$2.

Mr. WHIPPLE. No, sir.

Mr. REDDAN. What is this here?

Mr. WHIPPLE. That is breakfast.

Mr. REDDAN. But you are accounting for that charge?

Mr. WHIPPLE. I am just writing \$2. I'm not accounting for it.

Mr. REDDAN. You are putting it on your expense account?

Mr. WHIPPLE. Yes.

Mr. REDDAN. What is that little number?

Mr. WHIPPLE. It refers to that (pointing).

Mr. REDDAN. What is the No. 2?

Mr. WHIPPLE. Referring to \$18.

Mr. REDDAN. That refers to \$18?

Mr. WHIPPLE. Yes.

Mr. REDDAN. All right. Here is one marked "3."

Mr. WHIPPLE. Luncheon with respect to sales employee.

Mr. REDDAN. And that is \$8.50?

Mr. WHIPPLE. Yes.

Mr. REDDAN. Why did you document that?

Mr. WHIPPLE. I didn't; I just put an explanation, because it is more than my lunch.

Mr. REDDAN. Here is another one for \$7.50.

Mr. WHIPPLE. That is No. 3, also. That is because it is more than me. If I have someone else with me, and it is more than my luncheon, I will explain that.

Mr. REDDAN. What expenses did you not document there, or you did not identify?

Mr. WHIPPLE. Miscellaneous.

Mr. REDDAN. That is \$1.50.

Mr. WHIPPLE. No; \$8.50. Miscellaneous persons for interviews.

Mr. REDDAN. That is more specific.

Mr. WHIPPLE. I explained it there. And you know, instead of putting a note, I explain it there. Miscellaneous \$2, miscellaneous \$1.50, miscellaneous \$1.

Mr. REDDAN. In other words, every expense you have on there you have explained?

Mr. WHIPPLE. On that one, yes.

Mr. REDDAN. All right.

Mr. WHIPPLE. That one is pretty detailed.

Mr. REDDAN. Yes, it is. Here is one, April 14. Are there any expenses on there that are not explained?

Mr. WHIPPLE. That one.

Mr. REDDAN. \$2.10?

Mr. WHIPPLE. Yes.

Mr. REDDAN. What does this say over here (pointing)?

Mr. WHIPPLE. That is the reason for the trip.

Mr. REDDAN. \$2.10; it is under meals, however, isn't it?

Mr. WHIPPLE. Yes; it covers meals.

Mr. REDDAN. That is the only one not explained?

Mr. WHIPPLE. Yes, sir.

Mr. WHIPPLE. Now, here is one, April 18. Would that be the period that covered the Pfister Hotel engagement? That was April 16.

Mr. WHIPPLE. That looks like that is right.

Mr. REDDAN. All right. What is the total amount of the expense account there?

Mr. WHIPPLE. It looks like \$314.45.

Mr. REDDAN. How much of the items there are unexplained?

Mr. WHIPPLE. Well, under "meals," it looks like quite a few of them are unexplained, sir.

Mr. REDDAN. Total about \$134, do you think?

Mr. WHIPPLE. No; I would have to look at it. I will take your word if that is what you are saying but they are under "meals." I have a total here of three meals, and I was traveling with my wife, with the company approval.

Mr. REDDAN. The only question I ask, Mr. Whipple, is, is there any reason why, on this expense account for the 18th that covers that trip, the Pfister Hotel bills, there is a sizable portion of unexplained charges, as a matter of fact there is more than enough there to cover the entire amount which you paid for Mr. Elmore's hotel bill. And I'm just asking you if there is any reason why you didn't document that bill the same as you did the other bills?

Mr. WHIPPLE. No. No reason at all, sir. I probably didn't take the detailed time with it. I usually go over the expense accounts with my superior before they are approved. And if he has any questions on them, I make a notation, et cetera.

Mr. REDDAN. Would you blame anyone if they concluded perhaps that it might be a padded expense account?

Mr. WHIPPLE. It might appear that way to you, sir. But if you take under consideration my wife was with me, and that Milwaukee is not cheap, it is a big city like Chicago—

Mr. LALLY. I have one further question.

Mr. WHIPPLE. Yes, sir.

Mr. LALLY. Had you instructed the desk personnel at the Pfister Hotel that Lieutenant Nailor's bill was to be paid also?

Mr. WHIPPLE. No, sir.

Mr. LALLY. Thank you, Mr. Whipple.

Mr. PIKE. That is all, Mr. Whipple.

Mr. WHIPPLE. May I be excused?

Mr. PIKE. You are excused.

Mr. WHIPPLE. I can head to the airport? Thank you, gentlemen.

Mr. PIKE. Captain O'Brien.

Whereupon, Thomas O'Brien, having been first duly sworn, testified as follows:

Mr. REDDAN. Captain, are you represented by counsel?

TESTIMONY OF CAPT. THOMAS M. O'BRIEN, ELECTRONICS MAINTENANCE OFFICER, RADAR SECTION, WEAPONS SYSTEMS BRANCH, TECHNICAL DIVISION, SUPPLY DEPARTMENT, U.S. MARINE CORPS, WASHINGTON, D.C.

Captain O'BRIEN. No, sir.

Mr. REDDAN. Do you wish to be represented by counsel?

Captain O'BRIEN. No, sir.

Mr. REDDAN. Have you been given a copy of the Rules of the Subcommittee?

Captain O'BRIEN. I read a book at Headquarters Marine Corps on it, sir. A pamphlet that was given to me by Major Bridges.

Mr. REDDAN. Namely, the Rules of the Subcommittee? They are in pamphlet form. I will show you another copy to make sure we are talking about the same thing.

(Handing to witness.)

Captain O'BRIEN. No, sir; I have not read these.

Mr. REDDAN. Do you know that you are entitled to counsel?

Captain O'BRIEN. Yes, sir; I do.

Mr. REDDAN. And do you know that while appearing as a witness here you have the right to exercise any of your constitutional privileges you wish, more specifically the Fifth Amendment or any others you might think of?

Captain O'BRIEN. Yes, sir; I do.

Mr. REDDAN. Your statement is that you want to testify now without benefit of counsel?

Captain O'BRIEN. Yes, sir; I would. I do. I would like to have a Marine representative with me but that is impossible, sir.

Mr. REDDAN. Why is that impossible?

Captain O'BRIEN. Because Colonel Ostby told me that was impossible.

Mr. REDDAN. Where are you presently assigned, Captain?

Captain O'BRIEN. I'm in the Radar Section of the Technical Division, the Supply Department, sir.

Mr. REDDAN. How long have you been in that assignment?

Captain O'BRIEN. Since July of 1968, sir.

Mr. PIKE. Well, we have a problem here. I am advised on the record by you that you tell us that you would like to have Marine Corps counsel represent you.

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Where did you go to attempt to get Marine Corps counsel?

Captain O'BRIEN. To Headquarters, Marine Corps, sir.

Mr. PIKE. Who did you speak to at Headquarters, Marine Corps?

Captain O'BRIEN. Colonel Ostby, sir.

Mr. PIKE. What did Colonel Ostby say to you about the right and ability to get Marine Corps counsel?

Captain O'BRIEN. He said it could not be provided.

Mr. PIKE. I also understand from Mr. Lally, our staff man, that Colonel Oliver has just said Marine Corps counsel can be supplied you. I won't ask you to go under oath, Colonel, but just why do we have to go through this at this particular point? We have known that this hearing was coming up for some time. We excused Captain O'Brien this morning so he could go consult with the Marines.

Colonel OLIVER. I was unaware of that, Mr. Pike.

Mr. PIKE. Why do they tell him over at the Headquarters he can't have counsel, and then you come up and whisper in the staff's ear, yes, he can have counsel. What do you want us to do, stop the hearing?

Colonel OLIVER. I think it would be a good idea if I could telephone over, Mr. Pike. I thought it would be possible to make arrangements to have somebody come and help him. If he has already talked this afternoon or this morning to Colonel Ostby, I'm not aware of that.

Mr. PIKE. I am not inclined to proceed with the hearing on a record which shows a Marine Captain requested counsel and was told by the Marines that he could not have Marine counsel, and you are standing up here and whispering in our staff man's ear he can have counsel. The hearing is adjourned, and will reconvene at 10 o'clock tomorrow morning.

(Whereupon, at 4:05 p.m., the hearing was adjourned until 10 a.m. on Thursday, July 22, 1971.)

MARINE CORPS PROCUREMENT PRACTICES CONFLICTS OF INTEREST

THURSDAY, JULY 22, 1971

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
ARMED SERVICES INVESTIGATING SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 10:05 a.m. in room 2339, Rayburn House Office Building, Hon. Otis G. Pike presiding.

Members present: Hon. Otis G. Pike, Hon. Alton Lennon and Hon. Durward G. Hall.

Staff present: John T. M. Reddan, counsel; John F. Lally, assistant counsel, and Richard A. Ransom, professional staff member.

Mr. PIKE. The meeting will come to order.

I will ask Captain O'Brien to return to the witness table. Come right up, Captain O'Brien, and sit down.

Captain Thomas O'Brien previously sworn, testified as follows:

Mr. PIKE. Captain O'Brien, yesterday you were sworn as a witness. The reason the hearing was adjourned was because the Marine Corps was having difficulty making up its mind as to whether or not it would provide counsel for you or not.

You had requested an adjournment of your testimony yesterday morning so that you could go over to Headquarters Marine Corps and ask if you could be represented by Marine Corps counsel, is that correct?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. They advised you that you could not.

Yesterday we were advised by Colonel Oliver, after we started taking your testimony, that you could, in fact, be supplied with Marine Corps counsel, and we have now discussed this with two Generals who have concluded that you cannot be provided with Marine Corps counsel unless the committee makes this request.

The committee does not make this request. I think this is up to the Marines. You have been advised as early as June, I find in checking the records—

Mr. REDDAN. June 7.

Mr. PIKE. June 7, that you not only had the right to get counsel, but it might be a good idea for you to get counsel, and we are just plain not going to kick this around any longer. We will proceed with the hearing at this time.

Mr. Reddan, you go ahead.

Mr. REDDAN. I don't know whether you identified yourself for the record yesterday or not, Captain.

Captain O'BRIEN. No, sir; I did not.

Mr. REDDAN. All right, would you please give the reporter your name and your address?

Captain O'BRIEN. Yes, sir. It is Captain Thomas Michael O'Brien, 5820 Lavista Drive, Alexandria, Va.

Mr. REDDAN. Where are you presently assigned, Captain?

Captain O'BRIEN. I am the head of the Radar Section of the Technical Division of the Supply Department, Headquarters, Marine Corps, sir.

Mr. REDDAN. How long have you held that assignment?

Captain O'BRIEN. On this tour, sir, since 1968.

Mr. REDDAN. I assume from your answer, then, you had another tour?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. When was that?

Captain O'BRIEN. From 1962 until 1966, sir.

Mr. REDDAN. Now, what were your duties in that slot?

Captain O'BRIEN. My duties, sir, are to advise and provide technical assistance to the Director of the Technical Division at Headquarters, Marine Corps, in regard to radars, sir, radar maintenance.

Mr. REDDAN. In that connection, did you ever have occasion to discuss matters with contractors or contract representatives?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. In the discharge of your official duties, did you ever come in contact with Mr. Daniel Ross?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. When did you first meet Mr. Ross?

Captain O'BRIEN. I met Mr. Ross some time in 1962, sir. I don't remember the exact date. It was in 1962.

Mr. REDDAN. Do you recall the occasion?

Captain O'BRIEN. Yes, sir. I met him in my office at Headquarters, Marine Corps.

Mr. REDDAN. Who was he representing?

Captain O'BRIEN. An organization by the name of Electro-Mechanical Corp.

Mr. REDDAN. What was the occasion for the meeting?

Captain O'BRIEN. I was the technical officer on the testing of some equipment that Electro-Mechanical was producing.

Mr. REDDAN. An electronics shelter or something?

Captain O'BRIEN. Yes, sir, electronics maintenance shelter, for testing of electronics equipment and in particular, radar. However, you couldn't test the communications equipment with it.

At that time he just had introduced himself, and that was the end of that particular incident.

Mr. REDDAN. Did you ever have an occasion to discuss with General Allen any association you might have had with Mr. Ross?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. What was that about?

Captain O'BRIEN. During the course of this contract, the contractor and myself disagreed violently on what tests the shelter complex should be subjected to. It got to the point where the engineer on the program advised me that he would be sending legal representation to my contracting officer to possibly advise my contracting officer that I was being too stringent on the testing requirements and request relief.

Mr. REDDAN. What did General Allen have to do with that?

Captain O'BRIEN. My contracting officer asked me if I would give relief, if I felt relief was in order, and I said no, that it was not, and during the course of the conversation with the contracting officer I had used the word "shyster" in regard to Mr. Ross, and Mr. Ross found out about this and I was called down to the Quartermaster General as to my conduct.

Mr. PIKE. Do you know how Mr. Ross found out about this?

Captain O'BRIEN. No, sir.

Mr. PIKE. How long did it take Mr. Ross to find out about this?

Captain O'BRIEN. Within 15 minutes to a half hour, approximately, I was at the Quartermaster General's office.

Mr. PIKE. So less than a half hour from the time you had referred to Mr. Ross as a "shyster," word of this had gotten back to Mr. Ross and you were called into General Allen's office?

Captain O'BRIEN. Yes, sir; I was called into General Allen's office. I don't know if Mr. Ross had got the word or what the exact events were, but someone had requested that I talk to the Quartermaster General. I don't know whether it was through Mr. Ross or someone that overheard me in the office, or exactly how it was.

Mr. REDDAN. What effect, if any, did this incident have upon your relaxing the stringency of your requirements, if any?

Captain O'BRIEN. None, sir. The requirements remained the same.

Mr. REDDAN. Do you know Mr. Elmore?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. How long have you known him?

Captain O'BRIEN. I met Elmore in 1962, sir.

Mr. REDDAN. In your official capacity?

Captain O'BRIEN. Yes, sir; Mr. Elmore was a contracting officer there within the Quartermaster General, and I worked with Mr. Elmore on contracts. I advised Mr. Elmore technically.

Mr. REDDAN. I see. What was your relationship with Mr. Elmore as it developed over the years?

Captain O'BRIEN. Mr. Elmore and I have become good friends.

Mr. REDDAN. Did you ever accompany Mr. Elmore for lunch, dinners, things of that sort?

Captain O'BRIEN. I don't recall luncheon, sir, because at noontime I exercised at the Corps Battalion. I do not recall any luncheon that I can remember. There were a number of dinners I have accompanied Mr. Elmore on.

Mr. REDDAN. Was there any particular place, or places, you would go?

Captain O'BRIEN. Yes, sir; we would frequent the Market Inn.

Mr. REDDAN. Did any others accompany you at those dinners?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. Who would they be?

Captain O'BRIEN. On several occasions Mr. Kemple. On several occasions Mr. Ross, Mr. Sheldon Matzkin, Mr. Clark Bittner. I can continue, sir, if you would like me to.

Mr. REDDAN. At these dinners, was any business discussed?

Captain O'BRIEN. Yes, sir; Mr. Elmore usually discussed the business quite frequently, extensively sometimes.

Mr. PIKE. Were you aware at that time of who Mr. Kemple was associated with?

Captain O'BRIEN. During which time is this, sir?

Mr. PIKE. Well, at the time you were out having dinner with him.

Captain O'BRIEN. Yes, sir; I was aware of the company.

Mr. PIKE. What was that company?

Captain O'BRIEN. The G. C. Dewey Corp., sir, during the period of 1968.

Mr. PIKE. Were you aware of who Mr. Ross was associated with professionally?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. What companies was he associated with?

Captain O'BRIEN. I have never seen any documents that have shown him associated with these companies, only hearsay, sir, and the companies would be G. C. Dewey, CONDEC, Admiral Corp., Chicago.

Mr. PIKE. Were you aware he was associated also with Kurz & Root?

Captain O'BRIEN. No, sir.

Mr. REDDAN. Captain O'Brien, have you been in the hearing room during the last 2 days and heard the testimony of the witnesses with respect to the use of credit cards, Kemple's credit card?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. Would you tell us at this time precisely what your participation may have been in the use of the Kemple credit card?

Captain O'BRIEN. I have used Mr. Kemple's credit card, sir.

Mr. REDDAN. When did you first use it, and how did you obtain it?

Captain O'BRIEN. I believe that the first time I used it was approximately 30 to 60 days after I returned from Vietnam. I returned from Vietnam on the 7th of June, 1968, so it would be in June, July, or August period, in there, was the first I used it.

Mr. REDDAN. How did you happen to get possession of the card?

Captain O'BRIEN. Sometime in one of those months, I would say it would be more accurate—I would estimate it to be July, I was scheduled to have a meeting with Mr. Kemple at Headquarters Marine Corps, in my office, and Mr. Elmore was aware of this anticipated meeting and asked me to deliver some documents to Mr. Kemple.

I was given an envelope with what appeared to be quite a number of documents in it.

Mr. PIKE. Was it a sealed envelope?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. A sealed envelope?

Captain O'BRIEN. Yes, sir. Prior to giving the envelope and documents to Mr. Elmore, I looked in the container.

Mr. PIKE. You opened the envelope?

Captain O'BRIEN. Yes, sir. I saw a credit card that belonged to Mr. Kemple. I put it back in the container.

Mr. PIKE. Did you put all the documents back in the container?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. What were the rest of the documents?

Captain O'BRIEN. Just some blank papers.

Mr. PIKE. Blank papers?

Captain O'BRIEN. Yes, sir. It looked like it was filler.

Mr. PIKE. Was there anything in the envelope besides the credit card that had substance to it?

Captain O'BRIEN. Other than the credit card, just the filler, sir.

Mr. PIKE. So you opened the envelope and looked at what was in it, stuck it back in the envelope, and then what did you do?

Captain O'BRIEN. I stuck it—I resealed another envelope that was of the same texture and material and delivered it to Mr. Kemple when he arrived.

Mr. PIKE. What was the purpose of your meeting with Mr. Kemple that day?

Captain O'BRIEN. I don't recall, sir. It had something to do with technical matters. I do not recall exactly what it was.

Mr. PIKE. And so you just gave the credit card back to Mr. Kemple?

Captain O'BRIEN. I gave the container with the credit card back in the pack to Mr. Kemple and said Mr. Elmore had asked me to give this to him.

Mr. PIKE. Well, counsel asked you how you happened to use the credit card. Now you have gotten the credit card back to Mr. Kemple. That doesn't use it much.

Captain O'BRIEN. Within a matter of days, the same thing happened.

Mr. PIKE. Mr. Elmore gave you another sealed envelope?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. And you opened it again?

Captain O'BRIEN. Yes, sir.
happened.

Mr. PIKE. What did you find in it this time?

Captain O'BRIEN. The credit card with filler—what I considered filler.

Mr. PIKE. All right.

Captain O'BRIEN. I returned that to Mr. Kemple again, and told Mr. Kemple that I saw, or I know what is in the envelope.

Mr. PIKE. That was pretty sporting of you. What happened then?

Captain O'BRIEN. At that time, of course, assuming that my assumptions were that Mr. Elmore was using the credit card—

Mr. PIKE. Did you say this to Mr. Kemple?

Captain O'BRIEN. No, sir. I asked Mr. Kemple if it would be possible if I could use it if I ever needed it?

Mr. PIKE. What did Mr. Kemple say?

Captain O'BRIEN. He said "Yes, you can, if you reimburse me."

Mr. PIKE. Oh, he said "Yes, you can if you reimburse me"?

Captain O'BRIEN. Yes, sir. I said that I would reimburse him.

Mr. PIKE. If you were able to reimburse him, why did you need the credit card?

Captain O'BRIEN. For use, as any person would use a credit card, sir, handy, timely.

Mr. PIKE. When did you first use the credit card?

Captain O'BRIEN. I don't remember. It was a short time frame. Again, the procedure repeated itself.

Mr. REDDAN. You mean this sealed envelope bit again?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Once again you get a sealed envelope from Mr. Elmore, open it up, look in it?

Captain O'BRIEN. Well, the third time I assumed what it was. At that time I held onto the credit card and in fact used it.

Mr. PIKE. Did you tell Mr. Elmore you were going to hold onto the credit card?

Captain O'BRIEN. No, sir.

Mr. PIKE. All right. You held onto the credit card. Where did you take it?

Captain O'BRIEN. Sir?

Mr. PIKE. Where did you take the credit card?

Captain O'BRIEN. I have to think about this, Mr. Chairman.

Mr. PIKE. Think.

Captain O'BRIEN. I think the first time I used the credit card was at the Market Inn.

Mr. PIKE. Who was present when you used it?

Captain O'BRIEN. As to my actual use of the card?

Mr. PIKE. Yes.

Captain O'BRIEN. Myself and a waiter.

Mr. PIKE. Just yourself and a waiter?

Captain O'BRIEN. Yes, sir. There were other people there, but when I—

Mr. PIKE. Whose bill were you paying, that is what I am interested in knowing? Just your own?

Captain O'BRIEN. No, sir.

Mr. PIKE. Whose bill were you paying?

Captain O'BRIEN. Mr. Elmore's.

Mr. PIKE. Mr. Elmore's?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. He was present?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. You mean here is a credit card you had taken out of a sealed envelope given to you by Mr. Elmore, you take it to the Market Inn and use it in Mr. Elmore's presence?

Captain O'BRIEN. No, sir; not in Mr. Elmore's presence. I insured that no one other than the person that was collecting the bill and myself saw me use the card.

Mr. PIKE. Ah! You got up from the table and went over to the waiter and pulled the card out of your pocket and said, "I am going to pick up the check, and here is my card"?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Now, how many other people were there at that time?

Captain O'BRIEN. There were several people there.

Mr. PIKE. Who were the other people there?

Captain O'BRIEN. Mr. Elmore's wife—this particular incident, assuming this is the first time I used it, sir.

Mr. PIKE. All right.

Captain O'BRIEN. Mr. Elmore's wife—I am not sure of the others. There were quite a few people around that particular day.

Mr. PIKE. Quite a few people, but you don't remember who they were?

Captain O'BRIEN. I don't remember exactly who was there, sir.

Mr. PIKE. Well—

Captain O'BRIEN. If I would give you names, they would be names I am not sure of.

Mr. PIKE. They might be right and they might be wrong?

Captain O'BRIEN. Yes, sir; that is right.

Mr. PIKE. How many people, without giving me the names, six or seven?

Captain O'BRIEN. I would say in that vicinity; yes, sir.

Mr. PIKE. You picked up the check for all of them?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Now, when was the next time you used the credit card? Did you keep the credit card that time?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. You kept it?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. When was the next time you used it?

Captain O'BRIEN. I don't recall at all, sir. I used it a number of times. I don't know the exact dates.

Mr. PIKE. Did you keep the card from then on?

Captain O'BRIEN. No, sir; I think I held onto it for about 3 to 4 days.

Mr. PIKE. You held onto it for 3 or 4 days. What did you do with it?

Captain O'BRIEN. Returned it to Mr. Kemple.

Mr. PIKE. How did you get it next?

Captain O'BRIEN. Through the same—

Mr. PIKE. Mr. Elmore handed you an envelope, you opened the envelope and pocketed the credit card?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Where did you take the credit card that time, back to Market Inn?

Captain O'BRIEN. I don't recall, sir, the place that I took it to. From then on it is bunched together.

Mr. PIKE. Where did you use the credit card other than the Market Inn?

Captain O'BRIEN. I used it at the Normandy Farms Restaurant.

Mr. PIKE. Where else?

Captain O'BRIEN. I am not sure, sir.

Mr. PIKE. Have you ever used it at the Charter House?

Captain O'BRIEN. Not that I recall, sir.

Mr. PIKE. How many times have you used it altogether?

Captain O'BRIEN. I would say in the vicinity of 50 times, maximum.

Mr. PIKE. Did you ever use it out of the Washington, D.C. area?

Captain O'BRIEN. Yes, sir; I have.

Mr. PIKE. Did you ever use it in California?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Did you ever use it in Cassopolis, Mich.?

Captain O'BRIEN. Not that I recall, sir.

Mr. PIKE. Now, let's just determine what the procedure was. The first time you used it you said there were about six or seven people there and you picked up the tab. When you returned the card to Mr. Kemple that time, did you give him some cash?

Captain O'BRIEN. No, sir.

Mr. PIKE. Did you reimburse him for that time?

Captain O'BRIEN. Yes, sir; for that time I reimbursed him.

Mr. PIKE. Did you always reimburse him?

Captain O'BRIEN. I reimbursed Mr. Kemple for all the times that I used the card, my share of the card.

Mr. PIKE. How did you keep a record of how much you owed Mr. Kemple?

Captain O'BRIEN. By pencil and paper, sir.

Mr. PIKE. You wrote down on what, a piece of scrap paper?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. You kept it with you?

Captain O'BRIEN. No, sir; I did not keep it with me.

Mr. PIKE. What did you do with this? How did you keep your books, I meant to say?

Captain O'BRIEN. I kept my books at my house, sir.

Mr. PIKE. At your home. When you first paid Mr. Kemple, what was the amount which you paid him?

Captain O'BRIEN. \$795, sir.

Mr. PIKE. How many times did you ever pay Mr. Kemple?

Captain O'BRIEN. One time, sir.

Mr. PIKE. And did that payment occur after some letters had gone out from the House Armed Services Committee over to the Marine Procurement Office indicating that we were interested in the subject matter that has been discussed at this hearing?

Captain O'BRIEN. To my knowledge, no, sir.

Mr. PIKE. What inspired you to wait until you had accumulated \$795 worth of debts to Mr. Kemple before you paid him?

Captain O'BRIEN. I was getting deeper and deeper into the hole as time went by. I had a moral obligation to pay Mr. Kemple, as I agreed I would, and as soon as I got the money I paid him.

Mr. PIKE. When did you make this payment?

Captain O'BRIEN. Either October, November, or December, and possibly January of 1971.

Mr. PIKE. Last fall, or January?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. In what form did you make this payment?

Captain O'BRIEN. I paid him in cash, sir.

Mr. PIKE. Did you have a checking account?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Why didn't you use your checking account?

Captain O'BRIEN. I returned from Indiana with a significant amount of cash in my pocket, and I deposited cash in my bank account and kept or withheld money for Mr. Kemple's purposes.

Mr. REDDAN. Where did you get the significant amount of cash in Indiana?

Captain O'BRIEN. My father died, sir.

Mr. REDDAN. Part of his estate?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. After your father died, was there an attorney representing the estate?

Captain O'BRIEN. No, sir.

Mr. PIKE. The estate had cash in it?

Captain O'BRIEN. No, sir. It was insurance money.

Mr. PIKE. It was insurance money?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. The insurance money came to you in the form of cash?

Captain O'BRIEN. No, sir, It came to my mother and I in the form of a check, and—a dual check, where we split the—

Mr. PIKE. You took the check, and I presume—did you cash it?

Captain O'BRIEN. Yes, sir; my mother cashed it.

Mr. PIKE. Your mother cashed it?

Captain O'BRIEN. I was with her, and we split the cash.

Mr. PIKE. What did you use your checking account for, Captain O'Brien?

Captain O'BRIEN. Paying my bills, sir, mainly.

Mr. PIKE. Did you use it for all your bills, or all your bills but this one?

Captain O'BRIEN. No, sir; for most of my bills I use it. I have paid some bills in cash. When I pay the Credit Union, if I have the cash on me I pay them in cash, and at Sears, if I have a Sears bill due, I will pay cash.

Mr. PIKE. You first used the credit card in the summer of 1968, is that correct?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. And you repaid Mr. Kemple in either late 1970 or January 1971?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Did you feel that this was something which you were entitled to do in your capacity, use Mr. Kemple's credit card, run up an obligation to him of \$800—\$795, I believe you said, and just continue in essence to borrow money from him?

Captain O'BRIEN. No, sir. I am ashamed of it.

Mr. PIKE. So am I.

Mr. REDDAN. Captain, do you recall whether or not you were on leave from July 1 to July 11 in 1969—11 days leave?

Captain O'BRIEN. July of 1969?

Mr. REDDAN. Yes.

Captain O'BRIEN. I don't know if I actually took leave in July. I know I had asked for some leave. I did go back sometime in 1969. I am not sure whether it was July.

Mr. REDDAN. Back to your home?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. It might help you if I tell you Colonel Bosshard—he is your supervisor, is he not?

Captain O'BRIEN. Colonel—yes, sir.

Mr. REDDAN. He has advised the staff you were on leave from July 1, 1969 to July 11, 1969.

Captain O'BRIEN. Well, that is possible, Mr. Reddan. However, in our office during the leave period we are a lot of times around and then take it subsequently. I assume that is correct.

Mr. REDDAN. Where is your home, sir?

Captain O'BRIEN. South Bend, Ind., sir.

Mr. REDDAN. How far is that from Cassopolis, Mich.?

Captain O'BRIEN. I am not sure where Cassopolis is, but I think it is near Detroit.

Mr. REDDAN. Have you ever been in the Diamond Head Inn at Cassopolis?

Captain O'BRIEN. During this period—ever in my life?

Mr. REDDAN. Ever in your life, then we will come down to this period.

Captain O'BRIEN. I don't remember, but I could have been, yes, sir. I don't remember for sure.

Mr. REDDAN. I would like to show you a photostatic copy of a receipt from the Diamond Head Inn in Cassopolis, Mich., and it is dated July 6, 1969. Would that help refresh your recollection?

Captain O'BRIEN. No, sir. I don't know if this is mine or not.

Mr. REDDAN. Did you have Kemple's credit card with you at that time?

Captain O'BRIEN. I don't recall. I could possibly have, and I could not have. I don't recall, sir.

Mr. REDDAN. Do you recognize the signature that is on there?

Captain O'BRIEN. It appears to me that is Mr. Kemple's, sir.

Mr. REDDAN. Do you think Mr. Kemple was in Cassopolis at that date?

Captain O'BRIEN. I do not know, sir.

Mr. REDDAN. How did you sign Mr. Kemple's name to the charges?

Captain O'BRIEN. I gave Mr. Lally my signature for Mr. Kemple, sir. I signed it in Mr. Kemple's name.

Mr. REDDAN. Yes, I know, but did you attempt to copy Mr. Kemple's signature, or did you just sign it in your own handwriting?

Captain O'BRIEN. I signed it as close as I could to Mr. Kemple's, sir.

Mr. PIKE. If Mr. Kemple had told you that you could use his credit card, why didn't you sign it in your signature?

Captain O'BRIEN. I was ashamed of it, sir. I don't think I would have been able to use the card if I had signed it in my signature.

Mr. REDDAN. How many times did this sealed envelope routine take place?

Captain O'BRIEN. I would estimate—I would say approximately—and again my best estimate—of 20 times.

Mr. PIKE. Twenty times you opened a sealed envelope that contained a credit card and nothing else in it but some filler, is that correct, to your best estimate?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Did you open any other sealed envelopes that Mr. Elmore gave you?

Captain O'BRIEN. No, sir.

Mr. PIKE. Well, now, how did it happen that every single time you opened a sealed envelope that Mr. Elmore gave you, it happened to have a credit card within it? Isn't that just extraordinary luck?

Captain O'BRIEN. I could feel the card in the envelope, sir.

Mr. PIKE. Did you feel other sealed envelopes that Mr. Elmore gave you?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. But you didn't open any that didn't have a credit card? Didn't you ever strike out, didn't you miss once or twice?

Captain O'BRIEN. If they were sealed, I never opened them unless I felt a credit card in them. But I don't recall him giving me sealed envelopes other than when the card was in it.

Mr. PIKE. Ah! You didn't have to open a sealed envelope except when there was a credit card in it?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. All right.

Mr. REDDAN. How long would you keep the credit card when you got it each time?

Captain O'BRIEN. Sometimes for as long as 10 to 15 days, sir.

Mr. REDDAN. You had it on several trips to California, is that right, sir?

Captain O'BRIEN. Well, I remember I would say two to three max.

Mr. REDDAN. How did it happen that you had the card with you just when you took the trip to California? Did you ask for it for the trip?

Captain O'BRIEN. No, sir. If I was anticipating a trip, I knew ahead of time, I would wait for the opportunity to pass the envelope.

Mr. REDDAN. I don't follow you. I am wondering how you got the envelope in time to take the trip?

Captain O'BRIEN. Well, if I had anticipated a trip, or a trip was forthcoming, I would—if the envelope happened to come along sometime prior to that trip, and I didn't think I would see it again—

Mr. REDDAN. You kept it?

Captain O'BRIEN. I kept it, yes, sir.

Mr. REDDAN. How long did you keep it?

Captain O'BRIEN. Sometimes as long as 10 to 15 days, maybe 20 days.

Mr. REDDAN. How long were your trips to California?

Captain O'BRIEN. Usually 3 to 5 days, sir.

Mr. REDDAN. Now, were you here when Mr. Elmore was testifying yesterday?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. If I may read you his testimony.

We asked him about the credit card and his turning it over to you.

Is it your testimony that on no occasion—

I was asking the question—

Is it your testimony that on no occasion did you ever give the card to anyone else to use?

Mr. ELMORE. No, sir; that is not my testimony.

Mr. REDDAN. What is your testimony, sir?

Mr. ELMORE. I believe there are occasions that I gave the card to Captain O'Brien.

Then I asked him to tell us about it.

Mr. ELMORE. . . . I happened to have been with Captain O'Brien and I asked Captain O'Brien if he wouldn't return the card when he saw Mr. Kemple.

Mr. REDDAN. How did you do that? Did you just hand him the card?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. Did he ask you how you happened to have it?

Mr. ELMORE. Yes, sir.

Mr. REDDAN. What did you tell him?

Mr. ELMORE. Exactly what I just said previously.

Mr. REDDAN. You just handed him the card—

Mr. ELMORE. And asked him to give it to Mike, or Mr. Kemple.

He doesn't make any reference to sealed envelopes. Did he ever give it to you in the clear?

Captain O'BRIEN. No, sir.

Mr. REDDAN. You say you repaid Mr. Kemple \$795; is that right, sir?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. Did you hear Mr. Kemple's testimony yesterday?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. Was it substantially correct?

Captain O'BRIEN. He was incorrect on the figure.

Mr. REDDAN. Was he correct when he said "Don't mention this to anyone"?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. Did you tell him it was from you or Mr. Elmore?

Captain O'BRIEN. I did not tell him who it was from, sir. I didn't want to admit to Mr. Kemple that I had used the card. I said "Here is the money. Here is some money that is owed to you. Don't ask me any questions where it came from, because I am not going to tell you."

Mr. PIKE. Did you really think you could use Mr. Kemple's card—\$800 worth—without his being aware that you had used the card?

Captain O'BRIEN. Yes, sir; I did. I did think I could do that.

Mr. REDDAN. How did you arrive at the figure—I think you said you used it about 50 times, is that right?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. How did you arrive at that figure?

Captain O'BRIEN. I would keep track of moneys that I felt was my share of it.

Mr. REDDAN. Your share of what?

Captain O'BRIEN. Of the card—there were many people there at occasions, like the occasion I was explaining to the chairman. I would keep track of that, and where I was by myself, or a guest of my choice, I would use that in total to arrive at my figure.

Mr. PIKE. Did you ever try to collect the money from all the other people you were picking up the tab for?

Captain O'BRIEN. No, sir. Most of the time, sir—I won't say most of the time, on several occasions, some of Mr. Kemple's employees were there, and sometimes he was there.

Mr. PIKE. Even though he didn't know that you were using his card, when he was there, you felt it was all right to use his card to entertain him and his employees, is that it?

Captain O'BRIEN. I did not think any of it was all right, sir.

Mr. PIKE. Mr. Hall, do you have any questions?

Mr. HALL. Captain, if you didn't think it was all right, why did you do it?

Captain O'BRIEN. I don't know, sir.

Mr. HALL. Did you just have a feeling of being a big spender?

Captain O'BRIEN. Yes, sir.

Mr. HALL. An unusual opportunity, and a swell guy?

Captain O'BRIEN. Yes, sir.

Mr. HALL. What was the psychology behind doing this, if you knew it was wrong at the time? You pretty well convinced the committee that you did it with forethought, and that you knew at the time it was wrong.

Captain O'BRIEN. Yes, sir.

Mr. HALL. Is there any reasonable explanation about why you did it?

Captain O'BRIEN. Certainly not reasonable, sir.

Mr. HALL. Did you do it with full knowledge before the fact and understanding of Department of the Navy, Office of the Secretary,

standards of conduct, as updated by this July 12, 1968 memorandum, which says in part, "No employee or officer will solicit or accept a gift, gratuity, favor, entertainment, monetary value," and so forth, "if they are dealing with procurement or performing in official capacity."

Were you knowledgeable about that?

Captain O'BRIEN. I am knowledgeable of the statement you read, sir. I am not knowledgeable of the entire contents of that document, but I have been advised of that, yes, sir, of your statement.

Mr. HALL. And it goes further to include transportation, meals, or overnight accommodation in connection with official business, unless authorized for certain purposes, including protocol purposes, by the authority issuing the order.

On these trips, or at the time when you picked up the tab for the lunches and so forth and so on, were you ever instructed by higher ordering authority to do this?

Captain O'BRIEN. No, sir.

Mr. HALL. You just kind of did it on your own?

Captain O'BRIEN. It was my doing, sir.

Mr. HALL. I appreciate your forthrightness and your remorse. Are you doing this for any person or persons?

Captain O'BRIEN. For myself, I am doing it.

Mr. HALL. Confession is good for the soul, and I admire that, but you are willing to tell me that you are not doing it and being the fall guy for any other person or persons?

Captain O'BRIEN. I am my own fall guy, sir.

Mr. HALL. Did you do these things at any time, knowing that it might influence procurement of generators?

Captain O'BRIEN. No, sir. Mr. Kemple and I have been friends for a number of years, sir, and only when I am at a contracting-type meeting do I treat Mr. Kemple as a contractor.

Mr. HALL. That might be commendable as far as friendship is concerned. Do you think it was fair as far as your job is concerned?

Captain O'BRIEN. Yes, sir, because on my business relations I always kept myself businesslike.

Mr. HALL. Could one keep himself businesslike while accepting largess with a flourish from their contracts?

Captain O'BRIEN. I would certainly try, sir. I think that I have.

Mr. HALL. Do you think that the sum total of this procurement change orders and/or sole source add-on contracts was influenced by this sort of thing, regardless of your personal involvement?

Captain O'BRIEN. Not knowing the particular ones you are saying, sir, I haven't been involved, or personally influenced on Mr. Kemple's part, businesswise, on any business transactions at all.

Mr. HALL. You have not been, or you hope you have not been?

Captain O'BRIEN. I feel that I have not been, sir.

Mr. HALL. I understand that you, yourself, had nothing to do with either the 600 series or the 700 series generator procurement or the correction of the defects thereof, is that correct?

Captain O'BRIEN. Yes, sir; that is correct.

Mr. HALL. That is correct?

Captain O'BRIEN. Yes.

Mr. HALL. You had nothing to do with it?

Captain O'BRIEN. Yes, sir.

Mr. HALL. Thank you, Mr. Chairman.

Mr. PIKE. Mr. Lennon.

Mr. LENNON. Captain O'Brien, for how many years have you been in the Marine Corps?

Captain O'BRIEN. Eighteen, sir.

Mr. LENNON. During the period from say 1965 up until now, what credit cards did you have of your own that you can identify?

Captain O'BRIEN. From 1965 until now?

Mr. LENNON. Yes.

Captain O'BRIEN. Various gas credit company cards.

Mr. LENNON. Gas only—gas and car services?

Captain O'BRIEN. Sir?

Mr. LENNON. Gas and automobile services?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. None for restaurants, cafes, night clubs or anything of that kind?

Captain O'BRIEN. I didn't have a Diners or American Express card, no, sir. I think I had some charge cards that I could use at these places.

Mr. LENNON. You were interviewed in June of this year by members of the staff who are here this morning?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. Do you recall having told them you had never used a credit card, particularly anyone else's credit card?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. You were then not under oath?

Captain O'BRIEN. No, sir.

Mr. LENNON. You are under oath now?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. Now the confrontation you had with one of the contractors which resulted in some rather disquieting disagreement—we wouldn't call it violent disagreement—you referred to the fact this contractor representative, he would have you contacted by Mr. Ross, counsel for the firm that this gentleman represented?

Captain O'Brien. I am not sure he used Mr. Ross' name. He said a legal representative. He may have, and may not have, sir.

Mr. LENNON. Do you know what contracting firm this contractor's representative you were talking with at the time represented?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. What company did he represent?

Captain O'BRIEN. The company that Mr. Ross—

Mr. LENNON. The contractor's representative that you had disagreement with?

Captain O'BRIEN. He represented Electro-Mechanical, sir.

Mr. LENNON. You didn't know who the counsel for that company was at that time?

Captain O'BRIEN. Yes, sir; I knew they had a firm that was doing their legal work for them.

Mr. LENNON. You knew Mr. Ross was a member of that firm?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. And you referred to him as a "shyster lawyer"?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. I believe you said not possibly exceeding 30 minutes you were ordered to appear before the Assistant Commandant of the Marine Corps?

Captain O'BRIEN. No, sir; it was the Quartermaster General.

Mr. LENNON. Quartermaster General.

Just what did the Quartermaster General say to you?

Captain O'BRIEN. The Quartermaster General advised me as a Marine officer, that I had no business using that type of description or any other type of description for any contractor, other than the proper one.

Mr. LENNON. You did not construe that confrontation with the Quartermaster General was sort of giving you hell?

Captain O'BRIEN. Yes, sir; the Quartermaster in fact gave me hell.

Mr. LENNON. Gave you unshirted hell.

In this conversation with the Quartermaster General, were you led to believe that Mr. Ross had access to the high echelons of the Marine Corps, and his opposition to anyone would work irreparable damage to a Marine Corps officer?

Captain O'BRIEN. I had only heard Marines say that, sir.

Mr. LENNON. You heard other Marines say that?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. In the Procurement Department?

Captain O'BRIEN. No, sir; in the Technical Division.

Mr. LENNON. In the Technical Division. It went that far down the line.

Have you since been contacted by the Quartermaster General?

Captain O'BRIEN. No, sir.

Mr. LENNON. Not since that time?

Captain O'BRIEN. No, sir.

Mr. LENNON. Over what period of time did you get the impression from other Marine Corps personnel that Mr. Ross did have access to high levels of the Marine Corps who could influence the promotion possibilities of other Marine Corps officers?

Captain O'BRIEN. Would you restate that, please, sir? I lost it.

Mr. LENNON. Well, over what period of time did you hear other Marine Corps officers or personnel express their opinion that Mr. Ross had access to the higher echelons of the Marine Corps which could affect the potential advancement or promotion of Marine Corps officers?

Captain O'BRIEN. Over what period of time?

Mr. LENNON. Yes, sir.

Captain O'BRIEN. Recently, on this tour I have not heard that, it was only in discussion of course, when I came back from the Quartermaster General's office, I was—

Mr. LENNON. Had you learned to fear the name of Mr. Ross as a result of what you heard from other officers, in your belief he could go to the top echelon and would affect the career of a Marine Corps officer?

Captain O'BRIEN. I don't know if Mr. Ross could do that in fact. I know that Mr. Ross had many Marine officer friends, because Mr. Ross was a Marine officer, and—

Mr. LENNON. You do know he had a good friend in the Quartermaster General, don't you?

Captain O'BRIEN. I didn't know Mr. Ross' relationship with the Quartermaster General.

Mr. LENNON. You learned it, though, after you were called before him and caught unshirted hell? You learned it that way, didn't you?

Captain O'BRIEN. Yes, sir; but the Quartermaster General, the way he explained to me my fault in actions, is that I should not talk in that manner to any contractor. He did not refer only to Mr. Ross.

As a matter of fact, I don't remember him referring to Mr. Ross as such. I just remember the words of saying as a Marine officer and a representative of the Commandant, that I have no business using that type of language in regard to——

Mr. LENNON. Have you ever made the statement to anyone at any time, for the reasons that you have given here, that you were afraid of the influence of Mr. Ross?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. You made that statement as a result of a confrontation with members of this staff, did you not?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. Now you are under oath. What do you say now about that statement?

Captain O'BRIEN. I am trying to organize my thoughts as to my exact feeling. I would say that if Mr. Ross wanted to influence a transfer of myself, that possibly he could.

Mr. LENNON. I won't pursue it any further.

Thank you, Mr. Chairman.

Mr. PIKE. Captain, were you among those present at a meeting at Mr. Elmore's house on Monday?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. In the course of that meeting, did you discuss the subject matter of this hearing?

Captain O'BRIEN. I would not say that the subject matter was discussed; no, sir.

Mr. PIKE. Just a little social gathering?

Captain O'BRIEN. No, sir. Mr. Elmore and Mr. Kemple went through charge receipts.

Mr. PIKE. Went through charge receipts, trying to pin down who had been signing Mr. Kemple's name, is that it?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. At that meeting on Monday evening at Mr. Elmore's house, did you tell them that you had been signing some of those?

Captain O'BRIEN. No, sir.

Mr. PIKE. As recently as Monday, you did not tell Mr. Kemple, who had told you you could use his credit card, that you had in fact used his credit card?

Captain O'BRIEN. No, sir.

Mr. PIKE. You didn't tell Mr. Elmore, who nominally had possession of this credit card, that you had been signing Mr. Kemple's name, and that he might be responsible for it?

Captain O'BRIEN. No, sir; I did not.

Mr. PIKE. Did the fact that your superior, Mr. Elmore, was using Mr. Kemple's credit card have an effect on your decision that it might be all right for you to use it?

Captain O'BRIEN. I missed part of the question, sir.

Mr. PIKE. Did the fact—I will go back a little bit.

You knew the first time you got this sealed envelope and felt it and found a credit card inside of it, or felt something inside of it and opened it up and found a credit card, that Mr. Elmore had had Mr. Kemple's credit card?

Captain O'BRIEN. Right.

Mr. PIKE. And then you subsequently went through this business up to 20 times.

Did the fact that Mr. Elmore felt free to use Mr. Kemple's credit card influence you in feeling free to use Mr. Kemple's credit card?

Captain O'BRIEN. I did not want Mr. Elmore to know I was using the card, and I made sure that he didn't, and I think Mr. Elmore felt the same way about me, because I never saw Mr. Elmore use the card. So it was a—

Mr. PIKE. You think that is why Mr. Elmore put it in the sealed envelope?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Did the question of your future employment come up at the meeting on Monday at Mr. Elmore's house?

Captain O'BRIEN. No, sir; not that I recall. I do not recall my employment coming up.

Mr. PIKE. Since the subject matter of this hearing came up, have your duties in the Procurement Office been changed or circumscribed in any manner?

Captain O'BRIEN. I am in the Technical Division, sir.

Mr. PIKE. Have your duties in the Technical Division been changed or circumscribed in any manner?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. You said that you are very friendly with Mr. Elmore, or at least have been. Have his duties in the Procurement Office been changed or circumscribed in any manner?

Captain O'BRIEN. I have heard that they have, yes, sir.

Mr. PIKE. While you were in California, using Mr. Kemple's credit card, were you also getting a per diem from the Marine Corps?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Mr. Lally.

Mr. LALLY. Mr. O'Brien, does Mr. Kemple owe you any money?

Captain O'BRIEN. No, sir.

Mr. LALLY. Do you recall being interviewed by Mr. Ransom and me on June 17, Captain O'Brien?

Captain O'BRIEN. Yes, sir.

Mr. LALLY. Do you recall telling us at that time about a boat you sold to Mr. Kemple?

Captain O'BRIEN. Yes, sir.

Mr. LALLY. Do you recall the details of the transaction as you related them to us?

Captain O'BRIEN. The transaction as I related them to you?

Mr. LALLY. Yes, sir.

Captain O'BRIEN. The exact details of the transaction?

Mr. LALLY. Did you tell us the truth when you related the transaction to us?

Captain O'BRIEN. Yes, I did.

Mr. LALLY. What did you tell us?

Captain O'BRIEN. I told you I sold Mr. Kemple a boat, and as a result of the selling of the boat, he had owed me a thousand dollars.

Mr. LALLY. Was that a fact?

Captain O'BRIEN. Yes, sir.

Mr. LALLY. Has he paid you since June 15?

Captain O'BRIEN. No, sir. Mr. Kemple paid me prior to that.

Mr. LALLY. On June 15 you related to us he still owed you \$1,000.

Captain O'BRIEN. No; I said he owed me a thousand dollars. The price of the boat was \$2,200, or whatever he could get out of it above that, when he sold it. Mr. Kemple gave me \$1,200 in, I believe 1966, and had owed me, it was either 1965 or 1966, and had owed me \$1,000. Through the years he has paid that. I said he had owed me \$1,000.

Mr. LALLY. When did he pay it to you?

Captain O'BRIEN. Between 1966 and—I believe by the end of 1970. I am not sure about those dates. He was progressively paying me. I did not receive any payments while I was in Vietnam.

Mr. LALLY. Is it your testimony today, on June 15 Mr. Kemple did not owe you \$1,000, is that correct?

Captain O'BRIEN. Yes, sir; that is correct.

Mr. PIKE. When did you acquire this boat, Captain O'Brien?

Captain O'BRIEN. I believe, and it is an estimate again, sir, in 1963, or late 1962.

Mr. PIKE. When did you sell it to Mr. Kemple?

Captain O'BRIEN. Either late 1965 or early 1966.

Mr. PIKE. When this boat was for sale, did you put an ad in the Washington Post or an ad in the Washington Star and try to sell it?

Captain O'BRIEN. No, sir. Mr. Kemple had indicated to me when I got ready to leave, that he was interested in the boat.

Mr. PIKE. Had you taken Mr. Kemple out on your boat?

Captain O'BRIEN. I do not recall, but it would not have been uncommon if I did.

Mr. PIKE. Well, you don't know whether he had seen the boat?

Captain O'BRIEN. He had seen the boat. I had it parked in my yard, sir.

Mr. PIKE. You had it parked in your yard?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. When he came to your home he saw the boat?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Did you try to sell it to anybody else before you sold it to Mr. Kemple?

Captain O'BRIEN. I had announced to my fellow workers in the office, in Headquarters, Marine Corps, I was intending to sell it.

Mr. PIKE. Had you established the price for which you were going to sell it?

Captain O'BRIEN. Yes, sir; I had.

Mr. PIKE. Did you get that price?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. From Mr. Kemple?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. Nobody else offered you that price?

Captain O'BRIEN. No, sir; people had offered me that price—

Mr. PIKE. People had offered you that price before Mr. Kemple did?

Captain O'BRIEN. No, sir.

Mr. PIKE. After Mr. Kemple did?

Captain O'BRIEN. Yes, sir; that is correct, sir.

Mr. PIKE. I see.

Mr. REDDAN. I have just one question.

You say Mr. Kemple gave you an initial payment of \$1,200?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. How did he pay you?

Captain O'BRIEN. He paid me in cash, sir, at Manassas.

Mr. REDDAN. In big bills or small bills?

Captain O'BRIEN. They were big bills, sir, \$100 bills.

Mr. REDDAN. Did you ask him for cash?

Captain O'BRIEN. No, sir.

Mr. REDDAN. Where were you when he paid you off?

Captain O'BRIEN. I remember that incident vividly. We were at the Manassas Airport. He was flying through in his airplane.

Mr. REDDAN. Had he notified you to be there?

Captain O'BRIEN. Yes, sir.

Mr. REDDAN. For what purpose?

Captain O'BRIEN. To get the money.

Mr. REDDAN. How many subsequent payments did he make?

Captain O'BRIEN. I would estimate six. That is an estimate. I don't know exactly. Never less than \$100.

Mr. REDDAN. Always in cash?

Captain O'BRIEN. Yes, sir; as far as I remember they were. I believe they were. I am trying to think here.

Mr. REDDAN. Well, it would have been outstanding if he gave you a check at any time, would it not?

Captain O'BRIEN. Outstanding, sir?

Mr. REDDAN. I mean certainly it would have impressed it on your mind, wouldn't it, if he gave you a check? Did he ever give you a check?

Captain O'BRIEN. I don't believe so, sir. I don't know for sure. But I don't believe so. But if he would have given me a check, it would be in my checking account.

Mr. REDDAN. Why would that be in your checking account?

Captain O'BRIEN. Because I would just turn it over to my checking account.

Mr. REDDAN. How about your cash, what would you do with that?

Captain O'BRIEN. If I needed it, I would use it. If I didn't I would put it in the checking account.

Mr. REDDAN. What did you do with the \$1,200 he gave you?

Captain O'BRIEN. This is a long time ago, Mr. Reddan.

Mr. REDDAN. And it is a lot of money, too.

Captain O'BRIEN. Before I went to Vietnam.

Mr. REDDAN. How many times have you had \$1,200 in cash in your life?

Captain O'BRIEN. In my life?

Mr. REDDAN. Yes, in your life.

Captain O'BRIEN. I have been the pay officer for squadrons—

Mr. REDDAN. Oh, no, I am talking about your own, not what you are carrying for somebody else.

Captain O'BRIEN. I would estimate right off the top of my head five or six times.

Mr. REDDAN. Where did you get that kind of money?

Captain O'BRIEN. Well, I reenlisted a couple times, then I got over \$1,200.

Mr. PIKE. What kind of boat, would you just describe the boat and motor and the year?

Captain O'BRIEN. Yes, sir.

Mr. PIKE. The year and make of the boat.

Captain O'BRIEN. It was a 1962 or 1963 Crosby 17-foot fiberglass boat, with 110 horsepower Mercury outboard engine on it.

Mr. PIKE. What was the age of the engine? Was that also 1962 or was that older?

Captain O'BRIEN. Yes, sir; it was 1962 or 1963.

Mr. PIKE. Captain O'Brien, that is all.

Mr. LENNON. I would like to ask one question. Referring to the meeting Monday at the home of Mr. Elmore when Mr. Kemple was present, the Chairman asked you if you at that time admitted that you had used the credit card of Mr. Kemple. Actually, as I understood your testimony earlier, when you took him the first card from Mr. Elmore, you asked him the right to use that card, and he agreed to it, is that what you said?

Captain O'BRIEN. To Mr. Kemple, sir, not to Mr. Elmore.

Mr. LENNON. That is what I say, you took it from Elmore to Kemple?

Captain O'BRIEN. No, it was the second time, sir.

Mr. LENNON. The second time you carried it, you asked the right to use it?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. You had paid him in full, as you indicated earlier, before the meeting Monday night?

Captain O'BRIEN. Yes, sir.

Mr. LENNON. Thank you, that is all.

Mr. PIKE. That is all, Captain O'Brien.

Captain O'BRIEN. Thank you, sir.

Mr. PIKE. Mr. Stein.

Albert Stein was sworn, and testified as follows:

Mr. PIKE. Please give the reporter your name and address.

**TESTIMONY OF MR. ALBERT H. STEIN, DEPUTY GENERAL COUNSEL,
DEPARTMENT OF THE NAVY, WASHINGTON, D.C.**

Mr. STEIN. My name is Albert H. Stein. My address is 8007 Whittier Boulevard, Bethesda, Md.

Mr. REDDAN. What is your present occupation?

Mr. STEIN. I am a lawyer. My position is Deputy General Counsel for the Department of the Navy.

Mr. REDDAN. I would like to direct your attention to a meeting which was held on April 14, 1971, which was attended by Mr. A. E. Neuman, in the Office of the General Counsel. Were you present at that meeting sir?

Mr. STEIN. I was.

Mr. REDDAN. Who attended?

Mr. STEIN. Mr. Neuman, Albert Green, Counsel for the Commandant of the Marine Corps, Mr. Meritt Steger, who was then General Counsel to the Department of the Navy, and myself.

Mr. REDDAN. What was the purpose of the meeting?

Mr. STEIN. The purpose of the meeting was to interrogate Mr. Neuman concerning some questionable matters that had come to our attention.

Mr. REDDAN. Now, was a memorandum of that meeting prepared, sir?

Mr. STEIN. It was. It was prepared by Mr. Green.

Mr. REDDAN. Were you given a copy of that memorandum, sir?

Mr. STEIN. I was.

Mr. REDDAN. Does it correctly reflect what took place at that meeting?

Mr. STEIN. It does.

Mr. REDDAN. With the chairman's permission we will put the memorandum in the record.

Mr. PIKE. We will put the whole memorandum in the record at this point.

SUMMARY OF CONFERENCE WITH MR. A. E. NEUMAN IN OFFICE OF GENERAL COUNSEL ON 14 APRIL 1971 AND SUBSEQUENT COMMUNICATIONS

1. The subject conference was attended by Mr. M. H. Steger, General Counsel; Mr. A. H. Stein, Deputy General Counsel; Mr. A. Green, Counsel for CMC; and Mr. A. E. Neuman, Assistant Counsel for CMC.

2. Mr. Steger referred to the pending Congressional investigation, of which Mr. Neuman said he was aware, and advised Mr. Neuman (a) that he intended to ask questions covering certain matters; (b) that Mr. Neuman did not have to answer them if he did not want to and was entitled to a lawyer if he wanted one; (c) that Mr. Neuman could wait to answer the questions later if he wished to do so; and (d) that any statement he made could be used against him. The matters to be covered were stated to be as follows:

(a) Mr. Neuman's association with Mr. Ross and Mr. Matzkin at the time he came with OGC, and since he came with OGC.

(b) Mr. Neuman's financial interest in various companies. (Mr. Steger explained that up until about the time Mr. Neuman joined OGC financial statements had been required of lawyers.)

(c) All financial dealings with Mr. Ross and Mr. Matzkin or other members of their firm.

(d) Receipt of any gratuities as defined in the DoD Directive on conflicts of interest.

3. While Mr. Steger was explaining the subjects to be covered Mr. Neuman stated, in reference to the advice that he was entitled to a lawyer that he should be told of any charges concerning him. Mr. Neuman was at first reluctant to answer. He stated that he had been ill and was then under a doctor's care, that he had been asked to attend the conference without being told what it was about and had had no time to react, and that under the circumstances he was emotionally disturbed. Mr. Steger told him that he was then explaining the areas of OGC concern on which questions would be asked. As Mr. Steger outlined the questions to be asked, Mr. Neuman began answering them.

4. Mr. Neuman stated that he had no connection with the Ross/Matzkin firm except to rent office space from them at \$410 per month. He said he had never received a procurement case from either Mr. Ross or Mr. Matzkin. Mr. Neuman stated that another OGC lawyer had misrepresented that he had been associated with the Ross firm. Mr. Neuman said he has no present business relationship with Mr. Ross and has had none since coming with OGC. He stated that he never received any gratuities from anyone or any company; that he exchanges social amenities with Mr. Ross; (e.g., sending flowers upon the birth of each other's children; that they visit in each other's homes once or twice a month; that he went to law school with Mr. Ross; they have been friends since 1954; that he

and Mr. Matzkin are social friends but their visits are less frequent than with Mr. Ross.)

5. (a) In response to Mr. Steger's question as to whether he thought he could have this relationship with Mr. Ross without affecting his impartiality in business dealings, Mr. Neuman stated that he could.

(b) Mr. Neuman mentioned that companies represented by Mr. Ross, which do business with the Marine Corps, are CONDEC (Consolidated Diesel Electric Corp.); Mite Corporation and G. C. Dewey (Kurz and Root was mentioned later). He said Mr. Matzkin represents Dorne and Margolin and Hoffman Electronics.

(c) He said he had never favored any company; that a Kurz and Root claim [re hump test] had not been allowed where they might be entitled to it; that the CONDEC contract had been awarded by Invitation for Bid and had been reviewed by GAO.

(d) He said he was aware that a charge could be made as there had been animosity between the Technical and Procurement Divisions, formerly a Colonel Stimson vs. Mr. McLain and currently Major Bridges (Technical Division) vs. present CSG (Procurement) personnel.

6. Mr. Neuman provided the following information concerning his financial interests in various companies:

(a) He had owned \$3,000 or \$4,000 worth of CONDEC stock and sold it about last year at a loss. He was not sure just when he acquired the stock but had started purchasing it when working with Ross, Matzkin and Day. He had dealt with CONDEC while owning the stock but did not feel that it constituted a conflict of interest because (1) he was not required to file a statement of financial interest; (2) his holdings were too small, and (3) he does not make decisions on procurements, which are made by contracting officers.

(b) Mr. Neuman had owned \$1,000 or \$2,000 in Mite Corporation stock but disposed of it as a claim by the Mite Corporation was filed six or seven months ago. He said he did not know when this stock was acquired.

(c) Mr. Neuman had owned \$1,000 or \$2,000 in Hoffman Electronics and sold this sometime ago. He had done no work involving this company which is represented by Mr. Matzkin.

(d) He owns Penn Central Railroad Company stock.

(e) Mr. Neuman has an interest in Photo Fair, 1100 22nd St., NW., Washington, D.C. He said Mr. Ross has no financial interest in this company but had been a director until about 1964.

(f) Mr. Neuman said he owns stocks in Gold Strike Mining Exploration Company, 221 East Seventh St., Anchorage, Alaska. This company has a pro forma address at 1100 22nd St., NW., Washington, D.C., Mr. Matzkin has an interest as a stock holder in this company. There are about 11 stockholders.

(g) The 1100 22nd St., NW. address of Photo Fair and Gold Strike is an apartment building at which no one resides but for which there is an answering service.

(h) Quorum Land Corporation—His interest in this company was divested prior to 1967.

(i) Arltec Corporation—He never owned any interest in this company. He stated he never owned any interest in any other company in which Mr. Ross or Mr. Matzkin held an interest and that he had no ownership in any other company.

7. Mr. Neuman indicated he had advised Navy people (i.e., Mr. McLain and Mr. Gemmell) in connection with the Conflict of Interest regulation. However, he considered himself in a different position from them because he said he does not negotiate contracts or sign contracts. Asked how did he happen to sell the stock, Mr. Neuman first mentioned that it was a financial matter, but then went on to explain that he was getting involved in claims involving CONDEC and Mite. He said he had sold his stock before the CONDEC appeal.

8. Mr. Steger and Mr. Stein suggested Mr. Neuman read the regulation and the statute as his actions were in violation of the regulation and the statute in view of his stock holdings. Mr. Neuman stated that he did not feel the statute applied because he did not make the final decision, but he would have divested himself of the stock if he had had this conversation earlier. He acknowledged that decisions were made on the basis of his advice. He stated that he had purchased CONDEC stock when he heard CONDEC was getting a contract with the Army. He did not feel there was any conflict regarding Mr. Matzkin's ownership of stock in the mining corporation as stockholders are not outside business associates. He pointed out that Mr. Matzkin is not a director or officer and that the mining company does not do business with the Government.

9. Mr. Steger called Mr. Neuman's attention to the provisions of the DoD Directive on Conflicts of Interest which requires a person owning stock in a company to report his interest to the person responsible for his appointment (in this case Mr. Steger) when a matter involving the company comes before him.

10. In reply to Mr. Green's question as to whether his dealings had always been at arm's length, Mr. Neuman replied "Absolutely" and that everything he has done is a matter of record. Mr. Steger inquired as to whether Mr. Neuman was aware that Mr. Hatch had said that he (Hatch) would handle the Kurz and Root contract in view of Mr. Neuman's previous association with the Ross/Matzkin firm. Mr. Neuman stated that he was not aware of any such statement until he found it in the contract file three or four weeks ago after the Congressional investigation had commenced. Mr. Neuman stated that he had had some apprehension regarding his relationship with Mr. Ross, and Mr. Matzkin, but had not considered his stock ownership of any consequence.

11. Mr. Neuman stated that if Mr. Steger and Mr. Stein considered that he had been in a conflict of interest position and had not been candid in disclosing his interests he had no alternative but to submit his resignation.

12. Mr. Neuman was asked to retire from the room for a few minutes. In his absence Mr. Steger, Mr. Stein and Mr. Green discussed his stock ownership and the effect of his close relationship with Mr. Ross. It was concluded that his offer to resign should be accepted. Mr. Neuman was called back into the conference.

13. Mr. Neuman stated that he did not want to work for the Government if it was felt he had not been fair and candid. He stated that in such case he had no alternative but to resign; that while he had not considered his action a violation, he would not have further utility in his present position; and, in view of his close relationship and association with Mr. Ross, he would tender his resignation the following week and give it to Mr. Green. Mr. Green was instructed to call Mr. Steger upon receipt of the resignation. Mr. Neuman said that he would be taking sick leave the rest of the week as he was under doctor's care and was taking antibiotics for a bronchial infection.

14. Following the subject meeting on the same date, while talking to Mr. Green, Mr. Neuman wondered if his resignation might not be considered an admission in the event hearings were held.

15. On Friday, 16 April 1971, Mr. Neuman reported by telephone to Mr. Green that he was still under medical care. He stated that he did not think he should resign prior to Congressional hearings and that it might be better to go on administrative leave pending the hearings.

16. On Monday, 19 April 1971, Mr. Neuman called Mr. Green to say that he felt he had been too presumptuous in offering to resign; that he had no real cause to resign; that he had received no gratuities and granted no favors. He felt that at most he should be subject to a reprimand because of his stock ownership. He suggested, that as his supervisor, Mr. Green might outline those areas in which he could work. He knew he would not be effective in the Mite Corporation negotiations and could not handle the CONDEC appeal. He stated that the doctor had told him to take it easy for a couple of more days. Mr. Green advised him that some lawyers were coming over on loan to assist with the work he had been doing. He stated that, at the time he was hired, Mr. Steger, Mr. Stein, Mr. Brown and Mr. Hatch knew of his previous association with Mr. Ross.

Mr. PIKE. You may summarize the memorandum for us, as it pertains to Mr. Neuman's relationship with the corporations which we have been discussing in this hearing, the CONDEC Corp. and the Mite Corp.

Mr. STEIN. The meeting was attended by the persons whose names have already been given. It was held on the 14th of April. It was held in the morning. Mr. Steger opened the meeting by referring to the pending congressional investigation of these matters, of which Mr. Neuman said he was then aware.

We advised Mr. Neuman that we intended to ask him questions concerning his participation in these matters. He was cautioned that he did not have to answer questions, that he was entitled to counsel if he wanted one, that he could wait and answer questions later if he preferred, and that any information he gave might be used against him.

Mr. Steger outlined generally the area which we proposed to cover as including Mr. Neuman's associations with Mr. Ross and Mr. Matzkin at the time he came with the Office of the General Counsel, and since he was employed by the Office of the General Counsel. Also Mr. Neuman's financial interests in various companies, any financial dealings Mr. Neuman had with Mr. Ross and Mr. Matzkin, or other members of that firm, and any gratuities that Mr. Neuman may have received, as that term is defined in the Department of Defense directive on standards of conduct.

Mr. Neuman stated at that time that he had been taken by surprise, that he had not been informed prior to coming to the meeting of the purpose of the meeting, that he had been ill, was under an emotional strain at the time, under doctor's care, and he had not had time to react to the circumstances, but he did undertake to answer the questions which were asked of him.

Mr. Neuman stated he had had no connection with the Ross-Matzkin firm, other than to rent office space from them prior to his employment by the Office of the General Counsel, that there had been a misunderstanding or misrepresentation that he had some business relationships with Mr. Ross, which he had not had.

He stated that he had never received any gratuities from Mr. Ross or anyone else, other than the exchange of social amenities between them, such as sending flowers upon the birth of their children.

He stated he had known Mr. Ross for some time. They were personally friendly, had attended law school together, and that they had continued their friendship on a social basis from the time he went to law school. He stated that he was also friendly with Mr. Matzkin, but on a less frequent social basis than with Mr. Ross. He stated categorically that he did not believe that his relationship with Mr. Ross affected the impartiality of his business dealings with the concerns that Mr. Ross represented.

Specifically, he indicated to us that there had been three or four companies represented by Mr. Ross, with which he had done some business on the part of the Marine Corps. One was referred to as CONDEC, that is Consolidated Diesel Electric Corp. A second was the Mite Corp. The third was G. C. Dewey, and a fourth was Kurz & Root.

He stated that Mr. Matzkin had represented the company called Dorne & Margolin, and another company known as Hoffman Electronics, with which he had done business.

He stated again that he had never favored any company represented by either Ross or Matzkin, and that he felt certain that all of his dealings with these companies had been at arm's length. He told us that he was aware that there had been at least a charge of animosity between the Technical and Procurement Divisions in the Marine Corps, which perhaps accounted for some of the statements that had been made.

He gave us the following specific information concerning his financial interest in these various companies. He stated that he had owned \$3,000 or \$4,000 worth of CONDEC stock. He did not recall exactly when he began to acquire the stock, but he said it was while he was working at the Ross, Matzkin & Day law firm, and that he had continued to own that stock during the period of his employment by the

Marine Corps. He stated that he did not feel that his stock ownership constituted a conflict of interest because, one, he was not required to file a statement of financial interest, and, two, that his holdings, in his judgment, were too small to be significant, and three, he felt that he did not make decisions on procurement matters which were made by contracting personnel and not by the lawyers.

He acknowledged, in addition, that he had owned \$1,000 or \$2,000 in Mite Corp., which he had disposed of 6 or 7 months prior to his conversation with us, and he did not recall when that stock had been acquired. He also stated he owned \$1,000 or \$2,000 in the stock of the Hoffman Electronics Corp., and that he had sold that stock some time ago. He stated he had done no work involving Hoffman Electronics which he stated was represented by Mr. Matzkin.

He told us he also owned stock in Penn Central Railroad Corp., which was not involved in any transactions with the Marine Corps, and also that he had an interest in a corporation known as Photo Fair. He said Mr. Ross had no financial interest in this company, but had been a director until about 1964.

Mr. Neuman said he owned stock in the corporation called Gold Strike Mining Exploration Co., which had a pro forma address at 1100 22d Street, NW., Washington, D.C.

Mr. Matzkin had an interest as a stockholder in that company. He mentioned some other relatively minor financial interests which are summarized in the memorandum which seems to not appear to have any direct relation or interest to the Marine Corps business.

He repeated he did not think he had been in any conflict of interest position, primarily because of his small interests, and because he did not feel that he made any contractual decisions.

Mr. Steger and I advised him that in our judgment his admitted action in dealing with CONDEC Corp., in which he acknowledged having a stock interest, had been a violation of the Department of Defense directive on standards of conduct, and possibly the law, 18 U.S.C. 208, as well.

We advised him to read the directive and the statute for that purpose. He reiterated that his dealings with the company had been at arm's length, and that he did not feel in any instance that he had favored the companies in his dealings with them. Nonetheless, he stated that if Mr. Steger or I felt that he had been in a conflict-of-interest position and had not been candid in disclosing his interests to us, that he had no alternative but to offer his resignation.

We asked him to leave the room for a short time, which he did, and during that period there was a conversation between Mr. Steger, Mr. Green and myself in which it was concluded that Mr. Neuman's offer of his resignation should be accepted.

When he returned to the room, he was so informed, and the matter was left on that note. The conference memorandum which Mr. Green prepared, which the committee has a copy of, contains some subsequent material which Mr. Green refers to, where I was not personally present.

Mr. PIKE. Mr. Stein, we have a quorum call on at this point, and Mr. Lennon and I have to go over to the Floor. We will want to ask you some questions about your testimony. I think we can get some of them in before we break for lunch. But we are going to go over there at this

time, and if Mr. Lennon has no objections, I am also going to request that Mr. Lally can read into the record a written memorandum which we have seen detailing his efforts to serve a subpoena on Mr. Neuman.

Mr. LALLY. Early in July, I telephoned Mr. Arthur Neuman, and asked him to furnish the subcommittee with copies of his Federal income tax forms for the years 1966 through 1970, as well as the canceled checks in payment for his purchases of CONDEC and Mite stock. At that time Mr. Neuman stated he would furnish the records. He subsequently, in a telephone conversation with Mr. Reddan, advised Mr. Reddan that he had the records and would produce them for the subcommittee.

On July 13, Chairman Pike signed a subpoena for Mr. Neuman. At about 4:30 on that same day I went to 1100 22d Street, where Mr. Neuman has an office in Apartment 801. Since the receptionist and the porter told me he usually came in about 5 p.m., I waited around in the lobby until about 6:30. At that time the receptionist said Mr. Neuman was supposed to go to Alaska during the week of July 19th. I then called his residence and talked with a woman who identified herself as Mrs. Neuman. She advised me he was on his way to Florida, and I then left a note in Mr. Neuman's box at 1100 22d Street.

The next day, July 14, I again called Mrs. Neuman at her place of employment, and asked her where I could contact Mr. Neuman in Florida. She told me she didn't know where he was but she expected to hear from him that evening. I gave her my office and home phone numbers and told her to have Mr. Neuman call me collect.

On July 15 I again called Mrs. Neuman. She told me she hadn't heard from her husband, but she would have him call.

On July 16 I attempted to locate Mr. Neuman at Photo Hi-Fi International, Inc., 2608 Connecticut Avenue, a business which he owns. I had been told he was expected at about 4 p.m. When he hadn't appeared by 5:15, I asked where I could find him, and I was told he was on vacation. I then went to 1100 22d Street and the porter with whom I had talked on July 13 told me that Mr. Neuman had been in. He said he had told Mr. Neuman that I had been looking for him, and Mr. Neuman said he was sorry to have missed me. I left another note for Mr. Neuman telling him it was urgent that I talk to him.

On July 18 I again went to 1100 22d Street. The receptionist at the lobby desk said that Mr. Neuman was on vacation. I then drove to the Neuman residence at 307 Philadelphia Avenue, Takoma Park, where I talked to Mrs. Neuman. She told me she didn't know where her husband was.

I then contacted Northwest Airlines on July 18 to determine whether Mr. Neuman had made a reservation for a trip to Alaska. I was informed by Northwest personnel there was no record of a reservation in his name.

I called Mr. Neuman's office telephone on July 19, 20, and 21, and did not receive any answer on any of those occasions.

Mr. REDDAN. Is Mr. Neuman in the room, by any chance?

(Laughter.)

(A short recess was taken.)

Mr. PIKE. Mr. Stein, have you, subsequent to this meeting which was held, learned anything further about the dates at which Mr. Neuman

acquired stock in these corporations, CONDEC Corp. and Mite Corp.?

Mr. STEIN. No, sir; I have not.

Mr. PIKE. Mr. Stein, based on what you did know about Mr. Neuman's activities in holding stock in corporations which the Marine Corps Procurement Office was dealing with, the question in my mind is quite simple. Why did you let him resign instead of firing him?

Mr. STEIN. I think it was preferable that we sever the connection under the circumstances. Whether or not there is a basis for prosecutive action against Mr. Neuman remains open, and for others to determine. We did not absolve him of any liabilities he might have on that account.

Mr. PIKE. Have you ever seen his letter of resignation?

Mr. STEIN. Yes, sir; I have.

Mr. PIKE. Did his letter of resignation in any manner indicate there was anything wrong whatsoever with his conduct or his status in the office that he had?

Mr. STEIN. His letter did not indicate that.

Mr. PIKE. His letter simply said he had a conflict in his position with the Air Force Reserve; wasn't that it?

Mr. STEIN. That is correct.

Mr. PIKE. I know what you are after and what we are after is to try to prevent this type of conduct from occurring, and if the people who get caught doing this kind of thing are allowed to peaceably resign, do you think it serves as any deterrent whatsoever for others to do the same sort of thing?

Mr. STEIN. I don't think the matter is as simple as it appears. As I indicated, there is an unresolved question as to whether there is a prosecutive action in this case.

Mr. PIKE. What would it take, in your judgment, to make a prosecutive action, to use your phrase?

Mr. STEIN. I think I can only indicate that there is, in my judgment, a *prima facie* indication here of a violation of law and regulation. I am obviously not the person to make the final judgment on that.

Mr. PIKE. Who is the person to make that final judgment?

Mr. STEIN. Whether there would be a criminal prosecution would be a judgment for the Department of Justice.

Mr. PIKE. Has it been referred to the Department of Justice?

Mr. STEIN. It is my understanding that the matter has been or will be referred to the Department of Justice.

Mr. PIKE. Do you know whether it has?

Mr. STEIN. I know it has been referred to the Naval Investigative Service. It is my understanding they will, in their normal course, refer the matter elsewhere.

There is another aspect to my answer to your question. If we were to be asked for a recommendation, we would have a different problem. So the fact that Mr. Neuman's resignation says nothing about the circumstances does not necessarily—

Mr. PIKE. I really think Mr. Neuman has enough intelligence not to ask your office for a recommendation as to his character, but the fact of the matter is, he doesn't have to ask your office for a recommendation; he will show a copy of the letter he submitted tendering his resignation. His resignation was gracefully accepted, and he goes on his merry way.

Now, we have evidence to the effect that even at this meeting he wasn't telling you people the truth. He bought his CONDEC stock after he was working in the legal office there. He bought his Mite stock as recently as January 21, 1970, and May 8, 1970.

He was still buying CONDEC stock on February 9, 1970. The fact that nobody looked any deeper than his word, and just let him resign and go off—well, it may be sent to the Justice Department for prosecution and it may not be sent to the Justice Department for prosecution, and they may decide that it's such a penny ante thing, that it isn't worth prosecuting.

This really is a penny ante, little sordid tale of general sloppy, corrupt practices in the Procurement Office. I am not blaming you for this, because I don't know, frankly, what your responsibility in this area is.

More than anything else, I am venting my frustration at a couple of things. One is it happened, and nobody seemed to be very excited about it. Another is the fact that the Marine Corps showed not only not any enthusiasm for our hearing, or doing much about this, but they have sort of thrown rocks in our way all the way down the line, so we couldn't do anything about it. And finally, of course, I think the thing that offends me most is how very, very cheaply these little people sell their souls. That is what really hurts.

Do you have any questions?

Mr. REDDAN. I have no questions.

Mr. PIKE. That is all, Mr. Stein. Thank you.

Mr. STEIN. Thank you.

Mr. PIKE. The committee will stand in recess until 2 o'clock this afternoon.

(Whereupon, at 11:54 a.m. the subcommittee recessed, to reconvene at 2 p.m.)

AFTERNOON SESSION

Mr. PIKE. Mr. Matzkin, please come forward.

(Sheldon Matzkin was sworn, and testified as follows:)

Mr. PIKE. Please be seated. Give your name and address to the reporter, please.

TESTIMONY OF MR. SHELDON I. MATZKIN, ATTORNEY, WASHINGTON, D.C.

Mr. MATZKIN. Name and address and what, sir?

Mr. PIKE. Your name and address to the reporter.

Mr. MATZKIN. Oh, Sheldon I. Matzkin, 6204 Goodview Street, Bethesda, Md.

Mr. REDDAN. Mr. Matzkin, you are an attorney in Washington; are you not, sir?

Mr. MATZKIN. Yes, sir.

Mr. REDDAN. How long have you been an attorney in Washington?

Mr. MATZKIN. I was admitted to practice in the State of New York in 1956. From that period until the summer of 1962 I was employed as the vice president of the Gyrodyne Co. of America. In 1963, January 2, 1963, I came to Washington, D.C. to enter into the private practice of law.

Mr. REDDAN. Prior to that time, had you been employed by the CONDEC Corp.?

Mr. MATZKIN. I was employed by the CONDEC Corp. for the period, I believe, 1955 to 1956, or thereabouts.

Mr. REDDAN. Was it while you were employed with CONDEC that you met Mr. Ross?

Mr. MATZKIN. Yes, sir.

Mr. REDDAN. Was it at his suggestion that you come to Washington to practice law?

Mr. MATZKIN. Ultimately it was at his suggestion.

Mr. REDDAN. Did you practice law with Mr. Ross?

Mr. MATZKIN. Yes, sir.

Mr. REDDAN. During what period?

Mr. MATZKIN. During the period of January 2, 1962 until December 31, 1968.

Mr. REDDAN. Were there other members of the firm, or associates—was it a firm or an association, or what?

Mr. MATZKIN. We had what we, or I would refer to as being an association, an association of attorneys who maintained their own private practice independent of the other attorneys, and contributed to the maintenance of the office, overhead expense, library expense, rent, and other matters of a common expense nature, except that Mr. Ross and myself, during the period of 1963 until 1967, had a partnership arrangement on a representation of clients.

Mr. REDDAN. What did you do, split your fees 50-50?

Mr. MATZKIN. We split our fees, and it varied, depending on the situation, which was in accordance with the prearranged program.

Mr. REDDAN. Now, was Mr. Neuman associated with you and Mr. Ross at any time?

Mr. MATZKIN. Mr. Neuman became one of the tenants, paying rent on a fixed monthly amount in our office in the period 1966 to 1967.

Mr. REDDAN. When did you first meet Mr. Neuman?

Mr. MATZKIN. The first physical contact meeting him was sometime prior to my coming to Washington in 1963, and I have to guess as being somewhere between 1958 and 1962.

Mr. REDDAN. Under what circumstances?

Mr. MATZKIN. I happened to meet him in the offices then being maintained by Mr. Ross in the association of Wachtel, Weiner & Ross.

Mr. REDDAN. That was a law firm here in Washington?

Mr. MATZKIN. Yes, sir.

Mr. REDDAN. Do you recall what Mr. Neuman was doing there at that time?

Mr. MATZKIN. He was having a chat with him on a social basis. It was after working hours. I stopped by on my contract or business in Washington before he had gone back to Long Island.

Mr. REDDAN. Now, did there come a time when Mr. Neuman left the association and went to work with the Marine Corps?

Mr. MATZKIN. Yes, sir.

Mr. REDDAN. Do you recall the circumstances of that?

Mr. MATZKIN. Yes, somewhat—I do recall.

Mr. REDDAN. Will you tell us what that is, please, sir?

Mr. MATZKIN. I can tell you from my recollection of the circumstances.

Mr. REDDAN. Yes.

Mr. MATZKIN. Mr. Neuman, who was paying rent somewhere between \$400 and \$500 a month, indicated that his building up of a private practice after coming out of active duty in the Air Force wasn't going as fast as he had expected, and that he was desirous of obtaining additional experience in the field of procurement law, Federal contracts, and that he was entertaining taking a position as Assistant General Counsel or Assistant Counsel to the Commandant for the Marine Corps working under Bob Hatch, who I happened to know at that time as being Counsel to the Commandant of the Marine Corps.

I asked him what the circumstances were. As I recall, he mentined to me that Bob Hatch was interested in having him come to work for him because of his prior experience with the Air Force as a trial attorney in the JAG office, appeals section, at Wright-Patterson Air Force Base. And I knew from my day-to-day contact with Bob Hatch that he was pretty loaded down with work.

I got the impression, perhaps, that he was not that anxious to handle the appeals work aspect and was looking for assistance. I thought it was a good idea.

Mr. REDDAN. Did Mr. Neuman ask your assistance in helping him get the job?

Mr. MATZKIN. Absolutely not.

Mr. REDDAN. Did you recommend him in any way?

Mr. MATZKIN. I had no reason to recommend him. No one asked me for a recommendation. But I do know, again, from being in the office, that Mr. Ross was asked for a recommendation.

Mr. REDDAN. Mr. Neuman asked him?

Mr. MATZKIN. No.

Mr. REDDAN. Who asked for it?

Mr. MATZKIN. I believe Bob Hatch asked Ross. I am not certain, but Ross and I discussed the fact he was going to leave the office because we had to find another rent-paying tenant to pick up the overhead expense.

But Mr. Ross was concerned, and he expressed his concern to me that his going to the Marine Corps could adversely affect our business relationship with the Marine Corps, and perhaps be problematic, and I felt that if Mr. Ross had occasion to speak to anybody it was up to him to make certain that Neuman's joining the Marine Corps would not adversely affect our day-to-day relationship over there, because of his past association.

Mr. REDDAN. Did you have such conversations with Mr. Ross?

Mr. MATZKIN. Yes, sir. Mr. Ross later on assured me that he had discussions with Mr. Hatch, and I also believe with Mr. McLain, making it clear that the hiring of Neuman would not result in any retaliatory action against us resulting from such employment. We have had—

Mr. REDDAN. He was afraid there might be some retaliation?

Mr. MATZKIN. Yes, it would work adversely. We have been experiencing whiplash effect where people could show they are not related or not friendly they go out of the way to create problems for us.

Mr. REDDAN. But yet he did recommend him?

Mr. MATZKIN. I don't know what he said to them, but I assume he recommended him.

Mr. REDDAN. Did you know that Mr. Ross was on Mr. Neuman's application as a reference source?

Mr. MATZKIN. I have no way of knowing that. I never saw his application.

Mr. REDDAN. I have it if you want to see it.

Mr. MATZKIN. If you say so, I believe it.

Was my name on there?

Mr. REDDAN. No, no.

Mr. MATZKIN. OK.

Mr. REDDAN. You probably talked to him like you are telling us. I am just wondering if you heard Mr. Ross say the same thing?

Do you know whether or not Mr. Ross—I can ask him when he gets on—but do you know whether or not he authorized Mr. Neuman to use his name as a reference?

Mr. MATZKIN. Oh, I don't know. I have no way of knowing that.

Mr. REDDAN. Now, at any time while Neuman was employed by the Marine Corps, did you have any matters with which he would have had anything to do in the Marine Corps? Any claims, contracts, controversies or other matters?

Mr. MATZKIN. Let me think for a moment. My general response is No, but I have a recent matter that arose this year, where he did get involved.

Mr. REDDAN. Did that involve Kurz & Root?

Mr. MATZKIN. No, sir, it involved Dorne and Margolin, a contract we entered into on certain agreed-upon conditions which was later repudiated by the Marine Corps, and Mr. Neuman, was part—I thought he was part of the agreements reached, was apparently reached on these agreements, the basis on which my client took the contract and the basis on which I recommended to my client to take the contract, and later found out every one of these people repudiated such an agreement because there was no memorandum in writing or no record generated by people in the Marine Corps evidencing the agreement.

I wrote a letter to the Quartermaster General and I received a reply stating what I just stated to you. That is the only matter I recall of being in contention with Mr. Neuman.

Mr. REDDAN. Did Mr. Neuman ever discuss with you any of his stock purchases?

Mr. MATZKIN. At any time?

Mr. REDDAN. Yes, discuss with you the advisability of purchasing any stocks?

Mr. MATZKIN. Negative—no.

Mr. REDDAN. Did he ever discuss with you the possibility of selling any stocks?

Mr. MATZKIN. Negative—no.

Mr. REDDAN. Selling you stock?

Mr. MATZKIN. Selling me stocks?

Mr. REDDAN. Yes.

Mr. MATZKIN. No. I think I know what you are alluding to.

Mr. REDDAN. Yes, I am coming up to this gold mining business.

Mr. MATZKIN. Yes.

Mr. REDDAN. Would you tell the committee briefly how you came to invest in Mr. Neuman's gold mine operations or gold, whatever it is?

Mr. MATZKIN. Gold mining—

Mr. REDDAN. Gold Strike Mining Exploration and Development Corp.

Mr. MATZKIN. Yes, sir. During the period of time that Mr. Neuman was renting space in our office, he, like most of us, would be in the office late at night working, meeting people, and taking care of our professional responsibilities, and on many occasions—or not many, on several occasions he would have visitors, and one of them was a party named Roger McShea.

Mr. REDDAN. Who was Roger McShea?

Mr. MATZKIN. Roger McShea the Third—I forget the point in time—at one time I first met him on staff as counsel to one of the administrative agencies here in Washington, I don't remember which one—it was Commerce or Maritime, I am not certain. But at that point in time Mr. McShea had gone to Alaska to become Deputy Attorney General or Assistant Attorney General for the State of Alaska. He was in Washington on many occasions.

On one of these occasions he was visiting with Mr. Neuman, with whom he was friendly, and we were conversing on things that were going about in Alaska. We all had interest in Alaska as being one of our new States, and it looked like it had excellent development potentialities for housing and other factors.

Mr. REDDAN. Was this one evening after office hours?

Mr. MATZKIN. Yes.

Mr. REDDAN. What were they doing?

Mr. MATZKIN. McShea was in the file room as I recall, running off Xerox copies of a magazine article concerning the future of gold mining in the State of Alaska, especially the new processes, and especially I believe in light of relieving the monetary ban on gold, letting it seek its own world market.

You may recall, during that period 1967-68, gold was considered one of the better speculative investments. I asked him his interest, and he told me he was looking into this field to get out of the Attorney General's Office and pursue an active business of gold mining and exploration in the State of Alaska and picking up claims and hopefully to set up a corporation and eventually go public, the whole ground floor effort behind one of these speculative corporations.

I felt, from my own investment situation, I would like to get into the deal and be on the so-called ground floor, and I said to Roger, "When it gets started, count me in for a piece of it. I would like to be considered one of the original investors at the beginning of it."

Mr. REDDAN. Did you suggest how big a piece you might want?

Mr. MATZKIN. No, he asked me how much I would want, I said I would take up to maybe \$5,000. He also mentioned the total capitalization at first would be somewhere under \$100,000.

Mr. REDDAN. Had you known anything about the company other than what you learned that night?

Mr. MATZKIN. No, it was a newly formed company. I get involved in newly formed companies. I have some of my own which are speculative situations, some are very successful and some I lost money on them.

As a professional man I look for investments to supplement my income for long term. I evaluate them with the people involved, and

make many investments in real estate investment, like this gold mining venture. It felt to me like it would be good for me to get in this venture. You like to get in on the ground floor level and not be part of the action later on that gets diluted with the promoters.

I wanted to be in it at the beginning of it. I considered it a personal favor to let me in on it.

Mr. REDDAN. What happened then?

Mr. MATZKIN. Well, he said he would consider it, and I told him I would take up to \$5,000 if it is available.

Sometime later, during 1968, he told me the corporation was formed, and again my dealings with Roger McShea, who I understood was the one responsible for raising the capital, he was subsequently the secretary-treasurer of the corporation.

Mr. REDDAN. By this time Mr. Neuman had left your firm?

Mr. MATZKIN. Yes; he had left.

Mr. REDDAN. He was with the Marine Corps?

Mr. MATZKIN. Yes. Roger called upon me and asked if I was still interested. I made the comment, I guess he counted on it.

Mr. REDDAN. Who was President of the company?

Mr. MATZKIN. Mr. Neuman was President of the company. Mr. McShea was the Secretary-Treasurer and again the one responsible for raising the capital, and my discussions were only with McShea. I started to get involved in other investment situations at that time, and drained my cash availability and I asked if I could keep the subscription of \$5,000, but only pick up between \$2,000 and \$3,000.

He sent me a letter of October 21, confirming that he would take \$3,000, and leave me open on the subscriptions for the balance.

I submitted to counsel, Mr. Reddan, a copy of that letter, prior to the start of this meeting, this hearing.

Mr. REDDAN. Now, did you pay the subscription price of how much?

Mr. MATZKIN. I purchased \$2,000, leaving open a subscription for later option of \$3,000. Do you understand?

Mr. REDDAN. Yes, I do. I was going to ask you how you paid for it.

Mr. MATZKIN. I paid by check.

I believe the check was made to Roger McShea. I couldn't find my records, but I will look harder for it and present it to this committee if it is absolutely necessary.

Mr. REDDAN. Have you since then ever had any discussions with Mr. Neuman about the gold mine venture?

Mr. MATZKIN. I had many discussions with Mr. Neuman. I would ask him how things were going. I had an investment there. He kept saying how great things were going, and one time last year I asked if he would let me try and arrange for the public financing of it through my contacts in New York to see if we could get an underwriter to handle it and go full public, because we wanted to really break out, we should raise some public money and go after it on an SEC-type registration.

He asked me to hold off and not do anything about it, because other people were exploring that area also.

Mr. REDDAN. Did you ever pick up the other—

Mr. MATZKIN. No, it is still there, because—and I will say this voluntarily, the time I made the investment I asked Mr. Ross, who was my partner then in the office, whether he was going to go into it. I

told him about it. We discussed our mutual investments in real estate, stocks generally, and we traded information. We were very good friends, as well as being professionally associated.

His advice was, he didn't think it was wise to invest and to buy the stock primarily because Neuman was now with the Marine Corps, and I had to weigh his advice against a commitment that I made to Mr. McShea, and having been a promoter of investments and having people make commitments and later back out, I didn't like such kinds of people and I felt I would make a \$2,000 investment.

I had no matters pending with Mr. Neuman. I did not anticipate any matters pending with him. I knew damned well no matter how much I invested, I would not get any kind of breaks out of Mr. Neuman in handling the matters. Mr. Neuman, in all the dealings with him before he went there, took a negative approach to us. If we would say black, he would say white.

Mr. REDDAN. When was the last time you talked with Mr. Neuman?

Mr. MATZKIN. Approximately 2 weeks ago, at which time he told me that he was still going, he planned to be leaving shortly, not the next day, for Alaska, to spend the summer there, as he has done every previous summer, furthering the interests of Gold Strike.

Mr. REDDAN. Did he do that when he was with the Marine Corps?

Mr. MATZKIN. Yes. To my knowledge last year he took his annual leave and went to Alaska for Gold Strike in July. It was pretty common for him to go up every July since the organization was formed, and spend his summers in the field advancing the interests of the company. At least he brought back photographic evidence of it.

Mr. REDDAN. Have you talked with his wife since that time?

Mr. MATZKIN. Negative.

Mr. REDDAN. Have you made any effort to locate him?

Mr. MATZKIN. I have no reason to make any effort to locate him.

Mr. REDDAN. I thought as a stockholder you might be wanting to talk to him before he went to Alaska.

Mr. MATZKIN. I was not concerned about my investment. It was a speculative investment. I left myself in the hands of the operator, as I do in any investment I am not actively engaged in myself.

Mr. REDDAN. Have you had any return on your investment yet?

Mr. MATZKIN. No, sir. I don't expect any return on it.

Mr. PIKE. Mr. Matzkin, when did Mr. Neuman leave your firm and go into the Marine Corps?

Mr. MATZKIN. It was something in mid-1967, I would say; venture to say it was July or August of 1967.

Mr. PIKE. Did your firm's clients know Mr. Neuman?

Mr. MATZKIN. Yes and no.

Mr. PIKE. Well, I will be a little more specific.

Did any of the CONDEC people know Mr. Neuman?

Mr. MATZKIN. They knew of Mr. Neuman, the same way they know of Mr. Day; any client we have will usually ask who the other men are whose names appear on the letterhead.

Mr. PIKE. Did they know that he was in the Marine legal office?

Mr. MATZKIN. Oh, wait a while; at what point in time?

Mr. PIKE. After he left your firm?

Mr. MATZKIN. Maybe they did, maybe they didn't. But to the people, with the people with whom I did work for, it would be of no

significance to them, because our clients very rarely, if ever, had any involvement with legal counsel whether it be in the Marine Corps, Department of the Navy, Department of the Army, or the Air Force.

Mr. PIKE. A dreadful indictment of your firm to say your clients never had any experience with legal counsel.

Mr. MATZKIN. That is right, sir, they leave it up to us. They have experience with the contracting officers, the technical people, and they stay clear of legal counsel. That is our bailiwick.

Mr. PIKE. I see. Were they advised that Mr. Neuman was no longer with your firm, but was with the Marine Corps legal office?

Mr. MATZKIN. To my knowledge, they were not advised because there was no reason to advise them; no more than I would advise them where Mr. Day goes or anyone else who leaves the firm.

Mr. PIKE. Were they led to believe Mr. Neuman was still with the firm?

Mr. MATZKIN. Generally they were led to believe he was not with the firm, because his name was removed from the door. There is one administrative error which I have to take the blame for in that our secretaries were told to change the letterhead immediately after he left, and being good, cost-conscious, lovely ladies, they used the residual letterheads for scrap or used the reverse, and for billing purposes. I know of very little correspondence that we had that had Neuman's name on it, because that correspondence that had his name on it, I specifically remember giving instruction to X out his name until the new stationery came in.

Mr. PIKE. I show you a copy of a bill to the Kurz & Root Co., and ask if it looks familiar to you?

Mr. MATZKIN. As I just said, sir, the girls used it for scrap and billing purposes and submitting invoices. Yes, that is our stationery.

Mr. PIKE. What is the date of that bill?

Mr. MATZKIN. February 18, 1968.

Mr. PIKE. And Mr. Neuman had left your firm in July 1967?

Mr. MATZKIN. Yes, sir.

Mr. PIKE. Was his name still on the——

Mr. MATZKIN. Yes, sir.

Mr. PIKE. (continuing). On the firm's stationery?

Mr. MATZKIN. If you come to my office you will find scrap paper left over——

Mr. PIKE. I am not talking about scrap paper, I am talking about that bill that went out.

Mr. MATZKIN. Yes, sir; that is on there.

Mr. PIKE. That went to Kurz & Root?

Mr. MATZKIN. Yes, sir.

Mr. PIKE. I show you one that went to G. C. Dewey Co. What is the date of that?

Mr. MATZKIN. May 1, 1968.

Mr. PIKE. Is Mr. Neuman's name still on that?

Mr. MATZKIN. Yes, sir.

Mr. PIKE. And one that went to the CONDEC Corp?

Mr. MATZKIN. I admit the name might still be on that one also.

Mr. PIKE. What is the date on it?

Mr. MATZKIN. The date on that is May 6, 1968.

Mr. PIKE. So 10 months, or 9 months after Mr. Neuman had left your firm and was working in the Marine Corps legal office, you were still using his name on your stationery for this purpose?

Mr. MATZKIN. No, sir. We were still using stationery that bore his name through inadvertent error on the part of our secretarial staff.

Mr. PIKE. You mean for 9½ months you didn't pick up this inadvertent error by your secretarial staff?

Mr. MATZKIN. Yes, sir; because neither of us reviewed our invoices or signed off. You see no signature, no name appearing on this invoice. It is prepared by administrative personnel, requires no review. It is an automatic processing done by the secretaries.

Any letter bearing—you show me any letter bearing our signature in or around that date with Mr. Neuman's name on it and then I will have to eat crow or give you some explanation.

Mr. PIKE. Quite frankly, Mr. Matzkin, I suspect your clients read your bills as carefully as they read your letters.

Mr. MATZKIN. They read the dollar amount appearing below, that was their main concern, when and how they were going to pay.

Mr. PIKE. How do you know what their main concern was?

Mr. MATZKIN. How do you know what their main concern was?

Mr. PIKE. I am not saying it, you did.

Mr. MATZKIN. I am not saying it either. There is no signature of any of the partners of the—

Mr. PIKE. There are four names on there.

Mr. MATZKIN. This document was sent down by a secretary on her own initiative because she had routine billing instructions for clients who paid monthly amounts.

Mr. PIKE. These were routine billing assignments?

Mr. MATZKIN. Yes, sir.

Mr. PIKE. All of them for clients who paid monthly amounts?

Mr. MATZKIN. Right. We would give the secretary the amount of the bill and she would send it out. We would not sign the document before it went out.

Mr. PIKE. No bills went out with his name on it except on routine retainers, is that correct?

Mr. MATZKIN. No, sir; I said all the bills, the expenses were given to the secretary at the end of the month and she would bill the expenses on her own initiative. The paper she picked out of the file she picked out of the file. We had no way of checking or seeing. That is the truth under oath, and you can accept it or reject it.

Mr. PIKE. That is correct. I can do exactly that.

Mr. REDDAN. Mr. Matzkin, I think your testimony was that Mr. Neuman wanted to know how he could get some experience in procurement matters, and that is why he went to the Marine Corps? Is that your testimony?

Mr. MATZKIN. Yes, that was my testimony.

Mr. REDDAN. Yes. Well, now, back in 1963, did he have discussions with you then as to how he could get into procurement and become procurement counsel of some sort?

Mr. MATZKIN. I remember having a discussion with him in 1963 when he was in the private practice of law I believe in Jefferson Place, he was interested in how he could get experience to get involved in Fed-

eral contract law, and my advice was to him to go to work for the Government as contracting officer or take a job as counsel.

Mr. REDDAN. Did he do so, sir?

Mr. MATZKIN. I believe he took advantage of one of the Ohio State Reserve Air Force programs in the Advocate General's corps. This is my recollection, if you signed up for a 3-year commitment in the Reserve you can pick the field you would work in, and he picked the contract appeals section.

Mr. REDDAN. Did this give him the kind of work he was looking for?

Mr. MATZKIN. He can answer that. I don't know. He did contract appeals work.

Mr. REDDAN. Did he ever call you and talk to you about the cases he was handling and about various decisions?

Mr. MATZKIN. Yes, sir. From time to time when he was in Washington he stopped in the office and visited with us and discussed the cases he was handling and the arguments on both parties.

Mr. REDDAN. After he went with the Marine Corps, did he come back and discuss with you the various cases?

Mr. MATZKIN. Never—never.

Mr. REDDAN. What was the difference? He was still trying to get that procurement law experience, was he not?

Mr. MATZKIN. Yes, sir. You have to ask him that question. He didn't come back.

Mr. REDDAN. I thought he might tell you why he didn't come back and talk to you.

Mr. MATZKIN. I never asked him. I don't solicit people coming to me to get free advice.

Mr. REDDAN. How long have you known Mr. Elmore?

Mr. MATZKIN. I have known Mr. Elmore since 1963.

Mr. REDDAN. Under what circumstances did you meet him?

Mr. MATZKIN. I met him as a contracting officer administering, I believe it was the performance of contracts for Electro-Mechanical Corp.

Mr. REDDAN. Did Mr. Ross introduce you to him?

Mr. MATZKIN. No, sir; I introduced myself to him.

Mr. REDDAN. Did you know that he was a friend of Mr. Ross?

Mr. MATZKIN. I knew—I don't know "friend," that is a conclusion. I knew that he knew Mr. Ross from the contracts that Mr. Ross had.

Mr. REDDAN. Had you reached a conclusion on that?

Mr. MATZKIN. No, sir; not at that point in time.

Mr. REDDAN. Did you tell Mr. Elmore you were associated with Mr. Ross?

Mr. MATZKIN. He knew I was associated with Mr. Ross by the fact I mentioned the name of the firm I was with when I came in to discuss the performance problems on the contract with Electro-Mechanical Corp.

Mr. REDDAN. Could you—

Mr. MATZKIN. Excuse me. As a matter of fact, the president of the company, Mr. Alan Brown, introduced me to Mr. Elmore as being his counsel.

Mr. REDDAN. Did you have any other contacts with Mr. Elmore after that time?

Mr. MATZKIN. Yes, I did.

Mr. REDDAN. Did you have social contacts with him, as well as business?

Mr. MATZKIN. I believe I did.

Mr. REDDAN. What sort of social contacts?

Mr. MATZKIN. Go out to dinner with him and his wife, visit his house, see his children, my children would come over there.

Mr. REDDAN. Did you ever go out with him to dinner when his wife wasn't present?

Mr. MATZKIN. Yes, sir.

Mr. REDDAN. Ever go out with him to dinner when Mr. Ross was present?

Mr. MATZKIN. Negative. Well, maybe. If it is so, it was on minor occasions.

Mr. REDDAN. Did you frequently go with Mr. Elmore to the Market Inn?

Mr. MATZKIN. Frequently—how often is frequently?

Mr. REDDAN. I don't know, the fellows down there said they saw you with him so frequently they thought you were his attorney. You wanted to know what I though frequently was, I am telling you that. Now, can you tell us how many times you think you may have been down there?

Mr. MATZKIN. I have no idea how many times I was down there. I was down there with him often. You ask me how many times is "often," I don't know.

Mr. REDDAN. Did you ever discuss business during these meetings?

Mr. MATZKIN. Business concerning my clients?

Mr. REDDAN. Well, just start with business.

Mr. MATZKIN. Well, define what you mean by "business."

Mr. REDDAN. I don't know. I would say that business was something that involved perhaps money or income of some sort.

Mr. MATZKIN. I never discussed money or income with Mr. Elmore.

Mr. REDDAN. No, no; I didn't say you discussed money or income. If you will just listen, Mr. Matzkin, and not be so much on the offensive here, perhaps we can get through to each other.

I said did you discuss matters that involved, perhaps, money, or income, business generally, unless it is a nonprofit business, there is some money or income associated with it.

Now, you wanted to know my definition of business, and I gave it to you. Did you ever discuss business matters with him?

Mr. MATZKIN. I don't think I discussed business matters as defined by counsel.

Mr. REDDAN. All right, you define it then, whatever you discussed with him?

Mr. MATZKIN. I discussed with him business matters involving procurements in general. Mr. Elmore was very famous for picking my brains, by giving me hypothetical procurement problems and asking me my opinion of them, of the various answers to the problems, and coming up with solutions.

Mr. Elmore had a tremendous thirst for procurement knowledge. I know for a fact he picked my brains and picked Mr. Ross' brains to the maximum extent possible because he knew we were in this business.

Yet frankly I enjoyed the exchange of information because, at the same time, I obtained his thinking on the same problems.

Mr. REDDAN. Did you ever descend to particulars, or did you always talk in general terms?

Mr. MATZKIN. General, such as enforcement provisions on progress payments against the special tooling and DCAS interpretations. I had the feeling these were other clients, other contractor problems he was faced with and he was using me as a sounding board. Naturally I would try to give the adversary's position. I considered it an adequate exchange of information in the trade.

Mr. REDDAN. Would you characterize it sort of as informal seminars you held at the Market Inn?

Mr. MATZKIN. I wouldn't say we had informal seminars, as we understand seminars to be. If it is a sarcastic remark——

Mr. REDDAN. No, this was sort of an educational program on Mr. Elmore's part. I wondered how you characterized it?

Mr. MATZKIN. To pick my brains, to see my reaction from a legal standpoint, it was an educational situation.

Mr. PIKE. I have no further questions.

Mr. REDDAN. Thank you, Mr. Matzkin.

Mr. MATZKIN. Thank you very much.

Mr. PIKE. The committee will stand in recess while the chairman goes over and casts a vote.

(A short recess was taken.)

Mr. REDDAN. Mr. Gemmell.

Mr. GEMMELL. Yes, sir.

Mr. Ronald H. Gemmell was sworn, and testified as follows:

Mr. PIKE. Please sit down, Mr. Gemmell.

Mr. REDDAN. Would you please give the reporter your name and address, Mr. Gemmell?

**TESTIMONY OF MR. RONALD H. GEMMELL, ASSISTANT DIRECTOR,
PROCUREMENT DIVISION, SUPPLY DEPARTMENT, U.S. MARINE
CORPS, WASHINGTON, D.C.**

Mr. GEMMELL. Yes, sir. Mr. Ronald H. Gemmell, 5535 Columbia Pike, Apartment 212, Arlington, Va.

Mr. REDDAN. What is your present position, Mr. Gemmell?

Mr. GEMMELL. I am Assistant Director of the Procurement Division at Headquarters, Marine Corps.

Mr. REDDAN. How long have you had that position?

Mr. GEMMELL. Since January 1947.

Mr. REDDAN. Is Mr. Elmore one of your employees, or one of your subordinates?

Mr. GEMMELL. Yes, sir; he is Assistant Head of our Contracting Branch.

Mr. REDDAN. Now, did there come a time in early 1970 when you received a complaint concerning Mr. Elmore?

Mr. GEMMELL. I think you are referring to Mr. Forward's call to me?

Mr. REDDAN. That is right, sir.

Mr. GEMMELL. Yes, sir. I wasn't going to use the word "complaint," but Mr. Forward, who is Deputy Quartermaster General, called me

over. I was then in the capacity of Acting Director of the Procurement Division. I think it was approximately March or April.

Mr. Forward said someone, whom he would not name, had called him and indicated that they felt Mr. Elmore had been seen too much in the company of contractors, or contractor representatives. He asked me to speak to Mr. Elmore about this, and report back to him as to what I had done.

Do you want me to continue, sir?

Mr. REDDAN. Yes, if you would, please.

Mr. GEMMELL. I felt it most appropriate to call the entire division together, and reiterate the requirements, the conflict of interest statutes, with primary stress on the philosophy that is, basically, anybody in our business should not only be pure, but should stress the appearance of propriety. I spoke separately to Mr. Elmore in the circumstances because his name had been mentioned.

Mr. Elmore appeared quite irate about the charges, and he strongly said that he wanted to talk to Mr. Forward and be given the opportunity to confront the alleged witness or individual who had made these telephonic accusations or comments.

I called Mr. Forward, and Mr. Forward agreed to arrange such a meeting. Both Mr. Elmore and I went over to see Mr. Forward, and Mr. Elmore presented his position that he felt that a charge like this should not be bandied about, if you will, without confrontation of the witnesses.

Mr. Forward listened to what Mr. Elmore had to say, spoke to him, and reiterated the fact that he was not at liberty to disclose the identity of the individual, but he, in effect, in quotes, you might say, told Mr. Elmore to go and sin no more.

I felt, then, and I think Mr. Forward felt, that we had accomplished something in talking to Mr. Elmore, and conveyed again the Caesar's wife philosophy that he should conduct himself in a manner that would be entirely proper both in appearance and otherwise.

Mr. REDDAN. Mr. Gemmell, if in truth and in fact those allegations were correct, would you consider this an appropriate way to handle the matter?

Mr. GEMMELL. When you say "if the allegations were correct," sir, it depends on how far it went. In other words, if he had been seen in the company of contractors, it would depend on the circumstances to be seen. I don't think it is a crime to be seen in the company of a contractor per se. If I could go to yesterday's testimony, I would say absolutely, yes.

Mr. REDDAN. If you had looked into the facts, and found them to be such, you probably would have taken different actions than you had taken?

Mr. GEMMELL. If we had the ability to subpoena witnesses and so on, and found things to be true, of course, yes, sir.

Mr. REDDAN. You pursued the matter no further than that?

Mr. GEMMELL. We pursued it to this extent. We previously had a Headquarters order, issued a Procurement Division order on the subject of conflict of interest, and I called our branch heads together and again emphasized the necessity of assuring that personnel behave themselves in accordance with the conflict of interest standards; we established more frequent reporting dates for reading and explaining and

reviewing the Secretary of Defense Directive and Executive Order on conflict of interest. So we did publish an order and we have policed that rather strongly since that time.

Mr. REDDAN. Is this the only occasion on which you had an allegation or complaint involving Mr. Elmore?

Mr. GEMMELL. That is the only one in which I was in the capacity of Acting Director; yes, sir.

Mr. REDDAN. Had you had another, in another capacity?

Mr. GEMMELL. Not to me, as such. There was an inference that Mr. McLain had, something raised I think by Mr. Fink, at one time. This was approximately a year earlier, or maybe more.

Mr. REDDAN. You knew of that at the time that you went to Mr. Forward?

Mr. GEMMELL. I was not directly involved, but I had been told about it, probably by Mr. McLain.

Mr. PIKE. When you were involved in this meeting with Mr. Elmore, were you aware of who it was that he was alleged to have been a little too friendly with, or giving the impression of being too friendly with?

Mr. GEMMELL. I don't believe—I may be wrong on this, sir, but I don't believe Mr. Forward mentioned a specific name. He may have, and very possibly did, but I don't recall a specific name.

Mr. PIKE. Was there any corporation mentioned at that time?

Mr. GEMMELL. I don't recall it being mentioned, but the ones he was currently then dealing with were some of the companies that we mentioned here recently, both CONDEC and Dewey, and some of the people we had other large contracts with.

Mr. PIKE. If CONDEC and Dewey had been mentioned, you would have been aware who their representative was, would you not? You were aware that Mr. Ross was their representative?

Mr. GEMMELL. I knew he was their counsel, sir. They had other representatives that dealt with us from time to time.

Mr. PIKE. He was their counsel?

Mr. GEMMELL. Yes, sir.

Mr. PIKE. You knew Mr. Ross?

Mr. GEMMELL. Yes, sir; I knew Mr. Ross, I knew him well.

Mr. PIKE. How long had you known Mr. Ross?

Mr. GEMMELL. I knew Mr. Ross since 1947.

Mr. PIKE. Had you ever participated, yourself, in any business dealings with Mr. Ross?

Mr. GEMMELL. Yes, sir. I had been negotiating on the other side of the fence with Mr. Ross back in the early 1950's.

Mr. PIKE. I am not talking about as a Procurement Officer of the Marines, I am talking about personally, have you ever participated in any business ventures with Mr. Ross?

Mr. GEMMELL. I was a stockholder in a Quorum Land Corp., sir, which I can explain briefly to you if you would like me to.

Mr. PIKE. All right, you explain the Quorum Land Corp. to us.

Mr. GEMMELL. There were some gentlemen in the Marine Corps, I think the prime movers were a retired Col. Mac Dennis, a Lieutenant Colonel Cavalero, and a Lieutenant Colonel Hilmer, all are retired at this point. They were interested in their after-retirement plans, and they started—which was a land venture—they incorporated and sold

shares in Quorum Land Corp., which initially acquired some acreage down in the Dumfries area, which is adjacent to Quantico, down in that neck of the woods.

I had nothing to do with it at the time, I was not a party to selling the stock, or anything of that nature, but they solicited essentially Marines—I think there were about 65 or 70 people who contributed to this. They sold stock at \$12 a share to these people.

Mr. PIKE. Were you solicited to buy stock in this corporation?

Mr. GEMMELL. Yes, sir. I was approached to buy stock in the corporation.

Mr. PIKE. Who approached you to buy stock?

Mr. GEMMELL. Colonel Dennis. I think he was a major at that time. Colonel Dennis was a classmate of mine at Quantico in 1943.

Mr. PIKE. Was Colonel Dennis a major at that time?

Mr. GEMMELL. I believe he was, sir.

Mr. PIKE. Was he still on active duty?

Mr. GEMMELL. Yes, sir; he retired about two years ago.

Mr. PIKE. This was a land venture in the vicinity of Quantico?

Mr. GEMMELL. Yes, sir.

Mr. PIKE. Were you still on active duty?

Mr. GEMMELL. Yes, sir; I was.

Mr. PIKE. How many shares of stock did you buy?

Mr. GEMMELL. I ultimately acquired about 380, sir.

Mr. PIKE. When did you buy that stock?

Mr. GEMMELL. Over a period from 1961 to 1966, on an investment basis.

Mr. PIKE. Did you become an officer of that corporation?

Mr. GEMMELL. Yes, sir; I did.

Mr. PIKE. When did you become an officer of the corporation?

Mr. GEMMELL. I think it was 1963, the three active officers, Colonel Dennis, Colonel Hilmer, and Colonel Cavallero, all went to Vietnam or went overseas. Colonel Dennis had been the secretary and treasurer, and he prevailed upon me to assume those duties which, essentially, are taking in and making payments, receiving payments from the shareholders, and making payments on the notes payable.

Mr. PIKE. Now, you were one of three officers of the corporation. Is that correct?

Mr. GEMMELL. I believe Colonel Cavallero was the President, sir, and I think I was Secretary, and I think Mr. Ross was an officer of this corporation.

Mr. PIKE. Mr. Ross was an officer?

Mr. GEMMELL. Yes, sir.

Mr. PIKE. Do you remember what his title was?

Mr. GEMMELL. I think he was called Vice President, I believe.

Mr. PIKE. At the time that you were the Treasurer and Mr. Ross was the Vice President of this Quorum Land Corp., what was your position in the Marine Corps?

Mr. GEMMELL. I was in the Contract Negotiation Section, the Contract Branch.

Mr. PIKE. Did Mr. Ross have business going through the contract negotiations office?

Mr. GEMMELL. Yes, sir, on occasion. I should add there were essentially no business dealings in the corporation. It was simply a case of

barren land. It was openly at the vote of the stockholders sold, and we dissolved the corporation in 1966 and liquidated the payments.

Mr. PIKE. You dissolved it in 1966, you liquidated the payments. Has the final liquidation occurred yet?

Mr. GEMMELL. Yes, sir.

Mr. PIKE. When did the final liquidation occur?

Mr. GEMMELL. The final liquidation was in 1970, sir.

Mr. PIKE. So you got payments from this corporation from 1966 through 1970?

Mr. GEMMELL. We paid from 1966 through 1970; yes, sir.

Mr. PIKE. All the time that this was going on, then, from the formation of the corporation right through last year, you were involved in this business venture with Mr. Ross?

Mr. GEMMELL. Only as a stockholder for the first 2 or 3 years——

Mr. PIKE. Only as a stockholder—I am sorry.

Mr. GEMMELL. Only as a stockholder for the first 2 or 3 years until Colonel Dennis went overseas, at which time I agreed to take on the duty of Secretary-Treasurer.

Mr. PIKE. When did you become Secretary-Treasurer?

Mr. GEMMELL. I believe it was about 1963, sir.

Mr. PIKE. So from 1963 to 1970, you, as Secretary-Treasurer of this corporation, and Mr. Ross, as Vice President, were involved in this business venture together?

Mr. GEMMELL. Yes, sir. I possibly saw him about four times in connection with that business.

Mr. PIKE. In connection with that?

Mr. GEMMELL. Yes, sir.

Mr. PIKE. You saw him other times in connection with your business?

Mr. GEMMELL. Yes, sir, but not too frequently, not direct dealings frequently, when I moved to the Division. I might add, if I may, and this is on my own behalf, I wanted to be sure this was proper, particularly assuming the office of Secretary-Treasurer. As a matter of fact, I didn't want to take the job because I was busy enough and had enough to do. I agreed to take it if our counsel said he felt there was nothing wrong with it, and I discussed this with our counsel, who, at that time, was Mr. Hatch, and he said he saw no conflict.

Mr. PIKE. Did you tell Mr. Hatch at that time that a man, who was the attorney for several corporations, with whom your office had to deal, would also be the vice president of this corporation?

Mr. GEMMELL. Yes, sir; he was quite familiar with Mr. Ross; he knew him quite well.

Mr. PIKE. Did you put this application to Mr. Hatch in writing?

Mr. GEMMELL. No, sir; I did not.

Mr. PIKE. Did you get an opinion in writing from him?

Mr. GEMMELL. No, sir; I did not.

Mr. PIKE. This was an oral conversation when?

Mr. GEMMELL. This was an oral conversation.

Mr. PIKE. When?

Mr. GEMMELL. At the time in 1963, whenever it was, prior to the fact I agreed to accept this additional work.

Mr. REDDAN. Where can we locate Mr. Hatch?

Mr. GEMMELL. Mr. Hatch is deceased, sir.

I have, of course, reported the fact I hold this Quorum stock.

Mr. REDDAN. Mr. Gemmell, I would like to show you some documents and ask if you can identify them for me, please? These are photostatic copies.

Mr. GEMMELL. Yes, sir; I can identify the documents. Number 121 I can identify as having been a copy of the documents in our contract files.

Mr. REDDAN. What is that, sir?

Mr. GEMMELL. It is a document detailing the provisioning requirements and other requirements of invitations to bid, 0127 and 0129.

Mr. REDDAN. Is that the 700 series generators?

Mr. GEMMELL. Yes, sir.

Mr. REDDAN. Who prepared that document, do you know?

Mr. GEMMELL. I can't be sure, Mr. Reddan, but I think it was probably prepared by Mr. Ross himself. They use a pronoun in this, and I believe it was. The first two or three pages are simply detailing what was in the IFB in the nature of provisioning requirements.

Mr. REDDAN. Could you tell us what use was made of this document, sir?

Mr. GEMMELL. I can't recall exactly how it came in our possession. It is not identified in our files as such. This has been 2 years. I am sure we considered these aspects. I think it was probably given to us at the time we were deliberating as to what decision we should make as to the acceptability of responsive bids under these invitations.

Mr. REDDAN. Do you recall whether this was presented by Mr. Ross himself during that meeting?

Mr. GEMMELL. I think it probably was, but I don't recall. I don't identify the paper with Mr. Ross personally, but it probably was.

Mr. REDDAN. There is a second one there.

Mr. GEMMELL. I will have to look at this a little more closely, sir. I have seen the other one recently.

I don't recall this one particularly. I don't recall this being in our files. It may or may not have been.

Mr. REDDAN. This is where we found it, sir.

Mr. GEMMELL. Did you?

Mr. REDDAN. Yes.

Mr. GEMMELL. The others were pointed out to me recently. I don't recall this one being pointed out, but it is addressing International Ferment's position.

Mr. REDDAN. Again, on this series 700 generators?

Mr. GEMMELL. I assume so. Although let me look a little closer. I don't think it identifies as such. The other, of course, is identified by numbers.

Mr. PIKE. Mr. Gemmell, on this meeting, which has been testified to, I don't know, have you been in the room for the last couple of days?

Mr. GEMMELL. I was here yesterday, sir. I was not here the previous day.

Mr. PIKE. I think it was yesterday this testimony came up regarding meetings which were held between Christmas and New Year, 1967.

Were you the senior man at those meetings?

Mr. GEMMELL. No, sir; Mr. McLain would have been senior man.

Mr. PIKE. Mr. McLain would have been the senior man?

Mr. GEMMELL. I believe the meetings were held probably sometime prior to the 29th, some of them could have been held in the first week

in January. I am not sure of the time frame. It was in the time span, just before or after the first of the year.

Mr. PIKE. Who called for the meetings, do you recall?

Mr. GEMMELL. To the best of my recollection, after the bids were opened and abstracted, which is posting the prices and so on, they were reviewed. These were publicly advertised as open bids and were available to the public at large, including all the bidders.

Questions were raised. Mr. Elmore, who was supervisor of Mr. Hupp—Mr. Hupp at that time was the contracting officer on these particular contracts or bids—came up and spoke to Mr. McLain, and they may have come through me or gone directly to Mr. McLain, and pointed out that exceptions had been taken and changes had been made in the bids, and that it was their initial position that it was probable the low bids were not responsive, and in connection with the first meeting—

Mr. PIKE. Whose position was that, Mr. Hupp's or Mr. Elmore's?

Mr. GEMMELL. Mr. Hupp's and Mr. Elmore's. We had a meeting where a similar document to this first paper you showed me, although it was an across-the-board outline form, listed requirements of the invitation and listed what the bidders had submitted in the way of bids. That was to permit us to review these and we had counsel in on the meeting.

Mr. PIKE. What counsel?

Mr. GEMMELL. Mr. Neuman I think was in on the meeting.

Mr. PIKE. Mr. Neuman?

Mr. GEMMELL. Yes, sir; to determine which of these bids, if all or any of them, were considered responsive.

Mr. PIKE. This was the same Mr. Neuman that owned the stock in the CONDEC Corp.?

Mr. GEMMELL. Yes, sir; this is our Assistant Counsel, who has just recently resigned.

Mr. PIKE. Right.

Mr. GEMMELL. I recall the positioning of these. We did not finish this at one session, I don't believe. I think we subsequently reviewed the bidding, if you will, on this again, and the consensus of our group was that, after some deliberation on this, the first and second low bids were not responsive.

Mr. PIKE. Whose was the third low bid?

Mr. GEMMELL. The third low bid, as I recall, was CONDEC. There was a question at that time, which I am a little unclear on, on a late bid which was not accepted.

Mr. PIKE. Was there any other counsel there representing the Government, other than Mr. Neuman who owned the CONDEC stock?

Mr. GEMMELL. No, sir; not to the best of my knowledge.

Mr. PIKE. Was there any other manufacturer's representative there, other than Mr. Ross who represented CONDEC?

Mr. GEMMELL. We had 1 or 2 days' meetings. There was someone in, and I don't remember whether it was Mr. Johnson, or one of his assistants, Mr. Johnson, who is president of EMI. They came in and gave their position. They were responsive, and said why they felt they were.

Mr. PIKE. Did they do this after the decision had already been made that they were nonresponsive?

Mr. GEMMELL. No, sir; there were 2 or 3 days of discussions, and I am not sure whether they presented—whether I was present when they presented their case or whether they presented it to Mr. Elmore and Mr. Hupp. But their argument was they should be.

Mr. PIKE. They didn't present it to you?

Mr. GEMMELL. I don't recall. I don't specifically recall. It is possible that they did, but I don't specifically recall.

Mr. PIKE. You didn't have a meeting with everybody there and the counsel and all?

Mr. GEMMELL. It was a continued meeting. We wouldn't have had the same bidders in—both bidders at the same meeting. This is not proper for them because they might disclose privileged information. They were separately talked to, at least EMI and CONDEC.

It was sometime right after the first of the year that the protest from EMI came in, and subsequently I believe one from Add, to put us in the position of having a protest prior to award.

Under those circumstances, we always contacted GAO to get a preliminary informal position from the General Accounting Office prior to making award.

Mr. PIKE. Who contacted GAO, did that go through the attorney?

Mr. GEMMELL. The attorney went with us, to the best of my recollection. Mr. McLain went, I went, I believe Mr. Neuman went, and I believe that was all from the Marine Corps. I am not positive, but I believe that was all. I know that I went, I know Mr. McLain went.

Mr. PIKE. Did you give the GAO formal papers regarding this?

Mr. GEMMELL. We gave them the complete bid sets, and all the documents then that we had at that time. They had received I think a telegraphic protest from EMI.

Mr. PIKE. Did you give them your position as to why you thought this procurement was proper?

Mr. GEMMELL. This is what we discussed with them; yes, sir.

Mr. PIKE. Did you give them your position in writing as to why you thought your position was proper?

Mr. GEMMELL. No, sir; this was just a discussion. We gave them copies of the specification that listed the specification requirement that showed what is required. We explained to them what the conditions of our provision requirements are. They were aware of the fact, although we repeated this, that the Commandant of the Marine Corps, since I think 1958, when we adopted this specification, has said no items are to go into the fleet Marine forces that are not fully supportable, and to be fully supportable they have to be fully provisioned.

This is something we have lived with since 1958, when we adopted this specification.

Mr. REDDAN. Excuse me; could you tell us who you were talking to at GAO, please, sir?

Mr. GEMMELL. To the best of my recollection, Mr. Reddan, and this is some years ago, I believe it was Mr. Goldstein, who was Assistant General Counsel. I think there was a younger attorney by the name of Schwartz, I believe. We don't have this documented, and I am not sure. It would have been Mr. Rumizon, I believe, R-u-m-i-z-o-n, I am not

positive of the spelling. I believe Mr. Rumizon was in on this, but I am not sure.

I am almost certain it was Mr. Goldstein, and I believe Mr. Schwartz, and I believe there was a third attorney there, and it may have been Mr. Rumizon.

Mr. PIKE. Can you establish the date that you went to the GAO on this?

Mr. GEMMELL. Sir, I think it would be somewhere around about the fourth or fifth of January.

Mr. REDDAN. When was the award made?

Mr. GEMMELL. The award—an award is technically not made until it is signed by the last of the two contracting parties. The award was formalized on the ninth of January.

Mr. REDDAN. When was the award made? When was it decided to give the award to CONDEC?

Mr. GEMMELL. After we had talked to the General Accounting Office, and we then go through what—

Mr. REDDAN. Have you looked up the date of the initial decision to award the contract to CONDEC?

Mr. GEMMELL. I looked up the date of the award, sir, the execution date.

Mr. REDDAN. If you will bear with us.

Mr. GEMMELL. The contract is dated the 29th of December on the top of the contract.

Mr. REDDAN. December 29?

Mr. GEMMELL. Yes, sir. But it was not executed, and accordingly was not formalized until, I believe, the ninth of January. The holdup was the protest, in the meantime our visiting the General Accounting Office, and we then had our CHINFO release, any contract over a million dollars has to be held until we provide it for public information release of the award.

Mr. REDDAN. Now, the General Accounting Office received two protests on this, did they not?

Mr. GEMMELL. It could have been more than two. I think they had one from EMI, and I believe one from Adt.

Mr. REDDAN. That is right. Electromagnetic Industries?

Mr. GEMMELL. That is EMI, yes, sir.

Mr. REDDAN. And one from Fermont?

Mr. GEMMELL. I think Fermont may have been a token one. They were not low.

Mr. REDDAN. Will you tell us what the General Accounting Office told you?

Mr. GEMMELL. They concurred in the fact that the two low price bids were not responsive, and that the third low bidder, CONDEC's bid, was responsive.

Mr. REDDAN. Did they give you a written decision?

Mr. GEMMELL. No, sir, not at that time. There is a formal decision that was—they give you the form 58 decision because of the fact they were priority buys. Determination was made by the contracting officer because of urgency. The contract was awarded. Then we processed subsequent to that. We subsequently received a decision from the Comptroller General that upheld the previous decision.

Mr. REDDAN. At the time you said the General Accounting Office made this decision, they had not yet received the formal protest from the protestants, had they?

Mr. GEMMELL. They received the wire from EMI.

Mr. REDDAN. Yes, saying we are protesting, and we are going to send the basis for our protest?

Mr. GEMMELL. Incidentally, Mr. Reddan, I don't wish to tell you things you know, you see things, I am sure, you are aware of, but just for the record, on these informal decisions of the General Accounting Office, they are not formally bound by them. They could subsequently have held this is improper and upset the award. They did not do so. They upheld the award and found it proper.

Mr. REDDAN. Yes, but I am trying to find out whether or not they committed themselves to a position?

Mr. GEMMELL. Only informally, they concurred with our position, and said "Go ahead." However, they still reserved the right at a later date when formal submittals were made. They could have reversed themselves.

I guess that is one of the reasons you don't document this as you might otherwise. It is an informal agreement with the General Accounting Office.

Mr. REDDAN. The testimony we received yesterday was to the effect the Marine Corps relied on this. As a matter of fact, I believe one witness said the General Accounting Office told you to go ahead and award the contract.

Mr. GEMMELL. Well, I don't know the exact words, sir.

Mr. REDDAN. Would that be your understanding?

Mr. GEMMELL. They said—they would be more apt to be a little more negative and say they interposed no objection to our making the award. They don't tend to be usually that enthusiastic by saying go ahead and make the award.

Mr. LALLY. Mr. Gemmell, I believe you mentioned Colonel Dennis as a participant?

Mr. GEMMELL. Yes, sir; I did.

Mr. LALLY. What was his position in Quorum?

Mr. GEMMELL. Dennis was one of the original founders of the thing. He was Secretary-Treasurer when it was founded.

Mr. LALLY. What was his position at Marine Corps Headquarters?

Mr. GEMMELL. When he was here at that time he was head of the engineer branch of the Technical Division. He subsequently returned for a brief time as Director of the Technical Division.

Mr. PIKE. No further questions.

Mr. GEMMELL. Thank you, sir.

Mr. PIKE. Mr. Ross.

Daniel M. Ross was sworn, and testified as follows:

Mr. REDDAN. Would you identify yourself for the record, please, Mr. Ross? Your name and address?

TESTIMONY OF MR. DANIEL M. ROSS, ATTORNEY, WASHINGTON, D.C.

Mr. Ross. My name is Daniel M. Ross. I reside at 5345 West Pathway, Washington, D.C.

Mr. REDDAN. You are represented here today by counsel?

Mr. ROSS. Yes, sir, I am.

Mr. REDDAN. Would you identify yourself, please?

Mr. COLE. My name is Alan Y. Cole. My office is at 1730 K Street, NW., Washington, D.C.

Mr. REDDAN. Have you been furnished with a copy of the subcommittee rules?

Mr. ROSS. Yes, sir, I have.

Mr. REDDAN. Have you been in the room at any time during the testimony so far in these hearings, other than today, this afternoon?

Mr. ROSS. No, I have not.

Mr. REDDAN. Mr. ROSS, we have been taking testimony, as you probably know, with respect to certain Marine Corps contracts, certain Marine Corps procurement personnel, and the relationship between these personnel and certain company legal counsel or Washington representatives.

We have been seeking to determine just what this relationship has been, because we have received a number of allegations which require that we go into these things, and these various aspects. One of the matters we are concerned with, Mr. ROSS, is the nature of your relationship with a number of the present and former persons involved in Marine Corps procurement, particularly Mr. McLain, Mr. Gemmell, Mr. Elmore, and Mr. Neuman. So if you would, please, tell us about your association with these individuals, when you first met them, and if you will characterize for us your understanding of the relationship.

Mr. ROSS. Mr. McLain, I first met as a fellow officer approximately in 1947 in the Fifth Marine Reserve Battalion here in Washington, which was the Reserve Infantry at the time. At that time I was working at the Internal Revenue Service as an auditor, and Mr. McLain was working at the General Accounting Office.

We were officers in the Fifth Battalion. We were in the battalion until the battalion was called up for the Korean emergency, and I think it was sometime in 19—in July or August of 1950, that the battalion was called to duty, and we all went to duty at Camp Lejeune, N.C., and during getting ready to go to Korea, because I was a combat officer in World War II, a platoon commander, Third Company, K Company, Fifth Marines, I was immediately assigned to overseas duty because of my combat background. They needed officers.

But orders came in transferring me to Washington as a negotiator in the Procurement Section, because I had, at that time, had experience on the Excess Profits Tax Council in the Internal Revenue Service, and I guess my qualifications were such the Marine Corps wanted me there.

I was engaged—

Mr. REDDAN. Excuse me, are you an accountant, as well as an attorney?

Mr. ROSS. Yes; I am an accountant. I have a degree, a Master's degree in accounting from George Washington University. I got a law degree from George Washington. I have three degrees from George Washington.

Mr. REDDAN. Are you a CPA?

Mr. ROSS. No; I am not, sir. My entire education was at George Washington except for 1 year at Penn State. I completed it and was working full time at the Internal Revenue Service while I continued at

school, got my Master's degree in accounting and was on the Council. I was also liaison officer up at the Hill for the Internal Revenue Service around income tax time for a couple of years, and finished up at the Council when I was called back to duty with the Marine Corps.

At Marine Corps I was a contract negotiator, essentially chief of the contract negotiating unit, continuing law school while I was in the Marine Corps and left the Marine Corps, after about 14 or 15 months of duty in December 1951.

Mr. REDDAN. How much of this time were you in contact with Mr. McLain?

Mr. Ross. Well, Mr. McLain was called back to Headquarters Marine Corps sometime after I was, because he had been there during World War II, into the Procurement Section. I think he might have come back into the Transportation Section and then transferred up into the other section because we needed a fiscal officer there; General Bettel wanted additional officers. Mr. McLain knew Mr. Laurenson, who was formerly with the Marine Corps, and knew his capabilities and requested him to come up.

During that time I was in the office with Mr. McLain. I would say after the first 6 or 8 months I was there, Mr. McLain appears on the scene. I left the Marine Corps, finished law school, and in 1954 passed the bar; and continued my work with various companies who I had been affiliated with and continued to practice law.

Mr. McLain, of course, stayed in procurement. He stayed on, became Assistant Chief of procurement, and then I think the billet was made. I think he had a commanding officer over him, either a general or colonel, and then he took over the billet as Chief of Procurement of the Marine Corps.

Mr. REDDAN. Did I understand you to say that, when you began your practice of law, you represented a company that you had formerly been affiliated with?

Mr. Ross. Well, from the time I left the Marine Corps, I finished law school, and I was engaged in consulting work in conjunction with government contracts, due to my accounting background. Naturally I continued my education and became a lawyer. After becoming a lawyer, of course I operated in a legal capacity, but I still maintained my education in accounting.

Mr. REDDAN. All right. Now, did you continue your relationships with Mr. McLain after that date, and could you tell us whether or not they were both business and social?

Mr. Ross. During the period that I was in the Marine Corps Battalion, and during the time I was in the Marine Corps on active duty with Mr. McLain, we maintained social contacts because we were both on active duty. After I left active duty, we maintained both social contacts and whatever business contact was necessary in connection with any matters that I had under consideration at the Marine Corps.

Mr. McLain was in a supervisory capacity. He was Director of Procurement, and in his official capacity I did not carry on my business relationships with Mr. McLain. I carried on the business relationships with the people under Mr. McLain.

Socially, I would say that I maintained my friendship with Mr. McLain, but kept it within bounds of propriety because there are standards of conduct within the Department of Defense, and it is important

you maintain the standards of conduct, that is, according to your stature as an attorney and stature as a procurement officer.

Mr. REDDAN. How would you describe those bounds you referred to, sir?

Mr. Ross. I perhaps visited Mr. McLain's home maybe once a year, maybe more often in the earlier years, when he was a Marine officer. He came to my house on several occasions. His wife and my wife were friends. I am his friend.

But as Mr. McLain's duties became more pronounced at the Marine Corps, it was obvious that I had more clients that were doing business with the Marine Corps, and, therefore, our social activities had fallen off quite a bit. I don't think—the last time I was at his home was over three years ago, at the time his son was married, at the reception for his son.

He has been in my house maybe once in the last three years. I am very busy. I do an awful lot of traveling. I am not in Washington all the time. I have other affairs that don't involve the Marine Corps.

So our paths did not cross as much as they could have, plus the fact that I did not have to go in to see Mr. McLain on procurement affairs. I dealt with his subordinates.

Mr. REDDAN. Who would you normally deal with?

Mr. Ross. I would deal with whoever the negotiator was, or whoever the buyer was, or whoever the technical people were involved with my clients.

Mr. REDDAN. Did you ever deal with Mr. Elmore?

Mr. Ross. One of the persons I dealt with was Mr. Elmore, yes, sir.

Mr. REDDAN. How about Mr. Neuman?

Mr. Ross. My dealings with Mr. Neuman, I would say, from the time he went in the Marine Corps as counsel, did not start until maybe the last several years, the last few years.

Mr. REDDAN. How about Mr. Gemmell?

Mr. Ross. In the time Mr. Gemmell has been in procurement, I think in the last 6 or 7 years, I have not had any direct negotiations or any direct matters concerning Mr. Gemmell. I don't know what he did in a supervisory capacity, but I never had any negotiations. I did not sit down and discuss any matters with him relating to my activities with any negotiator. However, he must have been familiar with it, because he was in a supervisory capacity.

In my dealings I very seldom went beyond the people I was dealing with. I dealt with the people who were assigned the task.

Mr. REDDAN. Now I would like to come back to Mr. McLain for a moment, Mr. Ross. There came a time when Mr. McLain left, or retired from the Marine Corps, or from his position at the Procurement Office?

Mr. Ross. Yes.

Mr. REDDAN. Please tell us what his relationship was with you after he left there, businesswise?

Mr. Ross. After—I think Mr. McLain retired from the Marine Corps in either October or November of 1969. Shortly after that, I think early in January or late December, in that area, he called me up and asked to use the law library, and I said of course. I don't think I was in town the first time he came in and used the library.

The next time he came in I happened to see Mr. McLain. He indicated to me he was working on some procurement matters, he had to find something to do. I said "Are you interested in doing some work," I said, "because we are very loaded right now. Would you do some work for me?" because at that time we had quite a few bid protest matters in the office. Mr. Wachtel, who was one of the people in the office, was ill. I think either shortly after that he had a major heart attack, and we had a tremendous volume of work, and I asked him if he could do some work for me.

He said he would think about it. Several days later he said "Fine." We entered an arrangement where I would have him available and pay him a retainer of \$500 a month and we would try it out for a year. We entered into that arrangement that I thought was suitable to us, because he had unique experience valuable to us in the protest area.

Mr. REDDAN. Was that retainer payable whether or not you had any work during the month for Mr. McLain?

Mr. Ross. There was no question I had work. I mean I had plenty of work. But the retainer would run for a year, and it was a verbal arrangement between the two of us. I felt very fortunate to have him, and the amount of money I was paying him was a very small amount compared to his previous salary of \$30,000 a year. I didn't expect to get all of his time.

Mr. REDDAN. Now, Mr. Ross, you were served, I believe, three subpoenas for the production of certain books and records enumerated in those subpoenas; were you not, sir?

Mr. Ross. Yes, sir.

Mr. REDDAN. Among the records requested were all of the books of account, records and documents of Daniel M. Ross, and the law firm is identified in paragraphs 1, 2, and 3, relative to any disbursements of any salaries, fees, expenses, loans, advances, gifts, or reimbursements during the period January 1, 1966, to May 31, 1971, to or for the benefit of any of the following individuals: Jennings McLain, Ronald Gemmell, Daniel Elmore, Capt. Thomas M. O'Brien, Maj. John F. Sawyer, and Arthur E. Neuman.

What records did you produce, pursuant to that request, Mr. Ross?

Mr. Ross. I produce all of income and expense records for the years 1968, 1969, 1970, and 1971 to date, to May 30.

Mr. REDDAN. Are they recapitulation sheets for those years?

Mr. Ross. They are recapitulation sheets of data taken from my checkbook stubs.

Mr. REDDAN. What other records do you maintain of expenses and disbursements, other than your checkbook stubs?

Mr. Ross. None other.

Mr. REDDAN. What checkbook stubs did you produce pursuant to the subpoenas, sir?

Mr. Ross. I produced all checkbook stubs at the American Security and Trust Co., which is the bank that my office account is out of, for the period January 1, 1968, to May 30, 1971.

Mr. REDDAN. Now, what about the records prior to January 1, 1968?

Mr. Ross. I do not have those records.

Mr. REDDAN. Could you tell us where they are, sir?

Mr. Ross. The records are not available because I disposed of the records after my tax review for those years.

Mr. REDDAN. You have had a tax review for 1966 and 1967?

Mr. ROSS. Yes, sir.

Mr. REDDAN. And you disposed of all records?

Mr. ROSS. No; I have my tax returns. I disposed of all other records.

Mr. REDDAN. I mean the supporting records?

Mr. ROSS. Yes, sir.

Mr. REDDAN. You keep no set of books for your income, expenses, and operations?

Mr. ROSS. These are the only books I have which you see here—some are records. I tabulate at the end of the year right from my checkbook stubs. I have a very simple accounting system.

Mr. REDDAN. Do you maintain your canceled checks?

Mr. ROSS. Yes.

Mr. REDDAN. Do you have those?

Mr. ROSS. I have those canceled checks for the same period; yes, sir.

Mr. REDDAN. There are two payments in there, in your checkbook stubs, which carry a notation that there are two \$5,000 payments to Mr. McLain. If you will look at them, check No. 3133, dated June 12, 1970, and check No. 3225, of October 9, 1970.

Do you have those before you there, sir?

Mr. ROSS. They are in the pack. Do you want me to take them out?

Mr. REDDAN. Yes; if you would, please. There are clips on the pages to help you.

The first one was 3133, dated June 12, 1970.

Mr. ROSS. Yes, sir.

Mr. REDDAN. Could you tell the committee, sir, what those checks were drawn for?

Mr. ROSS. 3133 is a check written to J. W. McLain, dated June 12, 1970, in the amount of \$5,000, which was given to him at the same date that five or six other checks previous to that were given, for stock in the Bank of Arlington, which he was selling, in Virginia.

Mr. REDDAN. Is there anything on check stub No. 3133 to indicate that that check was drawn for the purpose of stocks?

Mr. ROSS. No; there is not. Similar to all the other entries made by Miss Newberry, our secretary who wrote these checks, this check and the five previous checks.

Mr. REDDAN. Is there anything in any of your other records, your financial records, which will establish that that check was drawn for that purpose?

Mr. ROSS. That particular check?

Mr. REDDAN. Yes, sir.

Mr. ROSS. No; there is not. No other notation. That is the only notation.

Mr. REDDAN. All right.

Now, how about the check, check No. 3225, October 9, 1970?

Mr. ROSS. Yes. This is another check of \$5,000 for the balance of the subscription, which was a total subscription of \$10,000, and it bears the notation on that, "Balance of Arlington stock subscription, \$5,000."

Mr. REDDAN. You notice the writing on that particular stub is different from the checks that preceded and followed it. Could you explain that, sir? Whose handwriting is that?

Mr. ROSS. This check is my handwriting.

Mr. REDDAN. Yes.

Mr. ROSS. And I am quite sure it was written at a time when either Miss Newberry was at lunch or something. I write checks, you will find checks through here, when I go to the checkbooks which are in our files and I write the check. This check was written at the time Mr. McLain told me that I would get the full \$10,000 subscription, because all the stock was not available. They were seeking a number of stockholders. They were holding back on the stock. So I made that payment to him.

Mr. REDDAN. Did he cash your June 5 check when you gave it to him?

Mr. ROSS. I imagine so, although I don't check my canceled checks. That is done by Miss Newberry. I imagine he did cash that check, yes, sir.

Mr. REDDAN. Then he had your \$5,000 on June 12, and then on October 9 you gave him another check for \$5,000. Do you know whether he cashed that one?

Mr. ROSS. I am quite sure he did. I don't see how he could buy the stock if he didn't put it in.

Mr. REDDAN. When did you get the stock, sir?

Mr. ROSS. I got the stock in February, 1971—February, 1971.

Mr. REDDAN. I have before me a photostatic copy of what purports to be a certificate for 1,000 shares of the Bank of Arlington stock, certificate No. 289, and it is made out to Jennings W. McLain and Bobbie W. McLain as the owner of the 1,000 shares, and this is dated February 1, 1971.

I believe you furnished us with this photostatic copy, did you not?

Mr. ROSS. Yes.

Mr. REDDAN. And at the same time you also furnished us with a photostatic copy of an assignment of stock, it is a Bache & Co. form. It is undated, and it is signed by McLain and Mrs. McLain. Could you tell us what that is?

Mr. ROSS. Yes, that is a blank endorsement signed by Mr. and Mrs. McLain when he delivered the stock to me in February 1971, so that I could take that stock and have it transferred to my name at any time.

Mr. REDDAN. Is that the certificate, the assignment he assigned at that time?

Mr. ROSS. Yes, sir.

Mr. REDDAN. Did he ever sign another one?

Mr. ROSS. Did he ever sign another one?

Mr. REDDAN. Yes, sir.

Mr. ROSS. At the time he signed that one, he signed two.

Mr. REDDAN. What was the other one?

Mr. ROSS. The same one. He gave me two copies, because when I gave him the form, I gave him two forms, because—in other words, he had both his wife's and his signature on it. I said give me two forms, I will determine whether I need two forms, because there are two signatures or what, that needs to be signed.

So he gave me two forms. We only needed one, one certificate of stock.

Mr. PIKE. Were they identical?

Mr. ROSS. Well, they looked exactly alike. They are both in blank, sir. I didn't need two, I only needed one.

Mr. PIKE. No date?

Mr. ROSS. You don't put dates on blanks.

Mr. PIKE. No subject matter?

Mr. ROSS. No; you don't do it on blank endorsements.

Mr. PIKE. No witness?

Mr. ROSS. Absolutely not.

Mr. PIKE. Just two signatures?

Mr. ROSS. That is all.

Mr. REDDAN. The reason I wanted to get your version of this, Mr. Ross, is that it is somewhat different from Mr. McLain's and, in the interest of accuracy, I would like to get your comments on his testimony, which I will have for you in just a second.

Mr. PIKE. Did you provide this form, or did he provide the form?

Mr. ROSS. I provided the form, sir. Bache & Co., is my broker. This is how I sign my forms.

Mr. REDDAN. Did you arrange to have the stock made out to McLain and his wife?

Mr. ROSS. At the time he talked about the subscription, he said in order to get me the amount of stock that I would like to have, he would have to get it in his and his wife's name, because there was a limit to the amount of stock they were going to sell to any particular stockholder. I made some substantial purchases on behalf of myself and other members of my family. So I fully expected it to be in his name, and when he received the stock he was to execute stock power to me, which he did.

Mr. REDDAN. Did he explain to you what sort of restriction there was on the stock?

Mr. ROSS. I wasn't concerned about any restriction on the stock. I never even thought in those terms. He didn't explain any restrictions. The only thing he explained to me was the fact that there were a lot of people after the stock, they were doling it out, and the only way to get more stock was by getting it in his name and it would help him because he was seeking some status at the bank and it might help him become a director by being holder of the stock.

Mr. REDDAN. He was the one doling out the stock, was he not, sir?

Mr. ROSS. He was selling the stock, but he was subject to controls by the people who were the organizing group, and they were watching the stock very carefully.

Mr. REDDAN. Is this what he told you?

Mr. ROSS. Yes. But he also told me that he was in charge of the sale of the stock, but I do think he had somebody looking over how he gave out the stock.

Mr. REDDAN. I asked Mr. McLain what kind of stock he was transferring. I said (reading from the record): "What kind of stock were you transferring according to the assignment?"

He said "Capital stock."

Mr. REDDAN. Of what?

Mr. McLain. Bank of Arlington.

Mr. REDDAN. Where does it say that?

Mr. McLain. Well, the one I signed has all that in that, Mr. Reddan. That was completely filled out.

Mr. REDDAN. Did you fill it out yourself?

Mr. McLain. No, sir.

Mr. REDDAN. Who filled it out; do you know?

Mr. McLAIN. It was filled out when I signed it. I don't know who filled it out. I assume Ross filled it out.

Mr. REDDAN. Was it handwritten or typed.

Mr. McLAIN. I don't recall, but I have a copy and I am assuming the original is available. I would like to see the original.

Mr. REDDAN. So would we.

Mr. PIKE. The one you signed was filled out?

Mr. McLAIN. Yes, sir. As I recall it was—it was; yes, sir.

Mr. PIKE. It had the name of the bank in it?

Mr. McLAIN. I am sure it was.

Mr. PIKE. Dated?

Mr. McLAIN. I am sure it was. I am almost positive it was. If I could see the original document, I would know.

Mr. PIKE. Did you ever sign one in blank?

Mr. McLAIN. No, sir; I don't think so.

Mr. PIKE. So this signature which a minute ago you said was your signature—

Mr. McLAIN. That is my signature.

Mr. PIKE.. Is not your signature?

Mr. McLAIN. That is my signature.

Mr. REDDAN. How would it get on a blank document?

Mr. McLAIN. I don't know.

Mr. REDDAN. You didn't sign it?

Mr. McLAIN. Not to my knowledge; I am almost positive.

Mr. REDDAN. Is that your wife's signature

Mr. McLAIN. Yes, sir.

Mr. REDDAN. So Mr. McLain is under the impression that he signed one that was filled out, and I am asking you whether or not he, to your knowledge, ever did sign one that was filled out?

Mr. Ross. He did not sign any document; he did not sign on the back of that certificate. He executed that blank stock power which was to be attached to that certificate.

Mr. REDDAN. Was there any endorsement on the stock certificate itself?

Mr. Ross. Absolutely not. If you would like to go to my safety deposit box tomorrow morning, I will open it up and show it to you.

Mr. REDDAN. No; I believe you.

Now, did you recommend any persons for employment in the Marine Corps Procurement Office who subsequently became employed in that office?

Mr. Ross. I never recommended anybody to the Marine Corps.

Mr. REDDAN. Did you ever authorize anyone to give your name as a recommendation?

Mr. Ross. I never authorized any one of the individuals I heard speak of today.

Mr. REDDAN. How about Mr. Neuman?

Mr. Ross. Absolutely not.

Mr. REDDAN. We have Mr. Neuman's application for employment, and it lists you as a reference. Did you authorize him to do that?

Mr. Ross. He did not ask me about using my name. It was used.

Mr. REDDAN. Did anyone contact you?

Mr. PIKE. In reference to his application?

Mr. Ross. No; they did not.

Mr. REDDAN. You know Mr. Elmore?

Mr. Ross. Yes; I do.

Mr. REDDAN. Did you have anything to do with his employment by the Marine Corps?

Mr. Ross. No. I did not have anything to do with his employment, except to tell him there was an opening in Washington, during one of

my visits to my corporation when he asked me if there were any openings in Washington.

Mr. REDDAN. How did you know there was an opening?

Mr. ROSS. Because they were hiring, they were looking for people. They were short of people at Headquarters.

Mr. REDDAN. Did they have a notice on the board?

Mr. ROSS. Yes; there were notices all over the boards.

Mr. REDDAN. Did you ever tell anyone that you had found someone that you felt would fill in their requirements?

Mr. ROSS. I did not contact anybody in the Marine Corps with respect to any of these individuals that I had told them there was anything available. I never informed them. The first they ever heard from, I am sure, is the individuals who applied for the job.

Mr. REDDAN. Did Mr. Neuman tell you he was going to apply at the Marine Corps for a job?

Mr. ROSS. No; he did not.

Mr. REDDAN. Did he ever discuss with you the possibility of getting into some sort of work which would put him in a better position to represent clients here in Washington who had procurement problems?

Mr. ROSS. The only time I had any discussions with Neuman about that was in Mr. Matzkin's presence back in 1963, when he saw that we were forming an association, and wondered what he could do to enable himself to go in this type of business. Our advice to him was go out and get yourself some government experience and some procurement experience, and then that would probably be the first step. You have to have the government's side before you review anything.

He never consulted me prior to being interviewed by Mr. Hatch at the Marine Corps on a legal job.

Mr. REDDAN. Did you attend a meeting at the Procurement Division in December of 1967, which was held to evaluate bids on the 700 series generators?

Mr. ROSS. I not only attended the meeting, I asked for the meeting.

Mr. PIKE. Who did you ask?

Mr. ROSS. I don't recall who I asked. I probably asked Mr. Hupp for the meeting because he was the contracting officer overseeing that bid.

Mr. PIKE. Did you ask for a meeting with Mr. Hupp?

Mr. ROSS. I asked for a meeting with Mr. Hupp; yes.

Mr. PIKE. And nobody else?

Mr. ROSS. I didn't ask for that. I asked for a meeting to discuss two nonresponsive bids, two illegal bids submitted on this invitation—two patently illegal bids.

Mr. PIKE. You are sure that it was Mr. Hupp you asked for this meeting?

Mr. ROSS. Mr. Hupp is the contracting officer, that is who I go to.

Mr. PIKE. Did you ask that anyone else be present?

Mr. ROSS. I did not ask that anybody else be present.

Mr. PIKE. If anyone else were present, it was Mr. Hupp's doing and not yours?

Mr. ROSS. I couldn't say that either.

Mr. REDDAN. Was it yours? You could tell us that.

Mr. ROSS. Beg pardon?

Mr. REDDAN. You could tell us whether it was your doing.

Mr. ROSS. I requested a meeting to discuss the bids because of the fact that we had two nonresponsive bids.

Mr. PIKE. That was your judgment?

Mr. ROSS. Not my judgment. All you do is read them.

Mr. PIKE. I think these are matters of judgment, Mr. Ross. You may be that positive in your opinion, but I think these are matters of judgment.

You don't; is that correct?

Mr. ROSS. On this invitation, the two bids were patently illegal.

Mr. PIKE. In your judgment?

Mr. ROSS. Anybody's judgment who knows procurement.

Mr. REDDAN. Anyone who doesn't agree. Well, were you surprised then when you got there and found out that there were others present?

Mr. ROSS. I was not surprised because Mr. Hupp, the contracting officer, allegedly, because of what Mr. Kazan, our representative, heard in the trade.

Mr. PIKE. What do you mean "the contracting officer, allegedly"? You said he was the contracting officer. Was he or was he not?

Mr. ROSS. Mr. Hupp had given one of the bidders—an allegation was made that Mr. Hupp—

Mr. PIKE. Who made what allegations to whom?

Mr. ROSS. Electromagnetic Industries, one of the low bidders, had made an allegation that Mr. Hupp, in a telephone conversation with one of their personnel, had misled them into filling out the blocks improperly in the provisioning section of the invitation to bid.

Mr. PIKE. Who told you this, when?

Mr. ROSS. Our representatives told this.

Mr. PIKE. Who were your representatives?

Mr. ROSS. We had Mr. Kazan as our representative.

Mr. PIKE. When did he tell you this?

Mr. ROSS. He attended the bid opening.

Mr. PIKE. You are talking about a telephone conversation between Mr. Hupp and somebody in Electromagnetic Industries. How did you know about this telephone call?

Mr. ROSS. It is right in the protest. Look at the protest papers.

Mr. PIKE. The protest papers hadn't come up at this point.

Mr. ROSS. But it was confirmed.

Mr. PIKE. I didn't ask you whether it was confirmed. You knew about it before the protest papers came up?

Mr. ROSS. Very easy. In the generator industry the word travels pretty fast.

Mr. PIKE. I am very sure the word traveled very fast to you, Mr. Ross. I am trying to find out how it traveled to you, and from whom.

Mr. ROSS. It traveled to me from our representative.

Mr. PIKE. And who was that?

Mr. ROSS. Mr. John Kazan.

Mr. PIKE. Mr. John Kazan.

Mr. ROSS. Right.

Mr. PIKE. So he told you Mr. Hupp had had a telephone conversation with Electromagnetic Industries; is that correct?

Mr. ROSS. He said at the bid opening it was very obvious to other bidders, including him, there was a nonresponsive bid by Electromag-

netic Industries. They said, "Well, we did this because Mr. Hupp told us this," the people at the bid opening.

Mr. REDDAN. Who made the allegation? You are making a serious allegation here. Who made it? We are going to follow this up.

Mr. ROSS. Electromagnetics made the allegation.

Mr. PIKE. Who? A corporation doesn't make allegations.

Mr. ROSS. Mr. Murray Taub.

Mr. PIKE. That is all we tried to get out of you.

Mr. REDDAN. How do you spell it?

Mr. ROSS. T-a-u-b.

Mr. REDDAN. What did Mr. Taub say?

Mr. ROSS. Look at his affidavit.

Mr. PIKE. We are asking you what he said?

Mr. ROSS. He told, in his conversation, or in his affidavit, the allegation was made that they were misled by Mr. Hupp in filling in the blocks erroneously the way they did.

Mr. REDDAN. He told you that?

Mr. ROSS. That is in the affidavit.

Mr. REDDAN. We know what is in the affidavit.

Mr. ROSS. He did not tell me that.

Mr. REDDAN. Who told you about this?

Mr. ROSS. Mr. Kazan.

Mr. REDDAN. Where did Mr. Kazan get it?

Mr. ROSS. He got it at the bid opening and the word travels through the generator set industry.

Mr. REDDAN. I know. Like a whirlwind.

Mr. ROSS. It sure does.

Mr. REDDAN. Where did he get the information?

Mr. ROSS. I don't know where he got the information.

Mr. REDDAN. Did you ask him?

Mr. ROSS. No; I didn't ask him.

Mr. REDDAN. You didn't care?

Mr. ROSS. He was pretty reliable.

Mr. REDDAN. You just took his word. You weren't interested in who told him, were you?

Mr. ROSS. At that point I wasn't.

Mr. REDDAN. Why not?

Mr. ROSS. Because he had given me the information I thought was good information.

Mr. REDDAN. What did you do?

Mr. ROSS. I asked the Marine Corps for a meeting.

Mr. REDDAN. Who at the Marine Corps?

Mr. ROSS. Mr. Hupp.

Mr. REDDAN. Then, the man who had given out the bad information, the man who according to you was allegedly the contracting officer, you then asked him for a meeting, is that right?

Mr. ROSS. I asked for a meeting to discuss—

Mr. REDDAN. Did you talk to anybody else about a meeting?

Mr. ROSS. I think that Mr. Hupp told me he would call me back after he consulted with other people.

Mr. REDDAN. No, did you talk to anybody? You are under oath here right now, Mr. Ross.

Mr. ROSS. Right.

Mr. REDDAN. If you want to start bandying words with the committee, you are going to be here for a long, long time.

Now, did you talk to anyone else at the Marine Corps about a meeting, in connection with this particular matter?

Mr. ROSS. We had several meetings after that—on this particular meeting, sir?

Mr. REDDAN. That is right.

Mr. ROSS. I don't recall talking to anybody else at this particular meeting.

Mr. REDDAN. You just talked to Mr. Hupp?

Mr. ROSS. I requested he arrange for a meeting.

Mr. REDDAN. With whom?

Mr. ROSS. Himself and whoever else he wanted.

Mr. REDDAN. You didn't just expect to see him there?

Mr. ROSS. I go into government meetings never knowing what to expect. There might be 20 people there, there might be three, there might be one. I didn't know what to expect.

Mr. REDDAN. On this particular one; I don't care about your other meetings.

Mr. ROSS. I expected to go in and talk to Mr. Hupp and anybody else that was concerned with this invitation. It is a very urgent procurement requirement. We had two nonresponsive bids.

Mr. PIKE. Did anyone claim your bid was nonresponsive?

Mr. ROSS. Oh, yes.

Mr. PIKE. All right. This was a judgment that was clearly erroneous, is that it?

Mr. ROSS. Well, it was erroneous when put to test. There are always bidders claiming you are nonresponsive. They open the bids, Mr. Pike—

Mr. PIKE. And as you claimed their bids were nonresponsive, they claimed that your bid was nonresponsive, is that not correct?

Mr. ROSS. Nobody made the overt claim that our bid was nonresponsive. They stated that we, too, could not meet the provisioning requirements. They spoke of the theoretical impossibility of us meeting the requirements, rather than something patently in the bid that did not indicate we were going to meet the requirements.

Mr. PIKE. You are saying no one claimed your bid was not responsive?

Mr. ROSS. No, I am not saying that. Eventually there was a claim our bid was nonresponsive, but when put to test, it was found our bid was responsive.

Mr. PIKE. What do you mean by "put to test"? What you are saying is the decision turned out to your favor, aren't you?

Mr. ROSS. I am saying it turned out in our favor because it was responsive.

Mr. PIKE. What is the test you are talking about, other than the decision?

Mr. ROSS. The number of days we indicated in our bid document could meet the requirements of the Marine Corps, and allow them enough time to place orders for the spare parts.

Mr. PIKE. The bid document said the provisioning would be done within such a time, you are saying, and it said the delivery of the generators would be done within such and such a time, did it not?

Mr. ROSS. The bid document stated the generators would be bid at a certain time and we would have to comply, because of our insertions, with certain time periods.

Mr. PIKE. What is the real test as to whether the generators were in fact delivered within the time? They weren't; were they? The real test isn't a piece of paper, it is the delivery of the generators; isn't it?

Mr. ROSS. At the time of the award, the real test is what your bid shows.

Mr. PIKE. That is right.

To me, Mr. Ross, the real test is whether the piece of paper you submit is a true expression of what you are going to do or not, and not whether you have complied with another piece of paper. As the testimony revealed from the Marines on the first day, the generators were not, in fact, delivered when they were supposed to be delivered; were they?

Mr. ROSS. They were not because of excusable delays. The government didn't furnish their engines and their equipment on time to us.

Mr. REDDAN. Was there a recommendation that the three bidders, one of which was CONDEC, should be rejected as nonresponsive, and the procurement go out again? Was that recommendation made?

Mr. ROSS. I don't know. Are you talking about whether it was communicated to me?

Mr. REDDAN. Yes, sir.

Mr. ROSS. Mr. Hupp was of the feeling it should be canceled.

Mr. REDDAN. Was that communicated to you?

Mr. ROSS. Yes.

Mr. REDDAN. Under what circumstances?

Mr. ROSS. Well, he thought they should be canceled because he felt that nobody could physically meet the requirements.

Mr. REDDAN. Where did he state this?

Mr. ROSS. He stated it in conversations with me.

Mr. REDDAN. Did he state this in the meeting that we are talking about?

Mr. ROSS. No; he did not.

Mr. REDDAN. Well, four of the people who attended that meeting tell us that he did. Now, sit back and search your recollection just a minute.

Do you recall an incident in that meeting where Mr. McLain told Mr. Hupp to "shut up," do you recall that?

Mr. ROSS. Not in the meeting I attended.

Mr. REDDAN. You must have been someplace else when this meeting was going on, then.

Mr. ROSS. You must have the wrong meeting.

Mr. REDDAN. No; because they place you in this meeting too. Either everybody else is wrong again, and you are the only one that is right, or vice versa.

Mr. ROSS. I am not here to make that statement, sir.

Mr. REDDAN. Well, I can read you the testimony under oath of the other witnesses if it will help you.

Mr. PIKE. We don't need to do that, Mr. Reddan. We will just show it in the report.

Mr. REDDAN. I would like to show you copies of two documents, Mr. Ross, found in the Marine Corps procurement files, and ask you if you know from what those documents were made?

Have you ever seen the original, or have you ever seen any copies?

Mr. ROSS. Yes; I recognize these, sir.

Mr. REDDAN. What are they, sir?

Mr. ROSS. This first document here—

Mr. REDDAN. It is marked—

Mr. ROSS. The first document I have here which is a number of pages with a staple on it, I think it is the larger of the two documents.

Mr. REDDAN. Does it have the notation on the top 121?

Mr. ROSS. 121.

Mr. REDDAN. It is on a legal-size sheet of paper?

Mr. ROSS. It is on a legal sheet. It is a document that I prepared prior to the meeting that I requested Mr. Hupp to set up, to enable me to present properly the facts of the provisioning portions of the invitation to bid, and I took this to the meeting with me and I followed it in my presentation and I left it with the Marine Corps.

Mr. REDDAN. With whom did you leave it, sir?

Mr. ROSS. I presented it to all the people in the meeting. I don't know whether everybody—they had a number of these.

Mr. REDDAN. Can you tell us who was at that meeting?

Mr. ROSS. Yes; I think I can recall who was at that meeting. Mr. Hupp was at that meeting, Lieutenant Nailor was at that meeting, Mr. Elmore was at that meeting, Mr. Gemmell was at that meeting, and Mr. McLain chaired the meeting.

Mr. REDDAN. Right.

Now, the second piece of paper you were going to describe, sir?

Mr. ROSS. Yes; this is a later submission of information that I made to the Marine Corps after the protest was filed by Electromagnetic Industries, and prior to the time that the Marine Corps submitted its first administrative report following the protest to the General Accounting Office. At the time I was preparing CONDEC's brief for submission to the General Accounting Office, answering an allegation made by Fermont that CONDEC's bid was nonresponsive and pointing out how Fermont had misread the language in this invitation and did not properly understand it, and how this would work to the benefit actually of the interpretation that I had been advancing to the GAO.

Mr. REDDAN. What did you do with that?

Mr. ROSS. I took this over to the Marine Corps and gave it to them.

Mr. REDDAN. To whom, sir?

Mr. ROSS. I don't recall, but I gave it to someone over there. I think I gave it to Mr. Gemmell, because he was assisting Mr. McLain and the whole staff in running the response.

Mr. REDDAN. As I understand your testimony, the second document was aimed at the arguments advanced by those who were filing protests with GAO, is that right?

Mr. ROSS. That was the argument advanced by Fermont.

Mr. REDDAN. Did Fermont file a protest with GAO?

Mr. ROSS. Yes, sir.

Mr. REDDAN. Then would this answer the arguments of Fermont, as filed with GAO?

Mr. ROSS. It would answer, I think, the basic contention made by Fermont as to some date process within some cycle being started.

Mr. REDDAN. Why did you bring this to the Marine Corps?

Mr. ROSS. My procedure in any matter which is under protest is to fully inform the procuring office of my position so that we can get protest matters resolved as expeditiously as possible with the General Accounting Office.

Mr. REDDAN. How does that help?

Mr. ROSS. That assists them in not having to wait for your administrative submission and knowing exactly what you are going to say so that the GAO will not consume more time in waiting for comments from theirs. This would be submitted in their comments, and they would not have to have return comments from the protesting bidder. It shortens the time cycle.

Mr. REDDAN. Do you feel it could also be used to assist the Marine Corps in responding to the protests?

Mr. ROSS. Absolutely.

Mr. REDDAN. Is that the purpose that you sent it over there, to help the Marine Corps respond to the protests?

Mr. ROSS. To help the Marine Corps, no. Our position was to throw as much light on the protest as possible.

Mr. REDDAN. To help them make their response to GAO on these protests?

Mr. ROSS. To inform them of our position, yes.

Mr. REDDAN. And to help them to respond?

Mr. ROSS. For whatever use they want to put it to.

Mr. REDDAN. Would it surprise you if they used it for that purpose?

Mr. ROSS. No, it would not.

Mr. REDDAN. Did they thank you for sending it over?

Mr. ROSS. Absolutely not. I never got any response to it.

Mr. REDDAN. This past Monday evening, I believe there was a meeting at the home of Mr. Dan Elmore. Did you attend that, sir?

Mr. ROSS. I was at Mr. Elmore's home on Monday evening, yes.

Mr. REDDAN. Were others present?

Mr. ROSS. Yes, sir.

Mr. REDDAN. How would you characterize this grouping? Were you there for a game of bridge, or what were you doing there?

I called it a meeting. Apparently that gave you some trouble. How would you characterize it?

Mr. ROSS. I went to Mr. Elmore's house because Mr. Elmore had placed a call to me.

Mr. REDDAN. When, sir?

Mr. ROSS. Either early that day or the day before, and I spoke to Mr. Elmore and he had asked that sometime between now and the time the hearings started, he would like to have a discussion with me and go over some of the contractual matters he probably had dealings with me on to refresh his memory on certain things.

I told him to determine when he wanted to get together, and he said he was busy in a meeting.

Mr. REDDAN. Did you suggest he go to the files to refresh his recollection?

Mr. ROSS. No; I did not suggest that.

Mr. REDDAN. Was this all he wanted to talk to you about, to ask you to remind him what business he had done with you?

Mr. Ross. He wanted to discuss with me whatever contractual actions he had with me that I might throw some light on so as to refresh his recollection, so he could properly testify at this hearing.

Mr. REDDAN. Did he tell you anyone else would be there?

Mr. Ross. Well, when he called—when I called him and got him on the phone and asked to get together, he said, "How about coming over, I am tied up." He put Mr. Kemple on the phone and Mr. Kemple talked to me. He said, "Dan, do you know where I can get an adding machine?"

I said "Gee, not offhand. What do you need it for?"

He said "We are totaling up some figures."

I said I had an adding machine at home. "I will be glad to come by. I can kill two birds with one stone, I want to talk to Mr. Elmore."

That was the occasion for my going to Mr. Elmore's home.

Mr. REDDAN. Who else was there?

Mr. Ross. Mr. Elmore, Captain O'Brien, and Mr. Kemple.

Mr. REDDAN. What were they doing?

Mr. Ross. They had a bunch of slips on the table and they were totaling up figures.

Mr. REDDAN. They were charge slips, Diners Club charge slips, were they not?

Mr. Ross. It looked like they were; yes, sir.

Mr. REDDAN. How long did you stay?

Mr. Ross. I would say about an hour and a half. I was there for about an hour and a half.

Mr. REDDAN. How long did you talk to Mr. Elmore about contractual matters that you may have handled?

Mr. Ross. Well, not as long as I would like to, about a half hour.

Mr. REDDAN. What did you do the rest of the time?

Mr. Ross. Sat there while they worked.

Mr. REDDAN. Did you participate in any way in their deliberations?

Mr. Ross. No.

Mr. REDDAN. You just watched them?

Mr. Ross. They didn't deliberate.

Mr. REDDAN. Did they say anything to you or ask you for any advice?

Mr. Ross. No, sir.

Mr. REDDAN. Do you represent a company that Mr. Kemple is associated with?

Mr. Ross. I am Washington counsel for G. C. Dewey.

Mr. REDDAN. Were you there in your official capacity that night?

Mr. Ross. Mr. Reddan, you are aware of the fact that I am Washington counsel of G. C. Dewey Corp.

Mr. REDDAN. That is right, but—

Mr. PIKE. That wasn't the question. The question was were you there in your official capacity?

Mr. REDDAN. Yes.

Mr. Ross. Any information I can assist with, I would be glad to at any time. I was only too happy to take the adding machine over to them.

Mr. REDDAN. Wait a minute, you lost me there. What was your answer, sir? I asked if you were there in your official capacity as Washington counsel for the G. C. Dewey Co.?

Mr. COLE. Can we have the reporter read the answer and see if it is responsive. He has answered it to the best of his ability.

Mr. REDDAN. It didn't get to me. If he did, we will have the reporter read it back.

(The answer was read.)

Mr. REDDAN. I will repeat the question, then, in the interest of clarity.

Were you, at any time during your visit to Mr. Elmore's house on the night in question, acting in your capacity as Washington representative for The G. C. Dewey Co.?

Mr. ROSS. I couldn't answer that question, because I never was consciously aware of what hat I was wearing in going to see and to meet these gentlemen.

Mr. REDDAN. Did you ever put on the G. C. Dewey hat that night?

Mr. ROSS. No, I did not.

Mr. REDDAN. Then your answer is you were not acting as the representative of G. C. Dewey Co.?

Mr. ROSS. I didn't put on any hat.

Mr. REDDAN. You used the expression of the hat, I didn't bring it up. Now, if you want to find fault with it, let's not use those expressions.

I will try you one more time. Are you trying to say "Yes" or "No,"

Mr. ROSS.

Mr. ROSS. I was doing everything I could, having dealt with Mr. Elmore, to answer his questions regarding any of the matters that he and I had dealings with in my capacity, whether it be G. C. Dewey Corp., whether it be CONDEC Corp., I didn't know what he was going to ask me. He wanted me to refresh his memory on contractual actions. So I wasn't wearing any particular hat. I went over there to see him and offer whatever assistance I could to him in order that he might better present himself here, and state the facts.

Mr. REDDAN. Was there any discussion as to what the testimony of the witnesses might be before this committee?

Mr. ROSS. No, there was not.

Mr. REDDAN. Was there any discussion as to a division of responsibility for these charge slips?

Mr. ROSS. Not in my presence.

Mr. REDDAN. Not in your presence?

Mr. ROSS. No.

Mr. REDDAN. You didn't hear any of that?

Mr. ROSS. No.

Mr. PIKE. Did you have a credit card of The G. C. Dewey Co. at any time, Mr. Ross?

Mr. ROSS. No, sir.

Mr. PIKE. Did you ever travel to the West Coast with Mr. Elmore?

Mr. ROSS. No, sir.

Mr. REDDAN. Did you ever meet him in San Francisco?

Mr. ROSS. I was in San Francisco waiting for him to arrive from Washington, accompanying him to visit CONDEC's Stockton facilities.

Mr. REDDAN. Did you make connections? Did you meet him?

Mr. ROSS. He arrived in San Francisco. I was staying at the Fairmont Hotel. I met him after he arrived in San Francisco.

Mr. REDDAN. How long were you there, sir?

Mr. ROSS. My recollection is I was only there in San Francisco 1 night, but it might have been 2 nights. My recollection is only 1 night.

Mr. REDDAN. I would like to show you a picture, Mr. Ross. This is rather a longshot view. Have you ever seen that picture before?

Mr. ROSS. Yes, I have. I don't recall when seeing the picture, but I know when it was taken.

Mr. REDDAN. Was that taken during that trip?

Mr. ROSS. That was taken the morning we went to Stockton.

Mr. REDDAN. Who is with you in that picture?

Mr. ROSS. Mr. Elmore.

Mr. REDDAN. Do you remember what hotel you stayed at?

Mr. ROSS. Yes, sir.

Mr. REDDAN. What was it?

Mr. ROSS. I stayed at the Fairmont Hotel.

Mr. REDDAN. Do you know where Mr. Elmore stayed?

Mr. ROSS. Yes.

Mr. REDDAN. Where was that, sir?

Mr. ROSS. Mark Hopkins Hotel, right across the street from where that picture was taken.

Mr. PIKE. Did you pay Mr. Elmore's bill?

Mr. ROSS. Absolutely not.

Mr. PIKE. Now I want to go back to this meeting that was held, at which time you gave this presentation regarding the disqualification or the nonresponsiveness of the two low bidders on these 700 series generators.

Let me go over the people who were present. Mr. Hupp was present. His superior, or superiors, Mr. Elmore and Mr. Gemmell and Mr. McLain, were all present; is that correct?

Mr. ROSS. Yes, sir.

Mr. PIKE. And Lieutenant Nailor was present?

Mr. ROSS. I think he was a lieutenant at that time.

Mr. PIKE. The gentleman who is currently Captain Nailor was present?

Mr. ROSS. Yes, sir.

Mr. PIKE. And you were present?

Mr. ROSS. Yes, sir.

Mr. PIKE. Now, at that meeting did Mr. Hupp recommend that all the bids be rejected and that the item be rebid?

Mr. ROSS. I did not hear Mr. Hupp make that recommendation at that meeting, sir. I don't recall that he did. But I was aware of the fact that he was of that opinion at that meeting.

Mr. PIKE. He had said that that was his judgment to you, either previously or at that meeting?

Mr. ROSS. We discussed it before we went into that meeting. Doral and I were on speaking terms.

Mr. PIKE. That was his opinion, and his opinion as a result of that meeting was overruled by his superiors; is that what happened?

Mr. ROSS. I don't know whether he was overruled, because I didn't sit in on the council deciding whether the award be made to CONDEC. I know it was decided after that.

Mr. PIKE. You know that was his opinion and you know that is not what happened in the meeting. He was the contracting officer, you said.

Mr. Ross. Mr. Pike, the meeting was a very long meeting in which there was a complete discussion about the provisioning cycle itself, its meaning, the words of the specification as set forth in my document, and the Marine Corps understanding of the specification, and as I recall that meeting, Mr. McLain deferred the meeting to a great extent to Mr. Gemmell, to go over the provision cycle, because Mr. Gemmell is a known expert in the Marine Corps on provisioning.

He asked for Mr. Elmore's views. I was allowed to go to the blackboard and present my views as to how we could meet—how our proposal, in fact, physically, could meet the schedule. It wasn't the question that patently we did. Mr. Hupp also had a question in his mind whether anybody could really physically meet that schedule.

One of the real big problems came with the fact that you had to understand compression. That we couldn't change the Government's time for certain actions. But the contractor had a right to compress his time, and those bidders that complied, compressed their own time, and this is why the actual time sequence of concurrences could be met.

I think Mr. Hupp had a question of both responsibilities in his mind and confused it with responsiveness. He didn't really think anybody could meet it.

Mr. REDDAN. What makes you think he confused that in his mind?

Mr. ROSS. Because he didn't understand the specifications.

Mr. PIKE. Do you think he thought that you were not responsive—by "you" I mean CONDEC in this case?

Mr. ROSS. No; I think he really thought that we were responsive. I just felt that he felt that nobody could really meet that spec, that requirement was too tough for anybody to physically meet and they should go out and readvertise. That is my interpretation of how he felt.

Mr. PIKE. The conclusion after this meeting was that the two lower bidders would be found to be nonresponsive, and that the contract would be awarded to CONDEC; is that correct?

Mr. ROSS. No.

Mr. PIKE. That is not?

Mr. ROSS. The conclusion that I gathered is there is no question about the nonresponsiveness of the two low bids.

Mr. PIKE. That is your judgment?

Mr. ROSS. That is the way I understood it, and my presentation indicates that. The question was whether it can be physically done, and this is why I suppose Captain Nailor was there, because he was from the Technical Branch. The discussion was a very thorough discussion on it, and since we were the low responsive bidder, we are the moving party.

My interest in my client there was to make sure that our position as a low responsive bidder was fully protected, that everybody understood this bid thoroughly.

Mr. PIKE. Now, of the people in the decisionmaking process—and you were not one of those theoretically—Mr. Gemmell was an officer of a corporation in which you were also an officer; is that correct?

Mr. ROSS. Not at that time.

Mr. PIKE. Well, who was not an officer, you or Mr. Gemmell?

Mr. ROSS. Neither he nor I. The corporation was dissolved in 1966 with a trustee relationship to pay the proceeds.

Mr. PIKE. You were still getting payments from this corporation, you and Mr. Gemmell?

Mr. ROSS. Mr. Pike, formal articles of dissolution in accordance with all Internal Revenue laws were filed with the Internal Revenue Service when that was dissolved, and it was a trustee relationship holding those for the payments of notes. There was no operation of that corporation after that date.

Mr. PIKE. You and Mr. Gemmell, together, until 1966, had been co-officers of that corporation; is that correct?

Mr. ROSS. Until 1966, I don't recall whether I was an officer or a director. If he says we were, we were up until 1965 or 1966 when all the property was sold and the corporation was dissolved in a 1-year dissolution and that corporation for all legal purposes was dissolved.

Mr. PIKE. Now, you have had that relationship with Mr. Gemmell. You had been in the Marines with Mr. McLain; is that correct?

Mr. ROSS. Yes, sir.

Mr. PIKE. And you visited with him at his house from time to time?

Mr. ROSS. Yes, sir.

Mr. PIKE. He visited your house from time to time?

Mr. ROSS. Yes, sir.

Mr. PIKE. And you had known Mr. Elmore for how many years at that time?

Mr. ROSS. I would say since around 1960.

Mr. PIKE. And it was you who suggested to Mr. Elmore that there might be a job vacancy in this office; is that correct?

Mr. ROSS. I told him that I understood they were hiring.

Mr. PIKE. And after this decision was made, when protests were filed, the man who went as the legal counsel to the GAO to argue against these protests was a man who had been formerly associated in your law office; is that correct?

Mr. ROSS. He was a tenant in our law office. You might consider him associate.

Mr. PIKE. His name was on your stationery?

Mr. ROSS. Definitely. This is not unusual.

Mr. PIKE. And he was either, at that time or very shortly thereafter, a stockholder in the corporation on which he was making the legal advice; is that correct?

Mr. ROSS. I don't know. We don't know of any of his stock holdings.

Mr. REDDAN. Who were the trustees for the Quorum Land Corp.?

Mr. ROSS. I can't recall. I think that Mr. Hilmer was one. I think Mr. Cavalero was one. I think Mr. Gemmell was one. I don't know whether I was one or not. The fact is, it was a trustee relationship; all payments were frozen and paid out.

Mr. REDDAN. As trustee, don't you participate in the distribution of the assets of the company?

Mr. ROSS. Every stockholder at the point of the dissolution was guaranteed a fixed return. There was nothing more to be done but receive the proceeds and disburse them.

Mr. REDDAN. Who disbursed the proceeds in 1970?

Mr. ROSS. I think Mr. Hilmer and Mr. Gemmell made the disbursements.

Mr. REDDAN. Did they discuss it with you?

Mr. Ross. They didn't have to. All they had to do was send out the money.

Mr. REDDAN. Since the last distribution was in 1970, can you think back and see if you can't recall whether you were a trustee at that time?

Mr. Ross. I stated I could have been a trustee. I don't recall. I never had anything to do physically with the disbursement of checks. We never had any meetings after that. They were disbursed, that is all.

Mr. REDDAN. You were one of the trustees?

Mr. Ross. I don't recall whether I am or not.

Mr. REDDAN. Could you ascertain that for us and advise the committee, get a copy of the trustee agreement?

Mr. Ross. Yes; I will be glad to do that.

(The following was subsequently provided for the record:)

At an annual meeting of stockholders of Quorum Land Corporation held on October 16, 1965, the stockholders voted to dissolve the corporation and to distribute the proceeds on an installment basis in accordance with a plan of disbursement adopted at that meeting. A statement of intent to dissolve the corporation was filed with the State Corporation Commission of Virginia on November 15, 1965. On November 17, 1965, the State Corporation Commission of Virginia notified the corporation that the dissolution complied with all the requirements of the law of that State. Final tax returns in liquidation were filed with the Internal Revenue Service as required. At the final meeting of the Board of Directors, held on December 17, 1965, the following persons were designated as trustees for collection of notes held by the corporation and the disbursement of funds due to the stockholders: J. H. Cavallero, D. F. Hilmer, R. H. Gemmell and Daniel M. Ross. There was no trustee agreement, as such. After that time, there were no meetings of the trustees and Mr. D. F. Hilmer and Mr. R. H. Gemmell made the distribution of all funds from note proceeds collected in accordance with the plan of disbursement adopted by the stockholders on October 16, 1965.

Mr. PIKE. Mr. Lally.

Mr. LALLY. Mr. Ross, have you ever been to the Market Inn?

Mr. Ross. Yes, sir.

Mr. LALLY. Have you ever met there with Mr. Elmore?

Mr. Ross. Yes, sir.

Mr. LALLY. And who else met with you and Mr. Elmore at the Market Inn?

Mr. Ross. I have been to the Market Inn with Mr. Elmore in the presence of Mr. Matzkin. I think I have been there in the presence of Mr. Kemple. I think I might have been there in the presence of Captain O'Brien. I think I have been there in the presence of Mr. Elmore's wife, current wife.

Mr. LALLY. How often did you meet with Mr. Elmore at the Market Inn?

Mr. Ross. Well, I would say I haven't been at the Market Inn, I don't think, in well over a year or two. Prior to that time, on several occasions, I met Mr. Elmore at the Market Inn; not frequently.

Mr. LALLY. Could you give us an approximation?

Mr. Ross. Four or five times.

Mr. LALLY. What was the purpose of your meeting there?

Mr. Ross. At times I attempted to see Mr. Elmore, he was busy, he informed me he was going down to the Market Inn, if I wanted to drop by, be there. So that was, I guess that that was the most frequent way that the meetings took place, because I found it necessary to see him, and he was there at the Market Inn.

Mr. LALLY. Were these meetings then for the purpose of discussing Procurement Division business?

Mr. ROSS. I would say that I wanted to contact Mr. Elmore and several of them were social, but when I went there, I wanted to contact him because I hadn't been able to see him, but we never transacted business, never got to that, because he always had people with him.

Mr. LALLY. When you did meet with him down there, who would pick up the check for the dinner or drinks or whatever you did have?

Mr. ROSS. Generally, if I was there and we were there in a group, one of us would pick up the check.

Mr. LALLY. One of the group?

Mr. ROSS. Yes; one of the group would pick up the check.

Mr. REDDAN. The management would have been unhappy if you hadn't?

Mr. ROSS. Beg pardon?

Mr. REDDAN. The management would have been unhappy if you hadn't.

Mr. ROSS. Somebody had to pick up the check.

Mr. REDDAN. Did you ever pick up the check?

Mr. ROSS. Yes, sir.

Mr. REDDAN. Did Mr. Elmore ever pick up the check?

Mr. ROSS. Yes; I recall he paid it.

Mr. REDDAN. How did he pay it?

Mr. ROSS. Cash.

Mr. PIKE. I think that is all, Mr. Ross.

At this point I would want to read into the record the results of an examination which was conducted by the FBI at the request of Chairman Hébert of the Armed Services Committee on a total of 313 Diners Club record of charge tickets containing the purported signature of M. M. Kemple:

Result of Examination: It was concluded that M. M. Kemple, whose known signatures appear on K1 and K2, wrote the Kemple signatures on the tickets contained in Item I, which are wrapped in yellow paper and marked 3-2, 3-5, 4-2, and 4-3.

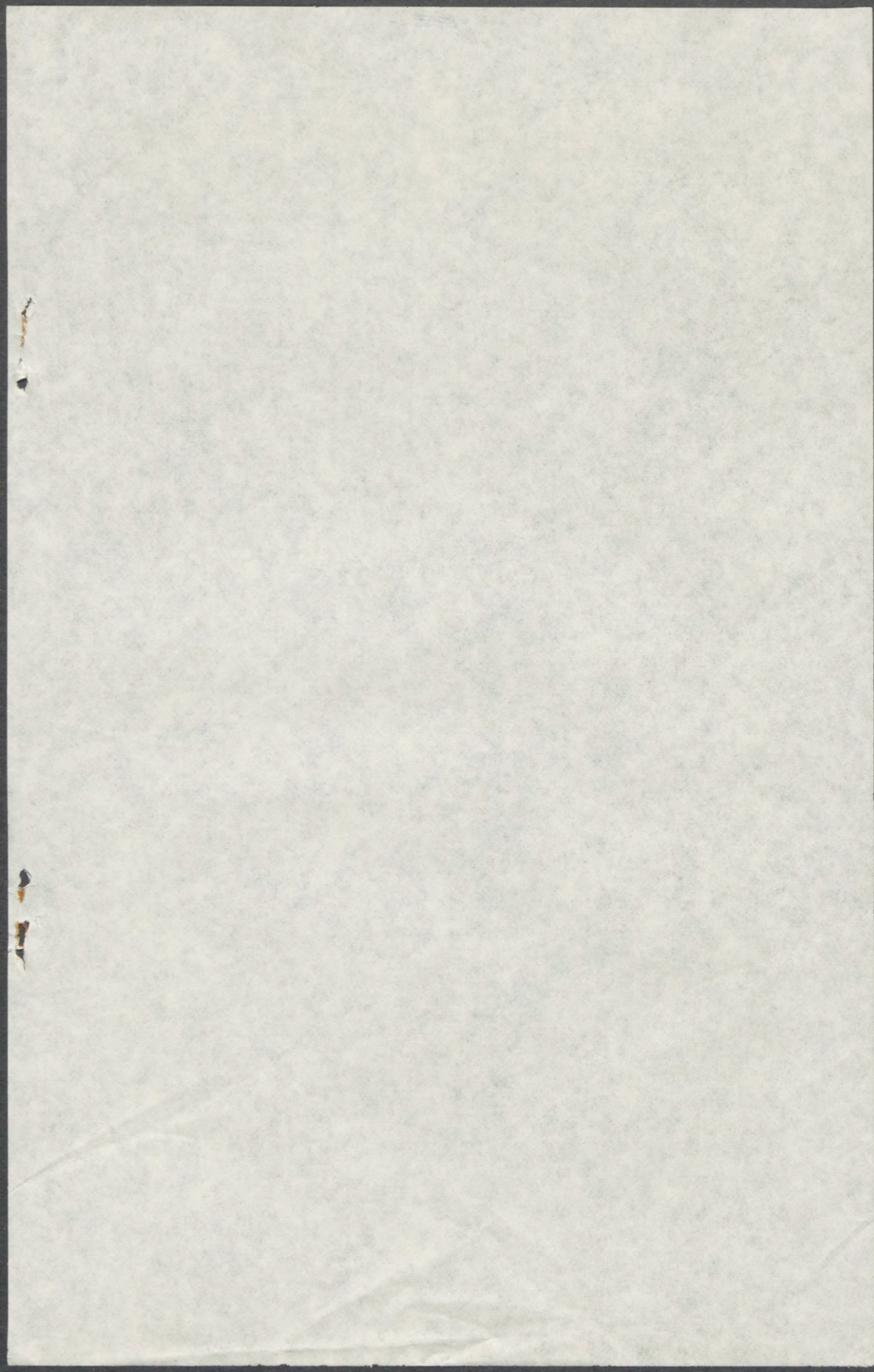
Parenthetically I will say that that includes a total of seven out of the 313 cards.

Resuming the report of the FBI:

No conclusion could be reached whether any of the remaining Kemple signatures on the tickets in Item I were written by M. M. Kemple, K1 and K2, due to the presence of unexplained handwriting variations. However, some handwriting differences were noted which indicate that Kemple, K1 and K2, may not have written any of these remaining signatures. It was noted that in many instances the signatures are so highly distorted that it is doubtful if the author or authors could ever be determined. Also, in many instances it was noted that the last name "Kemple" K1 and K2, was incorrectly spelled. Furthermore, indications were found that at least two different writers other than Kemple, K1 and K2, were involved in the preparation of the unidentified Kemple signatures. It is also possible that some of the unidentified Kemple signatures may involve an attempt to copy or simulate genuine signatures of Kemple, K1 and K2."

This hearing is concluded.

(Whereupon, at 5:02 p.m. the subcommittee hearing was concluded.)



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