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## HEARINGS

BEFORE THE

### COMMITTEE ON

### INTERIOR AND INSULAR AFFAIRS

### UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

MELVIN A. CONANT TO BE ASSISTANT ADMINISTRATOR  
FOR INTERNATIONAL ENERGY AFFAIRS

SEPTEMBER 23 AND DECEMBER 2, 1974



Printed for the use of the  
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The third question concerns Mr. Conant's previous employment as an executive with a major oil company, and whether the facts and circumstances surrounding the termination of prior employment with that company and entry into Federal service constitute a test of apparent conflict of interest.

**NOMINATION OF MELVIN A. CONANT TO BE ASSISTANT ADMINISTRATOR FOR INTERNATIONAL ENERGY AFFAIRS**

**MONDAY, SEPTEMBER 23, 1974**

**U.S. SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
Washington, D.C.**

The committee met at 10 a.m., pursuant to notice, in room 3110, Dirksen Office Building, Hon. Alan Bible presiding.

Present: Senators Bible, Abourezk, Metzenbaum, Fannin, Hansen, and Buckley.

Also present: Jerry T. Verkler, staff director; William J. Van Ness, chief counsel; Grenville Garside, special counsel; James Barnes, Richard Grundy, and Lucille Langlois, professional staff members for the majority; Harrison Loesch, minority counsel; David P. Stang, deputy director for the minority; and W. O. Craft, Jr., deputy minority counsel.

Senator BIBLE. The hearing will come to order.

**OPENING STATEMENT OF HON. ALAN BIBLE, A U.S. SENATOR FROM THE STATE OF NEVADA**

The committee will today consider the President's nomination of Mr. Melvin A. Conant to be Assistant Administrator for International Energy Affairs in the Federal Energy Administration.

The responsibilities of the Assistant Administrator for International Energy Affairs and the manner in which they are performed are extremely important to the future well-being of both the United States and the world economies. It is essential that the person holding this important office be knowledgeable of and sensitive to the enormous and potentially disastrous impacts which spiraling world oil prices are having on international financial, trade, and monetary systems, and on the developed and underdeveloped oil-consuming nations of the world.

Today's confirmation hearing presents three distinct questions which the committee must address.

The first relates to Mr. Conant's background and qualifications for the position of Assistant Administrator.

The second concerns Mr. Conant's views on the range of policy options available to the United States in dealing with the impact of escalating world oil prices and other aspects of the interdependence of energy policy, foreign policy, and the world's financial system.

The third question concerns Mr. Conant's previous employment as an executive with a major oil company, and whether the facts and circumstances surrounding his termination of prior employment with that company and entry into Federal service constitute a real or apparent conflict of interest.

Before the committee hears Mr. Conant's statement and examines the nominee, I want to announce that representatives of Exxon have been requested to appear at today's hearing and to answer any questions members may have concerning the severance payment and the circumstances of Mr. Conant's termination.

Do we have representatives of Exxon here?

All right, Mr. Reporter, at this point in the record, place the biography of Mr. Conant, and it is rather full. I think each member has been furnished a copy of the biography and there is a series of letters likewise dealing with this nomination. Without objection, they will be incorporated in the record at this point.

[Mr. Conant's biography, the letters referred to by Senator Bible and the text of 18 U.S. Code at 209 follow:]

BIOGRAPHY

MELVIN A. CONANT

(Acting) Assistant Administrator for  
International Energy  
Federal Energy Office  
Room 3426, Ben Franklin Station  
Washington, D.C. 20461

1200 N. Nash Street, Apt. 512  
Arlington, Virginia 22209

1. 1974: Joined the International Energy division of FEO as Director of the Office of International Trade and Commerce (Producing Nations).
2. 1963-73: Senior Government Relations Counsellor for Europe, the Middle East and Asia, headquarters of the Exxon Corporation,\* 1251 Avenue of the Americas, New York City. Concerned with the quality of political reporting, and representations to governments, on developments in political and national security fields likely to affect the regional and worldwide operations and planning of the company. Areas of interest and responsibilities sufficiently broad to include wide ranging contacts in political and defense circles especially in Europe and Far East. A member of the Institute for Strategic Studies, London, and Consultant, Department of State, on European and Oceanic Affairs. (Also Executive Secretary, Committee on Ocean Policies, Exxon Corporation.) Oil Advisor, U.S. Delegation, U.N. Preparatory Sessions, Law of the Sea Conference, 1972, 1973.

Lecturer: Royal Canadian Defence Forces College, U.S. National War College, U.S. Air University and Royal Naval Staff College, Greenwich, National Defence College of Canada.

3. 1961-62 appointed Regional Political Advisor for Standard Oil interests in East Africa, Asia, the Far East and Australia. Responsibilities comparable to the above but on regional company level.
4. Invited to join the faculty of the National War College, 1960-61, as Professor of International Security Affairs. Responsible for the research programs on national security, policy problems (methods of analysis, presentation of argument, etc.) participated in by each class member. Assisted in the analysis of current security issues. Lectured on U.S. Defense relations with Canada and on India and Pakistan (in the latter cases analyzing the internal political factors affecting foreign policy objectives). Faculty member assisting in course of War College visit to West and East Europe (Warsaw and Belgrade).

\* Formerly Standard Oil Company of New Jersey

5. Invited to join the Council on Foreign Relations (1955) as a Council member and on the executive staff responsible for the programs involving over 100 private meetings held annually with foreign diplomats, journalists and politicians.

Responsible for organizing Council discussions on Security Systems in the Western Pacific and U.S. Strategic Bases Overseas. Later, was responsible for initiating two other Council series on Military Strategy and U.S. Policy and Political and Strategic Problems of Deterrence.

In 1959 began a study of the political and military effects of special weapons on U.S. allies in Europe and on the Asian perimeter. Subsequently visited some of these allied countries to appraise political and defense problems in the light of Soviet military capabilities. Completed study for the Council on Foreign Relations: Strategic Defense of North America; a case study of the political effects in Canada of changing military requirements of special weapons. The study was published in the late Spring, 1962, as The Long Polar Watch.

6. In 1951 began an extended tour of the Philippines, Hong Kong, Indonesia, Malaya, Thailand and Burma; Pakistan, India and Ceylon to analyze Communist penetration in certain groups. Subsequent visits in the intervening years for other purposes have included Japan. Attended conferences on Far Eastern affairs beginning 1947 to the present.

From 1951-55 was Executive Director of the Pacific and Asian Affairs Council, Hawaii (formerly Institute of Pacific Relations of Hawaii). Responsible for operations of office and for the briefing of businessmen with interests in Southeast Asia and Japan. Appointed by the Territorial Governor a founding member of the Board and Executive Committee of the International Cooperation Center - forerunner of the present East-West Center for training of Asians and Americans assigned to Asia.

Advised elements of U.S. Air Force and U.S. Navy on political developments in Asia likely to affect operations and planning. Member of the National Security Forum, Air War College. Completed reports on Soviet diplomacy and tactics in Asia at the request of U.S. Air University (long-range planning section of the Air War College).

From 1953-1955 was a "go-between" for several Chinese banks and firms and leading "Western" banks and utilities in Hawaii. These wished to break down the lines drawn between races and for 2 years assisted in the sensitive discussions as a person with close friends in the racial communities involved.

Research Secretary of the Honolulu Chamber of Commerce's Economic Development Committee and member of the Governor's Committee to work with the Stanford Research Institute on economic problems of the Territory.

7. Publications in the Harvard University Monograph Series (Far East), Far Eastern Survey, International Journal (Canada), Royal Canadian Air Force Collge Journal; The United States and Japan (conference report) and Race Issues on the World Scene (conference report). The Long Polar Watch (Canada and the Defense of North America); Canada in Defense of the West (Foreign Affairs, April 1962) and Canada (published by the Foreign Policy Association, N.Y.), Heralds of Their Age: The Clipper Ship Names (South Street Seaport Museum, New York, 1972).

8. Member: Council on Foreign Relations  
 Institute for Strategic Studies (London)  
 Royal United Services Institution for  
 Defence Studies (London)  
 Board of Trustees, Woods Hole Oceanographic Inst.  
 Board of Trustees, South Street Seaport Museum, N.Y.  
 Board of Trustees, Cold Spring Harbor Whaling Museum  
 Visiting Committee, Harvard University (Astronomy)  
 New York Yacht Club  
 Seawanhaka Corinthian Yacht Club  
 Asian Society  
 Japan Society  
 Middle East Institute

9. Sports: Sailing (cruising)

10. Personal Data:

Born: New York City, March 20, 1924, of American parents

Educated: Harvard College (Magna Cum Laude in international law and diplomacy) 1949;  
 Harvard University, M.A., Far Eastern studies (1951)

Married: Christa Maria Gaul

Children: Ian James Conant (1947)  
 Alan Conant (1950)  
 Amy Conant (1956)

## FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

SEP 6 1974

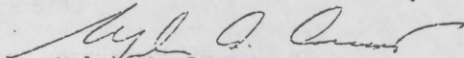
Honorable Henry M. Jackson  
Chairman  
Interior and Insular Affairs Committee  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

For the use of the Interior and Insular Affairs Committee, I submit herewith my financial statement with appropriate notes and explanations. Additionally, included is a record of recent financial transactions which may have a bearing on your considerations.

I am ready to discuss these matters in detail and supply any further information that the Committee may desire.

Sincerely,



Melvin A. Conant

CC:  
Honorable Paul J. Fannin  
United States Senate  
Washington, D.C. 20510

FINANCIAL STATEMENT  
AND OTHER PERTINENT INFORMATION  
SUBMITTED TO  
THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS  
UNITED STATES SENATE  
BY  
MELVIN A. CONANT  
(and wife: Christa G. Conant)

ASSETS

Real estate: Home in Great Falls, Virginia, appraised \$100,000

Securities Owned Outright: NONE

Additional Securities Owned Outright but Managed by: NONE

Other Securities: NONE

Life Insurance Policies:

Teachers Insurance	\$22,000
Aetna #N-1-932-348	45,000
USG	48,000

Other:

Cash: Savings Accounts	\$45,000
Checking Accounts	1,000
Personal Property: clothes, furniture, marine art collection	50,000

TOTAL ASSETS:      \$211,000

LIABILITIES

Description: Mortgage on Great Falls property 60,000  
(First Federal Savings & Loan  
Association of Washington)

TOTAL LIABILITIES:	\$60,000
<u>NET WORTH:</u>	<u>\$151,000</u>

MATTERS OF INCOME

1974 is an exceptional year for me in view of my entry into public service about mid-January, my prior termination of all financial interest in the Exxon Corporation (excepting only my fully vested rights in the retirement fund), application of the Corporation's public leave policy--extraordinary taxes and the change in income.

My 1973 income from all sources (bonus, options, pay) approximated \$80,000. My 1974 income -- from all sources but principally from the one-time Exxon severance arrangement will approximate \$180,000; total taxes will approximate \$54,000. My 1974 USG salary approximates \$36,000. A small additional income in each year has come from savings accounts.

I have no other means.

Tax returns for 1973 are attached; those for earlier years can be made immediately available.

My attorney for all purposes (including taxes) is Robert Taisey of Davies, Hardy, Ives, etc., 2 Broadway, New York City, New York.

RECENT TRANSACTIONS

Actions taken prior to entering USG service to avoid "conflict of interest."

- A. My entire holdings in Exxon stock were eliminated.
- B. My money in the Exxon Thrift Plan Fund was fully withdrawn.
- C. All stock options granted me were exercised/lapsed prior to termination of employment.
- D. My wife sold her shares in the British Petroleum Company.

OTHER MATTERS OF INTEREST

1. Trustee of the Woods Hole Oceanographic Institution, (1967- )
2. Trustee of the Cold Spring Harbor Whaling Museum (1967-1974)
3. Trustee of the South Street Seaport (N.Y.) (1966-1974)



FEDERAL ENERGY ADMINISTRATION,  
Washington, D.C., July 19, 1974.

HON. WILLIAM B. SAXBE,  
Attorney General of the United States,  
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: I am writing you with regard to certain legal questions which have been brought to my attention in connection with the proposal that the President nominate Mr. Melvin A. Conant to be an Assistant Administrator of the Federal Energy Administration. These questions concern the legal effect of 18 U.S.C. 209 on a severance payment made to Mr. Conant when he left his employer to accept a position with the Federal Energy Office established by the President last December.<sup>1</sup>

At the time Mr. Conant was appointed to the Federal Energy Office (FEO), he had served for 13 years in a variety of executive positions in Exxon Corporation and its predecessor, Standard Oil Company of New Jersey.<sup>2</sup> During the discussions which preceded Mr. Conant's appointment at FEO it became apparent that, were he to accept a position in that agency, it would be necessary for him to sever all financial relationships with Exxon (to include the arrangement for prospective employment that would be inherent in a leave of absence) by reason of FEO's comprehensive regulatory responsibilities over all segments of the petroleum production and refining industries.<sup>3</sup>

When Mr. Conant advised his superiors at Exxon of his inclination to accept an offer from FEO, should one be formally tendered, he was advised of the general effects of the Exxon Public Service Leave of Absence and Termination Policy.<sup>4</sup> In applying the provisions of that policy to Mr. Conant's case the corporation proposed a severance payment and sought the views of FEO on that proposal.<sup>5</sup> After review by the acting deputy general counsel of FEO, on January 3, 1974, the Administrator of that Office advised Exxon of FEO's concurrence with the proposed termination payment.<sup>6</sup> Mr. Conant thereafter tendered his resignation from Exxon, and on January 4, 1974, received the lump-sum payment which had been proposed by the corporation.

On January 14, 1974, Mr. Conant joined the Federal Energy Office, where he served as Director of the Office of International Trade and Commerce.<sup>7</sup> Since the effective date of the Federal Energy Administration Act of 1974,<sup>8</sup> Mr. Conant has been serving as Acting Assistant Administrator for International Energy Affairs of the Federal Energy Administration (FEA). It has been proposed that the President nominate Mr. Conant to be an Assistant Administrator of FEA, and pursuant to section 11(b) of the Act that nomination must be submitted by July 27, 1974, if Mr. Conant is to continue to serve as Acting Assistant Administrator pending confirmation.<sup>9</sup>

<sup>1</sup> See Executive Order 11748, December 4, 1973, in which the President established the Federal Energy Office as an entity in the Executive Office of the President, and delegated the Administrator of FEO the authority provided in the Emergency Petroleum Allocation Act of 1973, P.L. 93-159, 87 Stat. 627.

<sup>2</sup> Mr. Conant's biography is attached.

<sup>3</sup> Emergency Petroleum Allocation Act of 1973, *supra*. Regulations promulgated thereunder appear in 10 CFR § 202 *et seq.* (1947). Exxon is one of the major constituents of the integrated producing, refining and marketing elements of United States energy production.

<sup>4</sup> See letter of July 1, 1974, from David G. Gill, Counsel, Exxon Corporation, attached.

<sup>5</sup> See letter of December 26, 1973, from Melvin A. Conant, with enclosures, attached.

<sup>6</sup> See memorandum to Stephen A. Wakefield dated January 3, 1974, and letter of January 3, 1974, from William E. Simon, attached.

<sup>7</sup> On January 14, 1974, Mr. Conant was given a 30-day temporary appointment by the Department of the Interior and was detailed to FEO. On February 13, 1974 he was provided a Limited Executive Appointment in FEO pursuant to section 305.509, Federal Personnel Manual. While at FEO he was promoted Deputy Assistant Administrator, and thereafter was designated Acting Assistant Administrator for International Energy Affairs.

<sup>8</sup> P.L. 93-275, 88 Stat. 96, approved May 7, 1974. Section 30 of the Act specified that it would become effective 60 days after "enactment" (construed as approval by the President or otherwise becoming law), or on such earlier date as the President might determine and publish in the Federal Register. On June 25, 1974, the President promulgated Executive Order 11790, which provided, *inter alia*, that the Federal Energy Administration Act of 1974 would become effective on June 27, 1974.

<sup>9</sup> Federal Energy Administration Act of 1974, section 11(b), 88 Stat. 105. Mr. Conant's designation as Acting Assistant Administrator was made as of the effective date of the FEA Act established by the President in Executive Order 11790.

The letter from the relevant Exxon official to Mr. Conant which proposed the arrangements for his termination included the following:

"The operations of the Federal Energy Office are of such national importance, and the nature of the position being offered to you is such that, although the decision to accept or reject the position is entirely up to you, we feel this Corporation should do nothing to discourage your acceptance, and if you accept, should minimize the disadvantages that normally attend a termination of employment.

"Accordingly, we are making the following commitment: If an appropriate official of the aforesaid agency tells us in writing that the agency has no objection to this commitment and you terminate your employment with this Corporation in order to accept the aforesaid Government position, then, whether or not you remain in that position for any length of time, this Corporation shall pay you \$90,000, under its Public Service Leave of Absence and Termination Policy, in January, 1974."<sup>10</sup>

Mr. Conant described the circumstances involved in the termination payment as follows:

"I was informed by Exxon (formerly Standard Oil Company of New Jersey) of its Public Service Leave of Absence/Termination Policy applicable to employees invited to accept posts of public service. In such cases Exxon believes it should minimize the financial disadvantages that normally attend termination of employment for such a reason.

"Consequently, upon my decision to accept the FEO invitation, and my agreement with Exxon and FEO to make the separation complete, the Corporation chose to acknowledge past services and to compensate me in part and for an interim period some of the anticipated earnings foregone as a result of my decision to enter public service. The large tax obligations assumed by an employee who must end all financial interests in a corporation were a consideration in the application of the Policy. (Only my fully vested rights in the retirement program were retained). There was nothing unique in my case; the Policy has been in effect for thirty years."<sup>11</sup>

In light of the references to "minimiz[ing] the disadvantages that normally attend a termination of employment" and "compensat[ion] . . . in part for . . . some of the anticipated earnings foregone" (in Mr. Conant's description) as bases for the \$90,000 payment, the question has been raised whether the circumstances of this payment might appear to have violated 18 U.S.C. 209, which makes it a crime for an individual or a private entity to pay, and for a Federal employee to receive, any sum as a contribution to or supplement of the compensation such employee receives from the United States for his services to the government. Stated otherwise, the question which must be resolved is whether the apparent sensitivity to financial sacrifices that would result from accepting federal employment, if made an explicit factor among several in the decision to make a severance payment, would result in a violation of 18 U.S.C. 209.

#### THE STATUTORY PROVISION

Section 209(a) of Title 18, United States Code, provides:

"Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government . . . from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

"Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

"Shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

There are no reported prosecutions under section 209 or its predecessors. Such cases as have occurred have treated the prohibition in the context of issues collateral to criminal liability, such as the validity of a contract<sup>12</sup> or an agency

<sup>10</sup> Letter of January 2, 1974, from Stephen Stamas to Melvin A. Conant, attached.

<sup>11</sup> Memorandum for the Record of June 14, 1974, from Melvin A. Conant, attached.

<sup>12</sup> *Muschang v. United States*, 324 U.S. 49 (1945).

regulation.<sup>13</sup> Since section 209 is so similar in text to its predecessors, was suggested to be substantively identical to its precursors by its legislative history,<sup>14</sup> and has been so considered by the Department of Justice,<sup>15</sup> its reach may be examined in light of the constructions afforded its precursors, section 1914 of the 1948 codification of Title 18 and the previous section 66 of Title 5, which reflected the original provision enacted in 1917.

The source of 18 U.S.C. 209 was a proviso inserted in the Legislative, Executive and Judicial Appropriations Act of March 3, 1917.<sup>16</sup> The legislative history is thoroughly treated in the principal texts which have examined this provision,<sup>17</sup> and briefly it appears that it was originally enacted to address a narrow abuse involving placement of educational theorists in the Bureau of Education by private foundations. The potential abuse sought to be corrected was that of exploitation of the advantages which accrued by federal employee status, specifically the government's publishing capability and franking privilege, in order to propagate radical notions of education.<sup>18</sup>

As finally adopted, however, the statute had become a general provision applied throughout the executive branch. Its basic purpose was described succinctly by the Attorney General as "that no government official or employee should serve two masters to the prejudice of his unbiased devotion to the interests of the United States."<sup>19</sup> Nonetheless, this provision has never been the exclusive means whereby that value is sought to be preserved, and the commentators who have examined it have observed that it does not prohibit gifts or gratuities, nor the receipt of a private income, nor the receipt of compensation for services unrelated to and distinct from the services which the federal employee provides the United States.<sup>20</sup> Such a narrow construction is not remarkable, for this provision but complements other laws and has never been considered a general bribery statute.

The provision, however, has been described as aimed at a subtle form of bribery.<sup>21</sup> What is sought to be avoided is the capability for the private source to exert an improper influence on the decisions made by the federal employee in connection with his official duties. It is apparent that payment of a salary, as that term is ordinarily construed, would afford a particularly unwholesome opportunity for the private source to assert undue influence, because continuation of payments could too easily be conditioned, either expressly or by inference, on performance of federal services for the private source's benefit. Single lump sum payments by their nature would not involve this risk, but it has been stated that the mere fact the payment was made in a lump sum does not necessarily remove it from the reach of the statute.<sup>22</sup> The threshold question is whether the payment was made in compensation for the services performed or to be rendered by the employee for the government.

Though evaluating any termination payment involves ascertaining the subjective intent for which the payment was made,<sup>23</sup> it is apparent that some objective criteria must be used in evaluating such transactions. One commentator has stated that the payment must be "plausible" as for other than federal services in order to lie beyond the prohibition.<sup>24</sup> As suggested above, the form of the payment—whether it is a lump sum or an indefinite arrangement for monthly payments—is germane in making such an evaluation.<sup>25</sup> When the payment is made as a consequence of some formal action which articulates its reasons, the stated grounds for payment, if they are other than as compensation for federal services, also are relevant. Whether the payment is made in connection with an established program applied on a recurring basis, rather than an ad hoc arrangement made in connection with a particular employee, has also been considered germane.<sup>26</sup>

<sup>13</sup> *International Railway Co. v. Davidson*, 257 U.S. 506 (1922).

<sup>14</sup> S. Rep. No. 2213, 87th Cong., 2d Sess., at 14 (1962).

<sup>15</sup> Memorandum Regarding Conflict of Interest Provisions of P.L. 87-849, Jan. 28, 1963, 28 F.R. 985 (1963).

<sup>16</sup> Act of March 3, 1917, 39 Stat. 1070, 1106, ch. 163.

<sup>17</sup> Ass'n of the Bar of the City of New York, *Conflict of Interest and Federal Service*, at 148, 149 (1960); Manning, *Federal Conflict of Interest Law* at 54, 55 (1964).

<sup>18</sup> See remarks of Senator Chamberlain, 54 Cong. Rec. 2039 (1917).

<sup>19</sup> 38 Op. Att. Gen. 294, 296 (1935).

<sup>20</sup> See, e.g., Manning, *supra*, at 163.

<sup>21</sup> *Muschang v. United States*, *supra*, at 68.

<sup>22</sup> *United States v. Gerdel*, 103 F. Supp. 635, 638 (E.D. Mo. 1952).

<sup>23</sup> Staff of House Comm. on the Judiciary, Subcomm. No. 5, 85th Cong., 2d Sess., *Federal Conflict of Interest Legislation*, at 44 (Comm. Print 1958).

<sup>24</sup> Manning, *supra*, at 168.

<sup>25</sup> Report of the Ass'n of the Bar, *supra*, at 65. See also *Benedict v. United States*, 176 U.S. 357, 360 (1900).

<sup>26</sup> Manning, *supra*, at 168.

One commentator, in perhaps the most thorough treatment focused principally on the post-1962 statutes,<sup>27</sup> asserted that the *sole* test for severance payments should be the factual one of whether the payment was made for prior services. He suggested a single litmus test:

"To test its own intent the Board of Directors of the corporation from which the executive is departing should ask itself, would we make the same severance payment if the corporate executive was leaving with no idea of returning to accept the presidency of a college, or a charitable foundation, or to enter the ministry? If the answer is in the affirmative, it is virtually indisputable that there is a legitimate severance payment."<sup>28</sup>

Though the Justice Department's interpretive memorandum (and indeed, the text of the Senate report) concluded that 18 U.S.C. 209 does not vary in substance from its predecessors, one change suggests a narrow construction in evaluating such payments. While section 1914 had proscribed receipt of payments "in connection with" federal duties, as expressed in the current section 209 the prohibition is described as receipt of payments "as compensation for" federal service. The House report which accompanied the new codification described the change as follows:

"Accordingly, the bill prohibits the receipt from private sources of any salary, or contribution to or supplementation of salary, *as compensation for services as an officer or employee of the United States Governments.*"<sup>29</sup> (Emphasis in the original).

The House Report stated further that the phrase "as compensation for" was inserted "to emphasize the intent that the prohibition is against private payment made *expressly* for services rendered to the government."<sup>30</sup> (Emphasis added).

The effect of an explicit sensitivity to the financial sacrifice that would result in accepting a federal position does not appear to have been exhaustively considered. Emphasis on this factor, however, could be an element that would suggest that the motivation for the payment was to supplement a lower federal salary rather than recognition of prior services or some other factor unrelated to compensation for federal services.

In one instance, however, the Attorney General had occasion to examine a proposal for an arrangement designed to permit an individual to accept a federal position when reliance exclusively on "the rate of pay permissible under government regulations" would have involved "a financial sacrifice which he is unable to stand."<sup>31</sup> In that case, the President of a technical college proposed that the institution would provide the putative employee, a professor, a leave of absence at a reduced salary from the institution during the pendency of his work with the government.

Despite the apparent concern for the limited compensation available from the government as the principal motivating factor, the Attorney General concluded that such an arrangement would not violate section 1914. Without extensive analysis the opinion adverted to prior informal opinions by the Department of Justice and a published opinion which turned on a different issue, and concluded that such payments would be made "with respect to the former employment and incidental to the leave granted; they [would not be] made 'in connection with' the services of the individual as an official or employee of the United States within the contemplation of the statute."<sup>32</sup>

From this opinion it seems apparent that, standing alone, an expressed sensitivity to the reduction in compensation associated with accepting a federal position does not compel the conclusion that a severance payment falls within the statutory prohibition.<sup>33</sup> Accordingly, it is necessary to examine all the circumstances of the payment in reaching a conclusion as to whether it would be proscribed by 18 U.S.C. 209.

<sup>27</sup> Perkins, *The New Federal Conflict of Interest Law*, 76 Harv. L. Rev. 1113 (1963).

<sup>28</sup> *Id.* at 1139.

<sup>29</sup> H.R. Rep. No. 748, 87th Cong., 1st Sess., at 13 (1961).

<sup>30</sup> *Id.* at 24, 25.

<sup>31</sup> 39 Op. Atty. Gen. 502 (1940).

<sup>32</sup> *Id.* at 503.

<sup>33</sup> It has been suggested that the presence of "dealings" between the former employer and the agency might be crucial in determining the applicability of the statute to a given situation. See, e.g., Manning, *supra*, at 165; 41 Op. Atty. Gen. 217, 221 (1955). Under such a standard, arrangements proposed by nonprofit educational entities might be considered more favorably than payments made by businesses in a regulated industry. The statute, however, makes no such distinction, and its legislative history shows that the activities of nonprofit foundations prompted its original enactment.

## THE CONANT TERMINATION PAYMENT

The Exxon policy<sup>84</sup> under which the termination payment was made provides that, to accept certain public service positions, Exxon employees may be granted either a leave of absence or a termination. Eligibility for such a leave of absence is conditioned on assignments in which the employee "will not participate in any particular matter in which the Company has a financial interest."<sup>85</sup> If a leave of absence is not granted but an employee is "eligible"<sup>86</sup> he may be granted a "Public Service Termination."<sup>87</sup> Part IV of the Policy specifies that, whenever a leave of absence or termination is granted, the employee will receive a lump sum payment:

"When an employee is granted a Public Service Leave of Absence or Termination, the Company will pay a lump sum to the employee, prior to the absence or termination as the case may be, in consideration of his past service. The amount of the lump sum shall be one-quarter of a month's pay (or such larger fraction as may be recommended by the Employee Relations Department Management) per completed year of credited Company service, but in no event more than twenty-four months' pay."

As is apparent, the Policy terms describe the lump sum payment as made "in consideration of [the employee's] past service." Further details of the circumstances of Mr. Conant's departure are contained in Mr. Stamas' letter of January 2, 1974.<sup>88</sup> That letter described the termination payment as follows:

"Accordingly, we are making the following commitment: If an appropriate official of the aforesaid agency tells us in writing that the agency has no objection to this commitment and you terminate your employment with this Corporation in order to accept the aforesaid government position, then, whether or not you remain in that position for any length of time, this Corporation shall pay you \$90,000, under its Public Service Leave of Absence and Termination Policy, in January, 1974.

"The foregoing commitment is a recognition of the valuable service that you have rendered to this Corporation in the positions that you have held over the past twelve years, and is extended without any reciprocal obligation on your part. This Corporation believes, as you do, that the commitment is consonant with all legal requirements; but if in fact anything to which it commits this Corporation proves to be prohibited by any law, the commitment is to that extent void."

Neither the Policy nor the circumstances of this particular case suggests special inducement to enter federal service. The Policy extends to positions with any "qualified organizations," which are defined to include (in addition to federal agencies) international organizations, state and local governments, public and private colleges and universities, and public or non-sectarian private bodies engaged in health, educational, welfare, or community relations programs.<sup>89</sup> None of Mr. Conant's superiors encouraged his acceptance of the offer from FEO, and he has advised that the only Exxon official to discuss the matter in any length sought to dissuade him from taking the position.<sup>90</sup>

The correspondence involved in Mr. Conant's termination expressly precludes any commitments between Mr. Conant and Exxon, and the termination payment was premised only on acceptance of the position without regard to the duration of occupancy. The Policy under which the payment was made has been in force for a number of years, and is patterned after public service leave and termination programs adopted by other corporations.<sup>91</sup>

<sup>84</sup> A copy of the Public Service Leave of Absence and Termination Policy is appended to the letter of July 1, 1974, from David G. Gill, Counsel, Exxon Corporation, attached.

<sup>85</sup> Policy, *supra*, Part II A. 2.

<sup>86</sup> The "eligibility" of the employee is dependent on the proposed assignment being with a "qualified" public service organization, as defined elsewhere in the Policy. See Policy, *supra*, Part I 1.

<sup>87</sup> Policy, *supra*, Part III.

<sup>88</sup> Letter of January 2, 1974, from Stephen Stamas to Melvin A. Conant, attached.

<sup>89</sup> Policy, *supra*, Part VII.

<sup>90</sup> In a conversation with a senior Exxon official. Mr. Conant was told that were he to leave the company to accept the position he could not expect the experience to enhance his prospects for advancement should he return to Exxon.

<sup>91</sup> The Policy involved was adopted in 1969, and we are advised that a similar program existed in the company for approximately 30 years. Exxon has also advised that the current Policy is substantially identical to that used by the Xerox Corporation.

Though some provisions of the Exxon correspondence exhibit sensitivity to the financial sacrifices involved in Mr. Conant's departure, close scrutiny suggests that the relevant language speaks to the financial consequences of the termination itself and not the lower rate of federal compensation expected. The termination payment was made openly and, indeed, with the active scrutiny of FEO when it was first considered. The Policy under which the payment was made is not limited in its application to terminations for federal service, but by its terms applies to state and local instrumentalities, international organizations, public and private colleges and universities, and public-interest private entities engaged in health, welfare, educational or community relations programs.<sup>42</sup>

The Policy involves special consideration for past services to certain employees in a manner consistent with the consideration extended those who must terminate prematurely for medical reasons.<sup>43</sup> The payment in question was calculated pursuant to the formula stated in the policy, and there is absolutely no indication that the amount of the payment was computed by reference to the federal compensation anticipated for Mr. Conant. Finally, the payment was explicitly characterized by Exxon as "a recognition of the valuable service that [Mr. Conant] rendered to [the] corporation in the positions [he] held over the past twelve years, and [was] extended without any reciprocal obligation on [Mr. Conant's] part."

On these facts, I do not believe there is any showing of the requisite subjective intent that the payment compensate Mr. Conant for his government service as a supplement to his federal salary. No authority has been called to my attention which has, on such facts, imputed such an intent in a transaction involving a termination payment. Accordingly, I do not believe the payment made to Mr. Conant suggests a violation of 18 U.S.C. 209, and my inquiries have prompted me to conclude without question that Mr. Conant acted in complete good faith throughout this entire matter.

In light of the proposal that Mr. Conant be nominated to be an Assistant Administrator of FEA, I would appreciate the views of the Department of Justice concerning the legal issues presented in this matter.

Sincerely,

ROBERT E. MONTGOMERY, Jr.,  
*Acting General Counsel.*

[Enclosures.]\*

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FEDERAL ENERGY ADMINISTRATION,  
*Washington, D.C., July 24, 1974.*

LEON ULLMAN, Esq.,  
*Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice, Washington, D.C.*

DEAR MR. ULLMAN: AS I mentioned during our telephone conversation today, yesterday I posed several questions concerning the Conant termination payment to Mr. Richard E. Keresey, Assistant General Counsel of the Exxon Corporation. I requested that he provide further information as to the method by which Mr. Conant's termination payment was calculated, and information concerning the uniformity with which Exxon has made termination payments of similar magnitude to senior executives who have left for other public service positions.

Today Mr. Keresey advised me substantially as follows:

In each case involving a proposed termination for good cause by a senior executive of Exxon, Mr. James Moore, Senior Adviser, Executive Compensation, calculates a proposed termination payment. Mr. Moore thereafter recommends this payment to the Executive Compensation Committee of Exxon Corporation, who reviews the proposed payment to determine whether the amount proposed is "reasonable." This process is followed not only with respect to terminations made under the Exxon Public Service Leave of Absence and Termination Policy, but also is applied in cases involving terminations for other good cause, such as

<sup>42</sup> A representative sample of non-federal leaves and terminations granted under the Policy is appended to the letter of July 1, 1974, from David G. Gill, attached.

<sup>43</sup> See statement, Exxon Corporation Public Service Leave of Absence and Termination Policy, July 1, 1974, appended to Gill letter, supra.

\*Enclosures have been retained in committee files.

early separation of redundant executives or early retirements necessary for medical reasons.

Terminations by senior executives to enter federal government positions are infrequent, and occur every two years or so. In each case of such a termination the Exxon Public Service Leave of Absence and Termination Policy is applied in the following manner.

Though the basic formula of the Policy specifies at the outset that the termination payment will be calculated at the rate of one-quarter of a month's pay for each year's service, with respect to senior executives the fraction employed invariably is 1, so that the basic calculation allows one full month's pay for each year of service. The reason for the low starting formulation and the flexibility inherent in the formula (which permits a fraction other than one-quarter) is that the Policy applies across-the-board, and is used with respect to terminations of employees in widely varying circumstances, including those employees covered by collective bargaining agreements.

If, after having applied the one month's salary per year of service formula, the 24 months' salary ceiling has been reached, then the process is completed. If, however, the resulting figure would be "substantially" less than 24 months' salary, then Mr. Moore also takes into account financial losses associated with termination (such as stock options too recent to reflect any substantial gain, and the tax consequences of "bunching" income), and resettlement costs if the termination involves a move.

As his biography indicated, Mr. Conant joined Exxon after having had other employment. His position at Exxon was such as ordinarily would have been held by an executive who had been at Exxon for twenty years or more.

After reviewing his notes, Mr. Moore advised that he had computed Mr. Conant's payment as follows:

One month's salary x years of service.....	\$62, 300
Estimated loss of anticipated bonuses.....	11, 000
Loss associated with stock options.....	10, 900
Resettlement expenses.....	5, 000
<b>Total .....</b>	<b>89, 200</b>

Mr. Moore thereafter rounded the \$89,200 figure to \$90,000 and recommended that that sum be approved by the Executive Compensation Committee. The Committee concurred, concluding that a termination payment in that amount would be "reasonable."

Though terminations to enter federal service are infrequent, I was advised that in each instance the payment to a senior executive is calculated in this manner. Mr. Keresev further advised that such termination payments (for public service, redundancy terminations, health terminations, or departures for other good cause) invariably amount to between one and two years' salary.

Since our conversation, I have asked that Mr. Keresev provide Exxon's confirmation of what he told me during our telephone discussion, and further that he examine the Wall Street Journal article of July 1, 1974 and advise me as to the accuracy of the suggestion contained therein that the payment made to Mr. Conant was based in part on the difference between his Exxon income and his expected government salary.

Thank you for your assistance in this matter, and I will provide you the materials we requested from Mr. Keresev as soon as they arrive.

Sincerely,

ERIC J. FYGI,  
Assistant General Counsel for General Law,  
Legislation and Resource Development.

DEPARTMENT OF JUSTICE,  
Washington, D.C., August 7, 1974.

Mr. ROBERT E. MONTGOMERY, JR.,  
Acting General Counsel, Federal Energy Administration, Room 5101, New Post  
Office Building, 12th and Pennsylvania Avenue, NW., Washington, D.C.

DEAR MR. MONTGOMERY: I am responding to your letter of July 19 to the Attorney General regarding a legal issue attendant to the proposal that Mr. Melvin

A. Conant be nominated as Assistant Administrator of the Federal Energy Administration. It appears that Mr. Conant came to the Government on January 14, 1974, and is presently serving as Acting Assistant Administrator for International Energy Affairs. Prior to his federal employment, he had been employed for 13 years in a variety of Executive positions by Exxon Corporation and its predecessor Standard Oil Company of New Jersey.

The legal issue arises out of a lump sum severance payment of \$90,000 made to Mr. Conant by Exxon when he resigned to come to the Government. The issue is whether the payment could properly be considered as subject to the prohibition of 18 U.S.C. 209(a). That subsection reads in pertinent part as follows:

"(a) Whoever receives any salary, or any contribution to or supplementation of salary *as compensation for his services* as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States \* \* \*; or Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—" [Emphasis supplied.]

is guilty of a misdemeanor. What must be considered is whether the severance payment to Mr. Conant by Exxon could be regarded as a salary supplement in consideration of his government employment, prohibited by 18 U.S.C. 209(a).

At the outset it must be noted that Mr. Conant and Exxon, sensitive to questions relating to the Conant payment, requested and received from the then Federal Energy Office an advance assurance that the payment would not violate the conflict of interest laws. It was only after this assurance was received that the payment was made. Despite the reservations concerning the payment hereafter discussed, it is the position of the Department of Justice that an investigation concerning possible violation of 18 U.S.C. 209(a) is not warranted in the circumstances.

On the basis of the facts you have presented to us, Mr. Conant received his payment pursuant to a long-standing Exxon policy embodied in a formal document entitled "Public Service Leave of Absence and Termination Policy" covering employees who leave that Company to undertake various public service positions, both governmental and private. Under that policy, an employee who terminates his employment to accept public service receives a lump sum payment "in consideration of his past service." The payment is no less than one-quarter of one month's pay multiplied by the number of years of service and no more than twenty-four months' pay.

At the time he left Exxon, Mr. Conant had thirteen years of service and was receiving a salary of \$57,500. In addition, he had certain stock option rights and was entitled to certain bonuses. The payment of \$90,000 is clearly higher than the minimum payment authorized under the Exxon policy, but lower than the maximum of twenty-four months' pay.

You have advised us that the payment was calculated in the manner customarily used for senior executives who terminate for public service, whether governmental or private, or even for medical reasons or because of a reduction in force. In Mr. Conant's case the calculation began with one month's salary multiplied by his years of service (\$62,300). To this was added the amount of bonus income that he would lose for the year 1973 (\$11,000); an amount representing the value of his stock options lost (\$10,900); and a resettlement payment (\$5,000). The total sum of \$89,200 was then rounded off to \$90,000. On the foregoing facts, it appears that the payment was not based directly on the difference between Mr. Conant's Exxon salary and his governmental salary—which would be a clear violation of 18 U.S.C. 209(a)—but rather on a customary formulation of severance pay under the long-standing public service termination policy.

The question remains whether nevertheless the payment may be viewed as a supplement to government salary for federal services even though salary differential did not enter directly into the calculation of the payment. Our concern in this regard is prompted, in part, by a *Wall Street Journal* article of July 1, 1974 in which an Exxon official is described as having characterized the payment to Mr. Conant as "based in part on the difference between his income at the company and his new salary in the government." This clearly suggests a supplement as compensation for his government service, the very thing 18 U.S.C. 209(a) prohibits.

In a letter to the Federal Energy Administration dated July 26, 1974, Exxon explains this statement as reflecting the general policy behind the Public Service termination policy rather than a specific consideration in Mr. Conant's case.

This statement must be read in context with the underlying purpose of the Exxon policy on termination pay. The purpose of this policy is to reduce the potential barrier to leaving Exxon by alleviating the economic hardship incurred by an employee when he terminates his employment in mid-career. When an individual will be going to other employment after termination, whether private or public, we test the appropriateness of the indicated termination payment by reference to the individual's probable economic situation after termination. In other words, if there were no economic loss there would be no payment.

Exxon goes on to explain that the fact that Mr. Conant would be receiving less pay in government was taken into account in deciding *whether* there would be a payment but not in *calculating* the payment.

The interpretation of 18 U.S.C. 209(a) in light of the facts relating to Mr. Conant is difficult. We do not have the obvious violation involved in an *ad hoc* payment to an individual, whether by lump sum or over a period of time, directly designed to provide the difference between his private industry and government salaries. Rather we have a payment made under the customary formula implementing a long-standing policy. In Manning, *Federal Conflicts of Interest Law*, p. 168, it is suggested that this may be determinative in deciding whether the statute has been complied with. Similarly, it appears that the Exxon policy would provide payment not only to one entering government service but also to one going to an academic institution or a charitable foundation. In Perkins, *Federal Conflict of Interest Law*, 76 Harv. L. Rev. 1113, 1139, it is asserted that such a policy is not in violation of the law. He notes, that the Department of Justice had taken a stricter view on a substantially similar predecessor statute, 18 U.S.C. 1914. *Ibid.* Prior opinions of the Attorney General dealing with that statute, however, suggest that mere cognizance of the lower government salary does not, *per se*, contaminate an otherwise proper payment. 39 Op. A.G. 501; 38 Op. A.G. 294.

On the other hand, 18 U.S.C. 209(a) does not, by its terms, distinguish between payments calculated specifically with respect to the difference between the private industry and government salary and payments made generally in consideration of the lower government salary. It appears to prohibit any supplementation of salary made because of government service. The Exxon policy of making termination payments only when "economic hardship" will result from public service suggests a supplementation of salary which, in this case, relates to government service.

While we do not question Mr. Conant's good faith in this matter, we do have reservations concerning technical compliance with 18 U.S.C. 209(a) in this instance. Since there are respectable arguments, based on existing authorities, that the payment is permissible, however, and there is positive evidence of sensitivity on Mr. Conant's part concerning possible conflict of interest problems, we suggest that the entire matter be laid before the appropriate Senate Committee for its consideration.

This matter has alerted us to the difficulty in ascertaining the precise application of 18 U.S.C. 209(a) to particular fact situations. We are told that termination payment formulae similar to Exxon's formula are common in industry. In our view, however, although precise guidelines may be difficult to construct, there are certain features of termination plans which would seem to be suspect and to merit special examination, *e.g.*, explicit consideration of a gap between industry salary and prospective government salary, consideration of non-vested industry fringe benefits to be forfeited upon entry into government, consideration of hardship entailed in resettlement costs, any payment so large as not to be easily explicable as a reward solely for past service. We believe these factors warrant critical scrutiny despite the authorities previously adverted to in this letter which suggests a narrow view of 18 U.S.C. 209(a).

We feel that in instances like the Conant case there is a need to implement more effective review and clearance procedures, so that more explicit guidelines can be developed by experience. Difficulties of the sort posed by this case could be avoided or minimized if, in the future, the Office of Legal Council of the Department of Justice were consulted prior to the payment of such sums and the nomination or appointment of persons in Mr. Conant's situation. It must be remembered that the Government has an obligation not only to avoid violations

of the conflict of interest laws but also to prevent situations having the appearance of conflict of interest.

Sincerely,

MARY C. LAWTON,  
Acting Assistant Attorney General,  
Office of Legal Counsel.

FEDERAL ENERGY ADMINISTRATION,  
Washington, D.C., September 18, 1974.

HON. HENRY M. JACKSON,  
Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The President has nominated Melvin A. Conant of my staff to be Assistant Administrator for International Energy Affairs of the Federal Energy Administration. The Committee on Interior and Insular Affairs has scheduled a hearing to consider Mr. Conant's nomination on September 23, 1974 at 10:00 a.m. Mr. Conant has visited with several members of the Committee, and I know that he intends to be available to meet with each Senator on the Committee to introduce himself.

In announcing his nomination, the President expressed the view that Mr. Conant is an "ideal man" for this job. During his time with the Federal Energy Office and FEA, Mr. Conant has brought to public service unusual scholarly and practical experience, and has carried out his duties with rare ability, candor and complete integrity. I support without reservation the President's assessment of Mr. Conant's qualifications for this position from the special insight gained from working with Mr. Conant since he joined FEO last January.

In view of the regulatory responsibilities carried out by the Federal Energy Administration and Mr. Conant's prior service with the Exxon Corporation, some questions have been raised concerning the appropriateness of his nomination. Articles in the *Wall Street Journal* addressed the severance arrangements concluded with Mr. Conant on his departure from Exxon, which included a termination payment of \$90,000. In light of these questions, and the responsibility of the Committee to examine Mr. Conant's qualifications and integrity, I believe it would be useful for me to summarize the circumstances surrounding his selection and the termination arrangements which precede his joining the Federal Energy Office last January. Of course, Mr. Conant is available at your convenience to discuss these matters with you, as is Robert E. Montgomery, Jr., General Counsel of the Federal Energy Administration.

When the Federal Energy Office was being organized and staffed last winter, it was apparent that a major area of concern in meeting the immediate requirements of dealing with the embargo as well as forming a coherent national energy policy required substantial attention to the international aspects of energy production. Mr. Conant's qualifications came to the attention of my predecessor, Secretary Simon, and Mr. Stephen A. Wakefield, then an Assistant Secretary of the Interior serving as an Assistant Administrator of FEO, as they sought to form the senior staff that would be responsible for the international aspects of FEO's responsibilities. Mr. Conant's familiarity with the ways in which governments and multinational corporations relate and function in energy matters, when combined with his reputation for candor and intellectual honesty, made him the prime candidate for a position in FEO. In early January, Mr. Conant was invited to join the Federal Energy Office as Director of the Office of International Trade and Commerce.

Mr. Conant decided to accept the offer to join FEO, and advised Exxon, his employer, of this intention. He realized from the outset that the nature of his position and the public responsibilities of the Federal Energy Office would require that he sever all connections with Exxon and that he divest himself of all financial interests associated with energy. It was also apparent that leaving the company would have a major impact on Mr. Conant's personal finances. The process of termination itself would involve unanticipated financial dislocations, including the impact of realizing in a single taxable year deferred compensation associated with several previous years of service.

Mr. Conant was advised by Exxon of his eligibility for a severance payment under its Public Service Leave of Absence and Termination Policy, a program in effect for some thirty years at that company under which employees leaving Exxon to enter various public service positions receive lump sum termination

payments when the nature of the public service employment, be it private or with an instrumentality of government, necessitates a complete severance from the company. The amount proposed to be made to Mr. Conant was \$90,000, something less than two years' salary at his then current rate of compensation from Exxon. Under the terms of the proposed separation, Mr. Conant would sever completely all ties with Exxon, the termination payment would reflect consideration for his past service during his thirteen years with the company, and there would be no future obligation either on Exxon's or Mr. Conant's part arising out of his previous employment. Mr. Conant would have no right of reemployment with Exxon.

Mr. Conant advised Mr. Wakefield of these proposed arrangements, which were reviewed by the then legal counsel of the Federal Energy Office. After this review, Mr. Simon advised Exxon by letter that there would be no objection to the arrangements proposed for Mr. Conant's termination.

When it was recommended that Mr. Conant be nominated to be an Assistant Administrator of the Federal Energy Administration, the factual circumstances and the legal issues presented by this termination payment were thoroughly examined by the present General Counsel of FEA and the Justice Department. While the state of the law involving termination payments such as that made to Mr. Conant is not entirely clear, and the Department of Justice expressed reservations concerning technical compliance with 18 U.S.C. 209(a) with respect to application of Exxon's policy, both FEA General Counsel and the Department of Justice concluded that there was no question of Mr. Conant's good faith throughout this matter and that his conduct had demonstrated sensitivity concerning possible conflict of interest problems. After this thorough review, the President submitted Mr. Conant's nomination to the Senate.

If confirmed, Mr. Conant will bring to the Federal Energy Administration unique qualifications to address the major policy questions involved in international energy affairs. During his service with the Federal Energy Office and at the Federal Energy Administration he has consistently demonstrated the very highest standards of integrity and commitment to the public interest. His services are invaluable to me and to the Federal Energy Administration, and I urge that his nomination be favorably considered by the Committee.

Sincerely,

JOHN C. SAWHILL,  
*Administrator.*

18 U.S.C. 209. SALARY OF GOVERNMENT OFFICIALS AND EMPLOYEES PAYABLE ONLY  
BY UNITED STATES

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958).

Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1125.

Senator BIBLE. The Chair recognizes Senator Fannin.  
 Senator FANNIN. Thank you, Senator Bible.

**STATEMENT OF HON. PAUL J. FANNIN, A U.S. SENATOR FROM THE  
 STATE OF ARIZONA**

It is a pleasure for me to welcome Mr. Conant to this nomination hearing this morning. For the past several months, I have had an opportunity to know Mr. Conant personally as have several other members of the committee. His well-earned reputation of personal integrity and devotion to strengthening the U.S. position internationally in energy matters is known by most of the members of this committee.

I believe that, of all employees of the Federal Energy Administration, he is certainly one of the most qualified. His career has included not only 13 years of experience within the industry but also several positions with international organizations and academic institutions. I am deeply impressed by his willingness to accept a position with the Federal Government at approximately one-third the remuneration he was earning prior to his Government service. This signals to me a sense of public service to be highly admired.

I am hopeful that members of the committee will give positive consideration to recommending his early confirmation.

Senator Buckley had originally intended to speak on Mr. Conant's behalf, inasmuch as Mr. Conant's residence until recently was in the Empire State. Regrettably, rank has its privileges and Senator Buckley has been called instead to present Governor Rockefeller to the Rules Committee this morning, necessitating his absence at this hearing. He did, however, request that I read the statement he had intended to present on Mr. Conant's behalf, which I will do at this time.

With your permission, Mr. Chairman, I would like to do so.  
 Senator BIBLE. Without objection, you may do so.

**STATEMENT OF HON. JAMES L. BUCKLEY, A U.S. SENATOR FROM  
 THE STATE OF NEW YORK, AS PRESENTED BY SENATOR FANNIN**

I would like to welcome Mr. Melvin Conant, whose name has been placed before this committee for confirmation as Assistant Administrator for International Energy Affairs of the Federal Energy Administration.

Mr. Conant's knowledge of the petroleum industry and ability to perceive and assess the international implications of our energy actions will, I think, be valuable in every conceivable situation. Given our immediate past history of embargo and the appalling rises in world oil price thrust upon us by producer nations, I think his presence in Government is especially needed.

Mr. Conant has already made a valuable contribution to the early development of the Project Independence concept. We must, if we are to maintain our diplomatic integrity in the world, reduce the level of our imports from the present 38 percent, and must at all costs avoid the prospect of having to import half of our petroleum, which

we would be forced to do by the latter part of this decade, if Congress and the administration took no constructive action.

Attainment of a prudent degree of energy independence is a difficult task, at best. If we were to cut ourselves off from the rest of the world, and rely solely on domestic resources, we might be able to achieve energy independence, but the cost to the American public would be staggering.

It is my feeling that we must continue to venture forth into the international arena in search of energy—but on our own terms. Identifying the levels we can afford to import, and from which country those imports should come is a particularly delicate task, and will require the highest level of expertise we can muster. Implementing the foreign policy initiative necessary to carry out our judgments in this area is an even more difficult undertaking. But I do not think that anyone doubts, after our experience of last winter, that it must be done. This is why I am so pleased by Mr. Conant's designation. He represents the kind of specialized knowledge and the sound judgment that is required to achieve our goals.

Mr. Conant has already amply demonstrated a commitment to the country that matches his high level of ability, and I thank him for that willingness to serve, and feel sure that my colleagues in the Senate will give him the opportunity to serve that he so richly deserves.

Thank you, Mr. Chairman.

Senator BIBLE. The Chair recognizes the Senator from Wyoming.

Senator HANSEN. Thank you, Mr. Chairman.

#### STATEMENT OF HON. CLIFFORD P. HANSEN, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator HANSEN. I simply want to observe that I am delighted, as I feel sure most Americans soon will be, to have a person as knowledgeable as Mr. Conant serving in this position.

I think that we have reacted to our own detriment in this country in recent times in trying to avoid any possible conflict of interest or any hint of a conflict of interest in denying ourselves the voice and the knowledge and the wisdom that comes from the sort of experience that Mr. Conant has had with the oil industry and that is unfortunate. It is unfortunate, too, often times we have relied upon people with practically no knowledge or background gained first hand in advising the United States in areas where their counterparts in other parts of the world have all of the advantage, and I am delighted that we have here this morning the President's nominee for this post represented by a man who does know something about the industry.

I think that all possible concern that we may have about a conflict of interest seems to me very well laid to rest with the statement, the letters, the financial disclosures made by the nominee, and I just think it is America's great good fortune that we have a man who knows something about it who will be advising us on a very complicated and difficult topic.

Thank you.

Senator BIBLE. The Senator from South Dakota.

Senator ABOUREZK. I have no opening statement.

Senator BIBLE. Senator Metzenbaum.

Senator METZENBAUM. I have no opening statement, but I wish to make it clear that there may be a separation in my view between the qualifications of Mr. Conant and the propriety of a former official of Exxon accepting this responsibility.

Senator BIBLE. That is understood. You certainly have all of those rights before you and you know you are able to express them at any time.

Senator HANSEN. Mr. Chairman, the distinguished Senator from Oklahoma, Mr. Bartlett, was not able to be here this morning. He has a letter here, addressed to the Chairman. It is not long. If I may, I would like to place it in the record.

[The letter of Senator Dewey F. Bartlett follows:]

Dear Scoop: Unfortunately I will be unable to attend the confirmation hearing of Mr. Melvin A. Conant, nominated to be the Assistant Administrator for International Energy Affairs of the Federal Energy Administration. I respectfully submit that if I were at the hearing I would vote in favor of Mr. Conant's nomination.

Mr. Conant and I visited at length about the position for which he has been nominated and his qualifications. In my opinion, Mr. Conant is qualified for the position of Assistant Administrator for International Energy Affairs and I think that the people of the United States would be most fortunate to have him as a public servant in this capacity.

The tremendous importance of this position requires a person of Mr. Conant's unique qualifications. His previous practical experience and his experience within the Federal Government should provide Administrator John Sawhill invaluable insight and counsel.

I look forward to working with him as the Interior Committee continues to focus on a proper national energy policy. Congress must reach a consensus of opinion so that we can get on with the job of maximizing our domestic energy sufficiently.

DEWEY F. BARTLETT.

Senator BIBLE. The record will show that Mr. Montgomery talked to me earlier and said it would be impossible for Mr. Sawhill to be here today because he was with the President of the United States in Detroit, Mich.

Mr. Montgomery is here to present Mr. Sawhill's views, and I am happy to recognize you at this time, Mr. Montgomery.

First, identify yourself for the record.

Mr. MONTGOMERY. Thank you, Mr. Chairman.

I am Robert Montgomery, the General Counsel of the Federal Energy Administration.

As the chairman has just stated, Mr. Sawhill was sorry that he couldn't be present this morning, and only the need to accompany the President is what kept him away from this hearing.

I have a statement to read here.

Senator BIBLE. All right, you may proceed.

**STATEMENT OF DR. JOHN C. SAWHILL, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION, DELIVERED BY ROBERT E. MONTGOMERY, JR., GENERAL COUNSEL**

Mr. Chairman and members of the committee, I have the privilege this morning to introduce to you Mr. Melvin A. Conant, who has been

nominated by the President to be Assistant Administrator of the Federal Energy Administration in charge of its International Energy Affairs Office.

The Office of International Energy Affairs—IEA—has wide policy responsibilities covering the international energy spectrum. Some of the areas include policy related to U.S. objectives toward energy importing and exporting countries, international energy supply and resources planning, intergovernmental agreements on emergency supply and NATO wartime emergency supply readiness planning for civilian sectors.

The IEA participates in energy supply planning through NATO and the OECD oil committee and monitors U.S. requirements for foreign sources of energy.

The most important IEA function is the formulation of a U.S. export-import policy that would strengthen our capability for self-sufficiency and aid the objectives of Project Independence.

This broad outline review of the international mission of FEA covers a wide range of knowledge and disciplines required of the Assistant Administrator for FEA. I believe Mel Conant is an exceptionally qualified candidate for this position.

Early last January, Mel joined our Federal Energy Administration team and quickly distinguished himself as an articulate, knowledgeable and valuable adviser on the international aspects of energy.

Mel's deep insight and knowledge of not only the oil business but also the international politics of oil has demonstrated to me that he is the best man to pull this broad policy responsibility together.

Since February, Mel has served as Deputy Assistant Administrator for International Trade and Commerce. He dealt with trade and economic relationships relating to the flow of energy materials between countries. He also acted as the FEA's principal representative to the many organizations active in energy and trade affairs, carrying out this function in close coordination with the State, Treasury, and Commerce Departments.

Prior to joining FEA, Mel served as senior government relations counselor for the Middle East and Asia for the Exxon Corp. as well as acting as regional political adviser for Standard Oil Co. in East Africa, Asia, the Far East, and Australia.

From 1960 to 1961, he served on the faculty of the National War College as professor of international security affairs.

He has held several high-level advisory positions including lecturer to the Royal Canadian Defense Forces College, U.S. Air University, and Royal Naval Staff College. In addition, Mel was oil adviser to the U.S. delegations at the preparatory sessions of the Law of the Sea Conference in 1972 and 1973.

He holds a B.A. degree—*magna cum laude*—in international law and diplomacy from Harvard College. He also received an M.A. from Harvard in Far East studies.

He has written and published a number of works on international energy—in a series of security studies by the Institute of Strategic Studies in London; and on the defense-political aspects of our relations with Canada and other major allies in foreign affairs.

Mr. Chairman, I heartily endorse Mel Conant's nomination to be Assistant Administrator for International Energy Affairs with the

full knowledge and certainty that he will vigorously pursue missions of FEA with the utmost degree of professionalism.

During his service at FEO and FEA, Mel has earned the reputation as a man of impeccable integrity and intellectual honesty. I have found Mel to be an invaluable resource to the Government which is a reflection of his intimate, detailed knowledge of the oil business and the international politics of oil.

It is my firm hope that the committee will act favorably upon his nomination, and that the Senate will provide its confirmation at the earliest possible time.

Thank you Mr. Chairman.

Senator BIBLE. Thank you very much.

Now, you are the General Counsel at the present time. You are not acting?

Mr. MONTGOMERY. I am the General Counsel.

Senator BIBLE. I have made a part of the record your letter of July 19 from yourself, then Acting General Counsel, to the Attorney General of the United States, requesting the views of the Department of Justice on the legal views of Exxon's termination payment to Mr. Conant. And then a second referral letter from FEA, under date of July 24, 5 days later, to the General Counsel of the Department of Justice. A third exhibit which also has been made a part of the record is a letter to the FEA representing Justice's legal views; fourth, a September 18, 1974, letter from Mr. Sawhill, Administrator of FEA, and fifth, a copy of 18 U.S. Code at 209.

[The material mentioned by Senator Bible above begins on page 10.]

Senator BIBLE. I think it might be helpful, preliminarily, if we could have from you, Mr. Montgomery, a short summary of the legal issues and the final opinion in this particular problem involving Mr. Conant. Because that has been made a part of the record I think it would be well for you to explain it.

Mr. MONTGOMERY. All right, Mr. Chairman. I won't go into every detail in this because I am sure individual Senators will ask questions on it.

But the termination payment which Mr. Conant received from Exxon when he took the position with FEA in January of 1974, this was a payment of \$90,000.

The legal questions involved are really two. One, is whether or not in receipt of this payment Mr. Conant retained any financial interest in Exxon or in any energy industry company—of course, in this case it was Exxon—which would place him in a conflict of interest in terms of his duties and performance with the Federal Energy Administration. This question is presented by 18 U.S.C. 209, which prohibits any Federal employee from having any financial interest in any matter in which he is to participate in his official capacity. This is the obvious and foremost question raised whenever a question concerning conflict of interest is concerned.

In this case there was clearly no violation, no suggested violation, not even the vaguest possibility of that, because Mr. Conant's separation from Exxon was complete, final, irrevocable and did not carry over in any way, shape, or form to his performance with the Federal Energy Administration.

Senator BIBLE. When was that termination irrevocable? Because that term is pretty uncommon.

Mr. MONTGOMERY. There was no continuing relationship, no possibility on Exxon's part to reemploy Mr. Conant. It wasn't a leave of absence, it was a final separation. This isn't to say that in the final separation there was a legal prohibition to Mr. Conant ever returning, but there were no legal things on either party's part that any existing relationship should exist. In other words, it was a complete termination.

Senator BIBLE. What was the date of that termination, where it was completely terminated?

Mr. MONTGOMERY. January 13, Mr. Chairman.

Senator BIBLE. January 13, 1974.

Mr. MONTGOMERY. That's correct.

Now, the second question that is not normally raised, a very unusual one, was whether or not the termination payment itself while not creating the possibility of conflict of interest did violate section 209 of 18 United States Code, which prohibits the acceptance or the payment of a supplement to the salary of a Federal employee by any other source outside of the Federal Government. This is a very seldom used statute. There has been no prosecution under it to anybody's knowledge. This was the first time it has ever been brought to my attention.

The issue raised, of course, is whether or not in accepting the \$90,000 termination payment Mr. Conant was accepting a supplement to his employment with FEA.

Senator BIBLE. When was that?

Mr. MONTGOMERY. That was made at the time or shortly before the termination.

Senator BIBLE. Made before the termination, is that correct?

Mr. CONANT. Either before or on the very day of the termination.

Senator BIBLE. Which you said was what, January 13, 1974?

Mr. MONTGOMERY. That's correct. Now the statute in question was enacted by Congress with a view toward preventing the situation arising in which a Federal employee was receiving some of his compensation from the Government and some from some outside source, perhaps a former employer, perhaps some other private entity which had an interest in the Federal employee's performance. The obvious intent was to prevent the situation of a dual loyalty and the objective was to insure that all Federal employees receive their salary only from the Government and on that account are loyal and give their services only to the Government.

Normally a dual compensation setup and the one which was in fact the occasion for that one under this statute would provide for periodic payments. In other words a person during the time of his Government service would receive his Government salary and simultaneously he would receive some supplementary payment from some other source.

This was clearly not the case in Mr. Conant's situation. The Attorney General's opinions and statements of commentators are quite clear that the mere fact that the payments are not made on a periodic basis does not necessary remove the possibility of a violation

and it is necessary to look and see whether or not any payment made, even though it might be made as a lump sum, was made in anticipation of Government service and in remuneration for that service.

Now, when this question was brought to our attention, principally Mr. Eric Fygi, my Assistant General Counsel for General Law, who is present today, conducted an intensive search in the law in this, and we prepared a memorandum, a copy of which you did place in the record, Mr. Chairman, setting forth our analysis of the law and the facts, and giving as our opinion that there was no violation of 18 U.S.C. 209 in this case. We base that finding on the reading of the Attorney General's opinions in this area and a reading of the major scholarly articles done in this area by a number of authors, and the conclusion that the fact that in the case of Mr. Conant's payment there had been some reference to his loss of income in connection with his taking the job at FEA, that that payment had not been made as a supplement to his Federal salary but had been made in consequence of and recognition of his years of loyal service to Exxon.

I am happy to expand on the legal points.

Senator BIBLE. I think some questions will be raised later as we proceed along the proceedings, but I wanted to have this opening statement because that seems to be the crux of the nomination that has been sent to us for consideration today.

Mr. MONTGOMERY. Could I make one further remark to finish the story, if I may?

Senator BIBLE. You may.

Mr. MONTGOMERY. In response to my memorandum to the Department of Justice, the matter was reviewed sensibly by the Assistant Attorney General Supervising Office of Legal Counsel, and there ensued a number of meetings at which he and members of his staff discussed the matter with Mr. Fygi and myself and satisfied themselves that in this case Mr. Conant was acting in complete good faith.

Just a couple of relevant facts are that before accepting this termination payment Mr. Conant solicited the advice of the then Assistant Administrator of FEO, Steven Wakefield, concerning this matter and received a response on the basis of the advice of the Acting Deputy General Counsel, a letter from Mr. William Simon, the then Administrator of FEO, stating that there was no objection to this payment and that it was acceptable.

Having discussed these facts with the Justice Department, the Justice Department concluded as we have that Mel Conant acted in complete good faith, and if there was a relationship it was strictly a technical one in nature and did not reflect on Mr. Conant's integrity and did not warrant any further investigation and they therefore recommended, as we have, that the nomination be sent forward to this committee.

Senator BIBLE. Very well, thank you.

Mr. Conant, I am very happy to recognize you at this time for any statement you care to make, either on this problem or on your general qualifications. We have your prepared statement and you may proceed from that.

STATEMENT OF MELVIN A. CONANT, NOMINEE TO BE ASSISTANT  
ADMINISTRATOR FOR THE OFFICE OF INTERNATIONAL ENERGY  
AFFAIRS

Mr. CONANT. Thank you, Mr. Chairman.

I am privileged to appear before your committee to be examined as to my qualifications for the post to which I have been nominated by the President: Assistant Administrator for International Energy Affairs of the Federal Energy Administration. In addition to the biographical sketch supplied you, I have also made available a full financial statement.

I welcome this opportunity to discuss with you my experience and qualifications. May I begin by spending a few moments on the reasons which led me to enter Government service—at a level considerably below the one to which I have now been nominated.

Over the past few years I have shared with others a growing conviction that the supply of energy had become a matter of vital consequence to the interests of consumer and producer states—that the extraordinary systems which the international oil companies had created and which made oil so essential a commodity in world trade—would and should increasingly engage the attention of states. When oil became a vital national interest, it would inevitably come to engage the full range of concerns and powers of a state.

I had become familiar with the many different ways by which governments in many parts of the world sought to extend their influence into the international oil system, and had some appreciation for the degree of success they thought they had achieved. The effective operation of the system for the supply of oil is, in itself, an asset of great consequence; how, then, may a government make its presence felt in such a way as to enhance the effectiveness of the system?

The U.S. Government had never had a true national energy policy; I wanted to help fashion it.

Events of the past several years in the Middle East, and among the consuming states of Europe and Asia, including events of last fall, made clear our need for a focal point in the U.S. Government in which our domestic energy requirement would be linked to our international energy interests—including those of our allies.

The decision to create a Federal Energy Administration was a major and constructive step. When invited to join its international branch, I was immediately interested. I believe fully in the value of the system—which may be unique to our country—which introduces persons from private life to Government service. The range of experiences which the Exxon Corp., had given me over nearly a decade and a half, combined with my other involvements in U.S. foreign relations and defense, and with national security institutes of other countries gave me unusual opportunities to broaden my perspective. And, therefore, I was invited to apply this background to Government service. This was the second time I had been invited to Washington: in 1960 I served on the faculty of the U.S. National War College. Everything that has happened since has confirmed to me the increasing importance

of having energy defined in the national interest; for many years it will be a major aspect of our foreign relations.

There is no monopoly of interest or knowledge in this broad and vital subject of energy. There is an urgent need for us to utilize fully all our resources in tackling the complex issues involved in helping to assure the energy needs of our Nation are met. It is a challenging experience.

Mr. Chairman, questions have been asked concerning the terms on which I severed my relationship to Exxon prior to joining Government service. I am fully prepared to discuss any aspect of this matter now or in a subsequent session—whichever you prefer.

I am confident I can be of service to my country in a difficult and exacting task. I ask for your confidence in me as one who can aid in the setting of national energy goals and policies.

Thank you.

Senator BIBLE. We appreciate your statement very much, Mr. Conant. You do have a very fine background and certainly have great ability and expertise in my knowledge.

Both subjects will be discussed actually in open session. I see no need of going into a closed session concerning your termination.

So I would recognize first the ranking member of the minority on this committee on any questions he has on either subject, either the question of your termination of the events that led to it, any kind of a factual statement you might want to develop on that or as to your qualifications.

Senator FANNIN.

Senator FANNIN. Well, Senator Bible, as I stated, I had the privilege of working with Mr. Conant and observe him and his activity, and in one activity at the OECD meeting in Paris, I was very impressed with his ability to work with the international scene.

I accept the conclusions of the Attorney General and the Department of Justice in relation to the conflict of interest and I feel that that has been carefully weighed and come to the conclusion that it certainly indicates that he does not have a conflict of interest.

So, Mr. Chairman, I wholeheartedly support Mr. Conant's confirmation.

Senator BIBLE. The Senator from South Dakota is recognized.

Senator ABOUREZK. Thank you, Mr. Chairman.

Mr. Conant, you seem to have a lot of recommendations coming from people concerning your qualifications, and as Senator Metzenbaum said, whatever questions I might have on the propriety of the termination payment or your views on national and international energy policy, has nothing to do at all with your qualifications because I am given to understand that you are very well versed in your field, and I want to compliment you for that.

By the way, I just might ask, Exxon is what, one-third of the Aramco Oil Co.?

Mr. CONANT. It is now one of four. They are partners in the enterprise, the Government of Saudi Arabia now being included.

Senator ABOUREZK. But it is one of the three multinational oil companies that own Aramco?

Mr. CONANT. Texaco, Exxon and Mobil, Socal—

Senator ABOUREZK. Yes. And as the adviser in international affairs for Exxon, you dealt, I suppose, primarily or in a large way, with Aramco, with their policies?

Mr. CONANT. Not directly; no, sir. My counsel was within the parent company of Exxon. I don't recall ever speaking directly with the Aramco Co. per se.

Senator ABOUREZK. Did they have their own international advisers in Aramco, or did they rely on Exxon's and Mobil's office and so on, or the Office of International Advisers, for all of the other companies that were part of it?

Mr. CONANT. On the international side, my thought would be that probably Aramco might have some outside consultants. Their in-house capability is focused, so far as I am aware, entirely on internal matters within Saudi Arabia, so it would rely on the partner companies.

Senator ABOUREZK. I am sorry, I didn't hear that last sentence.

Mr. CONANT. So they would rely on the partner companies for views in the international realm.

Senator ABOUREZK. So your belief is, then, that they relied to some extent or other on your views as given to your parent company. In other words, they would ask Exxon, Mobil, and Texaco, and your input was probably used by Aramco, then?

Mr. CONANT. Your question obviously is a serious one, and I reply that I don't know how much of my advice was ever taken. I felt that events had been going out of control for quite a while. Nevertheless, I was always given a respectful hearing within the Exxon Oil Co.

Senator ABOUREZK. About their oil relationship with—

Senator BIBLE. What was the answer to that? Was the answer yes? He couldn't catch the shaking of your head.

Mr. CONANT. I advised the parent company as to my views of what was happening in the Middle East and other parts of the world. I do not know the extent to which the top executives of Exxon accepted my views in all instances, and what they passed on.

Senator ABOUREZK. With regard, then, to the oil embargo of last October, and if you don't know what my position happened to be on the Middle East conflict and so on, I want to advise you that I think up until October our foreign policy, the U.S. foreign policy, had been in what I consider to be—I thought it was in error, and I personally welcomed the change following the October war of a movement toward some kind of reconciliation by Israel toward the Palestinian people and the Arab countries surrounding them so an eventual durable peace could be brought about. So that at least in part was my position.

Now, I want to ask you, at any time in October—before October of 1973, were you personally made aware by any of the Arab governments that if our policy toward Israel continued in the manner in which it had been until October, that there would be an embargo of oil from Arab countries to the United States, were you aware of that?

Mr. CONANT. Yes, sir.

Senator ABOUREZK. And when were you first made aware of that?

Mr. CONANT. My recollection would be that such statements had been made in public and in private to the companies for well over a year before then.

Senator ABOUREZK. And in your memos and so on to the management of Exxon, and then presumably the Aramco people as well, did you warn them that this was very likely to happen, or did you not really take that threat seriously as many other people didn't?

Mr. CONANT. Oh, I took it with utmost seriousness. I can't imagine a person with whom I associated who did not take it seriously.

The fact that these warnings were coming for some time helped land a kind of compelling kind of importance to such a threat.

I think it was taken really with very great seriousness.

Senator ABOUREZK. In your company, you mean?

Mr. CONANT. Yes.

Senator ABOUREZK. Do you believe that the people you reported to took it seriously?

Mr. CONANT. Yes.

Senator ABOUREZK. Did you report that threat and the seriousness with which you took it to anyone beside the people in Exxon that you reported to?

Mr. CONANT. No, only to Exxon.

Senator ABOUREZK. Did you make any effort at all to report it to the Government of the United States, the State Department, or the CIA, anybody that might be gathering that kind of information?

Mr. CONANT. No, the contacts in Washington on this matter were always held on a much higher level. Usually on the board level or by the president of Esso Middle East.

Senator ABOUREZK. Were you aware of anyone at Exxon then relaying that advice of yours re the threat of oil embargo to anybody in the U.S. Government?

Mr. CONANT. It would not have gone in the form of my advice because, as I mentioned, there was a general consensus that this was a genuine threat.

Senator ABOUREZK. And, well, were you aware of anybody in Exxon relaying that threat to anybody in the U.S. Government?

Mr. CONANT. Yes, sir. I knew of visits by the chairman of the board—

Senator ABOUREZK. What was his name?

Mr. CONANT. Mr. Jamieson.

Senator ABOUREZK. All right, please continue.

Mr. CONANT [continuing]. To Washington. I was aware of visits by Mr. Hedlund, president of Esso Middle East, and George Percy, a member of the Exxon board.

Senator ABOUREZK. Now, can you set the dates for those visits and who did they talk to and what specifically did they warn them about, if you know?

Mr. CONANT. I do not recall the dates, and I doubt that I have any record whatsoever on that.

I do know that it was their intention in the course of one meeting at least to relay to the Secretary of State, and possibly to the President, the sense of urgency of remarks made by King Faisal and Mr. Yamani.

Senator ABOUREZK. Concerning the threat of an oil embargo?

Mr. CONANT. Yes, sir.

Senator ABOUREZK. So, in other words, our Government had been made aware before October of the very serious threat of the oil embargo?

Mr. CONANT. Yes, sir.

Senator ABOUREZK. At least according to your own knowledge and warnings?

Mr. CONANT. Yes, sir.

Senator BIBLE. The answer was, "yes.?"

Mr. CONANT. Yes, sir.

Senator BIBLE. The answer was, "yes.?"

Mr. CONANT. Yes, sir.

Senator ABOUREZK. Now there have been several suggestions by different people starting in October and continuing to date so far as I know that what the United States ought to do is to cut off our food export to the Arab oil exporting countries because of the oil embargo, because there has recently been a cut down in oil production from the Arab countries and because of the continued high prices in the OPEC cartel. Now, as an industry adviser to the United States, would you agree or disagree with that policy of shutting off the food exports to the Arab exporting countries?

Mr. CONANT. The question has arisen and I would not so recommend.

Senator ABOUREZK. If I recall, in reading the memorandas furnished to the committee by the Justice Department, FEA and so on, the stated policy of Exxon—and I am reading from a letter from Mr. J. F. Moore of your former company, "is to reduce the potential barrier to leaving Exxon by alleviating the economic hardship incurred by an employee when he terminates his employment in mid career."

Now, given that basic thrust of Exxon termination policy, do you know whether or not everyone who leaves Exxon receives a termination payment such as you received?

Mr. CONANT. I do not know, as a matter of fact, but I would find it inconceivable. There are a variety of reasons why one would leave the corporation ranging from that which prompted me, medical reasons, that would cause an employee to be given early retirement—

Senator ABOUREZK. You find what inconceivable?

Mr. CONANT. That everyone leaving the corporation would receive a termination payment.

Senator ABOUREZK. So your guess would be that it is just some people, not all people?

Mr. CONANT. Exactly.

Senator ABOUREZK. And who makes that determination as to who gets the payment, do you know that?

Mr. CONANT. I believe it is made either by the board or by the compensation committee which is composed almost, entirely, I think, of board members of Exxon. It is essentially the board members of Exxon.

Senator ABOUREZK. Mr. Chairman, I requested members of the board of directors.

Senator BIBLE. You have one, two, three, four, five members of the board. So you have the whole board of Exxon here. But you have got a crew from Exxon. I am told that they are here and they are available for questioning.

Senator ABOUREZK. I would like to question them.

Senator BIBLE. You will. You will have the opportunity.

Senator ABOUREZK. I would like to know at the time you discussed your entry into the Federal Government—was the approach made to you by the FEA, by you, or was it made by you to the FEA, how did it work?

Mr. CONANT. You are referring to the fact that I am in Government now?

Senator ABOUREZK. Yes.

Mr. CONANT. I was invited by Mr. Wakefield, then Assistant Administrator for International Energy, to come to Washington.

Senator ABOUREZK. Was that done in letter, personally, or phone call, or how?

Mr. CONANT. It was done initially in a personal interview. I was in Washington in December and attending another meeting. I was called out and asked to be in touch with a Mr. Wakefield. I had never heard of Mr. Wakefield. I did not respond to that message. I got a second one saying it was urgent. I telephoned Mr. Wakefield and he asked me to meet with him in the Department of Interior on a matter that he described as urgent. What he wanted me to do was look over the internal functions and so forth of the Federal Energy Agency, International division. I talked with his key assistant, Leigh Ratiner, about the international problems of oil—

Senator ABOUREZK. May I interrupt you? You believe that is how Mr. Wakefield heard of you, because one of his assistants had been consulting with you over many months?

Mr. CONANT. Since I had never met Mr. Wakefield that was my assumption. Mr. Wakefield showed me his organization chart. I went down the list of functions. I told Mr. Wakefield that as far as I was concerned he had all bases covered. That every issue that I would think would be of concern to the United States was there.

Mr. Wakefield then said, if you feel that way, we need someone such as yourself. Will you now come? And I told him that I was deeply interested and, for the reasons in my opening statement, would like to do so.

Senator ABOUREZK. All right.

Then following your invitation by Mr. Wakefield you obviously discussed the question of entering Government service with your superiors in Exxon. Who did you discuss that with?

Mr. CONANT. I discussed it with Mr. Stephen Stamas, who is now—at that time was vice president for public affairs, and my sort of top superior. I told Mr. Stamas that I had been offered this and that I was strongly inclined to accept and I wanted to do so.

Mr. Stamas then said that he would inform the board of my wishes, and several days after came to me and asked if I knew of the public service termination leave policy of the company. I knew only vaguely of this. Mr. Stamas then described the referenced terms of it, which is in the documentation, I believe, which you have, and told me of the decision of the board that if I understood that my separation from Exxon would have to be complete, and I had already understood from Mr. Wakefield, that was the U.S. Government view, the nature of my responsibilities would require this kind of act.

Then upon my agreeing to terminate and acceptance by the U.S. Government of the arrangement, the board of Exxon would grant me a termination payment of \$90,000. In addition to that, however, as part of the complete separation, it would be incumbent upon me to remove my savings from the plan of the company, to exercise all stock options, and in effect do everything with one exception that would mean a total dissolving of any financial link. That one exception, Senator, was that since my retirement rights had been fully vested in the company's plan, that I might retain these, which I did.

Senator ABOUREZK. At the time that you and Mr. Wakefield discussed your employment with the Government, was there talk of you at that time taking a leave of absence, or was there talk of total termination from Exxon, from your services at that time?

Mr. CONANT. It was assumed from the outset that it would have to be a total termination.

Senator ABOUREZK. It wasn't discussed, it was assumed?

Mr. CONANT. No, it was made quite specific.

Senator ABOUREZK. By Mr. Wakefield?

Mr. CONANT. Yes.

Senator ABOUREZK. Now you said you had been consulting with the FEA for many months prior to your first meeting with Mr. Wakefield?

Mr. CONANT. No, sir, I did not say that.

Senator ABOUREZK. What did you say?

Mr. CONANT. My first association, first contact with FEA was that meeting with Mr. Wakefield. I beg your pardon, I now understand what you are referring to, Mr. Leigh Ratiner who was in Mr. Wakefield's office, came to New York on several occasions to ask me what I knew about the history of international oil and to help brief him. It was not a direct consultative relationship with the FEA.

Senator ABOUREZK. You were not paid for that?

Mr. CONANT. No. Mr. Ratiner was going to be Director of the Office of International Political and Security Affairs and would, as things turned out, sort of be my opposite number in the international energy side. Mr. Ratiner's contact with international oil had not been extensive and since we came to know each other through the Law of the Sea in which he is an expert, he turned to me to learn what he might about the history of international oil.

Senator ABOUREZK. So you had met Mr. Ratiner—known Mr. Ratiner before he asked your advice?

Mr. CONANT. Yes.

Senator ABOUREZK. He was in the Office of the Federal Energy at the time?

Mr. CONANT. Technically he was still an employee of Interior, but the distinction was not clear.

Senator ABOUREZK. The Government, anyway?

Mr. CONANT. Yes.

Senator ABOUREZK. Was there any discussion with anybody in Exxon at the time that you discussed coming into the Government? Even as a casual comment on either your part or the part of anybody in Exxon, that maybe when you get tired of the Government you might want to come back to Exxon?

Mr. CONANT. There was no such reference.

Senator ABOUREZK. Was there a reference? And I believe it is in the notes of the memo that was furnished to the committee, someone in Exxon made a statement that your service with the Government would not enhance your advancement if you did return to Exxon.

Mr. CONANT. That's correct. In the process of going around and saying goodby to a number of the men that I have known for some years, one of them who had had experience in Government on, I believe—I am not sure of this, but I think on a leave basis, said he thought I was nuts to do this. That my future career in the company was well laid out and that if I were making this move because I thought at some particular point in the future the experience in Government would assist in my promotion in the company he said to forget it.

Senator ABOUREZK. Who was that that made the comment? It wasn't somebody who was above you in the company? It was just one of your fellow employees?

Mr. CONANT. He was above me, but not in a direct line. Mr. Jerry Rosow, also of the Public Affairs Department, who said that the company had not so regarded a spell of duty with the Government.

Senator ABOUREZK. In other words, Exxon would not, according to his statement, at least, would not want somebody who had wide contacts in the Federal Energy Office coming back to work for them; is that how I understand that?

Mr. CONANT. No, I don't think that was the implication of his remark. I think he was probably—my reaction was that he was saying, you know, if you do this kind of thing believing that you are going to be recognized by the company and it will lead you perhaps to the board or something of that sort, it doesn't happen that way. When you leave a company, there are others who get promoted who have stuck around, who are in the executive development scheme and you have departed.

Senator ABOUREZK. So you, in your own mind, without reservation, you have no intention of returning to Exxon following completion of your Government service?

Mr. CONANT. That's right. I have no present plan for doing that. I serve with your agreement at the pleasure of the President.

Senator ABOUREZK. Does the payment of \$90,000 by Exxon bother you at all so far as what either subconscious or conscious loyalties to Exxon during your Government service?

Mr. CONANT. Not at all. May I elaborate?

Senator ABOUREZK. Please.

Mr. CONANT. At the time Mr. Stamos informed me of this public service termination policy of the company, and coupled it with the condition that it would have to be acceptable to the U.S. Government, I was then immersed in the exchange of correspondence between the company, its legal counsel, and that of FEO. Not being a lawyer myself, but obviously concerned and interested in how this would be handled, I was tremendously impressed at the caution with which the company approached the obvious questions that have already been raised by you and by others. I was particularly impressed by the requirement of the company that the validity of the payment be acceptable to Government and that it raise no legal question.

Now, having said that, and having seen the correspondence, my own conscience was at rest.

In the letter or memorandum, I guess, which the then Assistant Attorney General of FEO sent to Mr. Wakefield stating that the payment would be valid, he did raise the question would there be a public relations aspect to this. I was fully aware of that also and it came to me as no surprise that this would be an aspect to be considered. But being sure in my own mind as to the reasons for the payment I felt that I could serve my Government.

Senator ABOUREZK. Mr. Chairman, I have only one more question. I know Senator Metzenbaum has some more questions on the payment that he wants to ask, and I am going to return to the oil embargo question just briefly.

Between July and October of 1973 oil production in Saudi Arabia increased by 1.2 million barrels a day compared to the previous period. I don't know if you are familiar with that particular statistic. But are you aware that oil production had increased in that 4-month period in Saudi Arabia?

Mr. CONANT. I must have been aware of it.

Senator ABOUREZK. And knowing of an impending oil embargo in the event a Middle East war started—well, we never did establish that.

Were you aware that the embargo would come about as a result of U.S. support during any conflict or just continued U.S. support? What was your understanding about it?

Mr. CONANT. It had always—from the time these threats began to be made, it was my assumption that the basic purpose or reason behind the threats was to compel a change in U.S. Government policy in the Middle East. Now, I do not think that I ever assumed that it would require a war to make this threat effective, but the time might come when the Government of Saudi Arabia would feel that a change in U.S. policy could be brought about only by a reduction in supply. As events turned out it was a war, but I never thought it would require any war.

Senator ABOUREZK. You had no advance knowledge, then, of any outbreak of fighting in 1973?

Mr. CONANT. No.

Senator ABOUREZK. All right. Now, with the increase in production that I talked about, was that increase in production brought about by the knowledge of the major oil companies involved in Aramco, that there might be a cutback or a total embargo of some sort during 1973 and that the reason for asking for an increase in production such as that would be to try to fill as much storage as you could, Exxon and the other companies, in an effort to have all of that cheap oil in the event a cutback came?

Mr. CONANT. I would have had to have been privy to the highest discussions within the board to be able to answer that on the basis of personal knowledge.

The increases in production which took place in Saudi Arabia were, I am strongly inclined to believe, the consequence of capital outlays and a well-known desire on the part of the Saudis to increase their production. I would find it hard to connect that increase with any other cause.

Senator ABOUREZK. That brings to mind another question. I want to cut off but I do want to ask it.

Senator BIBLE. You are permitted one more question, maybe two.  
[Laughter.]

Senator ABOUREZK. What was the price of oil at that time? What were the Saudis getting for their oil?

Mr. CONANT. I do not recall the exact amount.

Senator ABOUREZK. \$2 to \$3 a barrel?

Mr. CONANT. \$2 to \$3.

Senator ABOUREZK. They wanted to increase production at that price. Was it your opinion, or is it your opinion now, that at that point they were not planning on a price increase of crude? Surely, if they were, they wouldn't have tried to produce more of the cheaper oil. I mean what is your judgment?

Mr. CONANT. It is extremely difficult, Senator, to try and pierce the mind of the Saudi Government on these matters. I think we have seen in the last months and 6 weeks that assumptions that we make concerning their motivation may not always be the determining ones. I do not know if they—at that time, if they contemplated such an appalling increase in price as occurred. My guess, and it would only be a guess or a hunch, would be that they did not at that time expect to put through a price increase which effectively quadrupled the cost of oil. I think they were committed to some kind of an increase through their involvement with OPEC, but nothing on the scale to which we were hit at the turn of the year.

Senator ABOUREZK. I think the events quickly overtook everyone in the Middle East and that matters that might not have been discussed in a kind of reasonable manner took place in the heat of battle.

All right, Mr. Conant, if a decision should arise in your term of employment with the Government that might be a direct conflict with your responsibilities as a public servant, a conflict between the public and Exxon Oil Co., I assume from everything you have said that you would have no problem deciding that against the oil company and for the public should that choice arise?

Dr. CONANT. None whatsoever.

Senator, could I elaborate on this?

Senator ABOUREZK. You can always explain your answer, certainly. Go right ahead.

Mr. CONANT. Thank you.

And I think this is recognized within the company because the day I left, and as I said going around and saying goodbye, I visited with a man on the board who was my contact, Mr. Collado, then and now executive vice president of Exxon, and Mr. Collado said to me that I had earned a reputation within Exxon for independent judgment regardless of what other people on the board might think the interests of the company were, and that he was sure I would apply that same independence of judgment whenever circumstances arose within the Government whether the difference in views be elsewhere in the Government or in the industry.

I appreciated that remark. I will never forget it.

Senator ABOUREZK. Thank you, Mr. Conant.

Senator BIBLE. And the Senator from Wyoming.

Senator HANSEN. Let me pass for the time being.

Senator BIBLE. The Senator from New York.

Senator BUCKLEY. Thank you, Mr. Chairman.

I just want to say to Mr. Conant that as a fellow New Yorker I welcome you to these hearings and I regret that I was not here to introduce you to the committee, but I was in the process of confirming someone at another meeting.

I would just like to say that I have never seen anyone with the experience for the job to which he has been nominated nor do I have reason to question that he will serve the interests of the Nation with total fidelity irrespective of his past associations.

Senator BIBLE. Senator Hansen.

Senator HANSEN. Not right now.

Senator BIBLE. Senator Metzenbaum from Ohio.

Senator METZENBAUM. Senator Abourezk asked you questions about how you came about this. Did you ever see any persons from Exxon prior to Mr. Wakefield talking to you about coming to the Government?

Mr. CONANT. Never.

Senator METZENBAUM. What plans do you have if and when you leave Government?

Mr. CONANT. I don't have any plans. I have an expertise in international oil; this, for the rest of my life must be my professional preoccupation. I have committed myself and my family to Government service for as long as I am welcome in it.

Senator METZENBAUM. And if you were no longer welcome in Government, is it reasonable to assume that you will then return to the oil industry?

Mr. CONANT. It would be an option which I would consider, but there are other things which I have done in my life which I would consider also. Teaching, university work, and so forth.

Senator METZENBAUM. Do you feel that it is fair of this committee to inquire of you, with your past relationship with the oil industry, as to whether or not when you leave Government you would give any assurances to the committee that you would not expect to return to the oil industry after you leave Government?

Mr. CONANT. It is an entirely fair question and I understand fully the reasons behind it.

Let me explain why I would prefer not to commit myself to any particular course of action, whatever it is, after I leave Government service. I have already explained that my professional qualifications are in international oil. I am without private means. I will have to earn a living. How I would do that is entirely in the air, in every respect, in my mind.

Let me go further.

An answer that would pledge me not to work in the international energy industry or specifically in the case of Exxon I would regard as questioning my integrity and the purposes for which I left the company, I would not accept such a question about my integrity. I know why I did certain things; I know why I am sitting at this table. The answer, to me, is that I could not personally tell you now any future plan that I have.

Let me go further.

I mentioned in my opening statement, Senator, that we have a system which may be unique to this country. We have never successfully resolved the difficult questions of apparent conflict of interest,

perhaps even real. But as long as we have a system where an educator joins HEW or a specialist in defense will join the Defense Department, I wonder if you will continue to get men from private life if the requirement is that they never again do those things which brought them first into Government.

I understand the difficulty that you and other Senators have in examining the public interest versus the private and that this has concerned you specifically for a number of years and it has concerned others in the committee.

The answer, it seems to me, lies in law, regulation, and public policy, and these are, however imperfectly stated, on the books. And there is the question of public and personal morality and here we move into an area where I can only ask you to judge me as a person.

The FEA has, and I have looked at the regulations of the Government, the FEA has the most stringent regulations regarding conflict of interest that I am aware of exist anywhere in the executive branch, and we are about to institute regulations regarding lobbying which go beyond that found anywhere else in the executive branch. But these are the written scriptures and I understand that you must go beyond these and make your own judgment about the individual.

Senator METZENBAUM. As we pass upon persons for positions such as yours, when there is a consumer interest involved, public interest, don't we deal with something beyond the legal and don't we deal with the implications? For example, let's say a person from Exxon were to call you, and as you see the activities of your agency winding down, if and when that day comes, wouldn't you find yourself in a somewhat difficult position in responding to that person if in your own mind you thought that you may shortly thereafter be applying for a job at Exxon or some other oil company?

Mr. CONANT. I think I would apply the same safeguards with respect to my independence of judgment that I did from the moment that I worked for FEO. Long before the regulations were issued I consulted with Mr. Montgomery's office and laid down a requirement that neither I nor any of my principal associates would ever meet alone with a representative of any oil company and this was observed from the moment I entered into Government office.

The situation that you describe does not concern me in the sense that it worries me. It is obvious it must be a concern of others.

Senator METZENBAUM. Am I correct in assuming the rather lengthy answer you gave to my original question is that you may return to the oil industry when you leave Government service?

Mr. CONANT. Yes, sir, I might.

Senator METZENBAUM. Mr. Conant, you and I had a meeting in my office, at your request, prior to this hearing some weeks ago. At that time I asked you what actions, if any, you had been involved in at the FEA relative to keeping the public—which as I see it, is the prime responsibility of the FEA—you responded to me that you have been involved in putting together a good team personnelwise. You indicated that you had launched the Kruger study, which is a project having to do with laying out the range of options open to the public and defining the ranks of international oil, where our ideas can be expressed effectively, and that you have an interest in studying Project Independence which involves the continuing independence of our

country on some levels of imports, and the consequence of that independence as it unfolds in establishing an international policy, and all of that I consider to be good.

The question is, as it pertains to my overall concern with respect to the failure of the FEA to take any positive steps vis-a-vis the consumer of this country, what, if anything, have you done in that area?

Mr. CONANT. I think, Senator, if you refer to my letter that you will find that a fourth point was included at the end of it—

Senator METZENBAUM. I am sorry.

Mr. CONANT. Where I suggested that an assembly of a staff which would deepen the knowledge of our Government—and I forget the exact words—deepen the knowledge of our Government in international pricing was also a factor, an aspect of my work in the international side. And I believe that in the international arena this question of reasonable, appropriate prices and profits is highly complex, requires the most expert attention, both in terms of the economics and the politics of oil and the industry, that we are able to put into the U.S. Government energy policy. This ought to be the advantage of the American public.

Senator METZENBAUM. Did it come to your attention while you were an official of Exxon that the higher prices that the American oil companies negotiated for the payment of oil with the OPEC nations, the greater would be their profits with this country because they would thereby be permitted to charge a higher price for their new oil in this country?

Mr. CONANT. Yes, it did, and it was one aspect of this that gave me growing concern and led me to think more than I ever had about the consequences to the national interest of a lack of an energy policy. The fact was that these costs reflected commercial interests. The companies had embarked upon a course of negotiations in a context in which no U.S. national interest had ever been defined.

Senator METZENBAUM. Well, as a matter of fact, you really had a situation where those who are on our side of the negotiating table, who are purchasing the oil, truly have an incentive to permit the price to go higher rather than attempting to obtain a lower price, isn't that a fact?

Mr. CONANT. I agree.

Senator METZENBAUM. And what do you suggest or propose that the FEA do about that matter?

Mr. CONANT. There are several possibilities. Most of these have already been raised, proposed by one Senator or another. Let me begin, if I may, by stressing a point which I hoped was clear in my opening statement.

The interest of the United States in international oil is a direct reflection of the level of imports that all of us decide must be received; secondly, that of our allies. But the interest of the United States goes beyond that. It must assure to the best of its ability that the supply of oil be adequate in volume. That it be continuous, and that it be at an acceptable price. These to me are the three ingredients against which every proposal must be tested.

Now, there are many ways in which we can affect, as a government, the cost of imported oil. One of these, for example, would be to simply set a maximum price above which no oil could be imported into the United States.

You might want to go a step further, and if one chose and even set some particular margin for profit to be permitted within that price, this is another step and those who advocate it must, in my view, also make judgments concerning whether such a policy would result in adequate and continuous supply of oil into the United States.

One can go from that end of the spectrum to the other which is that the U.S. Government itself must take over the purchase of all imported crude, conduct negotiations itself, and then rely upon the companies to provide the logistics. This is the other end of the spectrum and this is where one must, if you have this other approach, also answer the other questions. Would this result in an acceptable price? It is not necessarily true that just because Government would negotiate, the price would be lower. Would the supply be adequate? Would it be continuous? And you have got various other options in between.

Senator METZENBAUM. There is limited time, and I am asking what you propose.

Mr. CONANT. My own personal view at this point is that the U.S. Government must control the price of crude coming into the United States.

Senator METZENBAUM. How can we do it?

Mr. CONANT. I think we can do it in one of two ways. I am not sure which is the best.

The first is to set a level at which no more expensive crude could be imported into the United States. This would be a flat prohibition, no exceptions permitted.

The other would be to move into the negotiations in the Persian Gulf and either in concert with the companies or standing behind them be directly involved in the negotiations.

Senator METZENBAUM. How soon do you think we ought to resolve which of those alternatives our country—

Mr. CONANT. Immediately.

Senator METZENBAUM. And do you expect to enunciate a position through the FEA on one of those two alternatives?

Mr. CONANT. I will certainly consult Mr. Sawhill.

Senator METZENBAUM. Do you know which one you would advocate?

Mr. CONANT. My personal view is the landed cost of imported crude.

Senator METZENBAUM. Do you have any idea what the cost should be for the landed crude?

Mr. CONANT. Probably somewhere between 8 and 10. Now, I don't want, please, to be held to that figure because others have to make some decisions that would relate to it.

For example, I would hope that the United States would embark with great urgency to develop our domestic reserves. This will require a certain price level in order to give the incentives to private enterprise to make these investments.

Senator METZENBAUM. What do you think that figure is?

Mr. CONANT. I would think that at the moment it would range somewhere between seven and nine.

Senator METZENBAUM. How do you reconcile that answer with the fact that the Petroleum Institute somewhere back in 1972 or 1973, that organization speaks for the petroleum interest and is an official advisory arm of the Government, had indicated that a figure of something in the area of \$4.50 would be adequate a figure by 1980 if we were to develop our petroleum reserves. How do you reconcile your statement with their statement 1 or 2 years ago?

Mr. CONANT. I don't know. I would imagine quite a bit has happened since that time.

Senator METZENBAUM. But nothing with the cost of producing oil. Certainly external matters. But nothing different in the cost of producing or refining, has there?

Mr. CONANT. Yes, sir, I would say there has. National inflation in this country, the claim for money for other activities. All have an effect on these figures.

Senator METZENBAUM. Mr. Conant, as of June 14, the Federal Energy Administration asked for comments with respect to a proposed transfer pricing regulation. Somewhere along that same period of time they indicated that on the basis of that that they were going to cause Gulf Oil Co. to refund \$40 million to the American public. It is now sometime in September or past the middle of September and that pricing regulation has not been made effective.

That pricing regulation would bring down the price because it wouldn't permit—well what if anything have you done in your position as Deputy Administrator—is that the title? Deputy Assistant—in connection with that subject because it certainly pertains to the price of international oil?

Mr. CONANT. We were consulted early on and continuously on whether this particular approach would have the desired effect. As I understand it a major or public hearing on this proposal began this morning.

Senator METZENBAUM. This morning?

Mr. CONANT. Yes.

Senator METZENBAUM. Well, when Mr. Montgomery was up here for confirmation he told us it was going to be forthcoming soon. When Mr. Sawhill was up here for confirmation he said it was forthcoming soon. Both of them have been confirmed and it wasn't forthcoming, and you tell us today they started hearings today.

Since it is within your orbit of operations, can you tell us when there will be a final hearing on the matter of transfer pricing? This expires in June of 1975.

Mr. CONANT. From the viewpoint of our shop we already put our stamp on the proposed relationship of the—

Senator METZENBAUM. Stamp of approval?

Mr. CONANT. Yes, we think this would be effective. As to when it becomes a matter of regulation or law I would have to ask Mr. Montgomery because I know these involve particular periods of time under Government procedure.

Senator METZENBAUM. How much would it draw back the prices to the American consumer for gasoline, if it ever becomes effective?

Mr. CONANT. I don't know.

Senator METZENBAUM. There is another policy that has been developed over at the Federal Energy Administration having to do with double dipping which has caused the American consumer to pay more for petroleum products also, are you familiar with the development of that policy?

Mr. CONANT. We have just recently been brought into this issue. I am not familiar enough with the background behind it to be able to give you an intelligent reply. I could do so subsequent to the hearing.

Senator METZENBAUM. Turning now, Mr. Conant, to the question of the bonus.

If you recollect, could you tell me what your salary and bonus was for 1973?

Mr. CONANT. Yes. My salary for 1973 was \$52,000. My bonus was \$9,550. I should say that in December of 1973 I received a salary increase which would have raised it on an annual basis in 1974, for example, to the level of \$57,000.

Senator METZENBAUM. Was it customary for the company to make salary increases every year in December?

Mr. CONANT. I don't know what the actual months for this would be. My recollection is that my own experience on salary promotions is I would get a promotion about once every 18 months.

Senator METZENBAUM. Was the salary increase granted to you prior to their knowledge of your intending to leave, or after?

Mr. CONANT. I don't know when the decisions are made by the compensation committee. My guess is that they must have been made sometime in the previous month.

Senator METZENBAUM. Did you know that after you told them you were intending to leave?

Mr. CONANT. No, it was well before that, I think. This question has been asked of me, Senator, by various journalists, also, and I would like, if I might, to make the point that in 1973 there was no spectacular increase in my gross income from Exxon.

Senator METZENBAUM. What was it in 1972?

Mr. CONANT. \$78,000. In 1971 it was \$61,000. In 1970 it was \$56,000 and in 1969 it was \$46,000.

Senator METZENBAUM. It was \$78,000 in 1971?

Mr. CONANT. No, 1972 it was \$78,000.

Senator METZENBAUM. How much of that was salary and how much was bonus?

Mr. CONANT. In 1972 the salary was \$50,000, the bonus was approximately \$15,000.

Senator METZENBAUM. Isn't that \$66,000?

Mr. CONANT. Yes, it is.

Senator METZENBAUM. How do you get the \$78,000, then?

Mr. CONANT. I beg your pardon, you are correct. My wife's salary was included in that \$78,000. Without it, it would have been \$66,000.

Senator METZENBAUM. Would you then go reading backwards; give us your salary for 1973, 1972 and 1971 and separately give us your bonuses for each of those years?

Mr. CONANT. In 1973 the salary was \$52,000. In 1972 the salary was \$51,000. In 1971 the salary was \$43,000. In 1970 it was \$39,000.

The bonus for those years: \$9,500 in 1973, \$15,000 in 1972, \$8,000 in 1971, \$7,000 in 1970, and \$6,000 in 1969—

Senator METZENBAUM. In what year?

Mr. CONANT. Excuse me, in 1969.

Senator METZENBAUM. OK.

Mr. Conant, when you were planning to leave, you knew that there was some kind of a policy but you didn't know the nature of the policy, did you, with respect to severance pay?

Mr. CONANT. That's correct.

Senator METZENBAUM. And that is not published information. The employees at EXXON are not familiar with that policy, are they?

Mr. CONANT. I certainly didn't know of it and I think I would have if it were general knowledge.

Senator METZENBAUM. So after you told them you were going to the Government they told you that you would be entitled to a severance payment provided that it met with the Government's approval that it wasn't illegal under Government standards?

Mr. CONANT. Right.

Senator METZENBAUM. Now, my understanding of the published public service leave of absence and termination policy enunciated—spelled out by the company on February 27, 1969, which is not distributed to all of the employees. But in that it provides that the amount of the lump sum shall be one-quarter of a month's pay or such larger fraction as may be—I am sorry that the Xerox didn't work very well—as might be recommended by the employee relation department management per completed year of credited company service, but in no event more than 24 months' pay.

Now, if it were one-quarter of a month for each year you would have been entitled to 3 months' pay or approximately \$13,000 as your bonus, wouldn't it? Am I correct?

Mr. CONANT. Yes, sir.

Senator METZENBAUM. And so that anything over \$13,000 that they paid you on leaving the company, the \$77,000, was totally discretionary and totally out of the goodness of their heart and nothing else, is that correct?

Mr. CONANT. Yes.

Senator METZENBAUM. Do you know what they have paid other employees when they have left Government?

Mr. CONANT. No, sir.

Senator BIBLE. When they left Exxon, you mean?

Senator METZENBAUM. When they left Exxon, I meant, I am sorry.

Now, when you learned that you were to receive \$90,000 if it met with the Government's approval, when it wasn't found to be illegal, you didn't immediately sever your relationship with the company until you found that you could accept the \$90,000, isn't that correct?

Mr. CONANT. No, that is not quite correct. I discussed this with my wife at the time. I might add first, that when I was told of the \$90,000 I asked Mr. Stamas out of curiosity how the sum was reached, and he told me that this was privileged information reserved to the board.

I did raise the question with my wife as to whether we could afford to accept the invitation of FEA in the event that this terminal grant were not approved or okayed by the U.S. Government. The implication in our discussion being that I wanted badly enough to participate

in the work of FEA that we might have to in fact simply go. As it turned out the U.S. Government did approve the validity of the payment and the issue was not discussed further:

Senator METZENBAUM. When did you sever your employment with Exxon?

Mr. CONANT. My recollection is that the first—the original date was to be January 7.

Senator METZENBAUM. Seventh?

Mr. CONANT. Yes; on that date I took a medical exam. It turned out I had come down with pneumonia and the company suggested it be postponed a week which was done.

Senator METZENBAUM. When did you first decide——

Senator BIBLE. Let's see the termination date. That gets up to January 13, is that right, of this year?

Mr. CONANT. That's right.

Senator BIBLE. That is the actual date. All right, you may proceed.

Senator METZENBAUM. When did you first decide or advise the company that you were intending to sever your relationship?

Mr. CONANT. I am not absolutely sure of that date. I know it was in December.

Senator METZENBAUM. The latter part of December?

Mr. CONANT. Yes.

Senator METZENBAUM. 1973?

Mr. CONANT. My guess is it was about the midpart of December.

Senator METZENBAUM. Do you have a copy of a letter dated December 26, 1973 on the Exxon Corp., personal and confidential, to Mr. Steven Wakefield. Do you have a copy of that letter?

Mr. CONANT. Yes.

Senator METZENBAUM. That letter, if I can read some words of it, says something like this is a draft of a letter—Do you have it handy?

Senator BIBLE. Maybe you have got a copy we can read.

Mr. CONANT. Yes, sir. I think I do.

Senator METZENBAUM. I don't know whether that is Exxon or the FEA that doesn't have a good Xerox machine, but one of them ought to buy a new one. It is just impossible to read it.

Mr. CONANT. I will provide you a copy of that letter.

Senator METZENBAUM. Will you read that?

Mr. CONANT. Yes.

Senator BIBLE. Would you identify the letter so I get clearly what it is that you are reading?

Mr. CONANT. Yes, sir.

This is a letter dated December 26, 1973, from me to Mr. Steven Wakefield.

Senator BIBLE. All right.

Mr. CONANT [reading].

Dear Steve: Here is a draft of a letter Exxon proposed to write me. Do you or your counsel have suggestions as to language or does this letter as it stands cover the question of separation? Would you look also at the last page where you will find a suggested draft of a letter to come from the FEA? Please advise by phone. In haste, regards, Melvin Conant.

Senator METZENBAUM. You are asking the Government to tell you in advance whether or not the severance arrangement with Exxon was legal?

Mr. CONANT. Yes, sir.

Senator METZENBAUM. And you submitted a letter that you were asking them to sign sending back to whom, to you or to Exxon?

Mr. CONANT. No; it would have to go to an officer of the company, in this case Mr. Stamas.

Senator METZENBAUM. And what happened after that letter was sent?

Mr. CONANT. The letter went from Mr. Simon to Mr. Stamas.

Senator METZENBAUM. Wasn't there something before that?

Mr. CONANT. Well, there was a memorandum from—an internal FEO memorandum dated January 3, 1974, from James Haynes to Steven Wakefield in which he stated that he found no conflict of interest and that the payment was valid, et cetera. Upon receipt of that Mr. Simon on the same day—

Senator METZENBAUM. Pardon me, pardon me.

In that letter Mr. Haynes says:

The only possible area of contention public relationwise is the \$90,000 paid to Mr. Conant. This payment is valid and will cause no problems as long as it is part of a past agreement.

Was it part of a past agreement?

Mr. CONANT. This is, I think, a some 30-year standing policy of Exxon under public service termination leave.

Senator METZENBAUM. Well, then it goes on to say:

And/or Exxon policy and not established for this particular case.

Now, we have already agreed that the policy provides only for a quarter of 1 month payment for each year of service except on a discretionary basis, so there was no policy providing for you to receive the fraction on one which you mentioned in your letter rather than the fraction of a quarter. That was not a matter of policy, that was pure discretion?

Mr. CONANT. My recollection is that discretion is inherent in the policy. The board determines the level of the payment, and that in any case it should not exceed 24 months' pay.

Senator METZENBAUM. And then what happened after that? That was January 3, right?

Mr. CONANT. Yes, sir.

Senator METZENBAUM. And then what happened?

Mr. CONANT. Then Mr. Simon wrote to Mr. Stamas stating among other matters:

The Office of FEA has no particular commitment by your company and that if Mr. Conant should terminate his employment with your corporation in order to accept the position with the Energy Office, then the corporation would make certain payments to Mr. Conant upon his termination period.

The purpose of this letter is to advise you that the Office has no objection to the commitment made in your letter to Mr. Conant, nor to the payments specified therein being made to Mr. Conant.

Senator METZENBAUM. Now at that point had you already received the letter from Mr. Stamas?

Mr. CONANT. I don't recall when I actually received it. I knew that on January 2—

Senator METZENBAUM. Which was one day before Mr. Simon's letter?

Mr. CONANT. Right. Mr. Simon had agreed to send the letter which he did on the 3d. On January 2 I received a personal letter from Mr. Stamas giving the conditions that I would have to terminate, that I would have to sever my financial interests in the company and then going on to say that if I did those things and an appropriate official of the aforesaid agency tells us in writing that the agency has no objection to this commitment and you terminate your employment with this corporation in order to accept the aforesaid Government position, then whether or not you remain in that position for any length of time this corporation shall pay you \$90,000 under its public service leave of absence and termination policy in January 1974.

Senator METZENBAUM. And so within a period of 1 week, between December 26 and January 3 it is possible for the Government to expedite this matter, and after that you then severed your relationship with Exxon, is that right?

Mr. CONANT. Yes, sir.

Senator METZENBAUM. Mr. Conant, if you wouldn't have been able to get that clearance so that you would accept the \$90,000, would you have still accepted the position with the FEA?

Mr. CONANT. I can't say that for sure. I think I have made the point that I discussed this possibility with my wife. I had not intended to explain one of the reasons that would have given me caution in moving to Government. I will. For some time I had not been particularly well. I was faced with the possibility that I would be incapacitated. The company had already been extremely generous to me over quite a long period of hospitalization, in my view beyond what the company's own policy required. While I was better I have been warned that as is the case with many, that I would run a medical risk for the rest of my life. Under those circumstances, remaining with the company with the programs that Exxon has in force was an obvious factor in my consideration. Nevertheless, we, I think, had both decided that Government service would be important enough to both of us so that the risk would be run.

I might add that I was assured that the day I arrived in Washington I would be covered with medical insurance and the 6 weeks that had elapsed without medical insurance gave me some uncertainties.

Senator METZENBAUM. What you are saying is that if you hadn't received this \$90,000 bonus you might not have joined Government.

Mr. CONANT. Right.

Senator METZENBAUM. Doesn't that then give you a certain sense of obligation back to Exxon for what they did for you? They made it possible for you to join Government.

Mr. CONANT. No, I wouldn't put it that way, and I do not feel that obligation.

I think it was made quite clear in the letter, and it was my understanding from the outset that the company was neither urging or advising against my taking this particular step.

Senator METZENBAUM. Mr. Conant, just to be certain that you haven't misstated unintentionally, the fact, did you receive a \$13,000 bonus or a \$15,000 bonus in 1973?

Mr. CONANT. I have here \$9,550 in 1973.

Senator METZENBAUM. Oh, I am only looking at your wage and tax statement for 1973 which indicates \$52,000 in wages and \$13,-115.63, and I just don't want you to unintentionally answer because I think you are attempting very hard to answer the questions very truthfully. Can you explain the difference?

Mr. CONANT. No, I can't, not at the moment.

Senator BIBLE. Is that the one that had your wife's salary?

Senator METZENBAUM. No, this is a W-2 that I am looking at.

Mr. CONANT. Is this 1973?

Senator METZENBAUM. 1973.

Mr. CONANT. I will clear it up in writing. I can't do it at the moment.

Senator METZENBAUM. I think there is a gentleman attempting to help you clarify it on your right. It is not that important.

Mr. CONANT. Tom reminds me that I will be meeting on the financial statement later.

Senator BIBLE. Well, why don't you clarify it a little later. I am anxious to keep this moving along and I don't think it is of much importance one way or the other.

Senator METZENBAUM. I don't think so either.

Senator BIBLE. We are going to take a recess for a while and that can be done then.

Senator METZENBAUM. I have no further questions at this time but, Mr. Chairman, it is possible that I might ask for the opportunity to recall Mr. Conant.

Senator BIBLE. Certainly, we still have to hear from the witnesses from Esso, and it would be my intention to recess in about 15 minutes over until 2 this afternoon so we will be back in session at 2 and you will have adequate time then to further explore these problems with Mr. Conant.

Senator METZENBAUM. Mr. Chairman, is that a rollcall?

Senator BIBLE. No, that means we are coming in. One means we are coming into session and one means we are voting. It is a little confusing but I am sure it is just coming in.

Let me ask just one question here, Mr. Conant.

I am a little curious about this health thing. How is your health this very moment?

Mr. CONANT. I feel good.

Senator BIBLE. Well, you look good. But I am kind of perplexed as to why coming to the Federal Energy thing, and with all of its problems, that might even be more burdensome than staying with Exxon.

Mr. CONANT. It's had its moments, I will agree.

Senator BIBLE. I am sure it will have a lot more. That is why I am curious a little bit about your answer. Because I have been here 20 years and taking it easy at the end of this year. But if you are looking for a soft spot you don't find it in Washington, D.C., and I just wanted to share that with you from my own experience.

The Senator from South Dakota.

Senator ABOUREZK. No, I only wanted to ask a question. Do you intend to proceed with Mr. Conant before the recess?

Senator BIBLE. No, Mr. Conant is right here. My plan is this: to first call on Senator Hansen, because he hasn't had his day in court, and then to recess until 2 o'clock when we go back to Mr. Conant, and then with the representatives of Esso. That will be the announced program.

Senator Hansen.

Senator HANSEN. Thank you, Mr. Chairman.

Mr. Conant, if I understood you correctly, I believe that you felt it would be your recommendation that the Government of the United States should establish as an upper limit the price of the landed cost of crude in the United States. This you felt now would be a policy recommendation you would make assuming that you are confirmed and placed in a position for which you aspire?

Mr. CONANT. Yes. Let me explain why I am presently thinking of that particular course of action and so recommending to the Administrator.

We have got to give a very clear signal to the member states of OPEC that the U.S. Government is now involved in this question. The other day one of the leading international companies was in to see the Administrator and they in fact asked for that kind of a signal. I think this must—

Senator HANSEN. Who asked for that kind of signal?

Mr. CONANT. It was one of the leading international oil companies. I feel quite free to say it was Gulf which came in and said that the companies were no longer in a position to set the commercial terms for oil. Well, they are not alone in having made this point, but the events of the last OPEC meeting and the admission by Yamani of another price increase simply, in my view, makes it absolutely imperative that the U.S. national interest in this matter be made entirely clear to the producing states.

Now insofar as the U.S. import is a pretty substantial part of oil in the world trade, a determination by the United States not to be held up further would, it seems to me, possibly have a salutary effect, hopefully, including on other consuming governments who will look to us to see if we are making that kind of signal.

Senator HANSEN. Mr. Conant, assuming that the Government of the United States were to give such a signal and its action, I suppose, if it were observed and maintained by this Government, resulted in a substantial diminution of imports, what would be your position?

Mr. CONANT. We would have to accept that.

Senator HANSEN. Accept what, fewer imports?

Mr. CONANT. Fewer imports.

Now, I would like to, if I might, take a minute to say that I never believed in flashing one signal. It seems to me that there are a number of things that must be done at almost the same time. That if one were to establish a ceiling, I think first of all there must be a crash program in this country for conservation in the United States of oil on a scale that we have never, even in wartime, experienced. That would be another very clear signal to the producing states. It seems to me that we must come to a quick resolution of the nature of the incentives that we are going to provide for the most rapid development of alterna-

tive forms of energy as well as the maximum exploitation of our own petroleum resources. At the same time, again anticipating the reaction that you mention, the United States must have strategic reserves. These take time to create, but we are to begin and we would have to begin in a public manner with a major commitment and that signal would have to be flown at the same time.

Senator HANSEN. Mr. Conant, there is an old saying in some parts of this country, I have heard it in the West, and perhaps it may have originated in the State of Nevada, that when you are playing poker, if you get caught bluffing you lose the pot.

Senator BIBLE. That originated in Nevada.

Senator HANSEN. Thank you, Mr. Chairman.

There seems to be some merit to it. My concern is this, I don't know when we come right down to the basics, I certainly do agree with many that we can get by, as I think we demonstrated last winter, on less energy than we would like to have. I think price plays a very important role in allocating any commodity or goods that is in short supply, and I happen to think it is a pretty good way of doing it. But I am—I don't say threat, but taking positions that we may not be able to maintain.

Now your thought in suggesting a price that beyond which oil could not be imported into the United States would contemplate, I expect, a decision as to what might happen with respect to supply on the one hand, and our ability as a nation on the other, to get by and to do with less than what otherwise might be brought in.

Do I understand if what I say makes sense to you, do I understand then that it is your feeling that at a price level for imported crude of between \$8 and \$10 per barrel, that we would get sufficient imports to get by using conservation measures in this country? Trying to make the best use of our various energy resources we have, is that your feeling?

Mr. CONANT. It is my feeling if we put substance behind the other signals that I mentioned. Nothing would be more dangerous to us than to embark on such a policy without being determined amongst ourselves that we are not bluffing.

Now in addition to the other steps which I mentioned, and these are essentially domestic steps, we have now initiated an understanding with other consuming states in the last couple of days, which for the first time in peace have linked the United States with other major consuming states so there would be some equitable sharing of the burden were the producing states to take a counteraction. I think this is an important step. But, again, if taken in isolation from the other signals that we mentioned, the bluff could be called, and this must not happen.

Senator HANSEN. Well, I applaud every effort that we can take that heads us or moves us down the road toward greater self-sufficiency, and I applaud you for your statements on that policy. But given the state of domestic concern in the business community, the rise in prices on the one hand, deepening unemployed on the other, which I think simply illustrates the fact that ours, among other things, is an energy oriented economy, I wonder how well we are going to be able to quantify the precise level or a range of levels that would get us by and meet our requirements here.

You read in this morning's paper that with respect to most of the oil exporting countries their situation basically is this: That they are presently receiving more money than they can invest wisely. They really don't know exactly what to do with it, and I gather that Sheif Yamani, speaking for the Saudis has sort of had to go along with them despite his policy that would result in, hopefully, lowered prices of oil. His auctioning off of 1½ million barrels, I know, was dropped, and I gather that he did that because of his assessment of the importance of Arab unity, and I feel it would be unwise to take the position that would be looked upon unfavorably.

So I wonder how it would be for us to look unilaterally and say—well, you know, this has been initiated by other countries. But it seems we may run head on into an equally adamant opposite Arab policy or oil country—oil importing country policy which just says that they are not going to sell it unless the oil prices go up.

Now, given that set of basic facts, I have had the feeling that greater harm now would result to our economy and the productivity that we so desperately need now in order to fight inflation from yet another vantage point. I think it is important that we try to get a balanced budget, but I think that it is also important that we not weaken our productive machine so that it will be producing less instead of more, and I have had the feeling that the one worse thing that might have happened to us last year than to be required to pay more for oil and all petroleum energy as we did than to have gotten none. That despite what lots of people have said as to the needs of rationing and the needs of rolling back prices, the worst possible thing that could have happened to us would have been to have received little or no energy and that would have brought about the most serious of consequences.

I notice that it is about a quarter after 12, Mr. Chairman, and maybe this afternoon, if you would like to respond—I am afraid I didn't ask you a very precise question.

Senator BIBLE. That is kind of a long question, but you can examine it and you can come back in and make a comment on it when you come back at 2.

We will start out with Senator Hansen and he can ask you any further questions he has, and next go to Senator Abourezk, and then Senator Metzzenbaum who are here, and I hope we can complete the hearing today.

Senator HANSEN. Mr. Chairman, just before you recess, if I could, let me observe that there has been scheduled, I notice with some dismay, House-Senate conference on another facet of the energy industry, strip mining, and I am one of the conferees.

Senator BIBLE. Well, I make the suggestion that you come back at 2. When is your conference?

Senator HANSEN. Two.

Senator BIBLE. Well, that is a happy mixup. But, Senator Fannin has finished his questioning and we will let you finish and you can both go to the strip mining conference.

Senator HANSEN. Very good.

Senator BIBLE. We stand in recess until 2 p.m.

[Whereupon, at 12:17 p.m., the hearing was recessed, to reconvene at 2 p.m.]

## AFTERNOON SESSION

Senator HANSEN [presiding]. Mr. Van Ness has suggested that inasmuch as I am supposed to be at a strip mining conference between House and Senate conferees, if you are ready, Mr. Conant, we might go ahead. I think you were going to respond to a question I asked just before we broke for lunch.

I understand Senator Bible will be here momentarily. The hearing on the nomination of Mr. Conant will resume.

Mr. CONANT. Senator Hansen, my recollection is that you asked that we not bluff in our policy steps; and second, that in determining what our policies should be we ought to weigh carefully the economic repercussions of any such step.

I can only say that I agree with you completely. I would share the view of Walter Levy, expressed the other day, that our country and many others are in extreme jeopardy. The oil price question is an important aspect of it. But there are other issues involved in what we now face today. Hence our attack has to be comprehensive, and the oil price question must be put in its proper perspective.

But just as I learned from a man who worked with me when I first joined FEA, who started out as a deputy sheriff in western Colorado, he said, the most important question he faced every morning was when he went out to get his man was whether he would carry his gun.

We have got to be awfully sure that if we are not bluffing that that is made evident, and it does not at this time mean, by any means, the carrying of a gun. There are other things we must do, but there will be an economic cost.

Senator HANSEN. Just parenthetically, Mr. Chairman, we have one other bit of advice to give to our candidates for sheriff in Wyoming, and that is that the gun be loaded.

Thank you very much, Mr. Conant. I have no further questions.

Senator BIBLE [presiding]. I have no further questions of Mr. Conant.

I guess we will just have to temporize for a few minutes because Senator Abourezk had some additional questions, and Senator Metzbaum said he had some questions. Can we put in a call to see if they are available?

Senator HANSEN. If I may be excused, I may start my strip mining operation.

Senator BIBLE. Fine, I hope you get it done.

Senator HANSEN. Thank you very much.

Senator BIBLE. Without objection, there is a series of questions here, Mr. Conant, on the role of multinational oil companies and on domestic oil prices in the cartel. I am going to furnish you copies of these questions, and possibly there will be others, and ask you to give us your replies at the earliest possible date. I won't burden the record with it now because, as I said earlier when we recessed for the noon hour, I am anxious to make progress; and if the remaining members of the committee show, we hope to wind this up very, very soon.

The hearing will come to order.

We terminated for our noon recess. Senator Hansen was assured that he would be recognized first to ask some questions of Mr. Conant.

He has asked those questions and now Senator Abourezk indicated he wanted to do some additional questioning of the nominee, as you did, Senator Metzenbaum, so in the absence of Senator Abourezk, will you please proceed.

Senator METZENBAUM. Did Mr. Conant want to respond? Did Senator Hansen get his response to his question?

Senator BIBLE. Yes, he has been here and he asked the question and got a response.

Senator METZENBAUM. Mr. Conant, you made a statement today about the dependency of the United States for imported oil as being a particularly critical matter. Have you given any consideration to the critical aspects of the continued outflow of capital from this country to the OPEC nations if oil prices remain at their present high level?

Mr. CONANT. Yes, sir.

Senator METZENBAUM. Weighing those two parts together, the fact that there will be something like a shortfall of capital dollars in our country of \$30 billion this year; that there will be 60—\$105 billion going to the OPEC nations for oil this year as opposed to \$29 or \$30 billion in the past, and a continued excess moving to the OPEC nations, what is your view as to the impact that that will have on the American economic picture in the coming years?

Mr. CONANT. It could be disastrous.

Senator METZENBAUM. Would you want to expand on that?

Mr. CONANT. Yes, sir. It will also be disastrous on the economies of other major allies whose dependence upon imported oil is ever so much greater than our own and for whom these unprecedented increases literally represent a matter which puts them in extreme jeopardy.

There are two aspects, as I have tried to think this through, and the solution, you know, eludes people. We have never had a situation that I am aware of comparable to this. So I think there are two aspects to the high price of oil as far as the United States is concerned. One, is our own ability to meet a bill of the dimensions you indicate.

Senator METZENBAUM. A what?

Mr. CONANT. To meet an oil bill of the dimensions you indicate and the outflow of money is simply staggering.

But the other aspect of it is the apparent desire of many of the OPEC producing states to send the oil revenues that they do obtain to the United States, both the London and New York market, financial market.

Now much of this money is going to represent oil payments made, say, by Japan, Britain, Italy, and is it getting recycled into the United States?

Now, unless we are prepared to be the lenders of last resort and in turn move around and send that money back to London, Rome, Paris, Bonn, and Tokyo, the moment is coming when those countries simply will not be able to pay their bills.

Now, what has bothered me about the arguments that go on as to the U.S. response, is that, let's say we agreed to be the lender of last resort, this would imply a continuation of these extremely high prices. That we had found some mechanism which permits us at the

end of each day to take in a certain amount of money and then shove it out back across the oceans. I don't believe that this is a practical means of handling this problem.

If I were to select a particular course of action that we could take right now, that would bring home to the producer states the magnitude of the problem they have visited upon us and upon themselves, I would be much interested in the current proposal that no importing country accept recycled Arab funds greater than the amount of the oil bill they have been presented by those countries.

In other words, this, it seems to me, would very quickly make a point with the producers that the economic conditions that have been visited upon the consumer countries, our own included, as a result of this increase in oil, is simply not tolerable either to us or to them.

But beyond that particular suggestion I must say at the moment I am baffled.

Senator METZENBAUM. Have you made any recommendations to that effect to Mr. Sawhill or to—who I gather is your superior at the present time at the FEA?

Mr. CONANT. No, sir, I have not. I have come to this particular conclusion really over the weekend, that there is no other immediate course open to us than the one I mentioned.

Senator METZENBAUM. Assuming for the moment that the possibility of that course that you just mentioned might result in, as Senator Hansen stated this morning, possibly somebody calling our bluff and cutting off oil as a consequence thereof. Between the choices of having the oil cut off at this point or the continued outflow of capital in the dimensions of which it is presently occurring, which would be better for the future economy of this country?

Mr. CONANT. You have rightly posed these stark choices.

Senator METZENBAUM. Hopefully we won't have those stark choices but if that be the bottom line, then what would be your answer?

Mr. CONANT. May I answer that in two ways?

First I would suspect that OPEC unity might not hold together so that we would in fact not lose all our imported oil, nor would any other consuming country. There are conflicts or differing conceptions of their interests within OPEC that would become more apparent were we faced with that choice. But if we were faced with the choice, as you have described, it would require exceptional measures on our part and with your permission, sir, I would rather discuss these with you in executive session.

Senator METZENBAUM. I think that is a reasonable suggestion and I have no objection to it.

I have no further questions at this time.

Senator BIBLE. The Senator from South Dakota.

Senator ABOUREZK. Thank you, Mr. Chairman.

Mr. Conant, do you believe that the foreign tax credit not allowed to multinational oil companies based in this country, do you believe it should be abolished or retained?

Mr. CONANT. It should certainly be changed.

Senator ABOUREZK. To what?

Mr. CONANT. I would like to see instruments of that sort made—or legislation of that sort made instruments of the U.S. foreign policy.

For example, were it to be decided that a particular part of the world was thought to be inherently a more secure source of energy for the United States or for our allies, and if it were determined that such a credit would be the ingredient that would call forth the investment required to create that resource, I would be in favor of using it. But using it as an instrument of foreign policy.

Senator ABOUREZK. Do you see any need for the foreign tax credit at this time?

Mr. CONANT. I couldn't answer that, Senator. I would have to decide first which area of the world our Government decided ought to be developed as an energy resource and then, if that area were such as to pose no particular hazard to foreign investment, there would be no need for any particular incentive, then I would not make such available.

Senator ABOUREZK. Are you of the opinion that the foreign tax credit was developed to induce companies to invest in overseas oil operations?

Mr. CONANT. No, I do not believe it was an instrument of U.S. foreign policy.

Senator ABOUREZK. That wasn't my question.

My question was, do you believe that it was first used initially as an instrument to encourage development of foreign oil sources by American oil companies?

Mr. CONANT. I doubt that.

Senator ABOUREZK. Do you know what the background of that tax credit was?

Mr. CONANT. No. I have surmised in recent years that it was, first of all, an effort to avoid double taxation of companies. I am not an expert on taxes, but my recollection is that there were opportunities for companies to choose how they record their tax payments to foreign governments.

Senator ABOUREZK. I don't think that has much bearing on it. I am given to understand that the tax credit was initiated just through an Executive order during the Eisenhower administration. Correct me if I am wrong. A Treasury ruling I guess that has never been repealed by Congress, but just stayed in effect during those years out of just sheer inertia. And ordinarily a business expense, any payment of royalties by a company to someone else such as the governments of the Arabian Gulf would just be an ordinary business expense writeoff, yet it was provided as a credit for one reason or another, reasons which obscure—which are obscure to me, but nevertheless it is allowed what I consider to be an unjust tax writeoff for multinational oil companies that deal in the Gulf of Arabia.

And my question is, if you were ever asked for a recommendation and you may or may not be in your position in the FEA, what would you recommend to be done with the foreign tax credit? Would you recommend that it be abolished at this point or retained?

Mr. CONANT. It falls between the tow. I want it used as an instrument to encourage exploration in particular areas of the world. If it is necessary to have such a credit to get investment, then I would want it retained. If it will play no such purpose, then I would abolish it.

Senator ABOUREZK. And what do you think? Is it necessary at this time to encourage investment in the Arabian Gulf?

Mr. CONANT. No.

Senator ABOUREZK. So you would want to see it abolished at this time with regard to that particular part of the world?

Mr. CONANT. Right.

Senator ABOUREZK. Do you believe that with regard to negotiations for the price of crude oil being imported from oil exporting countries, do you believe that the U.S. Government ought to conduct those negotiations or should it be retained as it is now, negotiations are between private multinational oil companies and the governments of those countries or to the OPEC cartel? Which way would you rather see it?

Mr. CONANT. The U.S. Government's involvement is now called for.

Senator ABOUREZK. It is not called for?

Mr. CONANT. It is now called for.

Senator ABOUREZK. Oh, it is now called for?

Mr. CONANT. Yes. Many of the companies have come to us and said so, that the traditional pattern of government-country negotiation has broken down. The power balance in this picture has changed so completely.

Senator ABOUREZK. Now, when you say government involvement, does that mean they just ought to take part or take over totally with regard to negotiations?

Mr. CONANT. My own personal view at this moment is that it might be sufficient for the U.S. Government to declare that price level of imported crude which it would permit to enter this country. I believe that our oil imports represent such a major fraction of the oil imports in the world that our decision on that effect would have an important effect on oil prices in the world, particularly on other states who would determine similarly.

Senator ABOUREZK. Well, do you believe that in order for us to ask the foreign oil exporting cartel to lower their prices that we ought to first of all lower ours? Because I am first of all of the opinion that it is naive of anyone to expect those people to reduce their prices below what we are selling it for domestically. Do you think we ought to lower our domestic prices before we can ask them to lower their's?

Mr. CONANT. No, I don't think that that factor has loomed very large in the price decisions of the producing countries.

Senator ABOUREZK. What is the major factor then?

Mr. CONANT. I think there are several, and each producing country may set its own sort of order of priority on these points, but I would believe a common denominator for almost all of them would be the after effects upon them, for each one of them had kind of a colonial experience at the hands of the West. They speak freely of the flow of money that went back to the industrial states for many, many years without in their view an adequate return to their own people. The Shah of Iran has made this point so often.

Senator ABOUREZK. Do you think he is getting even now?

Mr. CONANT. Yes, sir, and this is what I call part of the politics of oil. It is not an economic decision, it is another.

Secondly, I think there are strains within the producing cartel that have a political cast that make it very difficult for one country to come out with a price approach which would be interpreted a under-

cutting another producing state. And, here again, the common denominator may not be an economic judgment of supply and demand, but the fact that one country has started a sequence of events that the others are not prepared to interrupt.

Thirdly, again on the political aspects of oil, I think there is a common denominator that reflects the fact that the great bulk of oil moving in the world trade has been managed, controlled by British and American companies. I think this is perhaps less a factor today in the thinking of producer states, but that it does have its effect, and since many of these states believe these oil companies are the agents of their home governments, their policies, be it in the Middle East or in the Southeast area or in the Latin-American countries are dictated by London and Washington. So these are—it is very difficult to know how you can deal with these political aspects beyond making it perfectly clear to the governments that you are aware that these things enter into their minds.

On the more complex side I think the Shah has been entirely sincere in seeking a price level which in his view is competitive with those of alternative sources of energy. He sees no reason why he should get less for oil than others get for some other form of energy. Now, what that price is or what the comparison would be is a matter of subjective judgment.

I think they are also deeply and quite sincerely concerned with what the rate of inflation has done for them even though we see it in the reversed direction, and when the Saudis and the Saudis and Iranians ask that there be a commodity index, or some kind of measurement that would relate the price of oil to the cost of things that they import, difficult as it is to construct such an index, I think the view that such ought to be is reasonable.

Senator ABOUREZK. Can you foresee any circumstance, either in the very near future or in the distant future when you would advise and recommend to the Federal Energy Agency that the oil import quota be reinstated?

Mr. CONANT. Yes, I could.

Senator ABOUREZK. What would those circumstances be?

Mr. CONANT. If we were to decide that we were going to do all—not all of them, perhaps—but many of the things I mentioned before lunch. The intensification for the development of our own resources and so on. A real program of conservation.

One way of making the point would be to limit the volume of oil brought into this country, and one of the ways of doing that is through price. Another way is through a quota, and a third way, which might yet come to be considered, I guess, is whether there are certain countries with whom we wish to have a particularly good relationship, and that it would be a selective quota in the sense that imports from those countries might come in more easily.

Senator ABOUREZK. I am not sure that I understand what your reference is to the development of alternative sources of energy and its relationship to import quotas. Do you mean by that that if you let in too much foreign oil and it were somehow to be once again cheaper than our domestic oil, it would inhibit development of oil shale and alternative sources such as that?

Mr. CONANT. Exactly.

Senator ABOUREZK. In that line then, I think you suggested this morning that the price of domestic oil ought to be somewhere between \$7 and \$9, and of imported oil it ought to be controlled somewhere between \$7 and \$10 a barrel, is that correct?

Mr. CONANT. \$8 and \$10, right.

Senator ABOUREZK. You said \$8 and \$10; \$8 and \$10 on imported oil and \$7 and \$9 on the other, am I saying that correctly?

Mr. CONANT. Yes, sir.

Senator ABOUREZK. Isn't that the same figures that have been floated which would be the prices of oil that would be required to be charged in order to subsidize the industry, the energy industry development of its products?

Mr. CONANT. This question of what level of price is necessary to call for significant investment I find a most difficult one to judge, and I could not in all honesty say that the price levels or the price range that I am thinking of would in fact produce the reaction that I am suggesting. I think it might.

Senator ABOUREZK. I want to just have one more question and then I will yield back to the chairman.

Senator Metzenbaum asked you this morning I think probably the key question of the whole hearing, if you believe that at some time you were going to somehow return to the energy industry, or to Exxon, after your Government service were over, say something happened, the administration would change or the Director of the Energy Office were to change, and you decided to return to private life, do you think it is fair to the people of the United States whom you are now serving—rather than the stockholders of Exxon—do you think it is fair to the people of the United States that your judgment be allowed to be colored by a possibility of going back into private industry, and that one of your decisions in which you are required to decide in favor of the public interest, might be so colored so that you would decide it more in favor of one of the energy companies that you might return to? Do you think it is fair to the American people for you to have that kind of intention once you have decided to come on into the Government and serve the Government in that respect?

Mr. CONANT. Had I that intention, it would not be fair.

Senator ABOUREZK. If you had what intention?

Mr. CONANT. Of basing some decision that I might make in Government upon some possible reemployment at some time by Exxon or any other energy company.

Senator ABOUREZK. Mr. Conant, your representation is a very good one, and I have just by some independent query learned that you do have a reputation for independence and for exercising independent judgment even when you were with Exxon, so I am not talking about an intentional judgment that you might make, but being a human like all of us are, there is a very distinct possibility that without even knowing, without even making a conscious decision, you might soften up on some decision having to do with Exxon or some other company that you might be interested in returning to. I guess I should have phrased it that way, but if you haven't foreclosed the immediate reentry into private industry of the nature that you are now relating, do you think it is fair to the American people that that possibility exists that you might make a subconscious decision in favor of one of the companies that you might want to return to?

Mr. CONANT. Senator, I can only say that I am so accutely aware of the circumstance that you describe that it wouldn't be Melvin Conant sitting here in front of you were such a situation to arise and I would not recognize it.

Senator ABOUREZK. So you would assure the committee that in every respect you would be probably more aware than most people would that you have to make a decision that if it came down between the two, that would favor the public interest as opposed to one of the private companies that might employ you in the future?

Mr. CONANT. Yes, sir.

Senator ABOUREZK. Mr. Conant, thank you very much. I appreciate it.

Senator BIBLE. Thank you very much, Mr. Conant. I think that is all the questions.

We have the Esso people here and both Senator Abourezk and Senator Metzenbaum have indicated they have an interest in querying them, so you might just step back.

Senator METZENBAUM. Just one final question of Mr. Conant.

Senator BIBLE. All right.

Senator METZENBAUM. Following Senator Abourezk's question of some possible conflict of interest that might cause an effect upon your decision, has any such situation arisen in the past 9 months where you had to come down hard in opposition to the position of the oil industry?

Mr. CONANT. Yes, sir.

Senator METZENBAUM. Would you state it, please?

Mr. CONANT. One of the reasons which led me to want to accept Wakefield's invitation was, at the head of the column of the functions to be performed by this branch of FEA, was to determine what should be the nature of the presence of the U.S. Government in international oil. This is a subject of great interest to me. I concluded very quickly after my coming into Government that I was not the person to make that study; that I had not yet become known to men such as yourself. Thus the credibility of an examination by me into that subject would be less than the topic deserved and therefore I determined that this inquiry, what are the options open to our Government, would have to be conducted by an outsider, someone not in Government, not of the industry and so on. It was disappointing to me that the initial reaction of too many of the international companies to the making of this study was such as to make it difficult for me even to proceed with the creation of the project and its implementation on a contract basis.

The man that I chose to do this study, Mr. Kreuger, I chose for a number of reasons, and one is that he is sturdy, he is a fighter, and he does not wilt. The study in which he was embarked was met with what I could only view as very considerable hostility. Although most governments everywhere in the world have undertaken such studies, an examination into what the U.S. Government's role should be, was greeted with great apprehension by the executives of oil companies, but Mr. Kreuger does not wilt, and I am very pleased that by persisting, and, I think, to some extent by my making it known to a number of companies that with or without their interest and co-

operation the study was going to be made and that it would be made on schedule, and by Kreuger continuing with his work, we now have a different atmosphere surrounding this study, illustrated by Mr. Spahr, the chief executive of Standard Oil of Ohio, who has just recently written a round robin letter to the member companies of the API, asking that they assist in the completion of this study. So I regard this as an instance of where it was necessary, and I had the entire support of Mr. Sawhill from the very beginning as I had of Mr. Simon before him, that the study had to be made, that we had the right project and we had an independent, honest man to do it, and that eventually all interests likely to be affected would come around and assist in making this a better study. But believe me there were long nights. It would have been a lot easier, Senator, for me to have said, we will do it next year, we will do it some other way.

Senator METZENBAUM. Did you hear from Exxon in connection with that? Were they opposed?

Mr. CONANT. They are now assisting us. In the beginning my impression was they were opposed.

Senator METZENBAUM. Did they communicate directly with you of their opposition?

Mr. CONANT. No.

Senator METZENBAUM. Indirectly?

Mr. CONANT. Yes, sir, through meetings with Mr. Sawhill. Through meetings with the Secretary of State. But they were not the only ones; I would like to make that point clear.

Senator METZENBAUM. Thank you.

Senator BIBLE. Thank you very much. You have been a very forceful, and it seems to me, a very forthright and honest witness. I appreciate that Mr. Conant, and I suggest you stay here, there may be other questions develop after we have had Mr. Moore's testimony. Would you please remain?

[Subsequent to the hearing Mr. Conant submitted the following:]

SEPTEMBER 25, 1974.

Hon. HOWARD METZENBAUM,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR METZENBAUM: At the hearing on my nomination, we discussed my 1973 Exxon income which I indicated was:

Salary-----	\$52,000
Bonus-----	9,550

61,550

You correctly noted that in our 1973 tax return Exxon's two wages and tax statements totalled \$65,115.63. According to my records, the difference between these (about \$3,500) represents not "wages" per se but proceed from a stock option which was recorded by the company as "ordinary income" and included in the Wage & Tax Statement figures filed by it. The actual *bonus* received that year was, as noted above, \$9,550. Had I had the wit to ask my wife I could have answered you correctly at the time.

You also noted that my 1973 total Exxon income from all sources—which I said was \$79,000, actually totalled \$76,315. You are right. I had inadvertently included my wife's income from Mt. Sinai Hospital and lecture fees and savings' account interests and such miscellaneous items totalling about \$2,500, meant our combined 1973 income approximated \$79,000.

Sincerely yours,

MELVIN A. CONANT.

Senator BIBLE. Mr. J. F. Moore, senior advisor, executive compensation, Exxon, Inc.

STATEMENT OF J. F. MOORE, SENIOR ADVISER, EXECUTIVE COMPENSATION, EXXON, INC., ACCOMPANIED BY RICHARD E. KERESSEY, GENERAL COUNSEL

Mr. KERESSEY. Senator, I am Richard E. Keressey, assistant general counsel of Exxon Corp. I will be assisting Mr. Moore.

Senator BIBLE. And Mr. Moore, I have your prepared statement before me. It is short and you may proceed. You are recognized.

Mr. MOORE. Thank you.

My name is James F. Moore, senior Advisor for Exxon Corp., on executive compensation. I believe it will take 1 or 2 minutes to read this statement.

Exxon Corp. has had since World War II a public service leave and termination policy. One feature of the policy has been the availability of termination compensation to certain employees who were required to terminate their company service in order to enter public service.

During his years of service with the company, an employee accumulates certain vested benefits and certain expectancies—such as a steadily rising salary, various incentives, and ultimately a pension. If he terminates prematurely, he incurs increased taxes, as his vested benefits are accelerated, and forfeits some or all of his expectancies including valuable pension rights. Accordingly, an employee is penalized by terminating prematurely his career with Exxon. The Exxon public service policy, in providing for special payments, is in line with Exxon's general policy of according special consideration for past services to certain employees whose careers with the company are terminated at an unusually early stage without their fault, such as those for medical reasons.

The policy provides for a lump sum payment calculated on the basis of past services as follows:

When an employee is granted a Public Service Leave of Absence or Termination the Company will pay a lump sum to the employee, prior to the absence or termination, as the case may be, in consideration of his past service. The amount of the lump sum shall be one-quarter of a month's pay or such larger fraction as may be recommended by the Employee Relations Department Management per completed year of credited Company service, but in no event more than twenty-four months' pay.

Historically, payments to senior executives, such as Mr. Conant, who terminate to enter public service or for other good reason have involved larger multiples than the minimum one-quarter month's pay stated in the policy. In arriving at the amount of termination pay, we first consider the size of the amount generated by using one month's pay times years of service subject to the maximum limitation of 2 years' pay. If this amount is substantially less than 2 years' pay, we then consider what the employee is losing by reason of his termination; namely, previously awarded stock options which will expire prematurely, et cetera. Consideration is also given to unusually high taxes resulting from the bunching of income where payment from several company sources; that is, incentive bonus, thrift plan, et cetera are received in 1 taxable year. Finally, consideration is given to reasonable resettlement and moving expenses if the individual is required to move to another city.

Melvin Conant was employed as a public affairs specialist by Exxon Corp. for 13 years before he left the employ of the company in January 1974, to accept a post with the Federal Energy Administration. In applying the policy to Mr. Conant, the month's pay per year of service amounted to \$62,300, loss of anticipated bonus awards was estimated as \$11,000, the estimated loss due to the premature exercise or loss of right to exercise stock options was estimated as \$10,900, and reasonable moving and resettlement expenses were estimated as \$5,000 for a total of \$89,200. This number was rounded out to \$90,000, which payment was made to Mr. Conant before he commenced his employment at the FEA.

Before making a payment to Mr. Conant, Exxon Corp. disclosed to the FEA the fact that it proposed to make such a payment and the amount of the payment and was advised in writing that the FEA had no objection. Exxon Corp. believes that its payment to Mr. Conant was completely legal. Exxon had no ulterior motive in making the payment. Exxon considers that its public service policy serves the public interest in permitting employees to consider the possibility of Government service.

Senator BIBLE. Mr. Moore, do you have any instances within your company's policy insofar as your senior executives are concerned, but similar to this particular payment involved to Mr. Conant?

Mr. MOORE. They are infrequent. We have 5 or 6 in the last 20 years.

Senator BIBLE. Five or 6 in the last 20 years?

Mr. MOORE. Yes.

Senator BIBLE. Which could be said to be comparable with this?

Mr. MOORE. Yes.

Senator BIBLE. And would you tell the names. I think it would be well to document that for the record. It seems to me the thing that is raising most of the eyebrows is the fact that this seems to be a pretty handsome settlement pay in Mr. Conant's case. Now spell out that loss of anticipated bonus awards estimated at \$11,000. Translate that for me, will you tell me what that means?

Mr. MOORE. Yes, at the level that Mr. Conant was at—

Senator BIBLE. I am referring now specifically to Mr. Conant.

Mr. MOORE. Yes, a bonus award for a particular year's performance would be approximately 20 percent of salary. Now these particular percentages vary from time to time but the frame of reference we are talking about, it would be approximately that amount.

Now it happened that we made some awards July 1, 1974. Those awards were based upon performance in 1973. At the time this calculation was made this was our estimate. We knew that this was planned, it was our estimate of what Mr. Conant would have received as of July 1 in respect to the service he had performed in 1973.

Senator BIBLE. And he has testified as to the bonus payment he received in earlier years.

Mr. MOORE. Yes.

Senator BIBLE. And that is in line with this general policy that your company has?

Mr. MOORE. Exactly.

Senator BIBLE. All right. Now the estimated loss due to the premature exercise or loss of right to exercise stock options, was estimated at \$10,000?

Mr. MOORE. Yes.

Senator BIBLE. Spell that out for us?

Mr. MOORE. This falls into two categories. One is that they had already been granted but could not be exercised until the employee had completed 2 years of service with us. And it is customary in a situation like this to take the current market price of the stock, increase it at a current amount. And that estimate would be based on 5 years in the future. Look at the difference and say if the individual were to continue in our employ it is reasonable to assume that somewhere in that 5-year period he would be in a position to exercise the option and realize this amount of gain which he will now exercise because the option would be forfeited.

Senator BIBLE. Why would it be forfeited?

Mr. MOORE. The term of the option is that the employee must continue in our employ up to 2 years after the grant at which time he must continue in our employ for 2 years to get the other 50 percent of the grant. So the option is inexercisable until the individual has remained in our service for 2 years after the option was granted.

Senator BIBLE. Well, spell that out a little further, because Mr. Conant was with you for 13 years, wasn't he?

Mr. MOORE. He was receiving an option grant currently. For instance he received an option in December of 1973. None of the shares in that option were exercised.

Senator BIBLE. Oh, these are continuing options, is that it?

Mr. MOORE. Each year we grant options.

Senator BIBLE. I see. All right.

Mr. MOORE. Each year in December.

Senator BIBLE. The Senator from South Dakota.

Senator ABOUREZK. Thank you, Mr. Chairman.

When a senior executive first comes on with you or becomes a senior executive, he is given a stock option for a 2-year period, is that what you are essentially saying?

Mr. MOORE. No, the option can be either qualified, in which event it is for 5 years, or nonqualified in which event it can be exercised at any time within 2 years. It is not exercisable at all until he has completed 1 year of service after the date of granting. In that event 50 percent of the shares in that option could be exercised—

Senator ABOUREZK. I understand that. I guess what I am asking is that every year he is offered additional shares of stock under the same terms?

Mr. MOORE. Yes.

Senator ABOUREZK. And I don't even know if it is relevant to ask how many shares are offered in the option. Is that anything that you don't care to tell?

Senator BIBLE. I don't see any harm in that question. It doesn't embarrass Mr. Conant. He had certain stock options that would have been made available to him if he were still in the employ of Exxon.

Senator ABOUREZK. How many shares are made available in each particular offering?

Mr. MOORE. I didn't bring that particular number with me. I would estimate it is approximately 300 shares.

Mr. CONANT. My wife is my accountant and she just whispered to me 350 shares.

Senator BIBLE. 350 shares. The record is clear, you may continue.

Senator ABOUREZK. Now you told Senator Bible that payments of this magnitude to a departing executive have happened five or six times in the last 20 years?

Mr. MOORE. Twenty-five.

Senator ABOUREZK. Twenty-five years, and other departing senior executives were recipients of the one-quarter fraction per month, is that correct?

Mr. MOORE. I didn't say that, no, that is not correct.

Senator ABOUREZK. What is right?

Mr. MOORE. Approximately 1 month's pay per year service.

Senator ABOUREZK. For each executive?

Mr. MOORE. No. I thought he asked for senior executives which were comparable to what Mr. Conant was now taking with the Government.

Senator BIBLE. That was my question. You said you had comparable cases, of five or six senior executives over the last 20 or 25 years.

Mr. MOORE. Yes, your question was what were the multiples that were arrived at to pay the lump sum to those particular executives. My answer was 1 month's pay per year service, that has run for over 25 years.

Senator ABOUREZK. I assume there are several hundred senior executives that have departed in the last 25 years. What were they paid by way of termination compensation?

Mr. MOORE. Well, the amount that the individual is paid depends on our measurement of the economic area that he is actually leaving.

Senator ABOUREZK. The five or six who received a similar amount that Mr. Conant received, where did these three go when they terminated from Exxon?

Mr. MOORE. One of them went to International Nickel after terminating from Exxon. You mean what were their Government positions?

Senator ABOUREZK. No, these five or six people that you talked about that received that compensation, what jobs did they take after they had terminated from Exxon?

Mr. MOORE. Well one of the first ones was the General Manager of the Atomic Energy Commission.

Senator ABOUREZK. He left Exxon and became General Manager of the ABC?

Mr. MOORE. Yes.

Senator ABOUREZK. Is he still there?

Mr. MOORE. No.

Senator ABOUREZK. What was his name?

Mr. MOORE. First General Manager, Marion Boyer.

Another one was with the Agency for National Development.

Senator ABOUREZK. And what year was that?

Mr. MOORE. That was in 1962.

Senator ABOUREZK. And his name?

Mr. MOORE. Robert Ihrle.

Senator ABOUREZK. And the next one?

Mr. MOORE. C. F. Baird. That was with the U.S. Navy in 1966.

Senator ABOUREZK. And the next one?

Mr. MOORE. S. Stamos, Department of Commerce, in 1968.

Senator ABOUREZK. He is back with Exxon now, isn't he?

Mr. MOORE. Yes, he is.

Senator ABOUREZK. When did he return?

Mr. MOORE. In 1969.

Senator ABOUREZK. That is Mr. Conant's supervisor, is that correct?

Mr. MOORE. Yes.

Senator ABOUREZK. Next?

Mr. MOORE. J. F. Bennett, Department of the Treasury, 1971.

Senator ABOUREZK. Is he still with Treasury?

Mr. MOORE. Yes, he is.

Senator ABOUREZK. Have any of these other people come back to Exxon after their Government service other than Stamos?

Mr. MOORE. Marion Boyer.

Senator ABOUREZK. Boyer did, and he is now with Exxon?

Mr. MOORE. Right.

Senator ABOUREZK. Were there any other people besides these five?

Mr. MOORE. I believe that is six, if we include Mr. Conant.

Senator ABOUREZK. Mr. Conant makes six?

Mr. MOORE. Yes.

Senator ABOUREZK. So, how many other senior executives have left Exxon to go into Government service, do you have the record of those?

Mr. MOORE. These are the only individuals who terminated to go into Government service.

Senator ABOUREZK. Now I assume there are other people from Exxon who have gone into Government service who took a leave of absence?

Mr. MOORE. Right.

Senator ABOUREZK. And then returned to Exxon after that?

Mr. MOORE. Right.

Senator ABOUREZK. Now, other people who have terminated and not gone into Government service have not received excess compensation payment for termination, have they?

Mr. MOORE. I am not aware of anyone else who terminated and did not go into Government service.

Senator ABOUREZK. You are saying that nobody in Exxon terminated to go into a private company?

Mr. MOORE. Well we wouldn't make a payment to anyone who was leaving us to go to a competitor.

Senator ABOUREZK. All right, what about into a university?

Mr. MOORE. Not to a university, but to other public service functions.

Senator ABOUREZK. Have you had other people go into public service?

Mr. MOORE. Oh, sure, the Urban League, the Interracial Council, the New York Board of Education, this type of thing.

Senator ABOUREZK. Did those people receive the excess payments such as Mr. Conant received?

Mr. MOORE. No, simply because there was not the same type of sensitivity, and normally those people stayed on our payroll while they were on loan to the other entity.

Senator ABOUREZK. So they hadn't terminated anyway, so you couldn't make the payment?

Mr. MOORE. They weren't terminated. Now there was an instance of someone going with Government where it was a loan and there was a termination payment.

Senator ABOUREZK. Say that again, there was one instance where there was a loan and he was to return to Exxon?

Mr. MOORE. Right.

Senator ABOUREZK. But he also received a termination payment?

Mr. MOORE. Yes. A scaled down amount. That was Gerald Rosso. He went to the Department of Labor.

Senator ABOUREZK. And when was that?

Mr. MOORE. It was about 4 years ago for a 2-year leave.

Senator ABOUREZK. And he was on Exxon's payroll?

Mr. MOORE. No, he wasn't.

Senator ABOUREZK. He was paid by the Government and he was on leave?

Mr. MOORE. He was on leave, right.

Senator ABOUREZK. The only people who received the very handsome termination payments were people who went into Government?

Mr. MOORE. No.

Senator ABOUREZK. What would it be fair to say?

Mr. MOORE. It would be fair to say that whenever a senior executive terminates from Exxon for what the company believes is a good reason he receives a payment.

Senator ABOUREZK. He receives the 1-month per year payment?

Mr. MOORE. Yes. You raised the question earlier with respect to Aramco. Different times people were called on from Aramco for their talent. Very often in the oil business it is difficult to have the ability to have skilled people. So very often we make individuals available to Aramco. He receives the same type of payment.

Senator ABOUREZK. Why didn't you include him in this list?

Mr. MOORE. This is a reference to individuals who terminated and entered into Government service.

Senator ABOUREZK. All right, what I am trying to get at is are there people who terminated and went into other service and got this excess payment?

Mr. MOORE. Yes.

Senator ABOUREZK. Do you have a list of those people with you?

Mr. MOORE. I didn't prepare one, but we would be pleased to.

Senator ABOUREZK. Do you know how many there are roughly?

Mr. MOORE. Well, again, it would depend upon the period of time. There is another variation of this also. Within my reference of individuals who terminated from time to time, who were involved in divestment. We may be involved in a situation where there are individuals who become surplus and who terminate. The company is satisfied it is for a good reason, this type of payment is made.

Senator ABOUREZK. I wonder—I guess you realize the importance of this particular point, Mr. Moore. Would it be burdensome to ask

you to submit to the committee as soon as possible, a list of the names of the people who have terminated, and how much they received, and where they went to?

Mr. MOORE. Let me raise a question. These are personnel factors about a number of individuals. And we have had no discussion with them to the effect that we make this payment to you it may become a public affair.

Senator ABOUREZK. Well, we can keep it in executive session.

Senator BIBLE. You might illustrate on a no-name basis what you are trying to state. Could you do that? Because I am not sure of what you are trying to say. Don't name me any names, but give me an instance where you would be very reluctant on behalf of Exxon to reveal the circumstances for making these excess payments?

Mr. MOORE. I had indicated one instance where an individual had gone to Aramco and we had made payments. I am not sure he would be real happy at having the rest of the people he is working with know that a particular payment and the amount and what have you. These would be personal details.

Senator BIBLE. I can get that through my head. But I don't think the Senator from South Dakota.

Senator ABOUREZK. No, you don't have to name the executive, or name it and we will keep it confidential.

Mr. MOORE. We can give you some examples, is that what you mean?

Senator BIBLE. Why don't you recast your question so that it is clear. I don't think that Mr. Moore is quite clear exactly what you are trying to get and what it is you want from him, so I think the question should be clarified.

Senator ABOUREZK. I will tell you what I am trying to learn from this question is whether or not there are any significant number of people who have terminated from Exxon to go to jobs outside of the Government who receive these kind of payments.

Now, can you provide me on a confidential basis, and we guarantee we will keep it that way, we would like to know the names just so we know they are not fictitious people, but we will not release the names and we will just keep this in the committee. But the committee should know this, the names of the people, the companies they went to or universities, or whatever, and the amount of severance pay, and if you can, how you computed it, and what their salary was at the time they terminated from Exxon, and the salary of their new job, I think, is important to know because that is how you based Mr. Conant's pay.

Mr. MOORE. That is not so. If I understood that statement correctly, that was not our methodology.

Senator ABOUREZK. It was what?

Mr. MOORE. It was not our methodology. We made no use of the new job Mr. Conant is in in terms of calculating the amount that he was to receive.

Senator ABOUREZK. I understand that you calculated on what it cost him to terminate, not on what he will be receiving. Is that what your statement is?

Mr. MOORE. Yes.

Senator BIBLE. I wonder if it wouldn't be helpful if my colleague from South Dakota would put this in a time frame. You don't want to go back to the time when they started. What kind of time frame are you seeking.

Senator ABOUREZK. How about 1968 on forward?

Senator BIBLE. That narrows it down pretty well, 1968 up to date.

Mr. MOORE. Yes, and I would imagine in that period there would be three or four of the type you are describing and I think they would be quite illustrative of the nondiscriminatory nature of these payments.

Senator ABOUREZK. We don't need to know the names, just the number of people who terminated and only received the minimum amount of one-quarter of the salary, who received only the minimum amount or something less than you are providing Mr. Conant.

Senator BIBLE. I think the Senator from South Dakota ought to define his terms, excess payments.

Senator ABOUREZK. Well, under the terms of their termination policy they state that they will pay one-quarter of the amount of salary per month. And Mr. Conant got 1 full month.

Mr. MOORE. May I speak briefly to this point? I am sure you have in mind this particular policy is distributed in personnel manuals. The one-quarter is in fact a minimum. Management reserves to itself judgment in terms of the amount that will be paid and historically has, since World War II. There is no real thinking as far as the senior executives are concerned that there is any relevancy to the quarter of a month and I think without much question our experience will demonstrate that.

Senator ABOUREZK. Well, Mr. Moore, I guess what I am very much interested in trying to learn and I think other members of the committee would want to know this, is does the Exxon Co. make extra payments to people who go into Government and deny those to people who do not go into Government for any special reason of trying to soften up those people should a decision involving Exxon ever come down, and that is the whole purpose of our line of questioning and that is why we need to do that, and I think it is fair to ask that. We don't want to be burdensome or unfair to Exxon or to Mr. Conant, but it is kind of our responsibility to try to learn that type of thing and I hope you understand that, and that is really what we are trying to determine.

Mr. MOORE. Certainly.

Senator BIBLE. Are we clear now on the question that is being asked of Exxon?

Mr. MOORE. Yes.

Senator BIBLE. Any further questions?

Senator ABOUREZK. I have nothing further.

Senator BIBLE. The Senator from Ohio.

Senator METZENBAUM. Mr. Moore, when do you normally pay bonuses at Exxon?

Mr. MOORE. Normally we grant them in December and we make a payment in January and that payment in January, up until recently, had been a one-fifth installment. The entire award is not paid

at one time. But recently it was paid in five installments over a 5-year period. A year ago we changed it to three installments. So the individual would receive a payment in January, that is an aggregate of the installment of award that was made in several prior years.

Now we made one departure from that. We had a new incentive program by shareholders and under that we made a different type of bonus on July 1 of 1974. So until this year we had been making our grants in December.

Senator METZENBAUM. So when you made the bonus payment to Mr. Conant you didn't know what was going to happen in July of 1974 because you didn't even have the policy, did you?

Mr. MOORE. We knew what we were going to recommend and had a good idea that it would be approved.

Senator METZENBAUM. But Mr. Conant did receive a bonus for the work he did in 1973, is that correct?

Mr. MOORE. That is correct, Senator.

Senator METZENBAUM. So when you figured the amount that he ought to receive as an anticipated bonus in the amount of \$11,000, that really wasn't for past work but that was something that he might have received had he stayed with the company another 6 months provided that the policy went into effect?

Mr. MOORE. One small variation on that. The awards that were granted on July 1 of 1974 were based solely on performance in 1973.

Senator METZENBAUM. In 1973?

Mr. MOORE. Yes.

Senator METZENBAUM. Well, you paid bonuses in 1973, didn't you?

Mr. MOORE. Yes, in fact, the awards made in 1974 were a factor on the 1973 awards.

Senator BIBLE. Let me try to clarify this, because you have got me mixed up a little bit, too.

Now, the bonus award that was made to Mr. Conant in 1973 was for his bonus in 1972, is that right?

Mr. MOORE. No.

Senator BIBLE. It was still for 1973?

Mr. MOORE. Yes.

Senator BIBLE. I think what the Senator is driving at is that he got a double bonus.

Senator METZENBAUM. The Chairman understands my question well.

Senator BIBLE. Well that is what I want to know. Did he or didn't he get a double bonus?

Mr. MOORE. Under the new incentive plan program that had been adopted we were required to put an additional bonus settlement, namely, what we called a stock appreciation bonus unit. Unlike a cash award, these units when granted can be settled 5 years in the future and they have a maximum value, but how much is paid depends on dividends paid in the interim and what happens if the market price is down.

Senator METZENBAUM. That is a stock appreciation bonus you are talking about?

Mr. MOORE. That's correct.

Senator METZENBAUM. That is different than a straight bonus, isn't it? That has to do with his stock options, doesn't it?

Mr. MOORE. No; a stock option is a different matter. I am talking about a different kind of award under the—

Senator METZENBAUM. What date did the company adopt the stock appreciation unit?

Mr. MOORE. In October 1973.

Senator METZENBAUM. Was that in effect when Mr. Conant left?

Mr. MOORE. Yes.

Senator METZENBAUM. Why didn't it get paid in July of 1974 except for Mr. Conant?

Mr. MOORE. That was when we got geared up to do it.

Senator METZENBAUM. Didn't you just state to me that you thought the policy was going to go into effect?

Mr. MOORE. On July 1.

Senator METZENBAUM. Well will you explain that to me? You have me confused. If it went into effect in 1973, then you knew as a certainty that he would be entitled to a bonus in 1973?

Mr. MOORE. We were authorized by shareholders to make this kind of grant. We were not required to. It is a new concept and the question was how are we going to do it, and we spent some time in assessing the desirability of doing this in December along with the other stock awards and other bonuses. We decided if we did this we wouldn't obtain the motivational objectives that we had in mind. We concluded that it was desirable to grant them at a different point in time, totally different.

Senator METZENBAUM. Will you explain the differences between the two bonuses?

Mr. MOORE. Yes, sure. The award that is made in December is stated in cash. It is expressed in so many dollars, made at present in three annual installments in the future. That is the December one.

Now, the one that is on July 1 is a grant that is expressed in terms of units and for each unit the individual is entitled to receive a maximum of \$40 a unit. The actual amount he will receive is a sum of two factors: the difference that would have been paid if the unit were a share of stock rather than a unit, plus any appreciation in the price of stock, again measured as if it were a share rather than a unit.

Senator METZENBAUM. So now every executive of Exxon receives two bonuses a year?

Mr. MOORE. Yes; one bonus we look upon as an intermediate term objective—incentive.

Senator METZENBAUM. Didn't you indicate that the bonuses that are paid midyear in answer to Senator Abourezk's question, or Senator Bible's question, were usually 20 percent?

Mr. MOORE. The December bonus is usually 20 percent of the annual salary.

Senator METZENBAUM. And the July bonus?

Mr. MOORE. Two-thirds.

Senator METZENBAUM. Two-thirds of what?

Mr. MOORE. Of the December bonus.

Senator METZENBAUM. How much was Mr. Conant's bonus in December of 1973? I think he testified it was \$9,500.

Mr. MOORE. \$11,400.

Senator METZENBAUM. I think he testified it was \$9,500. If it was \$11,400, then how did you figure he was to receive two-thirds of that?

Mr. MOORE. Well, his actual award in December was \$11,400.

Senator METZENBAUM. All right, if he was to receive \$11,400 how did you calculate that his estimated loss of anticipated bonus in July of 1974, which was to be two-thirds of that amount, was \$11,000?

Mr. MOORE. That was the estimate, one of the things that wasn't certain in January was whether it would be a full multiple or whether it would be a portion.

Senator METZENBAUM. Is there no specific company policy on this point?

Mr. MOORE. It had not been arrived at at that point in time, there is such a policy, these are judgments that are made at the time of grant by a committee of the board of directors and as their staff assistant I formulate recommendations and I think I have a reasonably good feel, but I don't always have a certainty.

Senator METZENBAUM. When you calculate the amount, do you always give a benefit of the doubt to the person whose employment is being terminated?

Mr. MOORE. We try to show compassion.

Senator METZENBAUM. Let me ask you, then, a hypothetical question. Let's assume that Mr. Conant in leaving your employ had made it quite clear that he was in total disagreement with the policies of Exxon. Would you have still had the same compassion and would he still have received the \$70,000 excess bonus? Has that happened to you where you had people leave who didn't agree with the company, had some difference of opinion?

Mr. MOORE. I would say in that situation the payment would not be made.

Senator METZENBAUM. Would not be made?

Mr. MOORE. Would not. And there was such a general situation, an individual who left us to take a senior position in the Department of Commerce, and no payment was made.

Senator METZENBAUM. Would you tell us his name?

Mr. MOORE. Trowbridge. That wasn't so much of a disagreement, that was a question of him accepting the job prior to any discussion with us. There was no instance there that there was any economic barrier to his accepting the job.

Senator METZENBAUM. He went to the Department of Commerce?

Mr. MOORE. Yes.

Senator METZENBAUM. In what position?

Mr. MOORE. Assistant Secretary.

Senator METZENBAUM. And when was that?

Mr. MOORE. About 1965 or 1966.

Senator METZENBAUM. How long have you been with the company?

Mr. MOORE. Twenty-two years.

Senator METZENBAUM. What was his position there?

Mr. MOORE. I did not understand.

Senator METZENBAUM. What was his position with Exxon?

Mr. MOORE. Your reference is to how long he had been with the company mine or his?

Senator METZENBAUM. No; how long had he been with the company?

Mr. MOORE. No; I answered personally.

Senator METZENBAUM. Oh, I am sorry.

Mr. MOORE. I don't really recall. He was our manager in Central America, stationed in Puerto Rico.

Senator METZENBAUM. Do you have any idea, could you guess?

Mr. MOORE. About 18 to 20 years.

Senator METZENBAUM. And just generally speaking what salary bracket would you say he was in?

Mr. MOORE. I would say in the \$30,000 salary bracket.

Senator METZENBAUM. And that was about—

Mr. MOORE. Which at that point in time was a fairly healthy salary.

Senator METZENBAUM. \$30,000?

Mr. MOORE. Yes.

Senator METZENBAUM. And what title did he hold in the company?

Mr. MOORE. What was his title?

Senator METZENBAUM. Yes.

Mr. MOORE. He was the manager of our Carribean area.

Senator METZENBAUM. Manager of the Carribean area?

Mr. MOORE. Yes, located in Puerto Rico.

Senator METZENBAUM. He had a good record with the company?

Mr. MOORE. Yes, we were sorry to see him go.

Senator METZENBAUM. The only thing that he did wrong was that he took the job before he consulted with the company and—

Mr. MOORE. If Mr. Conant at any time had advised us that he decided to accept the job with the FEA.

Senator METZENBAUM. Would you repeat that again, sir?

Mr. MOORE. Yes, certainly, If Mr. Conant at any time had advised us that he decided to accept the job with the FEA we would have made no payment.

Senator METZENBAUM. So that unless an executive comes to the company and gets permission of the company to take the job with Government he will deprive himself of the excess payment over and above the one-quarter of his salary per month times the number of years?

Mr. MOORE. He would deprive himself of the one-quarter of a month also. There would be no payment.

Senator ABOUREZK. Is that discretionary? I thought that was an established policy.

Mr. MOORE. Not if it is completely discretionary.

Senator METZENBAUM. So that the entire payment, entire payment when a man leaves Exxon to go into Government is 100 percent discretionary?

Mr. MOORE. One hundred percent. Senator, if I could, maybe one word of explanation would be helpful in terms of what our concept or approach is.

As you know the oil business is an extremely complicated and extremely technical business. We find that in order to run it we have to first go out of our way to recruit people of superior ability. We then have to spend 10 to 15 years of giving that person experience in a number of places around the world. We have to go to some expense and difficulty in preparing them for key positions.

Now, during the period we are preparing them we are losing money on them. Once they are prepared they obviously have a market value that is higher than the particular salary we are paying them. Any competitor we have could take them if they were so inclined.

We have developed a series of programs to make it attractive for the individual to stay with us after he has acquired that type of expertise. And this is why we treat senior executives differently than we do the average employee.

Now, one of the things he will get is gradually increasing bonuses, gradually increasing stock options, and that sort of thing. Now, it is our concept that where there is a bona fide need for one of these individuals to be used in a public service type endeavor, it is unrealistic to think that he will be able to afford the luxury to take that type of a position unless we do something to reduce the economic barriers that we have imposed against his leaving.

So if there is no economic barrier, if the individual is ready to take the position, then there is no cause or basis for our making the payment.

Senator METZENBAUM. By economic barrier, would you spell that out? The fact he will be working for less money in the future?

Mr. MOORE. By the fact he will be giving up bonuses, he will be giving up options, the pension arrangement. We have a final 3-year average salary times years of salary, times 1.6 percent which is the pension formula. Now the individual about 45 who moves into one of these key management positions, he is just at the point where he is starting to make a lot of money. He is moved around the world, and moved his kids from one school to another. He has seen the world, but hasn't set aside much of an estate. So from 45 on he is just starting to set aside an estate, so it is from there on that he gets some bonuses, et cetera, to get him to stay with the company.

Senator METZENBAUM. Let's assume that Mr. Conant walked into the company and did what Mr. Trowbridge didn't do, and said I am rather unhappy at the size of Exxon profits, it is a bit embarrassing to me. I think I would truly be happier working for the Government rather than being a corporate executive under these circumstances and I think that I am going to take a position with Government unless you have some objection to my doing so, Mr. Moore. Am I entitled to any severance pay? Now, again, Mr. Conant speaking to you, am I entitled to any severance pay and if so what will I receive?

Mr. MOORE. He is not entitled to any severance pay and unless we agree to the termination he will not receive the bonus payment award that we have made.

Senator METZENBAUM. On the basis of what I said, how would Mr. Conant's situation be handled?

Mr. MOORE. That is extremely difficult to—

Senator METZENBAUM. Did you ever have anybody leave that disagreed with company policy and—

Mr. MOORE. No, we have had individuals leave where we have tried to persuade them not to leave, and we have not made the payments, of course.

Senator METZENBAUM. Is that for people who went into private industry?

Mr. MOORE. Yes.

Senator METZENBAUM. What about those who went into public service?

Mr. MOORE. We haven't had that to my knowledge.

Senator METZENBAUM. But when Mr. Trowbridge left and did nothing more than ask your permission, after 15, 20 years of service, he was totally denied any bonus, is that correct.

Mr. MOORE. He didn't qualify under the purpose of the policy.

Senator METZENBAUM. What is the purpose of the policy?

Mr. MOORE. To reduce economic hardships so the individual will be able to leave to perform public service.

Senator METZENBAUM. Didn't he suffer economic hardship?

Mr. MOORE. I don't know, he already left, so that wasn't a need for economic aid.

Senator METZENBAUM. But he did leave, didn't he, for Government service?

Mr. MOORE. I don't know, his wife might have had a lot of money, he might have had a lot of money. He may not have been concerned about a home in the suburbs.

Senator METZENBAUM. If you are married to a wealthy woman does that make a difference?

Mr. MOORE. If there is no economic hardship.

Senator BIBLE. I suggest, because I have to attend a conference with the Labor HEW appropriations, and I don't want to cut this off at all, and I am certainly able to turn the gavel off to Senator Abourezk and let him wind this down, because I don't want to cut you off, Mr. Metzenbaum. I certainly appreciate you people from Exxon coming here today. There will be a number of additional questions that will be submitted to you in writing and we would like to have those answers back just as promptly as possible. If you can arrange to do that and let me just ask before I leave, I have got about 3 or 4 minutes.

How many people does Exxon employ in total?

Mr. MOORE. 135,000.

Senator BIBLE. 135,000?

Mr. MOORE. Yes.

Senator BIBLE. And that is all over the world?

Mr. MOORE. Yes.

Senator BIBLE. Of that 135,000, how many fit into the class of being a senior aid?

Mr. MOORE. 2,900.

Senator BIBLE. 2,900 out of the 135,000. Do you have a mandatory requirement age?

Mr. MOORE. Sixty-five.

Senator BIBLE. And is that occasionally extended?

Mr. MOORE. No.

Senator BIBLE. For good reasons or good cause?

Mr. MOORE. No; there are no exceptions.

Senator BIBLE. No exceptions. Well, that is why I am going to retire on November the 20th, because that is when I will be 65 and I think it is a good policy myself, but with that little add on which has nothing to do with this hearing, and we will clean that up in the record, I will turn the gavel over to Senator Abourezk.

Senator METZENBAUM. I have no further questions.

Senator ABOUREZK [presiding]. I forgot what Mr. Conant said this morning as to who he first discussed the Government employment with. Was it you or Mr. Stamas?

Mr. MOORE. Mr. Stamas.

Senator ABOUREZK. Who made the decision, Mr. Moore, to pay Mr. Conant the full amount?

Mr. MOORE. The decision is made by our compensation development committee, which consists of 10 directors.

Senator ABOUREZK. And you are the senior adviser of that committee?

Mr. MOORE. Yes.

Senator ABOUREZK. And what was the basis of that?

Mr. MOORE. I believe I spelled that out in the statement.

Senator ABOUREZK. In other words, he was to lose certain amounts of compensation by virtue of terminating from Exxon?

Mr. MOORE. Looking at what he would be losing.

Senator ABOUREZK. The fact that he went to the Federal Energy Office, did that have anything to do with your decision to give him a full load?

Mr. MOORE. Nothing whatsoever.

Senator ABOUREZK. Did you discuss with Mr. Conant his entry into Government service in any way?

Mr. MOORE. No.

Senator ABOUREZK. Never talked with him about it at all?

Mr. MOORE. I met with him here today for the first time. In my business I try to keep out of personal contact with executives.

Senator ABOUREZK. Because of all that discretion you have, I see.

Well, Exxon is certainly not unhappy that he went into the Federal Energy Administration?

Mr. MOORE. You would have to ask Mr. Conant, but I think the general tenor of our commitments were to try to dissuade him from it.

Senator ABOUREZK. Why is that?

Mr. MOORE. He was a valuable employee providing a good service for us. We had a good future for him.

Senator ABOUREZK. You would rather that he would have stayed with Exxon than to go with FEA?

Mr. MOORE. Yes; and that is without any comment as to how useful an executive he may be with the FEA.

Senator ABOUREZK. Yes; if Mr. Conant had taken a job at a university would he have received the same payment?

Mr. MOORE. Not simply a university. There would have to be some general public service that could not otherwise be provided.

Senator ABOUREZK. What if Mr. Conant went to work for the Ralph Nader group, which in a lot of people's opinions, provides a public service, would you have made the payment, then?

Mr. MOORE. There are clearly some who would have recommend it, but how it would have ended up I couldn't hypothesize.

Senator ABOUREZK. Would you have recommend it?

Mr. MOORE. If the decision were for him to go, I then would have made the payment.

Senator ABOUREZK. Then someone other than Mr. Conant would have made the decision as to whether they were happy with him going to Ralph Nader's group?

Mr. MOORE. Yes.

Senator ABOUREZK. So it really does depend on the job?

Mr. MOORE. Right.

Senator ABOUREZK. So far as whether they receive termination payments?

Mr. MOORE. We say we have submitted a list of type of activities, United Funds, Community Chest, is obvious, Interracial Conference, New York City Board of Education has a continuing need for high-level people in organizational groups.

Senator ABOUREZK. Are there other groups such as Nader's on your list of approved organizations that employees can separate to?

Mr. MOORE. I don't believe so. I don't believe that question has ever arisen.

Senator ABOUREZK. As far as I know, that is all the questions I have.

I want to express my thanks of the committee and myself personally for your appearance here today and also that of Mr. Conant.

On behalf of the committee and myself personally, we want to thank you for the answers and your appearance here today.

As the chairman indicated there will be questions submitted to Exxon in writing that we would like to ask you to answer. In addition to that I intend to submit a few questions to the Justice Department concerning their opinion on whether or not the payment violates the law. They kind of came down on both sides of the fence in their first written opinion. We want to try and sharpen up their answers just a little bit.

Unless Senator Metzenbaum has anything additional, we will adjourn the hearings.

Senator METZENBAUM. I do not have anything additional, but I would like to speak to Mr. Conant after the hearing, if it would be convenient.

[Subsequent to the hearing the following communications were received:]

NEW YORK, N.Y., September 2, 1974.

HON. HENRY M. JACKSON,  
*Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate, Washington, D.C.*

DEAR SENATOR JACKSON: Saturday's issue of the New York Times carried a news story regarding difficulties over the confirmation of Mr. Melvin A. Conant for a key assignment in the FEA as a result of his having received a separation allowance from Exxon Corporation when he left the employment of that company to accept a position with the FEA.

Mr. Conant worked with me in the closest association for six years prior to my retirement from Exxon in December of 1969 and I know him from intimate personal knowledge as a man of high ability and unimpeachable integrity. He never allowed internal company politics to sway his judgment while with Exxon and he will never allow petroleum industry interests to sway his judgment while with the Federal Government.

Separation allowances are a time-honored industry practice, granted in countless instances in recognition of past services, and it would require an extremely strained interpretation of the facts to question the judgment of the official or officials who agreed to the payment of a separation allowance in the case of Mr. Conant.

Mr. Conant is a highly skilled, professional political scientist with particular expertise in the international politics of oil and it would be a needless and tragic loss to the government if his nomination for service in the FEA were not confirmed by the Senate. I cannot commend him to you more highly.

Respectfully yours,

LUKE W. FINLAY.

WASHINGTON, D.C., June 17, 1974.

Hon. HENRY M. JACKSON,  
*Chairman, Senate Committee on Interior and Insular Affairs, Dirksen Senate Office  
Building, Washington, D.C.*

DEAR SENATOR JACKSON; I understand that Melvin Conant is shortly to be considered for confirmation as Deputy Administrator of the Federal Energy Administration, and that you are likely to play a major role in determining whether or not his nomination results in confirmation.

Earlier this year, at a time when the energy crisis was having its maximum impact on the nation, and particularly on the Washington metropolitan area, I was amazed and delighted to learn that a man of Mel Conant's caliber was coming to work for the Federal Energy Office. I have known him for only a year or so, but long before I met him my husband, who is charged with Law of the Sea matters in the Department of Defense, had spoken of his great contributions to the work of the Public Advisory Committee on the Law of the Sea, assisting the government's Law of the Sea Inter-Agency Task Force in formulating U.S. oceans policy. Mel is an unusually talented man, whose intelligence, perception, and leadership capabilities are immediately apparent. As you know, Mel Conant was distinguished as an expert in international relations long before he was associated with the petroleum industry. We are fortunate in having men of such background and capabilities willing to accept government positions, particularly in dealing with international energy problems, where it is essential to have extensive knowledge of the industry as well as substantial expertise in the international aspects of energy production.

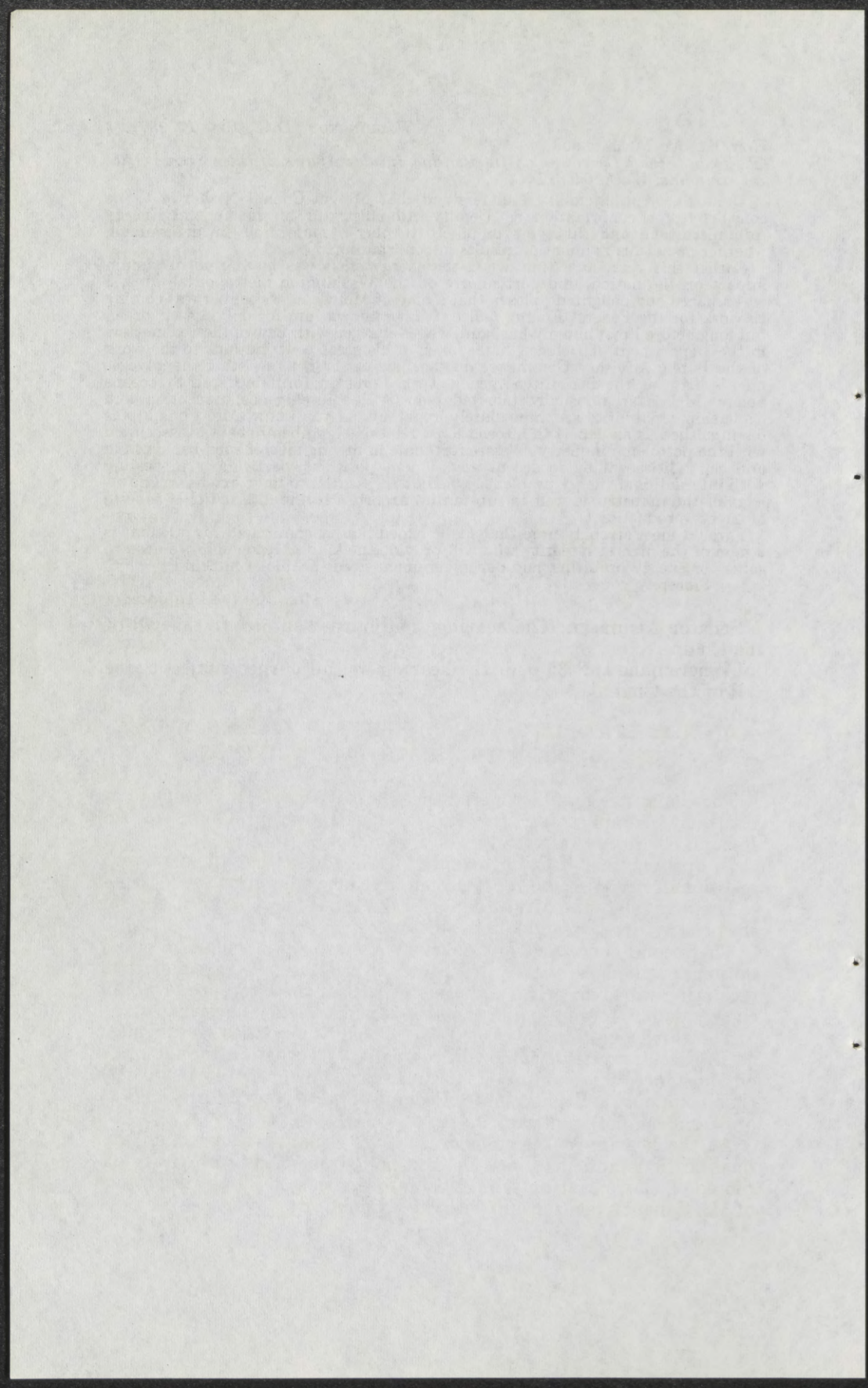
I would most strongly urge that he be expeditiously confirmed. Mr. Conant is a man of the highest integrity who will provide the kind of leadership we need to solve our energy problems, and our government needs people of his kind.

Sincerely yours,

Mrs. JOHN A. DUGGER.

Senator ABOUREZK. The hearing is adjourned subject to the call of the Chair.

[Whereupon, at 3:35 p.m., the hearing was adjourned subject to the call of the Chair.]



## NOMINATION OF MELVIN A. CONANT TO BE ASSISTANT ADMINISTRATOR FOR INTERNATIONAL ENERGY AFFAIRS

MONDAY, DECEMBER 2, 1974

U.S. SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D.C.*

The committee met at 2 p.m., pursuant to notice, in room 3110, Dirksen Office Building, Hon. Henry M. Jackson, chairman, presiding.

Present: Senators Jackson, Johnston, Abourezk, Haskell, Metzenbaum, Fannin, Hansen, Hatfield, Buckley, Bartlett, and McClure.

Also present: Jerry T. Verkler, staff director; William J. Van Ness, chief counsel; Grenville Garside, special counsel; James Barnes, Richard Grundy, and Lucille Langlois, professional staff members for the majority; Harrison Loesch, minority counsel; David P. Stang, deputy director for the minority; and W. O. Craft, Jr., deputy minority counsel.

The CHAIRMAN. The committee will come to order.

### OPENING STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

The committee first considered the nomination of Mr. Conant to be Assistant Administrator for International Energy Affairs of the Federal Energy Administration on September 23, 1974.

In opening that hearing, Senator Bible stated that three distinct questions were presented for the committee's consideration.

The first related to Mr. Conant's background and qualifications for the position of Assistant Administrator.

The second concerned Mr. Conant's views on the range of policy options available to the United States in dealing with the impact of escalating world oil prices and other aspects of the interdependence of energy policy, foreign policy, and the world's financial system.

The third question concerned Mr. Conant's previous employment as an executive with a major oil company, and whether the facts and circumstances surrounding his termination of prior employment with that company and entry into Federal service constitute a real or apparent conflict of interest.

At the hearing on September 23, Mr. Conant's background and qualifications and his views on key policy questions were fully explored. Today's hearing should, therefore, focus on the third question of Mr. Conant's relationship with the Exxon Corp.

It is essential that all agencies of Government avoid the actuality or the appearance of conflict of interest if Government is to maintain the confidence of and its credibility with the American people. This is particularly true of the FEA because of its important responsibilities in regulating the oil industry.

The General Counsel of FEA investigated Mr. Conant's prior employment and the circumstances of his termination and concluded that no conflict of interest exists. However, he referred the question to the Department of Justice, whose opinion was less definite. The Department did not question Mr. Conant's good faith, but said it had reservations concerning technical compliance with the conflict of interest statute because of the payment made to Mr. Conant when he left Exxon. And, its opinion concluded that—

Since there are respectable arguments based on existing authorities that the payment is permissible, however, and there is positive evidence of sensitivity on Mr. Conant's part concerning possible conflict of interest problems, we suggest that the entire matter be laid before the appropriate Senate Committee for its consideration.

The committee must, therefore, consider the specific issue posed by Exxon's payment to Mr. Conant. Beyond this, however, the committee must also consider the broader question of the extent to which petroleum industry expertise can be used in developing and managing Federal energy policy.

Now, the Chair is involved in debate over the floor in connection with the Navajo-Hopi legislation. The amendment is up, and I will have to go to attend that, and I am going to ask Senator Metzenbaum to preside.

The Chair would like to suggest that after Mr. Conant and Mary C. Lawton have been heard, the other witnesses be limited to 5 minutes in their opening statement. That is they can speak 5 minutes on what they have to say. Obviously, the questions that the Senators ask will not come out of the 5 minutes, but I think that would be fair in light of the number of witnesses. Is there objection to that?

The Chair would just like to make that as a suggestion. I must say in all of the time I have been in the Senate and in the House, I have never been confronted with a more difficult problem than this particular nomination.

I start out by saying that everything I know about Mr. Conant is excellent. I know nothing about his personal background or his career that is anything but laudatory.

We are just confronted with a very difficult problem in this committee, and I hope we can resolve it.

I would say everything I know about him is that he is a man of integrity, honor and the finest things I could say about any human being.

We do have a special problem here. I think the heart of it is what I mentioned on the third point, the question of severance pay and the possibility of going back to that same company. That is what is before us and that is what we will have to resolve.

Other members may have questions they wish to raise, but I want to state my views on the particular issues. It involves not only people. It involves a policy. With all of the years of conflict of interest discussion,

we are right back where we started from. We have no guidelines in the Senate. I don't know what we are guided by. I guess conscience.

The problem we face is not an easy one because of the lack of proper statutory guidelines. After all of these years of discussion of the problem, we all recognize the need for expertise and that is where our problems arise because of the possible conflicts that may enter.

With that, I will defer to Senator Hansen.

Senator HANSEN. I think Senator Metzenbaum has an opening statement he wishes to make.

The CHAIRMAN. I will ask you to take over, Senator Metzenbaum. I have to return to the floor.

### STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM [presiding]. I want to commend Senator Jackson, the distinguished chairman of the committee, for his decision to reopen hearings on the nomination of Mr. Conant.

Since September 23, the date of the previous hearing, several issues regarding this nomination have either emerged or been clarified which make this new hearing not only useful but essential.

The issue before us is not simply the question of Mr. Conant's fitness to be Assistant Administrator of the FEA for International Energy Affairs. The larger issue is whether the nomination of Mr. Conant is part of a takeover of the Federal Energy Administration by former oil industry executives and whether FEA is going to be administered for the benefit of the oil companies or for the well-being of the American consumer.

I have reached my decision to oppose the nomination of Mr. Conant only with great difficulty. But in the end, I felt I had no choice but to do so. Each nominee has to be considered both as an individual, and as a part of a total picture.

The real issue comes down to a question of who is going to run the FEA, the oil companies or those who are uncommitted, unrelated, and under no suspicion as being propetroleum industry biased.

Let me now quickly summarize the facts developed thus far on which my decision to oppose Mr. Conant is based.

First, I want to compare the case of Mr. Andrew Gibson with the case of Mr. Conant. On November 13, during the congressional recess, I wrote a letter to the President in which I asked him not to resubmit the nomination of Mr. Conant.

This letter was occasioned by two developments. First, the fact that the President was required to make a positive decision whether to send Mr. Conant's name back to the Senate, because under Senate Rule 38, all nominations pending at the beginning of the recess had lapsed. Second, the President had reversed his decision to nominate Andrew Gibson to be Administrator of the Federal Energy Administration after it was revealed publicly that Mr. Gibson had accepted a severance arrangement from the Interstate Oil Transport Corp. which would pay him \$880,000 over a 10-year period.

This, in part, is what I said to the President :

Dear Mr. President : I wish to commend you for your acceptance of Mr. Andrew Gibson's request that his name not be submitted to the Senate for confirmation Administrator of the Federal Energy Administration. In my view, regardless of Mr. Gibson's qualifications for the position, his generous severance arrangement with his former employer, the Interstate Oil Transport Co.—a business directly affected by FEA policies—made him an inappropriate choice for the job in question.

In this connection, I would like to direct your attention to what seems to me an equally inappropriate appointment—that of Mr. Melvin A. Conant \* \* \* During his confirmation hearing on September 23 before the Senate Interior Committee, on which I serve, I questioned Mr. Conant about a severance payment of \$90,000 which the Exxon Corp., made to him just before he left Exxon to join what was then the Federal Energy Office. Both Mr. Conant himself and Mr. J. J. Moore, senior adviser for executive compensation of the Exxon Corp., freely admitted that this payment to Mr. Conant was made entirely at the discretion of Exxon management.

Later in the hearing I plan to focus more precisely on the question of whether Mr. Conant's acceptance of a \$90,000 bonus from Exxon may have violated Federal law.

For now, let me simply say that I believe there is no essential difference, except in degree, between Mr. Gibson's acceptance of a severance bonus of \$880,000 and Mr. Conant's acceptance of a severance bonus of \$90,000.

The President evidently concluded that Mr. Gibson's severance agreement disqualified him to be FEA Administrator. I believe that Mr. Conant's acceptance of a discretionary severance bonus, his ready acknowledgement that without the bonus payment, he might not have joined the Government, and the fact that after he leaves the Government, he admits that he may return to the oil industry, all provide sufficient reason why he, too, ought to be disqualified. I regret that President Ford did not agree.

Let me now recall specifically several statements from the hearing record of September 23.

I posed the following question to Mr. Conant at the last hearing: "Am I correct in assuming from the rather lengthy answer you gave to my original question that you may return to the oil industry when you leave Government service?"

Mr. Conant replied: "Yes, sir, I might."

I appreciated the candor of that reply. But in equal candor, I concluded that, anticipating the possibility that he might return to the oil industry, Mr. Conant might well be expected to see to it that he did not alienate his prospective future employers.

There was an additional and equally disturbing exchange on September 23. I asked this further question: "Mr. Conant, if you wouldn't have been able to get that clearance so that you could accept the \$90,000 would you have still accepted the position with the FEA?"

Mr. Conant replied: "I can't say that for sure."

I then asked: "What you are saying is that if you hadn't received this \$90,000 bonus, you might not have joined the Government?" Mr. Conant replied: "Right."

Here, too, Mr. Conant was quite candid. But I could only draw the reasonable inference that Mr. Conant might well be expected to feel

some sense of gratitude, if not a sense of obligation, to his former employer, the Exxon Corp.

Finally, the most damaging fact disclosed at the September 23 hearing is that the severance bonus policy of the Exxon Corp. is totally discretionary.

This fact emerged from questions posed on September 23 both by Senator Abourezk and myself to Mr. J. J. Moore, senior adviser for executive compensation of the Exxon Corp. I asked Mr. Moore the following question: "So, the entire payment when a man leaves Exxon to go into Government is 100 percent discretionary?"

Mr. Moore replied: "One hundred percent."

There then followed this further exchange between Mr. Moore and myself:

Senator METZENBAUM. When you calculated the amount, do you always give a benefit of the doubt to the person whose employment is being terminated?

Mr. MOORE. We try to show compassion.

Senator METZENBAUM. Let me ask you, then, a hypothetical question. Let's assume that Mr. Conant in leaving your employ had made it quite clear that he was in total disagreement with the policies of Exxon. Would you have still had the same compassion, would he still have received the \* \* \* bonus? Has that happened to you where you had people leave who didn't agree with the company?

Mr. MOORE. I would say in that situation the payment would not be made.

Senator METZENBAUM. Would that not be made?

Mr. MOORE. Would not, and there was such a general situation; an individual who left us to take a senior position in the Department of Commerce, and no payment was made.

Senator METZENBAUM. Would you tell us his name?

Mr. MOORE. Trowbridge. That wasn't so much of a disagreement, that was the question of him accepting the job prior to any discussion with us—

Senator METZENBAUM. He had a good record with the company.

Mr. MOORE. Yes, we were sorry to see him go.

Senator METZENBAUM. The only thing that he did wrong was that he took the job before he consulted the company.

What that interchange tells us is that not only is the severance policy of the Exxon Corp. totally discretionary, but the precise contingency on which a severance bonus depends is whether Exxon is satisfied that the views of a departing employee conform to the interests of the corporation.

Let me say that I find this practice extremely dangerous to the public interest. In effect, Exxon dangles in front of its executives a great big potful of money, but says to them: "If you want to go with the Federal Government, you're going to get that money only if we feel confident that you will remember us when you get there."

I can think of no system better calculated to compromise a man's capacity to think and act in the interest of the government and the people.

That concludes my opening remarks. So far as I am concerned, the facts I have laid out, and the conclusions I have drawn from them, are a sufficient basis to reject the nomination of Mr. Conant.

There are, in addition, however, three areas of inquiry which I wish to pursue further today, at the appropriate time.

First, I wish to question both Mr. Conant and Mrs. Mary Lawton, who is a Deputy Assistant Attorney General, regarding the legality of Mr. Conant's acceptance of the Exxon severance payment.

Second, I want to ask Mr. Conant about other senior officials of the FEA Division of International Energy Affairs, what oil companies they came from, if in fact they did, and Mr. Conant's role in recruiting those officials. This issue is at the heart of the question of whether FEA is going to be run for the benefit of the oil companies or the American public.

Third, and a closely related matter, I want to ask Mr. Conant about the extent and nature of his contacts with oil industry officials while he has been serving with the FEA.

Senator Hansen, I believe you have an opening statement you wish to make.

**STATEMENT OF HON. CLIFFORD P. HANSEN, A U.S. SENATOR FROM  
THE STATE OF WYOMING**

Senator HANSEN. Thank you, Mr. Chairman. Article II, section 2, paragraph 2 of the U.S. Constitution refers to the procedures for which Presidential nominees shall be confirmed by the Senate.

That article provides, in part, he shall nominate, and by and with the consent—advice and consent of the Senate, shall appoint officers of the United States whose appointments are not herein otherwise provided by and which shall be established by law.

This provision of the Constitution confers upon the Senate the right to review nominations of Presidential appointees for the purpose of approving their confirmation. The manner in which the Senate proceeds to undertake this duty reflects upon its dignity and credibility with the public.

When Senators adopt tactics that can best be described as proving guilt by association and making resort to gross exaggeration and taking testimony out of context, such procedures neither enhance the dignity of the Senate nor its credibility to the public.

Mr. Chairman, some weeks ago, this committee, by an unrecorded vote, which I thought was about 9 to 2, acted to favorably report and recommend the confirmation of Melvin A. Conant.

In the meantime the chairman of this committee was prevailed upon to reopen the hearings. I am not questioning the right of the committee to reopen the matter that was once conclusively settled, but I do question the usefulness of a fishing expedition.

Not one witness has testified out of personal knowledge he knew Mr. Conant to be incompetent or lacking in moral integrity. To the contrary. All evidence received by this committee has shown Mr. Conant's competence to be of a caliber of excellence and his moral character to be totally unblemished. Yet, today, it appears he is being innocently and unjustifiably smeared. Accusations against him have not contained a scintilla of validity.

For example, it has been implied the Federal Energy Administration is being taken over by former oil industry executives whose sole purpose is to warp Government policies for the benefit of oil companies and to the detriment of the American consumer.

This implication could not be further from the truth. There is another implication that Mr. Conant has been bribed by Exxon in the

hope that Mr. Conant would feel an obligation to that corporation during the exercise of his day-to-day decisionmaking responsibilities. This, too, could not be further from the truth. The record is clear, not only was Mr. Conant's severance payment made in consideration of past services, but it was approved before May as not constituting a conflict of interest by Secretary Simon who was then acting as the Administrator of the Federal Energy Office.

Furthermore, the Justice Department memorandum dated August 7 stated in part, and I quote :

At the outset, it must be noted that Mr. Conant and Exxon, sensitive to questions relating to the Conant payment requested and received from the then Federal Energy Office an advance assurance that the payment would not violate the conflict of interest laws. It was only after this assurance was received that the payment was made. \* \* \* it is the position of the Department of Justice that an investigation concerning possible violation of 18 U.S.C. 209(a) is not warranted in the circumstances.

Instead of praising Mr. Conant for the personal sacrifice he made in leaving Exxon to come to Washington to engage in public service at a salary approximately one-third of that he was paid by his former employer, Mr. Conant is being criticized for having worked for an oil company.

It has been implied the very fact that Mr. Conant was employed by an oil company renders him unfit for Government service. This contention has no more validity than the suggestion that lawyers should be prohibited from employment in the Justice Department; that physicians should be prohibited from employment in the Public Health Service; that educators should be prohibited from employment in the Department of Health, Education, and Welfare and that agricultural specialists should be prohibited from employment by the Department of Agriculture.

It has been implied, because Mr. Conant did not absolutely rule out a return to the energy industry following completion of his duties at the Federal Energy Administration, that he should not be confirmed. This suggestion makes about as much sense as the suggestion that retiring or defeated Senators not return to the professions in which they were engaged prior to their being elected to public office.

Mr. Chairman, I could go on and on refuting each charge leveled against Mr. Conant in this exercise, but I will not.

I will conclude by suggesting in the 11 months Mr. Conant has been serving the Federal Government, everything he has done and said has attested to his fitness for the office to which he has been nominated. Conversely, nothing he has done or said has in any way detracted from his fitness in terms of competence and moral character for the office for which he has been nominated. I urge my colleagues to support him now as they did previously, with complete justification.

Senator METZENBAUM. Will the Senator from Wyoming yield?

Senator HANSEN. Yes; I will be happy to.

Senator METZENBAUM. I would like to point out to you I checked with the staff and there is no indication there was ever a formal or informal vote with respect to Mr. Conant. I think you may be confused, Senator, with Mr. Ligon where there was an informal vote and he has since been confirmed by the Senate. I don't think there ever was any vote taken by this committee informally.

Second, I would like to point out to you, perhaps just by typographical error, you indicated Mr. Conant had come to work for the Government at one-third of his previous salary. I wonder if you did not mean two-thirds.

Senator HANSEN. I may well have. I would like to check my figures on that. I do appreciate your observations, Mr. Chairman. May I say my feeling, and I continue to hold to it on the basis of expressions from members of the committee, is that there were nine who favored confirmation for Mr. Conant and only two who felt otherwise. If I left the impression that there was an informal vote, I was in error in doing that.

My recollection, insofar as expressions from the individual members of the committee is concerned, is fairly accurate, and I would respectfully have to disagree with the staff if they said there was no indication as to how members may have voted.

Senator Metzbaum. The Senator from Louisiana.

Senator JOHNSTON. I would like to add one thing, Mr. Chairman. Whatever we do with respect to this particular nomination, I think we ought to make a ruling insofar as this committee may do, at least, on the appropriateness of this kind of arrangement to the end that if we do find it is improper or should be avoided, that we will say so, so that in the future, it may be avoided.

I would think our choices may be more than yes, it is all right or no, it is not all right to confirm or not confirm. We may take a middle ground and not prejudge the evidence, but we might take a middle ground to say this particular nominee is not at fault and is innocent with respect to the arrangement, but it ought to be avoided in the future.

I don't mean by saying that that is my judgment at this time; I would like to hear all of the evidence.

Senator McCLURE. Would the Senator yield? Are you referring to a discretionary severance payment as this arrangement?

Senator JOHNSTON. The arrangement that has been described by the Senator from Ohio.

Senator McCLURE. He has described several arrangements. I did not know which one he meant.

Senator JOHNSTON. I am referring to each one of them, severally.

Senator McCLURE. I am left a little confused.

Senator METZENBAUM. Senator Buckley, do you have a statement you would like to make at this time?

Senator BUCKLEY. Yes, I do, Mr. Chairman, thank you.

#### STATEMENT OF HON. JAMES L. BUCKLEY, A U.S. SENATOR FROM THE STATE OF NEW YORK

Mr. Chairman, I welcome Mr. Conant back to this hearing. I am sorry that it has been deemed necessary. I believe the first time he was here he answered the questions that were asked of him rather candidly. At the time, I am impressed by his obvious experience, his obvious integrity as reflected by people who have worked with him, and in all candor, Mr. Chairman, one of the things that concerns me about this body, and also by tendencies in public comment, we may be carrying the fear of conflict of interest so far beyond real experience, so far beyond normal human motivation that we run

the danger of freezing out of public service some of our most valuable men and women, some of whom who have contributed the most to public service.

It seems to me a person who is perhaps better than any of us in the best position to judge Mr. Conant is the man with whom and for whom he has worked since early this year, and I would like to quote, if I may, from a letter sent to the chairman, Senator Jackson, by Mr. Sawhill, Administrator of the Federal Energy Administration, under date of November 30:

In my letter of September 18, I emphasized Mr. Conant's superior qualifications for this position, and his demonstrated qualities of ability, integrity, candor, and independent judgment. I reached these conclusions on the basis of my close working relationship with Mr. Conant since he first joined FEO early in 1974 . . . Suffice it to say that Mr. Conant has carried out a variety of responsibilities at FEA under exceedingly demanding circumstances, and has consistently demonstrated a remarkable degree of insight, independence, and good judgment.

The possibility always exists that an individual's previous loyalties will interfere with the integrity of his performance in a job; however, the obvious solution is not to disqualify for public service those that have earned the good will of their former employers, for that would deny us our best men and women, but to insist on individuals of proven integrity who possess the strength of character to keep their public duty and their private loyalties in proper perspective. Mel Conant is clearly such a man, and I find it inconceivable that he could ever allow the termination payment he received from Exxon to interfere with his professional judgment or his official responsibilities.

I submit Mr. Sawhill's letter for the record.  
[The letter referred to follows:]

## FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

NOV 30 1974

OFFICE OF THE ADMINISTRATOR

Honorable Henry M. Jackson  
Chairman  
Committee on Interior & Insular Affairs  
United States Senate  
Washington, D. C. 20510

Dear Mr. Chairman:

As you know, the President has resubmitted the nomination of Melvin A. Conant of my staff to be the Assistant Administrator for International Energy Affairs of the Federal Energy Administration. Though the Committee previously conducted a hearing on Mr. Conant's nomination when it was first submitted, I understand that the Committee will conduct another hearing on this nomination on Monday, December 2, 1974. The purpose of this letter is to restate unequivocally my complete support for Mr. Conant's nomination, and to suggest certain factors, based on my experience at FEA, which the Committee may wish to consider in acting upon this matter.

I believe that three major principles must be taken into account in considering such appointments. First, the individual's past conduct and reputation must attest that his integrity is beyond reproach. Second, the individual's experience and attainments must suggest the high degree of professional and technical competence necessary to insure that the public interest is well served. Third, the individual's continuing financial associations and interests must be such as to preclude any actual or potential conflict between his personal financial considerations and the duties he will be called upon to perform.

I am absolutely confident that the Conant nomination more than satisfies each of these tests. In my letter of September 18, 1974 I recounted the circumstances under which Mr. Conant was asked to join the Federal Energy Office and I summarized the steps Mr. Conant had taken to assure that his severance arrangements from Exxon would present no potential conflict of interest. As you recall, there was never any doubt that Mr. Conant had severed completely his financial ties with Exxon, nor was there ever any suggestion that he maintained any continuing financial interest whatsoever in the energy industry.

A great deal has been made of the fact that his severance arrangements with Exxon included a substantial termination payment. The circumstances surrounding that payment were exhaustively analyzed both by FEA's General Counsel and by the Department of Justice, to determine whether that payment constituted an unlawful supplementation of Mr. Conant's government salary. Each time, the conclusion reached was that the payment was legal and that Mr. Conant had demonstrated beyond question his good faith by accepting it only after obtaining the formal approval of Secretary Simon.

I am unaware of any suggestion made to the Committee during its consideration of this nomination that Mr. Conant does not have the experience or the competence to carry out the duties of this office, or that his conduct at any time has cast doubt upon his personal integrity. In my letter of September 18, I emphasized Mr. Conant's superior qualifications for this position, and his demonstrated qualities of ability, integrity, candor and independent judgment. I reached these conclusions on the basis of my close working relationship with Mr. Conant since he first joined FEO early in 1974, and nothing since then has caused me to alter them in any respect. Suffice it to say that Mr. Conant has carried out a variety of responsibilities at FEA under exceedingly demanding circumstances, and has consistently demonstrated a remarkable degree of insight, independence, and good judgment.

I am convinced, therefore, that the questions now being raised about this nomination go beyond the principles of integrity, competence, and freedom from conflicts of interests. The remaining issues seem to involve the larger question of the wisdom of filling senior positions in FEA with individuals who have spent a significant portion of

their professional careers in the petroleum industry. A related question involves the extent to which an individual who has received favorable treatment from his former employer should be deemed incapable of acting objectively and impartially as a public servant where the interests of that employer are concerned.

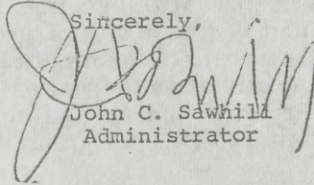
With regard to the broader question, my experience at FEA has vividly demonstrated the importance to the public interest that an agency such as FEA have available to it the most highly qualified individuals to carry out its responsibilities. Various positions require particular qualifications and backgrounds, and it is clear to me that no agency such as FEA can function effectively without being able to draw heavily upon individuals with a thorough understanding of the industry we regulate. My experience at FEA has also convinced me that it is impossible to predict an individual's philosophy or bias on the basis of his employment history. I can say unequivocally that Mr. Conant has demonstrated bias to none but the public interest during his service at FEO and FEA; never has he exhibited any predisposition to the interests of Exxon or any other member of the energy industry.

Turning finally to the more narrow question, it is suggested that notwithstanding its lawfulness, Mr. Conant's termination payment must have left him so filled with gratitude toward Exxon as to jeopardize his ability to act impartially as to matters in which Exxon might be involved. On grounds of both logic and experience, I find this reasoning vacuous. Many of us come to government with various degrees of loyalty, gratitude, and affection for people and institutions who have treated us generously in our prior employment. The possibility always exists that an individual's previous loyalties will interfere with the integrity of his performance in his new job; however, the obvious and proven solution is not to disqualify for public service those that have earned the good will of their former employers -- for that would deny us our best men and women -- but to insist on individuals of proven integrity who possess the strength of character to keep their public duty and their private loyalties in proper perspective. Mel Conant is clearly such a man, and I find it inconceivable that he could ever allow the termination payment he received from Exxon to interfere with his professional judgment or his official responsibilities.

In the final analysis, furthermore, the quality of an agency's decision making is a function not only of the integrity of its officials, but also of the objectivity of its procedures. At FEA, we have worked hard, and I believe successfully, to establish an atmosphere of openness and candor in which decisions are made on the merits after full and fair consideration of all the relevant arguments. In this kind of environment, I believe that the skills and expertise of individuals such as Mr. Conant can be utilized to maximum advantage without risk of losing the trust or confidence of the public.

I appreciate this opportunity to give you my thoughts on Mr. Conant's nomination, and I again urge the Committee to act promptly and favorably on this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "John C. Sawhill", written over the typed name and title.

John C. Sawhill  
Administrator

Senator BUCKLEY. The only thing I would add, Mr. Chairman, is we have in Mr. Conant, we have a man of specialized and highly critical experience. We must understand our energy problems also involve international problems and an understanding of how the OPEC nations work, how they think, how they react. I think it would be very difficult for us to find someone with these qualifications.

Senator METZENBAUM. Thank you Senator Buckley.

Senator Hatfield.

**STATEMENT OF HON. MARK O. HATFIELD, A U.S. SENATOR FROM THE STATE OF OREGON**

Senator HATFIELD. Mr. Chairman, I am troubled always in hearings of this kind by a number of things. One, in the executive branch of Government, we find it always advantageous to find someone out of the ranks of labor to serve as Secretary of Labor.

We think it is a qualification for someone out of the field of business to serve as Secretary of Commerce and we have always thought they represented a certain constituency group and one tends to check and balance the other.

I suppose we could say, therefore, there is not a conflict of interest, but rather it is a functional type of representation.

Then we get to the regulatory commissions and often times we say we have to have someone with credentials, someone who has had background in the field in which he is called upon to regulate.

Recently, we had a nominee that was sent down by President Nixon and again resubmitted by President Ford and finally withdrawn from the Federal Power Commission on the basis the individual did not have any background or any credentials representing experience and we say the public should be represented in the regulatory commissions or we may say there should be certain expertise from the background of the individual, so there is not a clear line here.

But what troubles me most of all is that conflict of interest seems to exist only in the executive branch of Government. We sit here as judges on whether or not an individual whose name has been submitted to us for confirmation by his background represents any possible conflict of interest that would disqualify him from representing the best of the public interest.

I have used the example many times before, and I shall use it again, that one of the Members of our own body owning 90 percent of an oil company stock and president of the oil company serving as U.S. Senator helped lobby through the extension of the oil depletion allowance, as a Member of the United States Senate, and there was no particular conflict of interest.

We require, and as you know, Mr. Chairman, I have refused to engage in the kind of hypocrisy I believe exists even though the statute states we shall do so, of going over the financial records of appointees because he is required to disclose all of his financial background status, the ones sitting as judges do not have to disclose our financial background and record.

I think if we are going to get hyper-pious about the possibility of conflict of interest in the administration of public policy, we had better be just as concerned about the possibility of conflict of interest in the enactment of public policy through the legislative process.

Until the Congress is willing to have full financial disclosure of its own personal financial status, including our wives and our brothers and sisters, our nephews and nieces and all such others, as we require a Vice-President-designee to make, I am not so sure I find these other than as mere exercises of protocol and procedure.

I must say I am troubled by this selective application of morality and ethics, this selective activity of conflict of interest that exists only in the executive branch of Government. I go back and I think of how Congress hounded Sherman Adams out of office because of gifts he had accepted, a vicuna coat and a rug. At the same time, there was never any listing of the gifts accepted by Senators and Congressmen or favors or free hotels or free passage to some resort center, free booze or whatever else it might have been.

I think in the so-called post-Watergate sense of morality which we are all conscious of, it would behoove the Congress in hearings of this kind to demand the highest of standards, the highest of ethic, the highest of nonconflict of interest and I will subscribe to all of them, but let us set it across the board and let us begin with our own household.

If I were to venture an opinion, I would venture one that would be not an indictment, not a charge, but just sort of a gut feeling that if we had all of the knowledge of the boards and boards of directors that Members of Congress sit on today that represent financial betterment or financial possibilities or the improvement of their own financial statements as contrasted with the executive branch of Government, we would be in a less than comfortable position.

I, along with Senator Case, cosponsored a bill so this is just not rhetoric without action. Senator Case and I cosponsored a bill that would require full disclosure, full disclosure of the Members of Congress—their financial status. You know what we ended up with, Mr. Chairman, before you came to the Senate. What we ended up with, we were going to disclose royalties and honorariums, and you know why? Because the wealthy members did not have to disclose anything and only those of us who perhaps have to go out and speak for our honorariums, to subsidize our office costs and other such things, we have to disclose honorariums and royalties. So, to me, that again exemplifies the fact Congress has had an opportunity; the Senate of the United States has had put before it for a yea or nay vote a proposition for full financial disclosure and it has chosen not to have disclosure of its own household, of its own members.

I, therefore, must say I am troubled for two reasons. One, do we look for the experts and the experts come out of the areas of background which qualifies them by their own background experience for these jobs. Then, do we say they have conflict of interest or do we look for someone with no knowledge, no background?

Again, as Senator Johnston said a while ago, we have not set a basic criteria which applies across the board. This is a day when petroleum companies, oil companies, are dirty words. They are a part of the

unpopular group and along with politicians, journalists and used car salesmen and consequently, we have to set a certain standard there that we would not require of doctors, bankers or someone else for other appointments.

So, I just wanted to bleed my heart today on the trouble I feel on making a determination in the judgment, sitting in the chair I sit in with the knowledge we have yet to put our own house in order and recognizing there is a statute that requires us to do this.

I am not faulting the chairman or anybody else for this procedure. This is required, but we had better look at our own households, as well as these other individuals who come before us.

Senator METZENBAUM. Is there a statement from the Senator from Idaho?

Senator McCLURE. Amen.

Senator METZENBAUM. Mr. Conant. I think you have a brief opening statement you would like to read. If so, please proceed.

**STATEMENT OF MELVIN A. CONANT, NOMINEE TO BE ASSISTANT ADMINISTRATOR FOR THE OFFICE OF INTERNATIONAL ENERGY AFFAIRS**

Mr. CONANT. Mr. Chairman, you and other members of the committee have expressed clearly many of my own thoughts. Excuse me if I repeat some of the observations that have already been made this afternoon.

On September 23 of this year, I was privileged to appear before your committee to be examined as to my qualifications for the post to which I have been nominated by the President.

I was given a full opportunity to review in great detail both the reasons which led me to accept the invitation to join the then Federal Energy Office, and the evident prior care taken by Exxon Corp., myself and the FEO to establish, in writing, concurrence on the severance arrangement offered me upon leaving the company.

All of the letters and memoranda relating to these matters were placed in the public record so that any person could study them.

Since that hearing I have been asked further concerning my personal views on international energy policy and developments, letter and questions from Senator Jackson to Mr. Sawhill of October 2 to which I responded on October 8, and a letter with questions from Senator Metzenbaum to me of November 20, on personnel matters and my background, to which I responded on November 26. I respectfully request that these two letters, plus one from me to Senator Metzenbaum of September 10, 1974, on my accomplishments in International Energy Affairs to that date, be included also in the public record.

Senator METZENBAUM. Without objection they will be made part of the record.

[The letters referred to above follow:]

HENRY M. JACKSON, WASH., CHAIRMAN  
 ALAN BIBLE, NEV.  
 FRANK CHURCH, IDAHO  
 LEE METCALF, MONT.  
 J. DONNETT JOHNSTON, JR., LA.  
 JAMES ABDOUREK, S. DAK.  
 FLOYD N. HASKELL, COLO.  
 GAYLORD NELSON, WIS.  
 HOWARD M. METZENBAUM, OHIO

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## United States Senate

COMMITTEE ON  
 INTERIOR AND INSULAR AFFAIRS  
 WASHINGTON, D.C. 20510

October 2, 1974

The Honorable John C. Sawhill  
 Administrator  
 Federal Energy Administration  
 Washington, D.C.

Dear Dr. Sawhill:

Enclosed are a set of questions which relate to Mr. Melvin A. Conant's nomination to be Assistant Administrator for International Affairs which is now pending before the Committee on Interior and Insular Affairs. I would appreciate it if you and Mr. Conant would prepare responses to these questions for the Committee's hearing record on this matter.

In addition to the enclosed questions, I would appreciate it if you could furnish the Committee with the names of all the employees and their current responsibilities in your agency who currently occupy a civil service classification of GS 14 and above.

With best regards,

Sincerely yours,

Henry M. Jackson  
 Chairman

HMJ:bvnl

Enclosure

Basis for determination of U. S. Oil Prices

You suggested to the committee that a price for domestic oil of between \$7 and \$9 and for imported oil of between \$8 and \$10 would be appropriate. The current world price and hence that of U. S. imported and "uncontrolled" domestic oil is a function of political determinations made by the OPEC nations. The current U. S. "controlled" price of \$5.25 is a function of an unsubstantiated intuitive judgment of the Cost of Living Council which was retained as policy first by FEO and then FEA. In that the current pricing and production policies of OPEC preclude a free market determination of world or U. S. oil prices for the foreseeable future, the price that Americans pay for oil will be determined by OPEC and/or the U. S. government. The question of what that price should be is a difficult one and is the subject of loud and widespread disagreement. Who within the Executive Branch will make the determination as to the appropriate price for domestic and imported oil, and on what basis? What studies have been made or are in progress to provide such a basis? Please provide the Committee with a copy of each which has been completed; please advise as to when you can provide a copy of each now in progress.

U.S. Government participation in negotiations.

You stated that United States Government involvement is now called for in the negotiations between U.S. multinational oil companies and the governments of producing countries. Does FEA officially support that view; the Administration?

What statutory authority is required to authorize government participation of the degree that you feel necessary? Is a request for legislation to grant such authority forthcoming?

Cutbacks in Overseas Production

The intentions of oil producing countries to reduce production to avoid the creation of a surplus in order to maintain current price levels has been highly publicized. The attached article from the Journal of Commerce of September 25, 1974 implies that at least three U. S. companies, on their own initiative, have implemented corporate policies also directed toward avoiding surplus and maintaining current price levels.

- a) To what extent have production cutbacks such as those of Caltex, Petromer Trend, and Iiapco been made by U. S. companies in other OPEC nations?
- b) Has the U. S. government been informed of these corporate decisions?
- c) If so, what response has been made to the companies?

Allied Cooperation

What is the potential for solidarity among consuming nations in the implementation of policies intended to bring about a price reduction by OPEC?

Relationship between U. S. and OPEC Pricing

You told the committee that in your view the factor of U.S. domestic oil prices did not loom large in the price decisions of the producing countries. However, you also proposed that the U.S. government "declare that price of imported crude which it would permit to enter this country." As a matter of diplomacy, if not of equity, should we not fix a price ceiling on "uncontrolled" U.S. oil no higher than the ceiling that would be fixed on imports under your proposal.

Options for U.S. action to lower world oil prices

In response to a question by Senator Abourezk, you suggested that the U.S. should "move on every front, bilateral in the sense of U.S. special relationships in the area, in concert with other consuming states, by every conceivable pressure that would help -- how to describe it -- give us assurance of a supply and our allies at reasonable prices."

Please enumerate those pressures which should be considered for a) unilateral and b) bilateral action?

Dumping of High Priced Oil in U. S. Markets

The Committee has received reports that disproportionate volumes of high priced foreign oil are being sold in the U. S., while disproportionate volumes of cheaper oil are being sold in Europe. There is some indication that, in part, this is caused by the difference between existing U. S. crude oil price regulations and regulations of foreign governments.

How do FEA's pricing regulations with regard to imports compare with those of other consuming nations as regards costs, profits and other expenses which may be passed on by the oil producers, oil companies and importers to the U. S. consumer?

To what extent do differences in the import pricing regulations between the several oil importing nations tend to direct the flow of variously priced oils to one or another country?

Specifically, do U. S. petroleum pricing regulations as compared to those of other consuming nations tend to attract higher priced crude oil and petroleum product to the United States? Is there statistical and financial data available to make an informal judgment on these questions?

Setting a maximum price for oil imports

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- (a) If the United States were to establish a maximum permissible price for imported petroleum (1) what would this price be? (2) What would be necessary in the laws governing the pricing of domestic energy sources; (3) what volumes of imported oil would be imported under such a policy; (4) what would be the impact on competition between those whose supply is weighted towards imported or domestic oil.
- (b) Should such a policy reduce imports and result in domestic shortages what, if any, additional statutory authority, (e.g. mandatory conservation or rationing) must FEA have before it could safely implement a maximum price import policy of this nature?

## FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

October 8, 1974

Honorable Henry M. Jackson  
United States Senate  
Washington, D.C. 20510

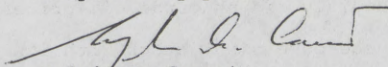
Dear Senator Jackson:

Your letter of October 2nd addressed to Dr. Sawhill and relating to my nomination to be Assistant Administrator for International Energy Affairs contains a number of important questions which relate to portions of my testimony at my confirmation hearing before the Committee on Interior and Insular Affairs.

In the first paragraph you ask that Dr. Sawhill and I prepare responses to these questions for the Committee's hearing record. Dr. Sawhill has been on the west coast the first part of this week and in hopes that my replying now might expedite further consideration of my fitness, I have taken the liberty of attaching my responses to your questions.

In the second paragraph of your letter you ask for names of FEA employees, and their current responsibilities, GS level 14 and above. I have asked FEA's Office of Management and Administration to furnish these names promptly and this will be done under separate cover.

Respectfully yours,



Melvin A. Conant  
Assistant Administrator for  
International Energy Affairs (Designate)

Enclosure

ANSWERS

1. The observation is made that the current world price of crude, and that of U.S. imported and "uncontrolled" domestic oil, are a "function of political determinations made by the OPEC nations." I would agree that the political aspect of oil is a critically important factor in the determination of price--an aspect often ignored.

But it is not set by political factors alone. The Shah has made the point repeatedly that the price for oil must relate to the cost of other forms of energy; and Venezuela has for years sought to increase prices to that level which it thought the market would bear--as has Indonesia. Canada is another example. Each of these countries would include a political ingredient in oil price but what makes a price is a highly complex set of factors and one country will vary from another in its mix.

I agree that because the "current pricing and production policies of OPEC preclude a free market determination of world or U.S. oil prices for the foreseeable future, the price that Americans pay for oil will be determined by OPEC and/or the U.S. Government."

What should that U.S. price be?

As with OPEC, a host of economic and political factors will be engaged. What price will serve to encourage greater energy investments in this country? and discourage non-essential levels of imports? What price will limit oil consumption per se and what price will make other energy sources competitive? Should the price reflect the cost to national security of a strategic stockpile? or failing to implement most of these, should the U.S. have unlimited oil imports thus competing with others for available supply?

Given the multitude of interests to be affected, no single unit of the Executive Branch could decide on price. Not only FEA but Defense, State, Interior, Treasury, FPC and AEC will have to help define it. The options to be laid out in Project Independence will offer different national objectives and the range and variety of policies needed to achieve the ones selected.

I am not aware of any but highly theoretical judgements on a "reasonable" level of price; until the objectives are chosen no concrete proposals can be made. There is a continuous watch kept by FEA on the costs of landed crude. These provide periodic checkpoints but are not formal "studies."

When the national objectives are chosen, intensive price studies will have to be made and FEA's International Energy Affairs will be involved. I am certain these studies will be made available.

2. An "Administration" position on U.S. Government involvement in company-producing government negotiations has not yet been reached. The FEA Administrator has repeatedly made the point that the position of the companies has changed greatly and that some form of U.S. Government involvement is essential. I know of no U.S. international oil company which would contradict that observation--while no consensus is yet reached as to its form.

The pressing need for a wide-ranging search for the most effective kind of USG involvement caused FEA to launch a major study which will be completed by year-end and made available. It is designed to inform of the choices open to us; once Americans have selected the course we shall know what statutory authority is required.

3. Whether the companies "on their own initiative" took steps to reduce production is not clear to me. But, as a practical matter, and for many years no company in Indonesia has set its own production levels; the role of Pertamina is dominant. The article does state that because of a lack of storage in consuming countries, the amount of crude lifted by the companies had to be decreased--which is a different matter.

While I was not aware of any specific corporate decisions in this regard, we have been aware of the increasing difficulty companies were experiencing in lifting and disposing of their crudes.

4. The potential for solidarity among consumers to bring about an OPEC price reduction is considerable. In actuality, however, the extreme vulnerability of individual states in West Europe, and Japan, to an OPEC retaliatory cutback in volume has helped preclude a concerted effort. The agreement of twelve such states to combine on an emergency sharing plan may yet prove to be a signal achievement. To date, most countries have chosen to try and work out a solution to price individually--with no apparent success.

5. I hope my extensive answer to the first question will serve as a reply to this one. The level of prices which may be set for oil--imported or domestic--must reflect our national choices. One of these must be the extent to which we wish to encourage domestic energy resource development and to discourage higher and higher volumes of imports. A higher import price might be one way.

6. I am personally convinced that every available instrument to secure our national energy interests will have to be engaged. I can see great and mutual advantages to some producing countries in various parts of the world having assured access to our energy market in return for specific supply and price commitments. The history of "special relationships" is complicated; they require great skill, a fundamental, mutual interest in its success and a contractual form which helps its survival through changes in government.

Both in "unilateral" and "bilateral" actions, security considerations, defense assistance, technology, access to each other's economy, political agreements meeting each nation's prime objectives--all need to be employed, simultaneously.

On the "unilateral" side alone, stringent conservation requirements and a major strategic stockpile and reserves program, plus control on import levels can all be done by nations singly. But their effect is magnified very greatly when done in concert.

7. (1) There is a great variety of techniques employed by consuming governments to watch over the costs, profits, etc. of imported oil. Some governments have specific requirements laid down in regulation; others have a less formal system which relies upon other kinds of government pressure. In the past, some--like the Japanese--have relied mainly upon allotments of foreign exchange: the lower the price per barrel, the more foreign exchange was allotted. Perhaps the two most comprehensive efforts are those of France and the United States. As an attachment, I am sending you a detailed description of the price control regulations applicable in other countries which was prepared by the former General Counsel of FEA, William Walker.

The 12 nation agreement to institute an International Energy Program contains exceedingly detailed data requirements to be shared in a data bank on an inter-gvoernmental basis which will greatly increase all participating nations' knowledge of oil prices and profits.

(2) Without being in the board rooms of companies, privy to their decision, I could not answer the questions from direct knowledge. My hunch is that decisions might well vary company by company depending upon the scale of its commercial investments in countries, pressure by governments to supply lest market shares be lost, and a company's estimate of its short and longer term prospects. I doubt that the net effect of varying government yardsticks for costs and profits is so different as to be significant; it is more likely perhaps to be a factor with smaller companies, especially those lacking integrated downstream operations.

(3) Again, I doubt that in the longer run, in trade involving significant volumes of crude, a company with substantial marketing investments would be influenced as implied in the question. A study of the phenomena, evidenced mainly in the embargo period, has been launched by the Subcommittee on Multinational Corporations of the Senate Foreign Relations Committee and FEA's International Energy Affairs is assisting. The data available is not yet comprehensive enough for it clearly requires data collected by other governments. But the oil data "bank" referred to in (1) above will eventually help give us answers.

8. Perhaps answers to the first question relate as closely to this one. Item (4) raises another issue: if the national choice is to limit our energy vulnerability by stimulating domestic sources--and putting barriers to imported oil, clearly the competitive advantage would seem to lie generally with those whose supply is based altogether or largely on domestic sources. The extent of that commercial advantage could be shaped by law and policy.

As for (b), FEA would need long term authority to implement steps to assure our national objectives were met. I would judge that legislation aimed at mandatory conservation or rationing to deal with shortages that arose as a consequence of U.S. or other governments' actions might be necessary. I emphasize "long term" for we urgently require energy policies and measures for the long pull. We can afford little doubt about our seriousness of purpose and national commitment.

August 12, 1974

SUMMARY OF PETROLEUM PRICE CONTROLS IN THE UNITED KINGDOM

The United Kingdom is unique among major consuming nations other than the United States by virtue of its potential for domestic crude oil production from its North Sea fields. Although large scale production from the North Sea is not expected until the late 1970's, this potential has already created tension between the competing goals of, on the one hand, maximizing revenues through pursuing a high crude oil price policy for North Sea production and, on the other hand, minimizing the disruptive effect of high oil prices upon the British economy. The British government has not yet confronted the obvious conflicts between these two goals, in part because there is still some five years before large-scale North Sea crude oil production becomes a reality. Nevertheless, the need to address these objectives and the trade-offs and accommodations between them can be expected to exert a dominant influence upon the development of British petroleum pricing policy over the next several years.

Crude Oil

At the present time, the British government has no price controls on crude oil production. The British government is the exclusive royalty owner of North Sea crude oil and the value which the British government will place on the oil for purposes of calculating royalties, is expected to reflect world oil prices. Two factors make it unlikely that the British will follow a two-tier pricing system. First, the revenues which the British

government receives from its North Sea crude oil are essential to bringing about an improvement in the UK's balance of payments. Second, the Treaty of Rome prohibits discrimination among members of the European community and would seem to preclude a policy which offers lower prices to British purchasers and higher prices to other European customers. Consequently, it seems likely that the British will peg the North Sea crude oil to comparable reference crudes in other parts of the world such as Libyan light or Nigerian light.

The white paper issued by the Labor government in mid-July announcing plans for government purchase of 51 percent of producing fields in the North Sea and establishment of a state-owned oil company are a reflection of the government's determination to maximize revenues from its crude oil production. It now seems likely that an election will be called for the fall of 1974 in which petroleum policy will be a central issue. Until the political questions are resolved, the precise nature of government participation in the North Sea crude oil should be viewed as tentative, but it seems a foregone conclusion that some form of participation designed to maximize revenues will be a central feature of British petroleum pricing policy for the foreseeable future.

#### Refinery Prices

Refinery prices in the United Kingdom are controlled pursuant to the general industrial price control system which was established in late 1972. This controls system was modeled, to a very large

degree, upon the Phase II experience of the United States. It permits price increases only on the basis of incurred costs and only where the companies have not exceeded their reference profit margin (like our base period profit margin). Companies must submit proposed price increases to the British Price Commission under a prenotification procedure very much akin to the procedure employed in the United States under the Economic Stabilization Program.

Since the two major increases in posted price announced by the OPEC nations in October and December, 1973, the Price Commission has permitted only two price increases, one on December 22 and one on January 30, 1974. Significantly, the January 1974 authorization permitted price increases only to reflect actual incurred costs in the acquisition of crude oil. It did not permit price increases to reflect anticipated increases resulting from the retroactive application of revised participation agreements with increased buy/back prices. Thus, the companies were permitted to increase prices to reflect crude oil costs of about \$7.00 per barrel, a figure premised upon a split of 75 percent equity oil and 25 percent participation oil with a buy/back price substantially lower than the 93 percent of posted price level which is widely predicted to prevail. The Price Commission has flatly refused to permit companies to anticipate the costs associated with revision of the participation agreements and the retroactive assessments of higher prices by the producing countries.

Price Commission officials profess to have no detailed information on the magnitude of the underrecoupment which has resulted from this policy, though they estimate roughly that it could represent as much as another 20 percent above existing levels. Moreover, the Price Commission does not view this underrecoupment sympathetically. Under strict application of the British price control law (as was true under Phase II and Phase IV of the Economic Stabilization Program in this country) authority exists to roll back the prices of companies which are in excess of their base period profit margin in amounts sufficient to eliminate the excess profits. British Price Commission officials are of the view that most of the oil companies doing business in Great Britain exceeded their base period profit margin, at least during the first quarter of 1974 and possibly during the second quarter as well. While the Commission did not assert this authority and order a price rollback, it may well disallow costs incurred by the companies during the period of time they were in excess of their base period profit margin and thereby reduce substantially the amount which the companies will be permitted to recoup in the form of future price increases.

As of mid-July, no new prenotifications had been filed by British oil companies seeking further price increases, but filings are expected as the participation agreements are settled. Price Commission officials expect the filings to take place in mid-August with a projected effective date of mid-September. Price Commission officials indicated that they wish to delay decisions on these increases until the companies have filed their reports covering the first half of 1974 (they are due September 30) so it seems unlikely that any price increases will be permitted until sometime in October.

The British Price Commission has not adopted any rigid or formal rules governing the level of transfer prices used by the companies in computing cost justification to support price increases. However, in practice they have required the companies to compute costs on the basis of tax paid costs, plus margin, plus transportation. They have disallowed the differential between costs and market on an ad hoc basis, so far without challenge from the industry. This is a far more stringent rule than either the Cost of Living Council or the Federal Energy Administration has applied to companies under U.S. petroleum price control regulations. The actual cost standard may not prevail in the subsequent round of price prenotifications given the significant market price differential which has occurred since the first of the year. However, the fact that the Price Commission is considering maintenance of this standard is further evidence of the restrictive attitude which they are manifesting toward petroleum price increases.

The British Price Commission recognizes that ultimately it must permit prices to rise to permit some recoupment of costs incurred since the last price increase. Its current thinking is to spread the recoupment portion of the price increase over a period of 12 months in an effort to minimize its impact upon the economy.

#### Wholesale and Resale Price Controls

In December 1973, the British government established retail price ceilings for motor gasoline and parafin. The ceilings were in addition to the existing price control rules which limit the net profit margins and gross percentage margins of resellers and retailers.

The ceilings were set and are administered by the Energy Department rather than the Price Commission. Apparently, the Price Commission declined to accept the burden of administering a retail ceiling price program involving thousands of small individual outlets and the Energy Department was compelled to undertake the responsibility.

While inter action between the two agencies is not entirely clear, it appears that the Price Commission initially determines the total cost which, under its rules, refineries are entitled to claim in support of price increases. The Energy Department then allocates these costs to specific products in establishing retail price ceilings. The Price Commission has the authority to review the determinations made by the Energy Department and, at least theoretically, has veto authority over its decisions, but as a practical matter it has not interfered with the Energy Department's decisions.

The price ceilings are fixed on a geographical zone basis with differentials added for the more remote geographical areas.

General

It is unlikely that the British government will decontrol petroleum prices in the foreseeable future. The existing system of controls has held British prices substantially below market by refusing to permit increases in anticipation of the new participation agreements between producing nations and the international oil companies and the higher buy/back prices which will be a part of those settlements. The likely British policy for the immediate future is to move prices gradually towards world market levels, thereby seeking to cushion the impact upon the British economy. Certainly by the time the North Sea fields come on stream, British prices can be expected to have reached world market levels and it can be anticipated that the revenues obtained by the government from the sale of North Sea crude oil will be used to subsidize industry and expand the scope and quality of welfare and related social services offered to British citizens as a means of offsetting the impact of higher oil prices.

William N. Walker  
Counselor to the Administrator  
Federal Energy Administration

August 12, 1974

SUMMARY OF PRICE CONTROLS IN THE FEDERAL REPUBLIC OF GERMANY

The Federal Republic of Germany is the only major oil consuming nation in the world which has not imposed a system of price controls to deal with rising petroleum prices. As is well known, Germany is committed to "economic liberalism" and the government's determination to avoid direct intervention in the economy continues to be strong notwithstanding the dramatic rise in world oil prices during the past year

This is true despite the political impact which higher prices have had in Germany as in other countries. But events have forced the government to take a number of actions, principally through the Bundeskartellamt--the Federal Cartel Office--to seek moderation of price rises and to defuse the political pressures which higher prices have created.

In March 1974, the Economics Ministry announced that it had requested the Cartel Office to conduct an investigation of petroleum prices in Germany. This action was taken without prior consultation with the Cartel Office and, from conversations with officials of both the Economics Ministry and the Cartel Office, it seems evident that the decision was made in order to deal with political criticism about rising prices in the Bundestag. The Cartel Office initially sought

to deflect this action by referring it to OECD. Their theory was that the West German market was not sufficiently large to provide an adequate base for an anti-monopoly investigation. However, public pressure persisted and the Cartel Office was then forced to proceed.

In late March and early April, it held a series of hearings in which the major German oil companies (including the international majors) were compelled to testify and to justify the price increases which they had put into effect.

Immediately after the hearings, and while the Cartel Office was considering what actions to take, the industry announced gasoline price increases of 1 to 2 pfennigs per liter (about 1 or 2 percent per liter). These actions were announced on the eve of Easter weekend, which is a major holiday in Germany during which a great deal of automobile travel occurred, and they stirred an adverse political reaction.

The Cartel Office advised the companies that it would issue a preliminary order prohibiting the price increase and, as a result, Shell and Esso rescinded their announced actions. BP and Texaco refused to do so and orders were issued against them in mid-April requiring them to maintain gasoline prices at levels in effect on April 9. The preliminary order issued against Texaco was repealed when the company, following a public hearing, revoked the price increase and com-

mitted itself to a policy of holding the line on retail gasoline prices. BP did not institute the planned price increase but did challenge the preliminary order in court. In May, the Berlin Court of Appeals overturned the Cartel Office order and sustained BP's request for an injunction. However, because of competitive market conditions, BP did not place the price increase into effect.

Similar actions were taken with respect to diesel fuel. Retail prices for diesel fuel increased from approximately 73.5 pfennigs per liter in the third quarter of 1973, to approximately 90 pfennigs per liter in the period December 1973 to February 1974 which coincided with the depths of the Arab oil embargo. Beginning in April 1974, there was a significant decline in the wholesale price of diesel fuel which was not passed along in the retail market. Accordingly, on April 10, 1974, the Cartel Office ordered the companies to reduce diesel fuel prices by at least 5 pfennigs per liter below the prices in effect on April 9. The companies generally complied with this order, though in differing amounts. In mid-May, prices at branded filling stations ranged from 89.9 pfennigs per liter to 83.9 pfennigs per liter with discount stations selling diesel fuel at prices as low as 77.9 pfennigs per liter. As a result of the action taken by the companies to reduce prices, the Cartel Office dropped any further proceedings with respect to diesel fuel.

The two direct actions by the Cartel Office involving motor gasoline and diesel fuel represent the only direct governmental interference in the marketplace during the course of the fuel crisis. However, a number of factors, some of which emerged in the public hearings, have prompted the Cartel Office to continue the investigation of the petroleum industry.

1. The Cartel Office is convinced that some forms of conspiracy or agreement exists among the major petroleum companies in Germany which has the effect of reducing competition for petroleum products in the German market. It is important to note that this conclusion is not shared by the Economics Ministry or by the Justice Department and it may be the product of the institutional orientation of the Cartel Office which - like our Federal Trade Commission - is an anti-trust enforcement organization. Nevertheless, this view clearly underlies the attitudes of officials in the Cartel Office. In particular, they are of the view - though without supporting documentation - that price-rigging in the Rotterdam market has occurred by use of price posting in Platts Oilgram. Cartel Office officials are very suspicious of Platts postings and question their validity. In particular, they were interested in the source of the reports which Platts publishes, whether or not these postings reflect only selected transactions, whether the reports reflect bids as well as actual transactions, the dates on which the transactions are

reported to have taken place, whether or not there is a distinction between intercorporate transfers and third-party transactions and whether or not the postings reflect long-term contract prices. While the Cartel Office has no evidence to support its suspicions, it is convinced that some sort of "gentlemen's agreement" must exist since these officials can find no other explanation for price movements in the Rotterdam market.

2. German officials, both in the Cartel Office and in the Economics Ministry expressed concern at reports by the U.S.-based international majors that the record profits reported during the past two quarters were derived from transactions in international markets rather than from activities in the United States. They interpret these general statements to mean that the companies realized substantial profits in the West German markets at the expense of German consumers.

3. Officials in both the Economics Ministry and the Cartel Office expressed concern on the subject of transfer prices from two standpoints. First, they are concerned that the international majors are selling crude oil to their German affiliates at higher prices than to affiliates located in countries where price controls are in effect, thereby maximizing their profit opportunities, and taking advantage of the free market in West Germany. They do not feel they have sufficient information on the level of transfer prices.

which are charged by the international majors and are therefore very much interested in securing additional information through the "price transparency" initiatives of ECG. They feel that this additional information is vital in order to either confirm their suspicions that West Germany is being discriminated against or to put those suspicions to rest. In addition, they are concerned that the transfer prices charged West German affiliates by the international majors are lower than the prices which independent, unaffiliated companies must pay for petroleum in world markets. Their fear is that the international majors thereby obtain a competitive advantage over the independents which will have an adverse effect upon downstream competition in the West German petroleum market.

There is obviously some inconsistency in these two concerns - on the one hand that transfer prices are artificially inflated and the other hand that they are lower than market prices and afford the majors a competitive advantage. Government officials are aware of this inconsistency but it emphasizes their desire to secure more detailed information on the pricing activities of the international majors either through the ECG or some other international mechanism to provide greater price transparency.

As a result of these misgivings about the activities of the petroleum industry in West Germany, the Cartel Office has

prepared a detailed questionnaire designed to secure information on a broad range of price and supply issues from each of the companies doing business in West Germany. This will supplement the information voluntarily being submitted by the companies on a monthly basis and will seek information concerning parent company operations and transfer pricing practices. The questionnaire itself has not been made public and a copy was not provided to me. Clearance must be obtained by the Cartel Office from the Economics Ministry before the questionnaire can be issued to the companies and the Economics Ministry seems disinclined to grant approval. Copies have been forwarded to the companies on an informal basis and BP has voluntarily submitted the requested information. On the basis of this submission, however, the Cartel Office has concluded that its questionnaire is in need of substantial revision in order to obtain the information they are seeking.

The developing surplus of crude oil in world markets has had a direct impact upon petroleum prices in West Germany. It seems generally agreed that spot prices in Rotterdam have controlling influence upon price levels in West Germany, and the Rotterdam spot market has softened significantly in the period since late June. During mid-July, gasoline prices at the pump were coming down from the 95 to 93 pfennings per liter levels of the Spring to about 85 to 89 pfennings per

liter. Both government and company officials seem to believe that this trend will continue and that prices will either stabilize or continue to decline, at least until winter when possible shortages of heating oil may reappear.

The current trend of prices will clearly have a decisive effect upon near term pricing in West Germany. Both the Economics Ministry and the Cartel Office, for somewhat different reasons, have seized upon the downward trend of prices as a basis for backing away from the actions which were taken earlier in the Spring. Officials of both agencies advised that if the trend of prices continues, the litigation against BP would be dropped and the proposed questionnaire to the industry would be abandoned. The Cartel Office takes the view that the reduction in prices signifies a return to competitive practices by the industry which in turn, eliminates the jurisdictional basis for continued action by the Cartel Office under the Cartel law. The Economics Ministry sees the trend of prices as defusing the political pressure for intervention in the petroleum industry.

It seems unlikely that the West German government will take further action to intervene in petroleum pricing activities in the absence of some unforeseen event which would push prices dramatically higher. The only current authority for intervention is the Cartel law which is a very blunt instrument for dealing with specific pricing activities. In order

to sustain an action, the Cartel Office must prove an abuse of competition by the industry and the burden of proof is very difficult to sustain. This is emphasized by the fact that only three of 299 cases instituted by the Cartel Office prior to 1973 were sustained. Amendments since that time have reduced the burden of proceeding under the Cartel law, but, like our antitrust laws, proceeding on an antitrust theory is an unwieldy process.

It seems evident that the government proceeded on this basis in the Spring of 1974 with full knowledge that there was not much of a case to be made against the industry but that it was a convenient means of accommodating public pressure to "do something" about raising prices without seriously risking adverse consequences. Now that prices are coming down and the market seems to be stabilizing, the government's appetite for even this limited form of intervention seems to have evaporated and the actions which have been taken to date are likely to be abandoned. The only issue that seems likely to survive is the continued interest of both the Economics Ministry and the Cartel Office in "price transparency" and the government's desire for greatly expanded information on the pricing and supply activities of the international majors.

William N. Walker  
Counselor to the Administrator  
Federal Energy Administrator

August 12, 1974

SUMMARY OF PRICE CONTROL POLICY OF THE EUROPEAN ECONOMIC COMMUNITY

The EEC does not have a uniform policy affecting member states on petroleum prices and it seems unlikely that such a policy will be adopted in the immediate future. The interests of the individual EEC member states are so diverse and so deeply-rooted as to present insurmountable obstacles to adoption of a common community policy on the central features of petroleum pricing and supply.

The membership of the EEC can be divided into three general systems of petroleum price controls, each of which differs substantially from the others.

1. France, Italy, Belgium and the Netherlands have elaborate regulatory systems governing prices of gasoline, distillate, and heavy fuel oil. The government fixes the maximum prices taking into account cost increases and establishing acceptable levels of profitability. France and Italy allocate costs to various products while Belgium and the Netherlands establish overall limits on the costs which companies may apply to price increases, but permit the companies to allocate those costs among various products.

2. In the United Kingdom, Denmark and Ireland, refinery prices are regulated as part of overall industrial price control programs which require the companies to notify proposed price increases and permit prices to rise only on the basis of incurred cost increases.

3. In Germany, prices are not controlled. The Cartel Office has required submission of information on costs and has asserted

a limited degree of "control" over product prices under the German anti-trust laws.

It is unlikely that the member states will modify their price controls systems to accommodate other member states and adopt a unified approach to petroleum price controls. As a result, the EEC Secretariat is concentrating on the more peripheral aspects of petroleum pricing. At a meeting in mid-July, the Energy Committee was authorized to establish three subcommittees to conduct studies and report by the end of October on matters of common interest. One subcommittee will analyze costs with a view to recommending a uniform basis for computation, thereby facilitating the gathering of statistics and comparative analysis of individual member states experiences. A second subcommittee is directed to address the subject of price transparency and will work closely with the mechanism established through the ECG to achieve this objective. The third subcommittee is authorized to study the different price control systems of the individual member states with a view to developing a standby price control plan which could be invoked by the EEC and applied throughout the community on a uniform basis in the event of some future emergency.

William N. Walker  
Counselor to the Administrator  
Federal Energy Administration

August 12, 1974

SUMMARY OF PETROLEUM PRICE CONTROLS IN FRANCE

The French have had a long history of petroleum price controls, dating back nearly fifty years to the establishment of CFP (The French Petroleum Company) which is 35 percent state-owned and was founded in the 1920's. In 1966, the de Gaulle government established a wholly state-owned enterprise (ERAP) marketing under the ELF label. CFP accounts for about 35 percent of the market and ERAP-ELF accounts for another 15 percent. The balance is composed of the international majors and other firms with mixed private and public ownership. France has traditionally controlled the importation of crude oil into France, the construction of refineries and the prices at which refined petroleum products are sold, the price controls structure having been formulated to regulate both profits and prices.

Petroleum price controls are administered jointly by the Ministry of Economics and the Ministry of Finance. The Ministry of Economics has a long history of relationships with the oil industry and is generally viewed as being sympathetic to the industry viewpoint. Ultimate decision-making authority resides, as a matter of political accommodation, with the Ministry of Finance which views itself as more of a protector of the consumer. In this connection, President Giscard d'Estaing is the former minister of Finance under President Pompidou and is widely believed to defer somewhat to the positions of the Finance Ministry.

Prior to May of 1973, refinery prices in France were controlled on the basis of a formula which was based upon historical prices and reference costs for crude oil and product. The process was to calculate a six-month

average cost of crude oil, subject to quarterly review, taking into account government take, company margin, company production costs, transportation to French ports and refinery operating costs. Once the average crude cost was determined, prices were allotted to refinery products on the basis of comparison with other market prices for the same products -- primarily prices in the Persian Gulf, the Caribbean and the U.S. Gulf coast. Differentials were then added for downstream operations to reflect distributor margin and transportation from refinery to the ultimate point of sale. Since prices for crude oil were relatively stable and comparative prices for refined products were both stable and readily ascertainable, the process was fairly mechanical.

In May of 1973, however, rising crude oil costs coupled with the realignment of currency exchange rates forced abandonment of the historical price and reference cost formula and the quarterly review process. Since that time, prices have been established on the basis of negotiations between the companies and the two ministries (Economics and Finance) that administer the government's program. Three price increases have been permitted at the refinery level since the Spring of 1973 to reflect some, but deliberately not all, of the increased costs which refiners have experienced during that period.

In October 1973, an increase was permitted to reflect the then-generally prevailing participation terms entered into between the major oil companies and producing nations on the basis of a 75 percent equity-25 percent participation split. This was increased in January 1974, to reflect the higher posted prices effected by the OPEC nations, but on the

basis of a split as follows: 70 percent equity, 20 percent participation at 93 percent of posted price and 10 percent at posted price plus 10 cents per barrel. In June of 1974, a further increase was permitted to reflect the currency realignments between the franc and the dollar.

The price increase of 198 francs/ton allowed in January 1974, clearly does not reflect fully the cost increases incurred by the companies, particularly since settlements are now being made on the basis of 40 percent equity oil and 60 percent participation oil with buy/back of participation oil being pegged at 93 percent (or in the case of Kuwait 95 percent) of posted prices. While the French calculations (unlike those under U.S. price controls) contain a provision for refinery operating costs (including depreciation and amortization) this allowance is not sufficient to fully reimburse the companies for their liability. At the present time, the companies estimate losses on the order of 70 francs per ton (or about \$2.00 per barrel) on every barrel imported since the first of the year. On the basis of imports of approximately of two million barrels per day that would yield a total "bank" of unrecouped costs of more than \$720 million over the first six months of the year.

The industry has been strongly critical of the government's pricing policy and, according to government officials, both Texaco and SoCal are giving serious consideration to withdrawal from the French market because of the financial burden of the regulations. However, the Ministry of Finance seems determined to hold the line until participation and buy/back arrangements are finally settled. Once that occurs, the government will calculate the amount of unrecouped costs and permit price increases in amounts sufficient to recover these amounts.

However, the government will take into consideration, in making these calculations, the effect of exchange rate fluctuations and the terms under which retroactive payment must be made to the producing countries for buy/back oil in the new participation arrangements. French officials point out, for example, that the credit terms which the countries extend to the companies have an effect upon the ultimate cost to the companies as does the level of compensation which the countries pay in compensation for nationalizing company assets.

It appears very likely that the French government will take a very careful and conservative approach to calculating the amount of unrecovered costs which they will permit the companies to pass through and it is not unlikely that they will force a considerable degree of cost absorption at the expense of company profits.

In response to the pressure from industry for price relief, the Economics Ministry in mid-July proposed a new formula for the calculation of crude costs reflecting the current trend of participation and buy/back settlements. The new formula would be based upon 40 percent equity, 55 percent participation and 5 percent at posted price plus 10 cents per barrel, with the price for buy/back participation oil based upon 93 percent or 86 percent posted price, weighted to reflect the points of origin for French crude oil imports. To date, no action has been taken on this proposal by the Ministry of Finance.

Downstream from the refinery, price controls are applied on a geographic zone basis. There are 11 zones for gasoline, for example, with higher prices in those zones which are more remote from refineries.

Mechanically, the system operates in this fashion. Total costs are calculated at the refinery level pursuant to the process set out above. Traditionally, costs were then allotted to refined products on the basis of comparable prices in other markets for similar products. That comparative pricing system was abandoned in May of 1973 and the allotment of costs to products has now become a highly political process. The January increase of 198 francs per ton was disproportionately loaded onto gasoline (an increase of 75 percent) in comparison to distillates (40 percent increase in middle distillates and 30 percent on residual fuel). This action was taken for the deliberate purpose of dampening demand for gasoline and encouraging gasoline conservation.

Once the process of allocating costs is completed, the controls authorize a transportation differential in a specified amount covering the average cost of transportation from the refinery to bulk plants and terminals in each zone. A fixed distributor margin is then added covering the margins for wholesalers, for retailers, and for transportation from terminals and bulk plants to retailers. The calculations are published as part of a price list, a copy of which is attached for information.

It is significant to note that this system, unlike the price control system in the United States, is premised upon average costs and average prices which is then applied equally to all companies. It, therefore, does not have a differential impact in the marketplace since all sellers charge the same maximum prices for each product. At the same time, however, it does not take into account the differential cost

experiences of the various refineries and obviously penalizes those with higher cost structures and correspondingly benefits those which are more efficient.

Second, it is important to note that the French have deliberately kept prices below world market prices. They have apparently not felt the risk of diversion sufficiently great to require an immediate passthrough of the very large cost increases which the companies have experienced and, indeed, the government's control over operations of the petroleum industry is very likely so comprehensive as to minimize that risk. In addition, during the embargo, the government compelled CFP and ERAP to adopt a "France first" approach and satisfy the needs of the French market before needs of markets in any other countries.

It is interesting to note that the French have not regulated transfer prices for crude oil in transactions among affiliates of the international majors. In large part, there is no need to do this since they operate on an average cost basis which is applied to all companies equally, and they have stringent controls upon profits and refinery output. As a result, there is much less likelihood that an international major would artificially escalate the price at which it sells crude oil to its French affiliate, since the price control system permits passthrough of only the average cost of imports as calculated by the government in the manner described above. The French are, however, exceedingly interested in the transfer price problem and indicated that they expect to have to get very much more deeply involved in ascertaining transfer price levels. It may well be that this interest will have the effect of encouraging the

French to participate in the Information Data Bank proposal being discussed by the ECG.

Finally, unlike the situation in the United States and Japan, there is no thought in France to dismantling the price control system after the turbulence of the last year subsides. The French attitude, unlike our own, is that if something is important, it should be left to government rather than the marketplace. The French have traditionally exercised significant influence over the level of prices of petroleum and other important products and can be expected to continue to do so. As a result, however, the government is likely to be forced to increase prices significantly in the months ahead to permit recovery of unrecouped costs which have been incurred since the first of the year. This is likely to have the effect of increasing petroleum product prices in France to a level above those of other countries in Western Europe (French prices are already among the highest) and may thereby have an adverse effect upon the French economy.

William N. Walker  
Counselor to the Administrator  
Federal Energy Administration

Produits Blancs

Applicable à compter du  
MERCREDI 17 JUILLET 1974

PB ACQ 1 131  
Annexe A

MARCHE INTERIEUR  
(à l'exception de la Corse)

ESSENCE-AUTO • SUPERCARBURANT

STRUCTURE DES PRIX D'AFFICHAGE A LA POMPE

(en Francs Hectolitre)

ELEMENTS	ESSENCE-AUTO		SUPERCARBURANT	
	Zone Atlantique	Zone Méditerranée	Zone Atlantique	Zone Méditerranée
Price ex refining				
Prix de reprise appliqué en raffinerie	55,6700	55,4400	62,1700	61,9400
Taxe intérieure	70,1339	70,1339	73,9110	73,9110
Redevance au Fonds de Soutien	0,0800	0,0800	0,0800	0,0800
Redevance à l'Institut du Pétrole	0,1800	0,1800	0,1800	0,1800
TOTAL arrondi à (a) ...	126,0639 126,00	125,8339 125,83	130,3410 130,34	130,1110 130,11

Transportation à la base (O, A...K) - Distribution margin (wholesale, retail, transport to retailers)

Zones de Prix	Frais de mise en place (1)		Compt. stocks de réserve*	Marge de distrib. (1)	Prix affichage calculé hors TVA (2) (100+D+C+T)	Ajustement hors TVA (2)	Prix affichage appliqué hors TVA	VAT TVA sur prix affichage appliqué	Prix d'affichage arrondi TTC
	Zone Atlantique	Zone Médit.							
<b>ESSENCE-AUTO</b>									
O	-	1,43	0,10	11,72	139,08	+ 0,38	139,46	21,54	164,00
A	1,70	1,93	"	"	139,58	- 0,12	139,46	24,54	164,00
B	2,20	2,43	"	"	140,08	+ 0,23	140,31	24,69	165,00
C	2,70	2,93	"	"	140,58	- 0,27	140,31	24,69	165,00
D	3,20	3,43	"	"	141,08	+ 0,08	141,16	24,84	166,00
E	3,70	3,93	"	"	141,58	+ 0,43	142,01	24,99	167,00
F	4,20	4,43	"	"	142,08	- 0,07	142,01	24,99	167,00
G	4,70	4,93	"	"	142,58	+ 0,28	142,86	25,14	168,00
H	5,20	5,43	"	"	143,08	- 0,22	142,86	25,14	168,00
J	5,70	5,93	"	"	143,58	+ 0,13	143,71	25,29	169,00
K	6,20	6,43	"	"	144,08	- 0,37	143,71	25,29	169,00
<b>SUPERCARBURANT</b>									
O	-	1,43	0,10	13,02	151,26	+ 0,10	151,36	26,64	178,00
A	1,70	1,93	"	"	151,76	- 0,40	151,36	26,64	178,00
B	2,20	2,43	"	"	152,26	- 0,05	152,21	26,79	179,00
C	2,70	2,93	"	"	152,76	+ 0,30	153,06	26,94	180,00
D	3,20	3,43	"	"	153,26	- 0,20	153,06	26,94	180,00
E	3,70	3,93	"	"	153,76	+ 0,15	153,91	27,09	181,00
F	4,20	4,43	"	"	154,26	- 0,35	153,91	27,09	181,00
G	4,70	4,93	"	"	154,76	-	154,76	27,24	182,00
H	5,20	5,43	"	"	155,26	+ 0,35	155,61	27,39	183,00
J	5,70	5,93	"	"	155,76	- 0,15	155,61	27,39	183,00
K	6,20	6,43	"	"	156,26	+ 0,20	156,46	27,54	184,00

(1) Dont 0,20 F pour constitution et entretien de stocks de réserve.

Au verso : GAS-ÖIL

(2) Pour arrondi au niveau des prix d'affichage TTC.

\* Complément pour constitution et entretien de stocks de réserve (arrêté n° 25 850 du 29 janvier 1971).

PB - 06/07

PARI

PARI

August 12, 1974

SUMMARY OF PETROLEUM PRICE CONTROLS IN JAPAN

Following the rapid escalation of crude oil and refined product prices during the Fall of 1973, the Japanese Diet enacted two laws (the Petroleum Stabilization Law and the National Livelihood Stabilization Law) which authorized allocation of petroleum, petroleum price controls and petroleum consumption restraints. Following enactment of this legislation, the Japanese government froze petroleum prices at the refinery on December 22, 1973. At the same time, it froze prices at retail for LPG and kerosene. (Prices for these two products are the most politically sensitive in Japan since most consumers use both for household purposes.) At the outset, no price controls were imposed upon other products at retail, but after the January 1 increase in crude oil prices by the OPEC nations, prices were frozen on other products as well.

The December freeze on refinery prices took place in the face of rapidly rising crude oil prices in the world market. The Japanese government stuck with its decision to freeze refinery prices largely on the rationale that the companies were realizing substantial inventory stock profits on the crude oil which they had in hand which totalled about 50 days supply in the aggregate. In addition, the government calculated an average of 20 days transport time between the Middle East and Japanese

ports. Consequently, it advised the companies that a price increase would be permitted after the expiration of this 70-day period (50 day inventory plus 20 days transportation), or by about March 10.

It is significant that the Japanese maintained a stringent price freeze during the most serious period of the embargo and the rising crude oil market associated with the worldwide shortage. This action is in sharp contrast to the United States which permitted full-cost passthrough during this period and with the European countries which acted to permit price increases in January and February to reflect the December price hike put into effect by the OPEC nations. Moreover, its action in forcing the companies to draw down on inventories took place despite strong opposition by the industry which claimed that the inventories ought to be maintained in the face of the emergency. Ultimately, the government did permit a price increase, but not until March 18, 1973, and the freeze had the effect of wiping out profits which the companies had acquired during the last quarter of 1973.

On March 18, the government raised the ex-refinery price from the December weighted average of 14,357 yen by about 65 percent - or a total of 8,496 yen per kiloliter. The increase was calculated in the following manner:

1. Average cost of crude oil, March 1974: \$10.53 bbl.
2. Exchange adjustment (calculated at 290 yen per dollar, even though actual exchange rate was about 280 yen per dollar in March, thus building in a slight cushion) and conversion to kiloliters. This yields a total of 19,208 yen per kiloliter.
3. Reduced by the average cost per kiloliter of crude oil incurred in the first half of 1973 and already reflected in prices.

$$\begin{array}{r} 19,208 \\ - 5,192 \text{ (first half 1973 crude cost)} \\ \hline 14,016 \text{ yen} \end{array}$$

4. Reduced by an inventory revaluation adjustment to dissipate stock profits.

$$\begin{array}{r} 14,016 \\ - 257 \text{ (inventory adjustment)} \\ \hline 13,759 \text{ yen} \end{array}$$

5. Reduced by the average cost per kiloliter of crude oil incurred in the last quarter of 1973 and already reflected in prices.

$$\begin{array}{r} 13,759 \\ - 4,813 \text{ (last quarter 1973 crude cost)} \\ \hline 8,946 \end{array}$$

6. Total adjustment 8,946 yen per kiloliter

At the same time, the government reviewed the retail price structure and permitted retail prices to rise for gasoline and most other products, except kerosene used for household purposes which was maintained at the December freeze level. In the case of gasoline prices at retail, the government

concluded that margins had increased excessively prior to the December freeze (they had increased to the equivalent of about 35 cents per gallon) so it was determined to reduce the margin to the equivalent of about 28 cents per gallon in lifting the retail ceiling price for gasoline to 100 yen per liter. LPG was permitted a modest increase, less than gasoline at retail, to reflect increased costs and also to reflect a very long distribution chain where middleman profits had to be maintained.

It should be noted that the 8,946 yen increase (or about 65 percent) allowed at the refinery level on March 18 was applied across the board to all companies and all refinery products. This is in sharp contrast to the price control system employed in the United States which recognizes different company cost structures and also permits more flexible loading of costs upon some of the refinery products (i.e., the special products, other products rule). This across the board application of a uniform price increase has had a differential impact on individual Japanese refiners, depending upon their cost structure and their refinery configuration. For example, it has generally skewed the higher prices towards the lighter fuels and against the heavier fuels which are the larger proportion of the output from most Japanese refineries. The larger, more sophisticated refineries which can obtain a higher yield of lighter products are thereby advantaged in comparison to their competitors which have a disproportionate output of heavy fuels. It should be noted, however, that this differential impact is marginal compared to the effect

on U.S. companies of different prices for low-cost domestic crude and higher priced imports.

Moreover, even at the time it was allowed, this increase did not provide a full-cost passthrough to the refineries, first because of the reduction for inventory revaluation which was included in the calculation and second, because it did not permit recoupment of higher costs which had been incurred during the freeze. However, to date there has been no further price increase permitted by the government, notwithstanding the fact that costs have continued to escalate since March. Both the government and the industry concede that the companies are now losing about \$1.00 to \$1.05 on each barrel of crude which they import into Japan, without taking account the adverse exchange rate differential.

A general election was held in mid-July in which the Tanaka government and the Liberal Democratic Party were returned to power, but with reduced strength. The election is generally interpreted as a significant defeat for the government, related in substantial part to the effect of inflation in the Japanese economy which at mid-Summer 1974 was running at an annual rate of about 25 percent. The Diet was reconvened in late July and there was widespread debate about petroleum prices - as well as other prices - and it was widely expected that a new policy would be promptly announced on petroleum prices. However, the Diet adjourned in the first week of August without taking action on the subject.

Since the March price increase is admittedly insufficient and since the two laws enacted in December expire later in August, some action by the government is clearly imminent. The dilemma which the government faces is generally as follows: CIF prices for crude oil have increased from the \$10.53 reference cost in March to a range of about \$11.11 to \$11.30 in August 1974. Similarly, the exchange rate has declined to about 300 to 302 yen per dollar in contrast to the 290 yen per dollar exchange rate in the March reference calculation. Finally, the inventory revaluation which was employed to reduce costs in the March reference calculation must now be substantially increased. Thus, if the same price controls mechanics are employed now as were employed in March, very substantial price increases must be authorized.

The supply/demand picture for petroleum in Japan has altered dramatically and will have a significant impact on the ultimate decision which the government makes. Whereas demand in Japan had been growing at the rate of between 12 and 15 percent in recent years, the government now projects a flat demand curve for the next year even without the maintenance of mandatory conservation measures. This projection reflects a combination of higher prices and a comparatively tight fiscal policy which the government plans to follow and which will retard business expansion. At the same time, supplies have increased dramatically and Japan, in the words of one industry official, is "swimming in oil". The significance of the surplus is reflected in the

fact that the government has recently authorized reinstatement of export trading in petroleum. Moreover, although the Japanese were aggravated by the Gulf and BP settlement with Kuwait at 95 percent of posted prices, they were relieved that part of the settlement was a reduction of the buy-back obligation of the two companies and consequent reduction in Japanese purchase obligations.

Notwithstanding the surplus of oil in the market, Japanese refiners are continuing to import crude oil and to refine and sell petroleum products at very high levels, a trend which is expected to continue. Three reasons explain this behavior. First, the companies entered into shipping contracts months ago and the cancellation penalties are so substantial (alleged to be 1 billion yen per vessel) that the companies would rather continue to import than to incur the contract penalties. Second, most Japanese companies buy under contract from the majors and they are reluctant to cancel their supply contracts because of the need to maintain long-term contractual relationships with their suppliers in order to maintain secure sources of supply in the event of a future interruption. Third, the companies have historically competed very vigorously for market share and they are reluctant to cut back production and risk market penetration by their competitors. In this connection, it is significant that prices for gasoline at retail are currently below the 100 yen ceiling, in the range of 93 yen per liter and falling.

The attitude of the Japanese government is not unlike our own: they are very anxious to return to an uncontrolled market. As one official put it, "We have already tempted the gods too long." However, they are very reluctant to accept the political responsibility for eliminating controls if the result would be higher prices. There seem to be three alternatives available to the government. First, they could increase prices under their price control authority using basically the same mechanism as was employed in March. There are obvious political and economic disadvantages to using a controls mechanism to increase prices in the face of the market conditions which now prevail. Second, they could simply leave the existing price controls mechanism unchanged and await the expiration of the statutory authorization later this month. Under the system of "administrative guidance" which prevails in Japanese industry (something akin to "jawboning" in this country) the government would be obliged to provide some price guidance even if this approach were adopted. Third, they could decontrol petroleum prices.

On the basis of discussions with government officials, it is obvious that decontrol is under very serious consideration and a high official in MITI (Ministry of International Trade and Industry) advised that decontrol may very well be decided upon and announced before the end of the month. Given the outlook for stable demand and the continued high level of industry importing and production activity, officials are cautiously

optimistic that removal of price controls would have the effect of lowering prices. This view is shared by at least one major oil company operating in Japan. Conversely, there is the feeling in official circles that the existing price control mechanism may well be artificially propping up prices and that price controls have become a floor rather than a ceiling. If this view prevails, it seems very likely that petroleum prices will be decontrolled in the very near future, though it is likely, even if decontrol is ordered, that some form of residual controls will be continued over the politically sensitive kerosene and LPG prices.

The consequences of petroleum price decontrol in Japan are important in several respects. First, putting aside the differences which result from United States crude oil production and the differential between domestic United States crude oil prices and world prices, the situation in Japan could be instructive to the United States in terms of the reaction of refined product prices to decontrol under current market conditions. If product prices in Japan should go down following price decontrol, there may be reason for increased optimism that the same phenomenon could occur in the United States (assuming some form of crude cost equalization). Alternatively, if the converse result occurs and Japanese petroleum prices increase, there is reason for added caution to proceed toward product price decontrol in this country.

If product prices are not increased in Japan (or if they decline), Japanese refinery profits will be increasingly squeezed, since imported crude oil costs continue at very high levels in world markets notwithstanding the developing surplus. Companies are now losing a dollar or more per barrel for each barrel imported and this trend will be exacerbated if prices should go down. Two consequences flow from these factors. First, the investment climate in Japanese oil companies will turn increasingly bearish and second, over time, Japanese importers can be expected to curtail their activities in world crude oil markets. It seems likely that they will become a factor seeking to depress world market prices rather than to increase them as their focus of attention shifts away from insuring the maintenance of adequate supplies to avoiding ruinously high prices. This factor may have an impact on the prices which are bid the anticipated forthcoming auctions for Middle East crude oil.

William N. Walker  
Counselor to the Administrator  
Federal Energy Administration

NOVEMBER 20, 1974.

MELVIN A. CONANT,  
*Acting Assistant Administrator,  
Federal Energy Administration, Washington, D.C.*

DEAR MR. CONANT: In further consideration of your nomination now pending before the United States Senate, I would appreciate an immediate reply to the following questions.

1. Since joining the Federal Energy Office (now Federal Energy Administration) in January of 1974, have you interviewed any persons for positions within any branch of FEO (FEA) and if so, what are their names, present addresses, and by whom were they employed during the past ten years? Please indicate how these persons were brought to your attention. Have you recommended any persons for employment within any branch of the FEO (FEA), and if so, please state the names, addresses, and former employer during the past ten years. Which of those you have interviewed or recommended for employment have been hired by FEO (FEA)? Please supply a copy of biographical data in FEA files of all those hired.

2. Have you ever been employed by the Central Intelligence Agency or any other intelligence-gathering agency of the United States Government on a formal or an informal basis? Have you ever worked for an organization which was funded, directly or indirectly, by the CIA or any other intelligence-gathering agency of the United States Government? Have you worked for or with an organization which cooperated with the CIA or any other intelligence-gathering agency of the United States Government?

If the answer to any of the foregoing questions is affirmative, please indicate the nature and duration of the relationship with the CIA or any other intelligence-gathering agency of the United States Government. Also please indicate what the status of your relationship, if any, is at the present time.

Sincerely,

HOWARD M. METZENBAUM,  
*U.S. Senator.*

FEDERAL ENERGY ADMINISTRATION  
WASHINGTON, D.C. 20461

November 26, 1974

Honorable Howard M. Metzenbaum  
United States Senate  
Washington, D.C. 20510

Dear Senator Metzenbaum:

I have your letter of November 20th, which was received in my office on the morning of November 25th. I hasten to reply.

It is impossible for me to respond as fully as you request in commenting on persons who have applied for positions in FEO/FEA. For one thing, the first two months of my presence in Washington had me interview two or three persons a day. Most of these I rejected, others I passed on to my staff to handle and in most cases, so far as I am concerned, there could be no record. I would guess that the majority of these persons came without any introduction from a third party. I cannot recall having recommended any of these persons for interview elsewhere in FEO/FEA; there would have been no point in keeping a record of persons in whom I was not interested.

I am presuming that the kind of information you seek is the extent to which persons I have employed came to my attention as a result of an industry initiative or that the persons themselves had background experience in energy, especially oil. I enclose biographies of James Morris, Bernard Kritzer, James West, Arthur Warner, Clement B. Malin, David Oliver, and Joseph Story.

With regard to these, Jim Morris was not hired by me but by my then colleague, Leigh Ratiner, and I do not know the circumstances. He has performed with distinction.

With regard to Bernard Kritzer, I invited him to meet with my staff and it was the unanimous view that he should be employed. I was responsible for bringing him to the

attention of Exxon in 1972 and am particularly pleased that a man of his outstanding qualities agreed to join IEA/FEA.

As for Jim West, he was in IEA at the time I joined, as a result of an invitation from Stephen Wakefield, then Assistant Administrator of International Energy Affairs. Upon Mr. Wakefield's resignation, I invited Mr. West to stay on and recently promoted him to be Associate Assistant Administrator for Energy Importing Nations and International Energy Resources. Mr. West is well-known in the U.S. Government and has made a signal contribution to the U.S. Government initiative which has resulted in the International Energy Agency located in Paris. Mr. West possesses a unique knowledge of emergency supply.

Arthur Warner was recommended to me by Jim West. Arthur Warner was brought in to provide IEA with additional resources in highly expert evaluations of international oil. In the short time he has been with us he has made a distinctive contribution to the quality of our work.

My Deputy, Clement B. Malin, came to my attention as a result of his having applied for an IEA position at the end of 1973. Mr. Wakefield asked me to interview Mr. Malin, which I did. I was impressed from the outset with the quality of the man; his interest in serving his country reflected the same considerations which prompted me to accept the invitation I received. Without his highly expert knowledge and complete integrity, the deservedly high reputation of IEA could not have been obtained. I have total confidence in him as do others who have been privileged to work with him.

With regard to the biography of David Oliver, please be advised he is not presently on my staff but he has been invited to join and I look forward to his acceptance.

Mr. Joseph Story was interviewed by me; I do not recall the circumstances which brought him to my attention. You will note that from his biography he has had a variety of relevant experience including and most importantly a tour of duty with the Iranian Consortium. He has brought exceptional talents to our work and I have nothing but confidence in his integrity, a remark I would make of everyone listed.

Finally, you should be advised that Loren Kahle, currently with Esso Middle East, has requested my advice as to the next step in his career. I have, with great reluctance, concluded that

because of his particular industry connection, I could not engage him. I would want to state most emphatically that this decision is to the loss of IEA for Mr. Kahle could make an outstanding contribution given his knowledge of the Middle East and of international oil. I shall attempt to have him interviewed elsewhere in FEO/FEA, the Treasury Department and the Department of State.

With respect to the facts requested in response to your second set of questions, my answer to the first is "No". The answer to the second is "No, not to my actual knowledge;" and the answer to the third is that in my capacity as a Government Relations Counselor for Exxon I was responsible for a number of contacts in the U.S. Government, including CIA, and responded to questions and occasionally volunteered information as a public service. My present relationship with the intelligence community is that which an official of the U.S. Government would be expected to have in the conduct of official business.

Sincerely yours,

/s/

Melvin A. Conant  
Assistant Administrator  
International Energy Affairs  
(Designate)

cc: Senator Jackson  
Senator Fannin

bcc: Mr. VanNess/Garside  
Mr. Loesch/Stang

JAMES P. MORRIS OFFICE: (202) 254-8480  
HOME: (703) 437-9674

EDUCATION

B.S. (1957) University of California  
Berkeley, California  
LL.B. (1964) Catholic University of America  
Washington, D.C.

GOVERNMENT SERVICE

Federal Energy Administration  
Feb 1974 to Date  
Chief, International Organizations and Consumer Country Affairs Division: Develops, coordinates and implements U.S. international energy policies and programs affecting the major industrialized countries, in bilateral and international fora such as the UN and the OECD.

Office of the Secretary of Defense  
(International Security Affairs)  
1968-1971, and 1972-74  
Assistant for Strategic Analysis: Developed national policies and programs to protect our most vital security interests as well as U.S. security interests in Europe and the Far East.

PRIVATE INDUSTRY

Mobil Oil Corp  
1971-1972  
Presidential Interchange Executive: Objectives, investment and profit planning in the International Division.

Operations Research Inc  
1962-1968  
Project Leader: Management sciences, operations research, strategic planning, systems analysis and legal analysis for clients in the private and public sector.

Melpar, Inc  
1957-1962  
Mechanical, Production, and Administrative Engineer: Accomplished a variety of assignments in design, production, cost estimating and program management.

OTHER

Member, American and D.C. Bar Associations  
"National Security and International Business", co-author, 1969  
Frequent speaker and participant in seminars on national security and energy policies.  
Born 1935; married with two children

ATTACHMENT

## BERNARD KRITZER

925 - 25th Street, N.W.  
Washington, D.C. 20037

Date of Birth: 3-18-47  
Place of Birth: Cleveland, Ohio

Education: B.A. - American University, 1969  
M.A. - Columbia University, 1972

Government Service:

April 1974 to Present: International Relations Officer, International Energy Affairs, Federal Energy Administration, Washington, D.C. Performs analytical work and participates in interagency discussions, studies and negotiations dealing with a wide variety of international energy problems between the U.S. Government, U.S. industry and the Soviet Union and Near East oil-producing countries.

Private Industry Service:

December 1972 to April 1974: Analyst-Consultant, Exxon Corporation, New York, N.Y. Prepared reports on Soviet energy, East-West trade, Middle East oil and the Soviet and Middle East economics.

Previous to the above, Mr. Kritzer held various part-time jobs.

## JAMES A. WEST

1317 N. Lynnbrook Drive  
Arlington, Virginia 22201  
Tel: 703-528-0741

Born 1923; Married; One  
Daughter (Student - will graduate  
William & Mary College, Dec. 1974)

- Education: M.S. in Petroleum Engineering, University of Tulsa  
Tulsa, Oklahoma, 1952
- B.S. in Petroleum Engineering, University of Houston,  
Houston, Texas, 1948
- M.B.A. (equiv.) Industrial College of the Armed Forces,  
Washington, D. C., 1969 (Interior Dept. selectee)

Government Service:

Aug. 1974 to date. Appointed Associate Assistant Administrator  
For Energy Importing Nations and Resource, International  
Energy Affairs, Federal Energy Administration. Responsible  
for developing energy policy options for this area. Served  
on U.S. delegation to the ECG and assisted in establishing  
the International Energy Program among major consuming  
countries.

Jan. 1974 to Aug. 1974. Federal Energy Office. Special Staff  
Assistant to Assistant Administrator, International Energy  
Affairs. Prepared energy forecasts and served on Forecast,  
Natural Gas, Accelerated Development and other OECD energy  
working groups. Directed preparation of first Project  
Independence report.

1972 - 1974. Department of the Interior. Staff Assistant to  
Assistant Secretary, Energy and Minerals. Principal advisor  
on engineering, economic, and scientific energy matters.  
Coordinator of Departmental fuels and energy analyses and  
programs.

1960 - 1972. Department of the Interior, Bureau of Mines.  
Chief, Interfuels & Special Studies (1970-72). Group  
Leader, Energy Analysis (1969-70). Area Director, Near  
East-Africa (1964-68). Chief, Operations, Helium Activity  
(1960-64). Petroleum and Natural Gas Engineer (1948-1952)

Private Industry Experience:

1956 - 1960. Socony Mobil Oil Co., Inc., Regional Engineer Middle East (1958-60). Joint Interest Engineer, Socony Mobil Oil de Venezuela (1956-58).

1952 - 1956. Arabian American Oil Co., Production-Reservoir-Development Engineer, Dhahran, Saudi Arabia (1954-56). Reservoir Engineer, New York, New York (1952-54).

Other:

Publications: Co-Author "U.S. Energy Through the Year 2000" (1972) and "U.S. Energy - A Summary Review" (1972), Department of the Interior. Author "Fuels and Energy", Encyclopedia Britannica Science Yearbook (1970 thru 1974). Numerous Bureau of Mines "Minerals Yearbook" and technical articles.

Registered Professional Engineer (Texas)

Member, Society of Petroleum Engineer (ALME)

Speaker: Addressed 30 industrial associations, academic institutions, technical societies, etc., in past year.

Lecturer: CIA Mid-Career Development Courses, Industrial College of the Armed Forces, Government and Academic groups.

Military Service: U.S. Navy, 1943-46, (Naval Air Force)

ARTHUR WARNER, SR.

10107 Forest Avenue  
Fairfax, Virginia 22030

Date of Birth: 5-30-28  
Place of Birth: Hamtramck,  
Michigan

Education: Michigan State University, 1950, B.S.  
Wayne State University, 1956  
Industrial College of the Armed Forces, 1974

Government Service:

October 1974 to Present Time: Physical Scientist,  
International Energy Affairs, Federal Energy Administration,  
Washington, D.C.

April 1956\* to September 1974: Petroleum Engineer,  
Bureau of Mines and U.S. Geological Survey, Department of  
the Interior, Washington, D.C. Responsible for planning,  
programming and supervising the preparation of mineral supply  
studies related to energy with emphasis on natural gas,  
hydrogen, helium and products related thereto.

Private Industry Service:

June 1950 to April 1956: Exploration Geologist,  
American Oil Company, Tulsa, Oklahoma and Hobbs, New Mexico.  
Worked as a geologist performing various technical duties.

## CLEMENT B. MALIN

6611 Dearborn Drive  
Falls Church, Virginia

Date of Birth: 4-4-34  
Place of Birth: Drexel Hill,  
Pennsylvania

Education: A.B. - Dartmouth College, Hanover, N.H. - 1956  
M.P.A. - Princeton University,  
Princeton, N.J. - 1960

Government Service:

June 1974 to Present: Deputy Assistant Administrator, International Energy Affairs, Federal Energy Administration. Principal liaison point within the energy office for governmental and non-governmental bodies whose energy interests are focused on the international trade or economic aspects of energy issues. Responsible for developing proposals for and initiating bilateral or multilateral programs that will lessen the economic burden to the United States of energy imports; encouraging binational or multinational efforts to broaden participation in energy prospects of benefit to the U.S.; assisting in development of economic or trade incentives for countries with energy surpluses that will result in their looking to the U.S. as a rewarding market. Acted as the Energy Office's principal representative to multilateral and bilateral arrangements (e.g., "special relationships" with Saudi Arabia) essentially with the critically important energy-exporting nations of the Middle East and the relations of U.S. allies to those same nations. (Salary - \$32,973)

February to June 1974: Chief, Producer Country Organizations and Industries, International Energy Affairs, Federal Energy Administration, Washington, D.C. Recommended policy options with respect to United States Government relations and initiatives with oil producing countries aimed at insuring adequate supply of oil to United States. Maintained information channel with oil and other energy industry to permit exchange of views. Regular contacts with foreign government personnel. (Salary - \$32,973)

Name: Clement B. Malin

Private Industry Experience:

August 1973 to February 1974: Assistant to Area Manager, Mobil South, Inc., New York, N.Y. Served as Deputy to Executive responsible for Mobil's operations in 16 African and Middle Eastern affiliates. (Salary - \$33,300)

July 1971 - July 1973: Projects Planning Manager, Mobil South, Inc., New York, N.Y. Advised Senior Management on Planning Matters and business strategy in 25 African, Middle Eastern and Latin American affiliates; acquisitions, joint ventures, supply agreements, political and economic analysis, and capital investment programs. Extensive travel (Salary - \$33,000)

August 1969 to July 1971: Planning Manager, Mobil Latin American, Inc., New York, N.Y. Advised Senior Management on planning matters and business strategy in 10 Central and South American and Garibbean exploration, producing, refining and marketing affiliates. Extensive travel. (Salary - \$27,000)

August 1967 to July 1969: Planning Coordinator, Mobil Europe, Inc., London, England. Advised Senior Management on planning and supply matters in 6 Benelux and Scandinavian marketing and refining affiliates. Extensive Travel. (Salary - \$22,000)

July 1965 - July 1967: Planning Manager, Mobil Oil B.V., Rotterdam, Netherlands. Directed planning activities in Mobil's marketing affiliates in Benelux. Extensive Travel. (Salary - \$16,000)

October 1963 to June 1965: Planning Advisor, Mobil AOEC Group, Paris, France. Directed planning activities in 5 Mobil companies marketing in 14 countries of West and Equatorial Africa. Traveled in Africa. (Salary - \$12,000)

October 1961 - September 1963: Junior Planning Assistant, Mobil International Oil Company, New York, N.Y. Prepared planning studies and economic analyses. Traveled in Europe. (Salary - \$10,200)

July 1960 to September 1961: Projects Assistant, Mobil International Oil Company, New York, N.Y. Prepared marketing studies, field travel in Europe and South America. (Salary - \$8,800)

December 1956 to September 1958: Instructor, Army Medical Service School, Ft. Sam Houston, Texas.

## DAVID OLIVER

5202 Banning Place  
Burke, Virginia

Date of Birth: 3-6-20  
Place of Birth: Burlington, N.J.

Education: Univ. of Pennsylvania, 1953  
Temple University, 1956  
Swarthmore College, 1941 - A.B.

Government Service:

January 1974 to Present Time: Senior Staff Technician, Federal Energy Administration, Washington, D.C. Responsible for preparing economic studies, coordinating and reviewing major staff investigations relating to measures to expedite the development and production of the nation's oil and gas resources. Participated in the oil supply analysis for Project Independence and coordinated the responsibilities of the Office of Oil & Gas in a study of oil and gas reserves and producing capacity as required by the FEA Act of 1974.

January 1965 to December 1973: Specialist, Office of Oil & Gas, Department of the Interior, Washington, D.C. Administered and supervised professional staff of engineers, chemists, geologists, economists and statisticians who provided professional staff of support to Interior's secretariat regarding oil, gas and energy. Maintained surveillance over and provided analyses of oil and gas events worldwide; participated in the development of energy policies and programs; analyzed current and proposed programs and legislation; drafted prototype energy allocation programs; participated in major revision of oil import program; prepared and published periodic forecasts of U.S. and world oil demand and supply.

Private Industry Service:

August 1946 to December 1964: Worked as a petroleum economist with the Atlantic Refining Co., Philadelphia, Pa. Was responsible for the preparation and presentation of reports to management on current petroleum industry developments, the economic structure of the petroleum and related industries; the economics of oil and gas production and trends in processes, costs and profitability in petroleum refining. Also directed and participated in analyses of U.S. and foreign economies; financial and operating analyses of competitor companies and appraisals of investment opportunities.

Joseph C. Story

1017 Springvale Road  
Herndon, Virginia 22070

Born 1931; Married;  
One Child

Telephone Number: (703) 759-2089

Education: M.S. in Economics, University of Illinois,  
Urbana, Illinois, 1961  
B.S. in Business, Indiana University,  
Bloomington, Indiana, 1954

Government Service:

April 1974 to date. Federal Energy Administration. Acting Chief of Producing Country Affairs, responsible for matters involving international economic and financial relations between the U.S. and energy exporting countries, in particular matters relating to international energy investment flows, the status of oil concessions, and the interplay of economic forces between and among energy exporting countries.

July 1967 to December 1967. Central Intelligence Agency. Senior Economist covering developments in the economy of India.

November 1964 to December 1966. Agency For International Development. Development Officer responsible for planning and implementation of rural public works programs in North India.

September 1961 to November 1964. Central Intelligence Agency. Country Economist. Responsible for research on the economy of North Korea.

Private Industry Experience:

January 1972 to December 1973. Oil Service Company of Iran, Tehran, Iran. Project Leader for External Economics responsible for reporting on developments in the Iranian economy, including trends in GNP, balance of payments, public finance, development spending, and prices. Also reported to company management on energy developments in Iran and in the Persian Gulf region.

November 1970 to December 1971. Human Sciences Research, Inc., McLean, Virginia. Project Director of USG contract study of the economic and political causes of violence and internal unrest in the developing countries of the world.

November 1968 to February 1970. Development and Resources Corporation, New York, New York. As Agricultural/Development Economist prepared economic input for UN regional development and irrigation feasibility study in North Afghanistan.

July 1968 to November 1968. American Freedom from Hunger Foundation, Washington, D.C. Assistant Director responsible for the review and selection of suitable economic development programs for support and funding by the Foundation. Worked with international agencies such as CARE, Church World Service, UNICEF, and FAO.

February 1961 to August 1961. Ford Motor Company, Chicago, Illinois. Cost Analyst performing studies to lower costs and improve efficiency in auto assembly operations.

July 1957 to September 1958. Pfizer International, Inc., New York, New York. Inventory Analyst responsible for charting sales and requirements trends of pharmaceuticals in overseas markets.

August 1956 to June 1957. Audit Bureau of Circulations, Chicago, Illinois. Auditor responsible for confirming circulation figures of newspapers and magazines.

Other:

Member of American Economic Association  
and Society for International Development

Military Service: U.S. Army, 1954-56

SEPTEMBER 10, 1974.

HON. HOWARD METZENBAUM,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR METZENBAUM : In addition to your question concerning the Exxon calculation of the severance payment made me upon termination of employment, to which I have responded under separate cover, you asked me concerning the "achievements" which I thought had been secured since I had become Acting Assistant Administrator.

I became Acting Assistant Administrator in mid-June. It is difficult for me to separate what I hope has been achieved since then from the groundwork laid previously. Moreover, I would want to make clear from the outset that in writing of these "achievements" they are the product of an exceptionally able and dedicated staff of men and women; moreover, none of these "achievements" has been secured in the sense that the problems they address are solved; the issues will be with us for the rest of our lifetime.

I would count first among these efforts the bringing together of the international energy staff. We have had full opportunity to obtain from many parts of the Executive Branch and from university life men and women who bring diverse and exceptional talents to the work of defining the international aspects of the U.S. energy interest. We have several outstanding persons from industry who share fully the concerns which motivated me and which we discussed yesterday. Our staffing is not complete but it is a substantial achievement which should result in FEA's international energy branch being the most competent of all in dealing with overseas energy interests of our country.

The second "achievement" has been the launching of what is called the "Krueger Study." This is a project to be completed by year end which will lay out the range of options open to the U.S. Government in defining its presence in international oil and the means whereby our national interests can be expressed effectively. To my knowledge, this is the first such major study ever made within the Executive Branch.

Thirdly, we have contributed in a special way to the ongoing study of Project Independence. The continuing dependence of the United States upon some level of imports requires that the consequences of this dependence be integrated fully into the calculations we must make in reaching a U.S. national energy policy. To my knowledge, it is the first time that the political, economic and security interests of the country, which are involved in these imports, have been so thoroughly examined in the context of our domestic energy policy.

Finally, I would emphasize the progress made in enlarging upon our knowledge of international pricing practices. While such information has long been housed in the international oil companies, it has taken a very special and extended effort to equip this part of the Executive Branch with the knowledge which will lead to accurate assessments and good judgments about an enormously complicated and exceedingly important aspect of energy. It is not easy to create this resource within a few months, as you will appreciate. I want to emphasize again that these so-called "achievements" are very much in process but I am confident that within the near future we will be an essential resource for the implementation of U.S. national overseas aspects of international energy policy.

Sincerely,

MELVIN A. CONANT,  
Assistant to the Administrator.

Mr. CONANT. In view of the fullness of the September 23 hearing, I shall not do more than summarize in briefest form the reasons why I accepted our Government's invitation, several key observations on the company's severance arrangements and then conclude by referring to the fundamental policy question before us.

One, over the past few years an observer of international oil developments could only conclude there was an urgent and growing need to define our national interest in oil supply and then to fashion appro-

ropriate policies. These questions go far beyond the commercial interests of companies. When asked by FEO to help in this process, I accepted. It must be evident from the record that my background and interests have always covered a wider horizon than the purely commercial aspects of oil.

Two, upon learning of my wish to accept the Federal Government's invitation to join FEO at a level very considerably below the one to which I have been nominated, and having stipulated that were I to do so, I would have to sever all financial interests in Exxon—a condition also made clear to me by our Government—that corporation ended my employment with a severance sum reflecting its assessment of my past services.

As indicated earlier, these arrangements were reviewed carefully in writing and in advance by all parties concerned. It is clear from the public record that each of us was sensitive to the issues involved and took every conceivable step to be assured that the matter was handled properly. Included in the severance arrangement was the written stipulation that the company had no obligation whatsoever to reemploy me when I leave Government service nor do I have any obligation to apply.

Three, now for general observations on the central policy questions which I believe underlie these and other hearings.

Do we wish to continue the system whereby Government resources are supplemented by inviting qualified private citizens to public service?

One argument for doing so is to check the tendency of Government to become remote from the world which lies beyond, to help Government be responsive; another reason is to make available to Government perspectives or skills to meet new contingencies. This system is peculiarly American; I know of no parallel elsewhere. It is one of the most remarked upon aspects of our political life and institutions. While it has its critics, I believe it is fundamentally a prudent and wise device.

A major problem, perhaps never fully addresses, is the need for laying down comprehensive and uniform guidelines to be applied to private citizens, such as myself, who are asked to interrupt their professional careers to accept positions of trust and responsibility. It is my clear impression that such procedures do not now exist in the necessary scope and detail. Absent these, all interests can only, and must, take the precautions which were taken in my case before entering public service.

The need for such is plainly evident when we move from the general question of meeting our Nation's needs by inviting private citizens to public service to the more specific and far more difficult one: How do we best provide for competent and honest direction of regulatory agencies?

The expertness required is not always available from within Government. Such has certainly been the case with the Federal Energy Administration. The dilemma is that expertness is likely to be found in the very activity which an agency is created to regulate. How does one attract the right person into such an effort? How does one best

protect the public interest from abuses of the public trust? Laws and regulations are needed, but will never suffice. Integrity and moral fitness, in addition to competence, are absolute requirements.

Mr. Chairman, thank you for this additional opportunity; I shall remain throughout this hearing and will be responsive to questions raised by witnesses' testimony, if you desire.

Senator METZENBAUM. Thank you, Mr. Conant. I think you have stated the problem quite accurately, and I think you have testified before this committee with candor and for that, we are very much appreciative.

I would like to ask a few questions. I indicated in my opening statement and in my private discussions with you that I have a concern as to who is going to run the FEA. As some of the gentlemen on my right have stated, you oftentimes turn to the industry to be regulated in order to find the expertise.

You stated it becomes a question of the integrity of the individual. I think on the other side of that question is the matter, are there only people from the industry being regulated who have the expertise to accept positions of responsibility in Government, because, you know, I have had this concern as to who is actually a part of your team. I would like to inquire of you with respect to certain ones.

When you came, there was a man by the name of James P. Morris who had a rather responsible position, GS-15. What position does he hold?

Mr. CONANT. James Morris is now a key associate of the Office of Consuming Nations and Organizations Affairs.

Senator METZENBAUM. That is a position of major responsibility?

Mr. CONANT. No. It is not. He is a key aide to an office director.

Senator METZENBAUM. He was there when you came.

Mr. CONANT. No. I am not absolutely sure of that. He was brought into the organization, I believe, by Leigh Ratiner and the exact date he came in, I am not sure of.

Senator METZENBAUM. A former employee of Mobile Oil Corp.

Mr. CONANT. I believe he had 1 year as part of an exchange, an executive exchange, that program whereby someone from Government goes on to an oil company for a year or some other kind of company, a bank, and somebody from the bank or the company has a year in Government.

Senator METZENBAUM. He was an employee, at that time, of the Mobil Oil Corp.

Mr. CONANT. For that year.

Senator METZENBAUM. Your first deputy is Clement B. Malin.

Mr. CONANT. Yes, sir.

Senator METZENBAUM. What does he do?

Mr. CONANT. He is my deputy. He is the Deputy Assistant Administrator for International Energy and represents me on every occasion on which I would otherwise have been present.

Senator METZENBAUM. His background is 13 years with Mobil Oil?

Mr. CONANT. Yes.

Senator METZENBAUM. He was hired by you?

Mr. CONANT. Yes.

Senator METZENBAUM. Subsequently promoted by you?

Mr. CONANT. Yes.

Senator METZENBAUM. He was recommended to you by your predecessor, Mr. Wakefield?

Mr. CONANT. No. He recommended to me that I meet with this applicant who was not known to either of us at that time.

Senator METZENBAUM. Then Mr. Joseph C. Story. He is the rank of GS-14. What is his responsibility?

Mr. CONANT. Mr. Story is Acting Chief of the Office of Producing Country Affairs. He had a comparatively brief experience with part of the Iranian consortium. He has held many other positions in Government.

Senator METZENBAUM. That was immediately prior to coming to Government he had been a part of the Iranian consortium.

Mr. CONANT. Yes.

Senator METZENBAUM. You hired him. You brought him in.

Mr. CONANT. He was recommended to me by one of my close associates, Mr. John Wilhelm, that he should be hired and I was glad to do so.

Senator METZENBAUM. John Wilhelm was a close associate at the FEA.

Mr. CONANT. Yes.

Senator METZENBAUM. You brought him into the Government?

Mr. CONANT. I did.

Senator METZENBAUM. So, actually, you brought a number of people into Government who came directly from the oil industry.

Mr. CONANT. May I elaborate on my reasons for the choice?

Senator METZENBAUM. Please do.

Mr. CONANT. First, Mr. Chairman, the list you were sent—which I had not seen—by congressional affairs in FEA is incomplete. A name left off of this is one to which I particularly wish to refer is that of James West. If you would refer, sir, to my letter to you of November 26, that list in my letter, I believe, is the complete one.

Senator METZENBAUM. It is also part of the bio's we have here.

Mr. CONANT. Yes.

In the case of Bernard Kritzer, he was a man whom I was instrumental in bringing into Exxon for the reason that he possessed highly unusual analytical capabilities and a quite considerable knowledge of Soviet energy, especially gas.

He is, in my view, a unique person. I realized he was not altogether comfortable about remaining in Exxon and when he was in Washington on a visit, I invited him to come by and meet my staff. We had no one in FEA or IDA who was, by any stretch of the imagination, remotely expert in this rather critical area. He is, in my view, more expert in this area than anyone I have met in the executive branch. I was pleased he had accepted the application to join—

Senator METZENBAUM. That is Mr. Kritzer.

Mr. CONANT. Yes, sir.

Senator METZENBAUM. Where did he gain all of this expertise?

Mr. CONANT. He worked with the Russian Institute at Columbia.

Senator METZENBAUM. While he was in college?

Mr. CONANT. Yes, sir.

Second, let me refer to Clement Malin who is my deputy. I had to decide, as it became clear that my responsibilities in IEA were enlarging that it was essential for me to make a choice. I could either proceed and help guide the Administration on the basis of bright, hard-working individuals who had experience in one discipline or another, but who were almost totally lacking in oil industry experience.

I therefore asked Mr. Malin to become my deputy. He had come in at a very considerably lower level. I did so with total confidence in his integrity and in the quality of his knowledge, and I would suggest that he and Jim West have together done more to help shape the U.S. participation in the U.S. emergency plan than any others in Government.

Without his expert knowledge, we would not have that IEP today. Jim West, who was left off this particular list, but included in my letter to you, had some 14 years experience in industry. Since then he has been a valued member of the Interior Department, widely respected for his technical knowledge.

Senator METZENBAUM. With whom was he associated 14 years ago?

Mr. CONANT. Aramco and Mobil. Ten years with Mobil and four years with Aramco.

Others that I have brought in such as Arthur Warner from the Interior Department, a longtime expert in energy, I brought in specifically to be in the international energy resources area. Here again, I had bright, hard-working people without deep backgrounds.

The others I referred to in my letter are ones I am contemplating hiring or attempting to locate for reasons of their expert knowledge.

Senator METZENBAUM. I have some other questions, Mr. Conant.

On September 23, you told this committee that:

Long before the regulations were issued, I consulted with Mr. Montgomery's office and laid down a requirement that neither he nor I nor any of my principal associates would ever meet alone with a representative of any oil company, and this was observed from the moment I entered into a government office.

Mr. Conant, since assuming your position at FEO in January, have you ever had occasion to meet privately with representatives of the oil companies?

Mr. CONANT. With representatives of the oil industry, do you mean employees?

Senator METZENBAUM. Spokesmen. Representatives is the language of your statement to this committee and that is the reason I used it, Mr. Conant; that you would not meet with any representatives of any oil company.

Mr. CONANT. There have been three cases, really four. It may have been more, but I can quickly think of four. One was not so long ago with George Case who is the manager of public and governmental affairs for Esso Standard Eastern, a man who is a close friend and business associate of some years.

The purpose of that meeting, where there was no other person present, was to have what was largely a social discussion as to how well was I doing, did I enjoy Washington, and second, he wanted to know what did I feel some of the OPEC moves in the Far East would do to international business in that area.

Senator METZENBAUM. That was a private meeting with a representative of an oil company concerning the feeling of the OPEC nations that violated your own policy statement.

Mr. CONANT. Not entirely. I have made those same remarks to other representatives of oil companies and one of which I will cite in a second.

Senator METZENBAUM. Didn't you actually tell this committee your policy provided you would never meet privately with a representative of any oil company?

Mr. CONANT. It did.

The second meeting was with the president of British Petroleum North America in which it was my responsibility to pass to him certain observations of the U.S. Government which I was privileged to know and asked to pass on to him for which the presence of a third party was not required.

Senator METZENBAUM. What is his name?

Mr. CONANT. Cazlett.

Senator METZENBAUM. When was that meeting?

Mr. CONANT. That was instituted before the system of maintaining the logs.

I then had a formal—in the sense I sat it up—with my former boss and friend, Mr. Stephen Wakefield and the purpose of that was to discuss the confirmation process in Washington which I understood imperfectly.

I have never discussed with Mr. Wakefield any of his business interests although I know he is associated with a law firm that has very extensive industrial interest.

Senator METZENBAUM. And Baker & Botts is the firm he is associated with, and they represent a number of oil firms.

Mr. CONANT. And gas.

Senator METZENBAUM. When he came to see you on November 12, you made a notation in your log that he was in there in connection with IEA programs. Does that mean International Energy Policy?

Mr. CONANT. No, it does not. I was having considerable difficulties in the executive branch getting our work cranked into the executive.

Senator METZENBAUM. What does IEA stand for?

Mr. CONANT. International energy affairs.

There was another occasion when I met with Mr. Wakefield. It was quite coincidental. He had come into the office. He was in Washington for some reason. He came in to say hello to people. I was in a great rush. I had a meeting with the OMB. I invited him into my office for a few minutes to say hello and then I had to depart.

Senator METZENBAUM. When Mr. Wakefield came to see you, did he discuss with you any matter concerning representation of clients of his or Baker & Botts?

Mr. CONANT. Never.

Senator METZENBAUM. Did he discuss with you any matters pertaining to OPEC policies or U.S. policies vis-a-vis international oil?

Mr. CONANT. No, only insofar as I myself raised this as to how IEA was going to make its way in the Federal branch, but that was not the topic.

Senator METZENBAUM. Did you meet with some others privately?

Mr. CONANT. There was another—

Senator METZENBAUM. Would it have been Mr. Jessup and Mr. Krapels? Mr. Jessup is the lobbyist for whom?

Mr. CONANT. He is senior public affairs counselor in the office of Exxon and a man actually I brought into the company and urged the company to hire some 12 years ago. You will notice at that meeting with Mr. Jessup that I had present a third person, Mr. Edward Krapels of my staff who was working then in the area of international energy resources.

Senator METZENBAUM. What did that meeting pertain to?

Mr. CONANT. The IEP, the international energy plan, which is the overseas emergency arrangements the United States is now concluding with a number of countries and in which the involvement of the leading international oil suppliers is a fundamental part.

Mr. Jessup's experience in Europe and the Far East, stretching back over many years, has made him a key point in Washington, both with the State Department and others in FEA on this very difficult matter of emergency supply.

Senator METZENBAUM. Were there any others?

Mr. CONANT. One that may in itself, or two, that appear to be industry as such, and it may be they are too far off, but on October 15, I was invited to meet with Owens & Associates, a Mr. Ware and a Mr. Jepsen. Mr. Jepsen had one time been with Exxon and left the company and they were looking for contract business with the Government.

There was no point in continuing the discussion because we had no contract money. Another instance, International Maritime Associates. I asked a colleague in FEA, Don Creed, if he would bring me together and be present at a meeting with Mr. Lancaster of that company. I did this, not with any other objective in mind. I just heard Mr. Gibson was probably about to be my boss, and I understood Mr. Lancaster could give me some clues as to his character and how do you work under him, but those two which might not appear, at first glance, as being industry were industry.

Senator METZENBAUM. Now, how many of these instances would you say you have violated your own stated policy by meeting with oil industry representatives?

Mr. CONANT. One.

Senator METZENBAUM. Have you had any other meetings, not covered by the logs, with oil industry representatives since you have been with the FEO or the FEA since January?

Mr. CONANT. This log does not go back to January. I have had meetings with oil industry people going right back to the beginning. This would be a natural consequence.

Senator METZENBAUM. Some of them private that would violate your own privacy.

Mr. CONANT. I don't think any of them were private.

Senator METZENBAUM. Have you had meetings with oil industry representatives outside your own office since you have been with the FEA?

Mr. CONANT. Yes. With Stephen Wakefield in New York. With chief executives of Mobil and Exxon. A number of meetings in London with Royal Dutch Shell and European branches of U.S. companies.

Senator METZENBAUM. When you met with Mr. Wakefield, what was that about?

Mr. CONANT. The Krueger study. We were attempting to enlist the hospitality rather than the hostility of international oil companies to the making of such to which I attach great importance. It is an independent effort to lay out the options that are open to all of us in extending Government involvement.

Senator METZENBAUM. Who was Mr. Wakefield representing in that meeting?

Mr. CONANT. FEA. FEO I guess it was then. He was then Assistant Administrator for International Affairs.

Senator METZENBAUM. I thought you said you had meetings with him outside the office, but he was still with Government.

Mr. CONANT. Yes.

Senator METZENBAUM. Not other than that?

Mr. CONANT. No.

Senator METZENBAUM. Senator Hansen.

Senator HANSEN. I have no questions.

Senator METZENBAUM. Senator Johnston.

Senator JOHNSTON. No questions.

Senator METZENBAUM. Thank you very much, sir.

Will Mary C. Lawton please come forward?

**STATEMENT OF MARY C. LAWTON, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE**

Ms. LAWTON. I have no statement, Senator.

Senator METZENBAUM. Thank you.

Ms. LAWTON, your official position is what?

Ms. LAWTON. Deputy Assistant Attorney General, Office of the Legal Counsel, Department of Justice.

Senator METZENBAUM. How long have you held that position?

Ms. LAWTON. That position, since February 1972.

Senator METZENBAUM. Prior to that?

Ms. LAWTON. I have been in the Office of Legal Counsel since 1960.

Senator METZENBAUM. You have been in the Attorney General's office about 14 years.

Ms. LAWTON. Yes.

Senator METZENBAUM. You wrote an opinion dated August 7, 1974,\* which examined the application of 18 U.S.C. 209(a), the statute prohibits the supplementation of the salary of an employee of the U.S. Government. You concluded in that opinion, and I quote, "We do have reservations concerning technical compliance with 18 U.S.C. 209(a) in this instance."

But, you declined to go further and said, "We suggest the entire matter be laid before the appropriate Senate committee for its consideration."

In your opinion, one factor you stressed as perhaps being determinative was whether or not the policy under which Mr. Conant was paid was applied in a uniform manner across the board to all executives who leave to enter public service.

\*See page 16 for letter referred to.

Another factor you stressed was whether the payment could be viewed as being for past service or whether it looked to Mr. Conant's future economic situation after he accepted the Government position.

I would like to explore these two factors with you.

First, who represented to you that the severance payment was made pursuant to a long-standing Exxon policy embodied in a formal document covering employees who leave the company to undertake various public service positions, both governmental and private?

Ms. LAWTON. It was furnished to us as an attachment to the original request for the General Counsel of the Federal Energy Administration for our views, a copy of the Exxon policy, so we had the document itself before us.

Senator METZENBAUM. Did you understand the severance policy is invariably applied across the board subject to certain minimums and maximums?

Ms. LAWTON. No, we did not. We understand it was stated by Exxon always to be discretionary.

Senator METZENBAUM. In what manner did they state that to you and did you make any reference to that fact in your opinion?

Ms. LAWTON. When we got the original submission, we did not have what we thought was adequate information, so we requested the Federal Energy Administration to supply us with additional information.

They, in turn, obtained for us several statements from Exxon indicating the nature of the policy, the discretion in applying the specific amounts and the application of the policy to various individuals in the past.

Senator METZENBAUM. When you wrote your opinion, you talked about it, as I recollect, you talked about it as being a very fixed, definite formula, and I want to ask you, and I have available here your opinion, if you would indicate to me where in your opinion you reflected the fact you were taking into account the discretionary aspect of the Exxon policy, because the entire opinion, as I read it, leads one to a contrary conclusion and I would be happy to make it available to you.

Ms. LAWTON. I can tell you the language, Senator. I don't have the page number, but we discussed in the opinion the fact that the payment is made only if there is to be a lower income in public service. We indicate, if an individual were leaving for public service at a salary equal to, or an income, which is different from salary, equal to what he was getting at Exxon, there would be no payment. This, we received orally from Exxon, but in any case, we had that information.

Senator METZENBAUM. Then you concluded on that basis, you accepted the Exxon reasoning, it was legal to make the payment provided economic hardship did not have to do with the economic loss to the person whose employment was being severed?

Is that correct?

Ms. LAWTON. That is not quite correct, Senator.

First of all, let me explain. The letter itself has three facets to it. The first is the question, was there a violation sufficient to warrant investigation and prosecution? The answer clearly not criminal deficient made that determination from the outset. No basis for prosecution.

That decision means, in our opinion, the statute was not violated.

However, the role of the Office of Legal Counsel in these cases has been mostly prophylactic. We attempt to avoid problems, not only in violation of the conflict laws, the criminal statutes, but also difficulties in the appearance of conflict.

We felt such difficulties existed here, not from anything Mr. Conant did, because, of course, he did his best to avoid the problem. We were also asked by the Federal Energy Administration to provide some guidance for the future because many companies had the severance policies, and they wanted some guidance in looking at them in the future.

We put down some factors we thought ought to be considered and then ended up with our request they please check with us in advance in cases where they thought there was some difficulty involved in post-employment payments. The statute specifically authorizes such as bona fide pension payment plan. That is where the difficulty arises.

The statute recognizes some postemployment payments even though they may present an appearance of conflict. It does not expressly mention severance payments, one or the other. This is one of our problems with the statute in the interpretation, but our difficulty is not interpreting it as a criminal statute. That is to be strictly construed.

As advisers to the Government, we construe the statute very broadly.

Senator METZENBAUM. I will come back to my original question. You say where we have a payment, you talk about the fact—

On the basis of the facts presented to us, Mr. Conant received his payment pursuant to a long-standing Exxon policy embodied in the formal document entitled "Public Service Leave of Absence and Termination Policy" covering employees who leave that company to undertake various public service positions, both governmental and private. Under that policy, an employee who terminates his employment to accept public service receives a lump sum payment "in consideration of his past service." The payment is no less than one-quarter of one month's pay multiplied by the number of years of service and no more than 24 months' pay.

I am asking you where, in your opinion, have you recognized that which you have just stated to this committee that you knew it was discretionary, because that does not sound very discretionary to me. That sounds very arbitrary. The only thing being discretionary is the amount.

Ms. LAWTON. That was the amount being discretionary that is reflected there, but it is made only if there is a lower salary and not automatically to all persons who leave Exxon for public service. In our opinion, it was discretionary.

Senator METZENBAUM. Would you have arrived at a contrary view if you had known the time payment was completely discretionary with the Exxon Co.

Ms. LAWTON. No, sir.

Senator METZENBAUM. Did you know Mr. Conant had told the company that he was leaving, and if he had told the company he was leaving and failed to get their permission, he would have received no severance?

Ms. LAWTON. I read the transcript of the prior hearing. I know it now, but I did not know it at the time of the opinion.

Senator METZENBAUM. You did not know it at the time you wrote the opinion.

Ms. LAWTON. That is the best of my recollection.

Senator METZENBAUM. Do you know that the severance bonus depends on the recommendation of an ad hoc committee comprised of the board of directors?

Ms. LAWTON. Yes.

Senator METZENBAUM. Were you aware that one high official of the Exxon Co., Mr. Alexander Trowbridge, left in 1965 to become Assistant Secretary of Commerce and did not receive any severance money from the company?

Ms. LAWTON. No, sir, I was not.

Senator METZENBAUM. Would you distinguish the Conant and Trowbridge cases.

Ms. LAWTON. With respect to conflict?

Senator METZENBAUM. I will withdraw the question.

Were you aware that the Exxon policy is so flexible that if Mr. Conant had made it clear on leaving for public service that he disagreed with Exxon policies, he would not have received severance pay?

Ms. LAWTON. I knew the company reserved that right to themselves. We did not have it expressed in those terms.

Senator METZENBAUM. Did you ever make any mention of that fact in your opinion, or did you merely talk about an inflexible policy of the company?

Ms. LAWTON. We did not allude specifically to it, no.

Senator METZENBAUM. So, actually, when you wrote your opinion, you wrote it on the basis you had been presented a document which indicated there was an Exxon policy that a man or woman, upon severance, received one-quarter of a month's salary for every year that he had been in service with the company and that the man could be paid more than that, but not in excess of 24 months' salary. Is that correct?

Ms. LAWTON. No, sir. We had more than that. We specifically inquired, for example, whether it is limited to Government service or includes other types of public service.

Senator METZENBAUM. What was the answer?

Ms. LAWTON. That it includes both. Other types of public service as well as Government.

Senator METZENBAUM. Let me ask you another question.

Let me then direct your attention to the transcript in which you said and I quote, "Senator Abourezk inquiring of the uniform application of the severance policy and severance bonus would have been payable even if Mr. Conant had gone into non-Government public service, such as university teaching."

On page 4 you said, "It appears the Exxon policy would provide payment not only to one entering Government service, but one going to an academic institution or a charitable foundation," end of quote.

From this you cite a law review article that says this is not a violation of 18 U.S.C. 209 because it covers non-Government public service.

Reading from the transcript when Senator Abourezk was inquiring of Mr. Moore, Exxon senior adviser on page 132 of the transcript, quote, "Senator Abourezk asked: If Mr. Conant had taken a job at a university, would he have received the same payment? Mr. Moore: Not simply a university. There would have to be some general public service that would not otherwise be provided."

So, as I understand Mr. Moore's statement, only if you went into Government service were you even considered for severance payment.

Ms. LAWTON. I did not read the transcript that way, sir. I understood it to be not all academic teaching automatically, but there would have to be a public service connection and we did indeed have lists of people who had gone into the Urban League and other—

Senator METZENBAUM. And none of them received severance pay according to Mr. Moore's testimony.

Ms. LAWTON. According to the papers Exxon furnished us, they did. We had a list of about six or eight names. I think you have it, Senator.

Senator METZENBAUM. Weren't all of those people taking a leave of absence?

Ms. LAWTON. The list said public leave of absence or public service. It did not differentiate.

Senator METZENBAUM. If you had known the policy was not to pay severance pay to those who had gone into nonpublic service, would your opinion have been different?

Ms. LAWTON. Nonpublic service. We knew that. We knew it was limited to public service.

Senator METZENBAUM. I am talking about nongovernmental service.

Ms. LAWTON. That would have weighed in the balance; yes. It would not have been suppositive, but it would have weighed.

Senator METZENBAUM. Continuing with the legal basis of your opinion, you cite the conflict of interest law may make a severance payment acceptable under 18 U.S.C. 209 (a). There is a question as to whether or not there is a longstanding policy since it is 100 percent discretionary; but going back to that authority, I see on the page you cite, 168 asks four questions which seem to be applicable to this case.

Manning asks, "Is there in an employee's governmental duties that would tempt a former employer to wish for special favors in his dealings with the Government with the employee?"

Ms. LAWTON, wouldn't you say the possibility of temptation which Manning talks about is just in this situation?

Ms. LAWTON. I think that depends on the man's situation, not on the situation.

Senator METZENBAUM. I am not talking about the man. I don't think Mr. Manning talks anything about that at all. He talks about is there anything in the employee's governmental duties that would tempt a former employer to wish for special favors in his dealings with the Government.

Ms. LAWTON. I am sorry. I didn't hear you.

Senator METZENBAUM. Don't you think that Exxon would wish for special favors from the FEA?

Ms. LAWTON. I would suppose so, yes.

Senator METZENBAUM. So, that doesn't meet the criteria Mr. Manning cites in his text that you cite as authority, quote, "Are the leave of absence payments the product of a preexisting arrangement or suddenly intended for the occasion when the employee undertook the Government assignment?"

Now, he talks about a preexisting arrangement. Wouldn't you agree he is not talking about a so-called policy which is 100 percent discretionary in every case and which actually excluded one employee who

went to the Government, because the company was disturbed over the manner of his leaving.

Ms. LAWTON. No, Senator, I would not. It seems to me most companies would attempt very hard to keep a severance policy discretionary to avoid being subsequently sued, for example, on a contractual right. They are distinguishing, I think, between right and benefit, and trying very hard to separate the two and to make sure it is not a contractual right for all employees so they retain discretion.

Senator JOHNSTON. Ms. Lawton, are you saying since it is not a contractual right, there is no duty under the law to do it and, therefore, it is purely discretionary and not supported by what we call valuable consideration?

Ms. LAWTON. I think it could be. I would think this would be the aim of the companies.

Senator JOHNSTON. Would it then be a gift, pure and simple?

Ms. LAWTON. I don't think purely and simply, no, it would not.

Senator JOHNSTON. Wouldn't it be subject to a gift tax?

Ms. LAWTON. When you are talking tax, you are out of my area, Senator. I don't have any idea.

Senator METZENBAUM. Now, moving to how the \$90,000 figure was computed. As I understand, in your opinion, the payment is legal only if it relates to Mr. Conant's past service to Exxon. If it relates to Mr. Conant's future economic condition as a Government employee, it is illegal, is it not?

Ms. LAWTON. The statute is not that clear. We tend to construe it that way, but as I say, we tend to construe it broadly, but the statute talks in terms of compensation. This was our real difficulty here. If it had been calculated so Exxon was paying him for a certain period of time, the difference between his Government salary and his Exxon income, as we pointed out in the opinion, that, to us, would be a clear supplementation, exactly what the statute is aimed at, but when you have benefits geared in part to past service and the formula is indeed geared to past service, it is much more difficult to determine whether they fall within the meaning of the statute as compensation for his Government service.

Senator METZENBAUM. If the purpose is to reduce the economic hardship to the individual by taking a Government job, then it would violate the statute, wouldn't it?

Ms. LAWTON. It comes closer. I cannot say it would violate the statute, no.

Senator METZENBAUM. When do you violate the statute? Don't you ever violate the statute? Unless you say specifically "If you get \$36,000, we are going to give you \$18,000 difference between that which you are receiving at Exxon." Is that the only time in your view you violate the statute?

Ms. LAWTON. Not at all, Senator. If Exxon had never in its history made a severance payment, had never had a written policy, discretionary or otherwise, concerning such payments, but on a one-shot basis for this man only in consideration of the job he was going to, they had made a payment, that, to me, would be a clear violation of the statute. Whether or not the payment was geared to the difference in salary.

Senator METZENBAUM. If they have a policy that is 100-percent discretionary and the purpose of that policy is to ease the economic hardship to the individual who is taking a Government job at less money than he was receiving at the company, and they are trying to make that up, doesn't that violate the statute?

Ms. LAWTON. We are not sure, Senator. That is why the opinion is cast in those terms. We are talking, of course, of a criminal statute.

Senator METZENBAUM. Let me make it clear. I am not interested in the criminal aspects and I am not suggesting in any way that anyone is to be criminally prosecuted. We are sitting on the question of whether Mr. Conant should be confirmed and whether Exxon and Mr. Conant may have technically violated the law, but that would only go in my opinion of the question as to whether or not he ought to be confirmed and not to the question of prosecution.

Certainly, there is a greatly different standard of rules. You know Mr. Moore testified, in answer to the question, "What is the purpose of the policy?" Mr. Moore said, and I quote, "To reduce economic hardships so the individual will be able to leave to perform public service," end of quote.

Then, he went on to say, and I asked him if he was married to a wealthy woman and, therefore, wouldn't have any problem. Mr. Moore said, "If there is no economic hardship—He didn't finish the sentence, but I gather he would not receive it if he were not really economically hurt and could afford it. Then, Exxon would not make a severance payment.

I would like to ask you, when you add Mr. Moore's and Mr. Conant's testimony to the fact the Exxon policy provides the discretionary termination payments are made only when economic hardship will result from the public service, don't you have exactly that supplementation of salary that is prohibited by the statute?

Ms. LAWTON. You are skirting very close to the edge of it, yes. Again, I have difficulty with the term violation in the statute, because violation of the statute means a crime, and I have no doubt there is no crime here.

Senator METZENBAUM. We will stipulate there is no crime for purposes of this discussion, but for purposes of violating the intent and the overall objectives of what the statute was directed at, when you put all those factors together, don't you have a violation, even though it is not a criminal violation?

Ms. LAWTON. Again, I think you are very close to the edge of a violation, Senator, but the statute is confusing in that it specifically allows certain payments to continue on past the entry of the individual into public service.

The line between them is not clearly drawn. This is troublesome to us. Were we asked before the payment were made, we would have suggested he not take it.

Senator METZENBAUM. You would have suggested he not take it?

Ms. LAWTON. We would have suggested that, yes, sir.

Senator METZENBAUM. You feel because he had already accepted it, therefore, your opinion was it was legal, although if you had been asked prior to his accepting it, you would have provided a different opinion.

Ms. LAWTON. No, Senator, not at all. We feel it was extremely troublesome, lay it all out before the Senate and let the Senate decide. We did not say it was all right. We said it was not a criminal violation. We did not say it was all right.

Senator METZENBAUM. You did not say it was all right.

Ms. LAWTON. We did not say it was all right.

Senator JOHNSTON. Excuse me. Will the Senator yield. You do say "we have reservations concerning technical compliance with 18 U.S.C. 209 (a)."

That means you have reservations there may be a technical violation of the law.

Ms. LAWTON. I regret the use of that word "technical". More in the sense the Senator was speaking of. It violates the spirit of the law, in the technical sense. We do have reservations. It is entirely consistent with the content of the law, that this payment was entirely consistent with the intent of the conflict law.

We have reservations, yes.

Senator HANSEN. Mr. Chairman, would you yield?

Senator METZENBAUM. Certainly.

Senator HANSEN. Ms. Lawton, in the memorandum that was sent to the Department of Justice by Mr. Montgomery, I read on page 6, "the source of 18 U.S.C. 209 was a proviso inserted in the Legislative and Judicial Appropriations Act of March 3, 1917.16. The legislative history is thoroughly treated in the principal texts which have examined this provision, 17, and briefly it appears that it was originally enacted to address a narrow abuse involving placement of educational theorists in the Bureau of Education by private foundations. The potential abuse sought to be corrected was that of exploitation of the advantages which accrued by Federal employee status, specifically the Government's publishing capability and franking privilege, in order to propagate radical notions of education." Now, point 18, it seems to me, as a nonlawyer, we would be stretching the intent of that statute pretty radically to assume, when that was passed, we were trying to address a situation such as, I suppose, prompts the reason for this hearing today?

Do you share that opinion?

Ms. LAWTON. The legislative history, Senator, is much narrower and indeed the commentators, both Manning and Perkins who are authorities in the area, tend to view it very narrowly. On the other hand, our office has always viewed it very broadly. We will often advise against things that are not violations, but which we think would raise an appearance of violation and Perkins alludes to this in his own article.

The Justice Department, he says, takes a contrary view. This is one of our difficulties, with our view being too cautious against the two existing authorities and as again the legislative history of the statute which, as you say, is very narrow. This is why it is such a difficult statute to interpret.

Senator HANSEN. It seems appropriate to me, Mr. Chairman, to make that observation. I have the feeling—I hope I am in error—that maybe there was an intent to read something into the statute I had not gotten from it, and I wanted to get Ms. Lawton's opinion on that.

Senator METZENBAUM. I thank the Senator from Wyoming, Senator Johnston.

Senator JOHNSTON. I just wanted to add, Ms. Lawton, I share the Chairman's view that the phrase, "a minimum payment authorized under the Exxon policy—" you don't have a minimum payment under an entirely discretionary plan, would you?

Ms. LAWTON. The plan itself sets its own minimums, yes. It specifically says the payment will be somewhere between here and there. That does not mean that all will be made, but if it is made, it will be made between the two figures.

Senator JOHNSTON. Do you have evidence they never went below the minimum?

Ms. LAWTON. No, we do not.

Senator JOHNSTON. In your view, it is discretionary as to whether you get it at all and as to the amount.

Ms. LAWTON. Within the limit set by the policy; yes.

Senator JOHNSTON. You said it could go below the minimum or above the maximum?

Ms. LAWTON. As a matter of law, of course, they can change the policy at any time, but as a matter of practice, we have no knowledge they ever went below or above the minimum or maximum set.

Senator METZENBAUM. Would the Senators yield? You do know they did not pay one man. They gave him zero. That is below, isn't it?

Ms. LAWTON. That is refusal to invoke the policy, but when the policy is invoked, we know of no distinction below the minimum.

Senator JOHNSTON. Your opinion states, and let me repeat this, "While we do not question Mr. Conant's good faith in this matter, we do have reservations concerning technical compliance with 18 U.S.C. 209 (a) in this instance."

Are you now saying you do not have reservations concerning technical compliance with the law or do you have those technical reservations?

Ms. LAWTON. We have the technical reservations. What I was trying to do before, Senator, was explain that the word "technical" was probably a poor choice of words. We have no reservations at all concerning the applicability of the statute as a criminal statute.

Senator JOHNSTON. You do not?

Ms. LAWTON. We do not.

Senator JOHNSTON. Your opinion does seem to indicate even though it is a technical violation, a technical violation is nevertheless a violation.

Ms. LAWTON. That is why I expressed my disappointment at my choice of words at that time. I think that is the wrong choice of words. What we have reservations about is applying the spirit of the statute in its prophylactic sense.

Senator JOHNSTON. Conceding that good faith in your judgment, it is clear there is no violation of this law.

Ms. LAWTON. No criminal violation.

Senator HANSEN. May I ask a question, Mr. Chairman?

Senator JOHNSTON. Yes, I will yield.

Senator HANSEN. You say there has been no criminal violation of the law. Is this a criminal law?

Ms. LAWTON. Yes. It is a criminal statute.

Senator HANSEN. Is it necessary then to qualify the word "violation" by criminal in that instance?

Ms. LAWTON. Our practice, Senator, and it is only a practice, has been to view the statute as a preventive, as having a broader effect than they do when they are strict criminal sense.

A criminal statute you always construe as narrowly as possible and doing that, we find no violation, but in its preventive, serving its broader purpose, we construe the statute more broadly. There is where we have the reservations.

Senator JOHNSTON. In other words, were it not for the rule of strict construction, if you interpreted it according to the ordinary meaning, you would have trouble as to whether there was violation of the statute.

Ms. LAWTON. We would have trouble.

Senator JOHNSTON. The only thing that saves us from violation in your judgment is the rule of strict construction of criminal statutes.

Ms. LAWTON. Yes, sir.

Senator METZENBAUM. Thank you very much.

We have a number of witnesses who wish to testify for and against the nomination of Mr. Conant. The chairman has suggested we limit testimony to 5 minutes. Before we do so, I would like to introduce a number of letters that have come in concerning this nomination: one from the Environmental Policy Center, one from the Energy Policy Task Force, one from the Americans for Democratic Action, one from the United Auto Workers, and one from Environmental Action. At this time I will hand these to the stenographer and ask that they be made a part of the record.

[The letters referred to above follow:]

ENVIRONMENTAL POLICY CENTER,  
Washington, D.C., November 21, 1974.

Re: Nomination of Melvin A. Conant to be Assistant Administrator for International Energy in the Federal Energy Administration.

Hon. HENRY M. JACKSON,  
Chairman, Committee on Interior and Insular Affairs, New Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: On behalf of the Environmental Policy Center I would like to express our concern with, and our opposition to, the confirmation of Mr. Conant as Assistant Administrator for International Energy Policy within FEA.

Mr. Conant's acceptance of a \$90,000 severance payment from the Exxon Corporation immediately prior to his assumption of responsibilities within FEA, and his unwillingness at the Interior Committee hearings on his nomination to voluntarily agree not to return to the employment of Exxon, or any other Energy Corporation upon completion of his services within FEA, should automatically disqualify him from consideration for any decision making role within the Federal Energy Administration. The particular circumstances surrounding this severance payment, as brought out in the Interior Committee Hearings, underscores the justification for disqualifying Mr. Conant from consideration for this position.

With all deference to Mr. Conant's personal qualifications, we strongly oppose his nomination to be Assistant Administrator, and we hope that you will oppose his confirmation.

Respectfully,

MARC MESSING.

ENERGY POLICY TASK FORCE,  
Washington, D.C., November 27, 1974.

HON. HENRY M. JACKSON,  
Chairman, Committee on Interior and Insular Affairs,  
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: I wish to express the strong opposition of the Energy Policy Task Force of the Consumer Federation of America (see attached membership list) to the nomination of Melvin A. Conant as Assistant Administrator of the Federal Energy Administration for International Energy Affairs. Mr. Conant's nomination is clearly inconsistent with the public interest in the energy field, and this unfortunate inconsistency should not be intensified by his confirmation to the position.

The Task Force is particularly distressed by Mr. Conant's acceptance of a \$90,000 "discretionary" severance payment upon leaving the Exxon Corporation to join the then Federal Energy Office. In testimony before your Committee, Mr. Conant indicated not only that he might not have taken the government position had he not received the severance payment, but also that he may indeed return to the oil industry in the future. While we certainly do not question Mr. Conant's personal integrity and ability, we feel that confirmation of his appointment would set a dangerous precedent. Just as in the case of the nomination of Andrew Gibson as Administrator of the Federal Energy Administration, Mr. Conant's nomination calls for federal regulation to be carried out by representatives of the very industry being regulated.

In this time of skyrocketing energy prices in which many Americans may have to make a very real choice between food and fuel, it is essential that those responsible for Federal energy policy be keenly aware of the plight of consumers. The severance payment awarded Mr. Conant, and the admission before your Committee by J. J. Moore, Senior Advisor for Executive Compensation at Exxon, that discretionary payments are not made to retiring employees who do not agree with company policies, certainly do not speak favorably for increased consumer sensitivity at FEA. In light of these factors, the Energy Policy Task Force feels that Mr. Conant's nomination should be withdrawn. If it is not, it should be rejected by the Committee on Interior and Insular Affairs to allow President Ford to make a more appropriate appointment.

Sincerely,

LEE C. WHITE.

ENERGY POLICY TASK FORCE MEMBER ORGANIZATIONS

Adams Electric Cooperative, Inc.  
AFL-CIO.  
Allegheny Electric Cooperative, Inc.  
American Federation of State, County and Municipal Employees AFL-CIO.  
American Federation of Teachers AFL-CIO.  
American Public Gas Associations.  
American Public Power Associations.  
Consumers Union.  
Cooperative League of the USA.  
Industrial Union Department AFL-CIO.  
International Association of Machinists and Aerospace Workers AFL-CIO.  
International Brotherhood of Electrical Workers AFL-CIO.  
Kansas Municipal Utilities.  
Lincoln, Nebraska, City of.  
Maritime Trades Department AFL-CIO.  
Minnesota Farmers Union.  
National Farmers Organization.  
National Farmers Union.  
National Rural Electric Cooperative Association.  
Northeast Public Power Association.  
Northwest Public Power Association.  
Oil, Chemical and Atomic Workers International Union AFL-CIO.  
Service Employees International Union AFL-CIO.  
Tennessee Valley Public Power Association.

Textile Workers Union of America AFL-CIO.  
 United Auto Workers.  
 United States Conference of Mayors.  
 United Steelworkers of America AFL-CIO.  
 Wisconsin State AFL-CIO.

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AMERICANS FOR DEMOCRATIC ACTION,  
 Washington, D.C., December 2, 1974.

Hon. HENRY M. JACKSON,  
 Chairman, Committee on Interior and Insular Affairs,  
 U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing you to tell you of ADA's concern about the confirmation of former Exxon officer Melvin A. Conant as Assistant Administrator of the Federal Energy Office.

To be sure, we question neither Mr. Conant's integrity nor technical background for the office. We do, however, have serious reservations about these kinds of appointments that move people from being the regulated to the regulator. They not only increase the popular misgiving about the cozy relationship between "big oil" and "big government" but they narrow the viewpoints needed to deal with the future energy needs of the United States. Like all too many people at the FEA, Mr. Conant is from the petroleum industry and therefore sees his answers primarily in terms of that background.

According to the testimony of September 23, 1974, Mr. Conant came to the FEA with a \$90,000 severance payment from Exxon. Of that, \$77,000 was a totally discretionary award from the Board of Directors. The popular outcry over the recent Gibson fiasco apparently did not crack the White House's shell of insensitivity to potential conflict of interest. A rejection of Mr. Conant's nomination would go a long way to crack that shell while simultaneously helping to curb the erosion of public confidence in government.

Sincerely yours,

LEON SHULL, *National Director.*

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE &  
 AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,  
 Washington, D.C., November 22, 1974.

Hon. HENRY M. JACKSON,  
 Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Dirksen  
 Building, Washington, D.C.

DEAR MR. CHAIRMAN: The public interest clearly was served when the nomination of Andrew Gibson as Administrator of the Federal Energy Administration was withdrawn. Now the Senate is confronted with another Andrew Gibson with the renomination of Melvin A. Conant to be Assistant Administrator of FEA for International Energy Affairs.

The UAW opposes the Conant nomination for the same reasons we opposed Mr. Gibson. The nomination should be withdrawn. If it is not, the Committee on Interior and Insular Affairs should reject it.

We do not quarrel with Mr. Conant's abilities. He is undoubtedly very able; he held a high position—senior government relations counselor with the Exxon Corporation—before joining what was then the Federal Energy Office. What bothers us about this particular nomination is that Mr. Conant received a severance payment of \$90,000 just before leaving Exxon to join FEO. It seems to us the issue here is the same as that raised in the case of the nomination of Mr. Gibson.

Mr. Conant has indicated that he may return to the oil industry at some future date. This fact coupled with the discretionary \$90,000 severance payment from Exxon are, in our judgment, sufficient grounds for turning down this nomination so that the President may make a more appropriate one.

Sincerely,

JACK BEIDLER, *Legislative Director.*

ENVIRONMENTAL ACTION,  
Washington, D.C., November 21, 1974.

HON. HENRY M. JACKSON,  
Chairman, Senate Interior Committee, U.S. Senate,  
Washington, D.C.

DEAR SENATOR JACKSONS I wish to express to you the opposition of Environmental Action to the configuration by your committee of Mr. Melvin A. Conant as Assistant Administrator of the Federal Energy Administration for International Energy Affairs.

We are most concerned by the revelation that Mr. Conant has received a substantial "severance payment" from the Exxon Corporation, the largest oil company on earth, and that he very likely might not have accepted a position with the government if he had not received this money.

To our way of thinking, this sounds like Mr. Conant might find himself serving two masters—a public one with decision making powers and a private one with money. We do not feel that Mr. Conant would be able to make decisions that would be based solely on the needs and requirements of the average American.

Environmental Action feels that future U.S. energy decisions are too important to be left to oil company executives—no matter what they happen to be wearing.

Thank you for this opportunity to express our views.

Sincerely,

PETER HARNIK, *Coordinator.*

Senator METZENBAUM. Our next witness will be Mr. John C. Campbell.

Senator HANSEN. Mr. Chairman, while Mr. Campbell is coming to the witness stand, I would like to ask unanimous consent that some letters I have in my possession may also be introduced into the record at this time.

Senator METZENBAUM. Would the Senator care to identify them?

Senator HANSEN. They all happen to be favorable.

Senator METZENBAUM. I mean the sources they represent; organizations or individuals.

Senator HANSEN. I would have to get the full list.

Senator METZENBAUM. There is no objection to their being admitted into the record.

[The letters referred to above follow:]

WASHINGTON, D.C., November 30, 1974.

HON. HENRY M. JACKSON,  
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: Having seen the recent controversy over the nomination of Melvin A. Conant, I am moved to write in support of his nomination as Assistant Administrator, International Energy Affairs, Federal Energy Administration.

I have had relatively little contact with Mr. Conant in recent years. However, I learned to respect most highly both his judgment and integrity when I knew him well as a graduate student at Harvard, with a strong extracurricular as well as academic interest in Far Eastern matters, and later while he was Executive Director of the Pacific and Asian Affairs Council in Hawaii. The latter subsequently evolved into the present East-West Center at the University of Hawaii. He demonstrated then not only an uncanny ability to acquire factual knowledge about Asia, but also to put into a useful policy-making perspective.

I do hope that the Senate will see fit to approve Mr. Conant at an early date. He will serve the United States well.

Sincerely,

JAMES P. GRANT.

HARVARD UNIVERSITY,  
Cambridge, Mass., November 27, 1974.

HON. HENRY M. JACKSON,  
Russell Building, Washington, D.C.

DEAR SENATOR JACKSON: I understand that my good friend Mr. Melvin Conant is up for confirmation before your Committee, and I would like very much to provide you with the following testimony on his behalf.

I have known Mr. Conant for more than ten years in various connections with our service to the Woods Hole Oceanographic Institution. For much of that time, we were both members of the Executive Committee of the Board of Trustees, which met once a month throughout the year, and was closely involved in almost every aspect of the complex business of the Institution, which is by now an operation of more than \$18 millions per year, and which operates research ships throughout the world. During this period, Mr. Conant's advice and opinions were invaluable to us, and I was exceedingly impressed with the judicious and open-minded manner in which he addressed problems. His opinions were honest and forthright, and never seemed prejudiced by his experience in or connection with the oil industry. I found him a man of great integrity and wisdom, and one of the most effective members of our committee.

Sincerely yours.

HARVEY BROOKS.

[Western Union Telegram]

NEW YORK, N.Y., November 26, 1974.

TO: SENATOR HENRY M. JACKSON.

I strongly urge your committee to confirm Mr. Melvin Conant to the Federal Energy Administration. Over 8 years I worked closely with him in the foundation and building of South Street Seaport Museum, now one of the leading museums in the city of New York. I can attest to his character, integrity, and his abiding concern for the public interest.

ERIC RIDDER,  
*Publisher of the Journal of Commerce.*

Senator METZENBAUM. Mr. Campbell, state your name and organization you represent.

#### STATEMENT OF JOHN C. CAMPBELL, COUNCIL ON FOREIGN RELATIONS, NEW YORK

MR. CAMPBELL. My name is John Campbell. I am associated with the Council on Foreign Relations in New York, a nonprofit organization concerned with international affairs. I am speaking not on behalf of the organization, but personally.

I incidentally had 12 years of Government service in different pieces over the past 35 years. I speak not primarily out of personal friendship with Mr. Conant, although that is very strong, a strong factor in the background of this case. I speak primarily to emphasize what I think are his superb qualifications for the job and for doing what is necessary for the good of the country in the energy field and also to express a high confidence in his integrity which I have gathered over many years of association with him.

That association goes back for many years to 1955 when he came to take a position at the Council on Foreign Relations in New York. There he covered many aspects of the international field, becoming expert in Far Eastern matters, United States-Canadian relations and matters of national security and acquired a sufficient reputation in those fields that he was invited 5 years later to become a member of a civilian faculty of the National War College. I, myself, am a

graduate of the War College and know very well these positions are very highly desired in the academic community and it was an honor for Mr. Conant to be chosen for this position. It indicates his intellectual capacity, his ability to deal with foreign relations questions and his sense of the national interest. That is one point, Mr. Chairman, which I think should be represented as running all through his career over these past two decades.

He has worked on a very broad basis in the international field, not solely in the field of the oil business in its commercial aspects, as he himself emphasized here this afternoon.

In 1961 he joined Standard Oil of New Jersey, as is clear from the record.

Now, he had an opportunity at that time to return to a job at the Council on Foreign Relations which would have been a higher and more responsible one than the one he left a year and a half previously. He did not do so because he had already made a commitment to go to Standard Oil Co., and did not feel he could change or walk out on a commitment.

He served, as you know, in Exxon for 13 years. During that period I met him from time to time at international conferences, at study group meetings, at the Council on Foreign Relations in New York and met him personally for talks between ourselves on many occasions. In all those meetings, the subject had to do with international trends and the world international economics and, of course, oil questions in which we were both interested.

I want to make the point, while serving his employer, I have no doubt, loyally and to the best of his ability during that period, he had a full awareness, not only of company concerns, but of matters of national interest to the United States and was, in fact, very much worried about the developments or lack of development, in fact, in American energy policy during that period.

Incidentally, I think we should note the nature of his position in Exxon was one not so much of being in the line of command as an oil man, but being an expert adviser on international affairs for that company. His value was in being able to tell the directors and officials of the company what were the probable developments in various parts of the world affecting the energy situation in the interests of the company.

In the 1960's he saw on the horizon many of the problems for the oil industry and for the United States which have now appeared before us in the 1970's. He was very much concerned at that time with the fact we did not have a rational and comprehensive energy policy in the United States. It was his task, as he saw it, to give his views straight to the company, to Government officials with whom he conferred at the time and to others, both on and off the record and no one had to look behind his opinions on national policy for some special company angle.

It was for that reason, I think, Mr. Chairman, he was a natural choice for a job at the Federal Energy Office, and I presume that is why he was asked to undertake those duties.

One final comment, Mr. Chairman, on the question of severance pay. I don't presume to have the legal opinion on this matter. I refer

to the fact that Senator Jackson said there was no clear legal choice for the committee on this question. It was largely a matter of conscience and certainly one will have to look at this particular case and at the integrity of the individual involved. It seems to me the U.S. Government has no concern here that Mr. Conant would somehow be motivated by company concerns in the job which he holds, determining actions to be taken on behalf of the interests of the United States.

Senator METZENBAUM. Thank you very much for your supporting statement, Mr. Campbell.

Our next witness is Dr. Paul Fye.

**STATEMENT OF DR. PAUL FYE, PRESIDENT, WOODS HOLE  
OCEANOGRAPHIC INSTITUTE, CAPE COD, MASS.**

Dr. FYE. Mr. Chairman, members of the committee, for the record, my name is Paul Fye. I am president of the Woods Hole Oceanographic Institute, which is located on Cape Cod in Massachusetts. I am here today to speak in support of the confirmation of Melvin A. Conant to be the Assistant Administrator of the Office of International Affairs in the Federal Energy Administration.

Mr. Conant is a long-time friend and trustee of the Woods Hole Oceanographic Institution, and I strongly endorse his nomination. There is no doubt in my mind his appointment would be beneficial to the Nation, particularly during the present situation in which knowledgeable and skilled administrators are so vitally needed for the successful operation of the Federal Energy Administration. Perhaps it would be useful for me to trace my association with Mr. Conant, how I have known him and how I judge him today.

I have known Mr. Conant for about a decade. He has been a member of our governing corporation since 1966 and a trustee of our institution since 1968. He was a member of our institution's associate program before that. He has served on several of our trustees committee since this time.

Over the years, it was my job as president and director of the Woods Hole Oceanographic Institution, I have come to appreciate in a very special way the importance and selfless dedication of the distinguished men and women who cared enough to lend their vision, their character, and their wise counsel to the private institutions of this country. The service they render is unique and it is uniquely American. Nowhere else in the world can one find such devotion and assistance in such numbers as those individuals who work and spend their time in encouraging and supporting our private institutions. Having said this, I feel privileged today to support a man who qualifies in the highest sense, a trustee, and who has proven to me many times over he understands the trustee role very well.

I do not support Mr. Conant because he has given generously of his time, his wisdom, and his ideas to our institution, to oceanography, but because I have, through our relationship, been privileged to know him well and believe I can honestly judge his character.

There is, in my opinion, gentlemen, a very clear relationship between Melvin Conant in his role of trustee and the judgment which must be rendered by this committee and by the Senate in confirming his nomination.

As you know so well, anyone coming into Government today, even through the elective or the appointive process, is accepting a trust in which he or she must represent and thus act as a trustee for all of the people of the United States.

I would respectfully submit, having performed the duties of trustee of private institutions is a good testing ground for public office and the characteristics Mr. Conant has demonstrated as a trustee will, without doubt, carry over into his work in the Federal Energy Administration.

Gentlemen, if I may, permit me to be more specific. Mr. Conant has served on various trustee committees over the years. In all of these assignments, Mr. Conant demonstrated on numerous occasions his ability to analyze problems and render opinions of an independent nature which were in the best interests of our institution.

He did not permit his connection with other organizations such as his employer or other philanthropic organizations with which he was intimately concerned, to influence his judgment regarding matters of our institution.

All of our trustees serve parttime and have other obligations. Mr. Conant is undoubtedly one of the best trustees in showing his ability to provide independent and meaningful judgments with respect to our institutional requirements.

There is simply no question in my mind, when he acts as a representative of the Federal Energy Administration, he will do so with only the best interests of the Nation in mind.

Senator METZENBAUM. Thank you very much, Dr. Fye. Are you speaking on behalf of yourself or on behalf of Woods Hole Oceanographic Institute?

Dr. FYE. I am speaking on behalf of myself, sir, and I am proud to be here to do so.

Senator METZENBAUM. Thank you very much. I have no questions. A very fine statement.

Senator HANSEN. I have no questions. I don't know whether Dr. Fye was able to finish his prepared statement. If he did not, I would ask unanimous consent that it be included in the record.

Senator METZENBAUM. Without question and without objection. Any witness who does not complete his statement, we will accept the full statement.

Dr. FYE. I thank you, Mr. Chairman. I wanted to give a few examples, but I saw there was not time.

[The prepared statement of Dr. Fye follows:]

TESTIMONY BEFORE THE SENATE INTERIOR COMMITTEE

BY PAUL M. FYE

DECEMBER 2, 1974

Mr. Chairman, Members of the Committee

My name is Paul M. Fye, I am the President of the Woods Hole Oceanographic Institution, which is located on Cape Cod, in Massachusetts, but I speak for myself as a private citizen.

I am here today to speak in support of the confirmation of Melvin A. Conant as an Assistant Administrator of the Federal Energy Administration for International Energy Affairs. Mr. Conant is a long time friend and Trustee of the Woods Hole Oceanographic Institution, and I strongly endorse his nomination. There is no doubt in my mind that his appointment would be beneficial to the nation, particularly during the present situation in which knowledgeable and skilled administrators are so vitally important to the successful operation of the Federal Energy Administration.

Perhaps it would be useful for me to trace my association with Melvin Conant, how I have known him and how I judge him today. I have known Mr. Conant for about a decade. He has been a member of our governing Corporation since 1966 and a Trustee of our Institution since 1968, and was a member of the Institution's Associates' Program before that. He has served on several of our Trustee committees during this time.

Over the years in my job as President and Director of the Woods Hole Oceanographic Institution, I have come to appreciate, in

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a very special way, the importance and the selfless dedication of these distinguished men and women who care enough to lend their vision, their character and wise counsel to the private institutions of this country. The service they render is unique and it is uniquely American. Nowhere else in the world can one find such devotion and assistance in large numbers as those individuals who work and spend time encouraging and supporting our private institutions. They have in their hands one of the most precious and perhaps most fragile of our Nation's assets, the future and well-being of these institutions. I am sure the members of this committee appreciate and participate in this special role yourselves and thus know very well about which I speak.

Having said this, I feel privileged today to support a man who qualifies in the highest sense as a Trustee and who has proven to me many times over that he understands the Trustee role very well. I do not support Mr. Conant because he has given generously of his time and his wisdom and his ideas to our Institution and to Oceanography, but because I have, through our relationship, been privileged to know him well and believe I can honestly judge his character.

There is, in my opinion Gentlemen, a very clear relationship between my observation of Melvin Conant in his role of Trustee and the judgement which must be rendered by this Committee and by the Senate in confirming his nomination. As you know so well, any one coming into Government today, either through the elective or appointive process, is accepting a trust in which he or she must represent and thus act as Trustee for all the peoples of the United

States. I would respectfully submit that having performed the duties of Trustee of private institutions is a good testing ground for public office and that the characteristics Mr. Conant has demonstrated as a Trustee will without doubt carry over into his day to day work in the Federal Energy Administration.

But, Gentlemen, if I may, permit me to be more specific. Mr. Conant has served on various of our Trustee Committees over the years. These have included the Nominating Committee, the Audit Committee, the Development Committee of which he was Chairman for two years and the Executive Committee. In all of these assignments, Mr. Conant demonstrated on numerous occasions his ability to analyze problems and render opinions of an independent nature which were in the best interests of our Institution. He did not permit his connections with other organizations--such as his employer or other philanthropic organizations with which he was intimately connected--to influence his judgements on matters regarding our Institution.

All of our Trustees serve on a part-time, voluntary basis. They all have other commitments and other obligations, either to other philanthropic organizations or to their employers or to clients, depending on their own commitments or personal situations. Mr. Conant is without question one of the best of our trustees in his ability to provide independent and meaningful judgements with respect to our Institutional requirements independent of any other obligations or responsibilities. When he wears his Woods Hole hat, as it were,

it has been clear from his words and his actions that he is considering only the best interests of our Institution.

The Woods Hole Oceanographic Institution has developed its reputation over the years in fundamental studies about the oceans. Several years ago we decided that since we had a key role in developing knowledge about the oceans we had a responsibility to assist the nation in the wise use of the oceans. We started a small Marine Policy group under my personal cognizance. This was a controversial decision. There were those who have a stake in marine resources who politely suggested we should stick to our business of science. On occasion there have been differences between some industrial representatives and some members of our policy group in regard to the optimum development of, for example, fisheries or of offshore oil and gas. In every case where program decisions needed to be made, Mr. Conant supported those decisions which insured that the freedom of thinking within our Institution was protected.

Other examples could be given which demonstrate his concern for the environment and for the broad interests of the United States. I have in mind his attitude specifically about some of our research which studied the long time effects of oil in the marine environment and his service on the State Department's Law of the Sea Advisory Committee on which I am also privileged to serve.

He has thus demonstrated to me many times his special and unique ability to reach decisions with the highest integrity and within the proper constraints of the constituency concerned. There is simply

no question in my mind that when he acts as a representative of the Federal Energy Administration he will do so with only the best interests of the Nation in mind.

Thus, Mr. Chairman, Members of the Committee, I submit I have had an opportunity to observe Melvin Conant in a special role and one which has unique application to the decision which you must make. I wish my words were adequate to express my full confidence in Mr. Conant.. I will just close, Mr. Chairman, by stating simply that I heartily endorse the nomination of Melvin Conant as Assistant Administrator of the Federal Energy Administration for International Energy Affairs.

Senator JOHNSTON. Mr. Chairman, I have no questions of this witness, but I would like to ask a couple of questions of Mr. Conant.

Mr. Conant, your salary is \$57,500.

Mr. CONANT. Yes, sir.

Senator JOHNSTON. You had promises of about \$10,000 that year. Is that right?

Mr. CONANT. Yes. I would have to look up the exact figures.

Senator JOHNSTON. Is that pretty well a yearly bonus. Could you fairly well expect that every year?

Mr. CONANT. In my case, and I presume in many cases, once you reach a certain level, the bonuses are an annual affair. As the chairman will recall, the explanation of the Exxon bonus policy is torturous and in the September 23d hearing, the complexities were laid out. As I understand it, the board determines perhaps sometime in November what the actual bonus award will be and it is given in part in January of the following year. The balance in equal installments, in successive Januarys.

Senator JOHNSTON. What I am getting at, as a practical matter, could you count on an annual bonus of around \$10,000 if you had stayed at Exxon?

Mr. CONANT. And more.

Senator JOHNSTON. So that would bring you up to \$67,500 plus you have stock options.

Mr. CONANT. Yes.

Senator JOHNSTON. And the premature dismissal resulted in a loss of those stock options.

Mr. CONANT. Yes.

Senator JOHNSTON. As a practical matter, what would be what you could expect annually in stock options in value, in rough terms?

Mr. CONANT. It was always awarded in shares of stocks, so it would vary widely from year to year. My recollection, Senator, is for the last 2 or 3 years, I was getting 350 shares of Jersey stock.

Senator JOHNSTON. As an option at whatever the market value was?

Mr. CONANT. At the time the Board determined the number of options that would be made available.

Senator HANSEN. Would the Senator yield? The Senator used the word "dismissal." I don't know whether it was used inadvertently or not.

Senator JOHNSTON. Yes, it was used inadvertently. This is a very difficult problem. You have a man making about \$70,000 a year. How do you get him to accept a job at \$36,000? The policy itself is very troublesome to me. Maybe we ought to raise Federal pay.

Senator METZENBAUM. I agree with the Senator from Louisiana. That is what the statute says. Whenever somebody goes from private industry into Government, there is a sacrifice and I think the Senator himself could probably do better practicing law, doing his own thing back home.

Senator JOHNSTON. There are some people who would like to see me go back to doing that. [Laughter.]

Senator METZENBAUM. I am going to call now two witnesses opposed of Mr. Conant's nomination. I call Mr. David Calfee, of the Environmental Policy Center.

STATEMENT OF DAVID W. CALFEE, WASHINGTON REPRESENTATIVE OF THE ENVIRONMENTAL POLICY CENTER

Senator METZENBAUM. Will you identify yourself and identify whether you are speaking for the organization, for yourself, and indicate whether there is any official board action or whatever.

Mr. CALFEE. Thank you, Mr. Chairman and members of the committee. I am David W. Calfee, I am Washington representative of the Environmental Policy Center. I am here to speak in opposition to the nomination of Melvin A. Conant to the position of Assistant Administrator for Interational Energy in the FEA.

The decision of the Environmental Policy Center was essentially a staff decision and I am here in that capacity.

On November 21, Marc Messing wrote a letter, on behalf of the Environmental Policy Center, to Senator Jackson and members of this committee, expressing our opposition to Mr. Conant's appointment. We appreciate the fact that the committee has reopened these hearings and given us this opportunity to address our concerns more fully.

Our opposition to Mr. Conant's appointment is not based upon his personal abilities. We may assume he is a man of competence and integrity. Rather, our concern is based upon the circumstances of his appointment and the continuing nature of the relationship between Mr. Conant as an Administrator within FEA and the oil companies which would presumably be affected by the decisions he might make. At the time the Federal Energy Administration was created, there was considerable public concern that conflicts of interest within the Administration would be inevitable, and that they would benefit the international energy companies at the expense of the American consumer.

While it was argued on the other hand that the creation of a new agency such as FEA required experienced personnel from the oil industry, it was argued on the other hand that such personnel bring with them a professional bias, and that executive talent should be drawn from circles outside those directly affected by the new agency. In the case of the FEA which has a great immediate impact on both energy producers and consumers the questions of conflict of interest and implicit bias have been brought sharply into focus.

Notwithstanding Mr. Sawhill's appointment as Administrator of FEA and his personal statement that he would not accept employment within the energy companies following his tenure at FEA as Administrator, the dilemma has continued as a legitimate concern of the American people.

It is crucial that the appointees in position of responsibility within FEA perform their functions with the highest standards of personal and professional objectivity, the American people can maintain some basis for confidence in the administration of our energy policies at a time when public confidence is critical and hard to come by. To the extent that the FEA fails to develop and maintain this confidence, it will exacerbate feelings of uncertainty and hostility towards all Federal energy controls.

The necessity for building public confidence in preparation for energy difficulties ahead should caution the Senate to be unusually discriminating in its review and confirmation of appointments to FEA.

That confidence can only be maintained if appointees to responsible positions are free from the taint of actual and apparent conflicts of interest.

In the case of Mr. Conant, the circumstances regarding his employment with Exxon and his appointment to the FEA are unusual enough to require special scrutiny. The facts regarding this appointment are all on the record, in the testimony of Mr. Conant and Mr. Moore before this committee on September 23, 1974, and it remains for us to evaluate the implications of that record.

First, it should be emphasized, from the standpoint of public concern, that the \$90,000 severance payment which Mr. Conant received from Exxon was a completely discretionary payment. There was no contractual obligation on the part of Exxon to provide any severance payment.

Under the circumstances, this payment looks like an incentive to accept the FEA position. Had Mr. Conant accepted this Government position prior to notification of Exxon, he would not have received a severance bonus.

Had Mr. Conant not received such a bonus, prior to acceptance of the FEA position, he indicated in his testimony that he might not have accepted the post. In short, the \$90,000 payment looks like an incentive payment for taking a specific government position with responsibilities which may bear directly on the interests of the payor—the Exxon Corp.

Senator JOHNSTON. Suppose it was nondiscretionary. Suppose Exxon had a policy of paying all people who went into Federal service at a certain level, would you have any objection then?

Mr. CALFEE. I would have problems if it was people who went into Federal service. If it was for people terminated, I would not have any problem.

Senator JOHNSTON. If it was a payment for all who went into Federal service, nondiscretionary, would you have any trouble with that?

Mr. CALFEE. Yes; I think I would. I would have to think that through. In this case, we are talking about a discretionary payment. We are talking about a man who said without the payment he probably would not have entered Government service and we are talking about Mr. Moore's testimony on the 23d, if he had entered Government service before negotiating with Exxon to get the payment, he would not have gotten the payment.

We have the three elements there together. It makes the payment look very much like an incentive payment to take a Government job on behalf of the company.

Senator JOHNSTON. I agree with you that the appearances of this are bad, but if they had a policy that everyone who went into a salary, they may be dependent on salary or description of the job would get a departure bonus or whatever you want to call it, based on the following formula, salary times month, stock-option formula, that sort of thing. So, they would have a contractual right to it if they left to go to Government service. You would have to think that through or do you think that would be all right?

Mr. CALFEE. I would want to think that one through. It is a very difficult problem. The problem has been raised here, how do you get competent people, how do you get them to take a lower salary and how do you, at the same time, protect the public from people from people who are essentially representative of their company, going into Government service and fully intending to come back at some point.

Senator METZENBAUM. Proceed, Mr. Calfee.

Mr. CALFEE. There are concerns here, not entirely hypothetical. I would like to note that our concerns are not entirely hypothetical in nature. The national attention which surrounded the nomination of Andrew Gibson to replace John Sawhill as FEA Administrator grew out of a situation essentially similar to that which we have here with Mr. Conant.

The measure of the concern there is indicative of the conviction with which the American people demand that their public servants be free from conflicts of interest, real or apparent.

Billions of dollars are at stake in FEA operations. Consumers and the American public might not be able to afford the expertise and experience former oil company executives bring to their administrative duties. In this connection, I would like to remind the committee about some experience we have already had at FEA where oil company executives entered Government service so that the public could receive the benefit of their intimate acquaintance with the intricacies of the oil industry.

As members of the committee will no doubt remember, one of the oil industry executives who temporarily left the industry for a stint of Government service was Mr. Robert Bowen of Phillips Petroleum. Mr. Bowen was also the chief advocate within the Federal Energy Office for the now infamous "double dip" regulations for which nobody can be found to claim credit as drafter and architect. The FEA estimates that the program permitted \$40 million in excess charges to be passed on to consumers and another \$330 million banked for passthrough when the market permitted.

The double dip was simple in concept: Companies forced to sell oil under the mandatory allocation program were allowed to include the cost of that oil in their cost base without deducting revenues from the sale of their cost base. They could then bank the costs, or pass them through to customers, making a double recovery. FEA now calculates that of the more than \$330 million in banked costs under the regulation, Phillips ranked No. 3, banking \$41,256,000 in excess costs.

Mr. Bowen, who also drafted propane allocation regulations at a time his employer was engaged in withdrawing from some of its propane markets, is now back in the service of Phillips.

At a time when Government credibility has been eroded by events of the past year, when energy prices are doubling and tripling, and energy company profits are rising, appointees to the Federal Energy Administration should be without question free from actual or apparent conflicts of interest.

We do not feel that Mr. Conant, whatever his other qualifications, meets this standard.

Senator METZENBAUM. Thank you very much, Mr. Calfee. Senator Hansen.

Senator HANSEN. I have just a couple of questions, Mr. Calfree. Were you or any other member of the Environmental Policy Center solicited by any member of the committee to testify in opposition to the confirmation of Mr. Conant?

Mr. CALFEE. I am frankly not sure about that. Mr. Marc Messing who originally worked on this project went out to Chicago and left me with roughly drafted testimony on Saturday and I did not go into the details with him of how the arrangements were made to testify here.

Senator HANSEN. Insofar as you know, did the Environmental Policy Center exhibit any interest in this nomination on its own volition or do you know whether the Environmental Policy Center exhibited any interest in the nomination on its own volition?

Mr. CALFEE. On November 21 Mr. Messing wrote a letter to Senator Jackson asking that the hearings be reopened and the nomination be reconsidered.

Senator HANSEN. I have no further questions.

Senator METZENBAUM. As a matter of personal privilege the Senator from Wyoming is alluding to the fact there was held a meeting in my office of the many groups interested in this nomination. There is no question that such a meeting took place, but they were as to the question of whether they were being solicited to oppose the nomination. I would have been pleased to have you if I had known of your interest, but some of the groups had indicated their opposition to Mr. Conant, and we did hold a meeting of such a group of those organizations, and I remember inquiring of them, "What is your position with respect to this. These are my views. What are your views?" And, I am happy to report, although he may not be happy about my report, that there was unanimity that the nomination should not be confirmed.

Again, it was not a question of Mr. Conant. It was a question of who runs the FEA.

Senator HANSEN. I am interested in what you just said. I say to my distinguished colleague and chairman, I would be equally interested to have Mr. Messing—was it he to whom you referred?

Mr. CALFEE. Yes.

Senator HANSEN. I would be interested to have him respond. I would like to have him respond.

Mr. CALFEE. I will see that that is arranged.

Senator METZENBAUM. Mr. Garry DeLoss.

#### STATEMENT OF GARRY DeLOSS, STAFF ATTORNEY, CORPORATE ACCOUNTABILITY RESEARCH GROUP

Mr. DeLoss. Professor Miller has given me a statement which I submitted for the record and he has asked me, if I could, to read the statement into the record for the benefit of the audience here. I would like to read it if possible.

My name is Garry DeLoss. I have been monitoring the activities of the Federal Energy Administration for Ralph Nader since last winter. I believe you should reject this nomination for one of three reasons.

First, the severance bonus provided to Mr. Conant when he left Exxon to join FEA, then FEO, last winter is illegal under the Federal

conflict of interest law. Second, the severance bonus creates an improper relationship between a Federal regulatory official and his former employer whom he regulates. And, third, the appointment of Mr. Conant to this FEA office in spite of the existence of the severance bonus would further undermine the credibility of Government spokesmen on energy problems.

The facts surrounding Exxon's payment of a severance bonus to Mr. Conant when he left Exxon last winter to begin work at FEA have been developed by this committee at a prior hearing. At that hearing Conant and FEA argued that the bonus payment did not create a conflict of interest problem because it was granted and calculated strictly according to a longstanding Exxon policy of granting severance bonuses to executives who left Exxon to take Government jobs.

An opinion supplied by the Justice Department obediently agreed that since Exxon regularly gave these bonuses to its executives when they took Government jobs, it was legal. On its face this argument amounts to saying that if the Conant bonus were unique it might create a conflict of interest, but it is OK because Exxon has been doing things this way for 25 years.

But even this excuse failed to hold up. Questioning revealed that Exxon does not grant these bonuses as a matter of course. In fact, when one of its executives took a position at the Commerce Department without Exxon's approval, he received no severance bonus. Moreover, the amount of the Conant bonus was calculated partially on the basis of the future benefits he would be forgoing by taking the lower paying Government job.

In regard to the legality of the Conant severance bonus arrangement, let us first hypothesize that Exxon had proposed to make it possible for an Exxon executive named Smith to afford to accept a lower paying position with FEA by providing regular payments to supplement his Government salary during his tenure in office. Even the Justice Department would not deny that such an arrangement would create a conflict of interest between the hypothetical Mr. Smith's interest in the continuance of the Exxon payments and his duty as a public official to make decisions which promote the public good, regardless of their impact on Exxon.

Now let us consider the difference between my hypothetical case and the facts in this case. Since Exxon is not providing payments to Mr. Conant while he is in office, one might argue that conflict of interest created in the hypothetical case by the continuing financial relationship between Exxon and Mr. Smith does not occur in Mr. Conant's case.

On closer examination, however, this appears to be a distinction without a difference. Mr. Conant's entire \$90,000 severance bonus was conditioned on Exxon's approval of his departure from Exxon to take the FEA job and a significant fraction of the \$90,000 was calculated as benefits which he would be forgoing by taking the lower paying position with FEA.

Therefore, the bonus payment amounts to supplementing Mr. Conant's Government salary and is different from the hypothetical

case only in its timing. In the hypothetical case the salary supplement was to be paid to Mr. Smith while he was serving in office. In Mr. Conant's case the salary supplement was provided in advance of his assumption of his Government office.

The legality of the severance bonus paid to Mr. Conant, then, boils down to the question of whether it is illegal for a Government official's salary to be supplemented by a corporation which he regulates if the supplement is paid to him while he is in office but legal if the supplement is paid to him as a lump sum in anticipation of his assumption of the lower paying Government office. My own view is that the two arrangements are equally illegal under the Federal conflict-of-interest law.

Unfortunately, I cannot cite a judicial view on this question because the Justice Department has chosen not to test this issue in the courts.

The lack of a definitive judicial interpretation of the legality of Exxon's supplement to Mr. Conant's salary, however, does not leave this committee and the Senate without a standard of judgment. The very fact that the Federal Energy Administration Act subjects appointments to this and nine other FEA offices to approval by the Senate suggests that the Senate might invoke a standard of propriety as a ground for rejecting a nomination.

A precedent for judging nominations to FEA on the ground of propriety can be found in the recent withdrawal of the nomination of Andrew Gibson to be Administrator of FEA. In Gibson's case the disqualifying impropriety was his arrangement to receive \$88,000 a year in severance payments from his prior employer, an oil transport company which is now half owned by Cities Service Co., the 15th largest oil company in the Nation.

Gibson and the White House agreed to withdraw his nomination not because they believed that his severance payments would be illegal if he took the job, but because they knew that the question of the propriety of such an arrangement might prevent his confirmation by the Senate.

The Gibson severance payment arrangement raises its own questions of propriety stemming from his prior relationship with his employer when he was a Government official. However, to the extent that the payments to Gibson differ from the severance payment to Conant in not being conditioned on his departure from private employment for a lower paying Government position where he would regulate his former employer, they are less objectionable than the Exxon bonus paid to Conant.

If this committee would have rejected the Gibson nomination due to the impropriety of an FEA official receiving unconditional payments from an oil company while regulating that company, as I trust you would have, you should also reject the nomination of Mr. Conant to a high FEA office due to the impropriety of his receipt of a substantial payment conditioned on his transfer from Exxon to FEA where he would regulate Exxon.

The propriety of this nomination is intimately related to a third and larger issue of its effect on the credibility of Government spokesmen on energy policy. In following the energy related events of the past year, I have been impressed by the public skepticism and cynicism which greets pronouncements by Government officials on the causes of our energy problems and proposed remedies.

Unhappily much of this public disbelief is justified by the actions of our Government's spokesmen on energy policy. Thus Rogers Morton, who shapes energy policy as Secretary of Interior and Chairman of the Energy Resources Council, torpedoed his own credibility last year when he told oil industry leaders at a White House briefing that, "Our mission is to serve you, not to regulate you. We try to avoid it. I have tried to avoid regulation to the degree that I possibly can . . . I pledge to you that the Department is at your service." And a GAO report recently disclosed that many FPC officials have failed to file required financial disclosure statements and that 19 FPC officials hold prohibited stocks in companies such as Exxon, Texaco, Tenneco, and Pepco. The GAO report also charged that FPC had made a "sham of the regulatory process" by extending 60-day emergency sales of natural gas at unregulated prices to as long as 300 days. Indeed, FPC Secretary Kenneth Plumb had granted extensions of emergency sales beyond 60 days to eight companies that had not even applied for them.

With people like Morton and Plumb speaking for the government, it is no wonder that the government's credibility gap is growing. This Committee should not add to this credibility problem by approving the nomination of an Exxon executive to a high FEA office after he has received a severance payment conditioned on Exxon's approval of his transfer to FEA and partially calculated to supplement his Government salary.

[Attached to Mr. De Loss' statement is the following letter from Professor Arthur S. Miller, professor of law, George Washington University:]



*The National Law Center*

December 2, 1974

Chairman  
Committee on Interior and  
Insular Affairs  
United States Senate  
Washington, D.C.

Dear Mr. Chairman:

I understand that the nomination of Mr. Melvin A. Conant to be Assistant Administrator of the Federal Energy Administration is now under consideration by your Committee. This is written to suggest that there are grave problems of propriety involved in this nomination; and that, accordingly, it should be rejected.

It is not a question of Mr. Conant's competence. It is, rather, whether his severance payment violates the spirit of federal conflict-of-interest laws and poses the question of the appearance of propriety--which, as will be noted shortly, is as important as propriety itself. I should like to discuss each of these.

First, the statute (18 United States Code 209): I have perused the letter dated August 7, 1974 from the Acting Assistant Attorney General to the Acting General Counsel of the Federal Energy Administration, in which Mr. Conant's nomination is discussed. May I invite your attention to the following passages from that letter:

"While we do not question Mr. Conant's good faith in this matter, we do have reservations concerning technical compliance with 18 U.S.C. 209(a) in this instance. Since there are respectable arguments, based on existing authorities, that the payment is permissible, however, and there is positive evidence of sensitivity on Mr. Conant's part concerning possible conflict of interest problems, we suggest that the entire matter be laid before the appropriate Senate Committee for its consideration.

\* \* \* \* \*

THE  
GEORGE  
WASHINGTON  
UNIVERSITY

Washington, D.C. 20098

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"We feel that instances like the Conant case there is a need to implement more effective review and clearance procedures, so that more explicit guidelines can be developed by experience. . . . It must be remembered that the Government has an obligation not only to avoid violations of the conflict of interest laws but also to prevent situations having the appearance of conflict of interest." (Emphasis added.)

The failure of the Department of Justice to take a firm position, but, rather, to pass the buck to the Senate, reveals a basic uncertainty on the part of the Department that the payment is lawful. For the Department not to fulfill its responsibilities in ruling on such matters is itself deplorable; I know of no way in which a Senate Committee, or indeed the Senate itself, can make such a determination. But what the Senate can do, either as a collective body or acting through your Committee, is to reject the nomination as being so cloudy legally that the Department of Justice, as well as the Federal Energy Administration, have serious doubts about its legality.

Next, the propriety: If the nomination can possibly be faulted legally--which the Department of Justice admits--then it admits of no doubt whatsoever that it is of the most dubious propriety. The Acting Assistant Attorney General expressly stated this in the extract from her letter quoted above. For this reason alone, as well as the problem of lawfulness, the nomination should be rejected. Just as in the judiciary, the "appearance of justice" is as important as justice itself (see John P. MacKenzie, *THE APPEARANCE OF JUSTICE* (1974)), so too in the public administration the "appearance of propriety" is of overriding importance. You have in the public record a statement to that effect by the Department of Justice. I do not see how, with the public record in its present form, you can do anything else than reject the nomination.

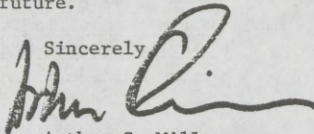
In making that recommendation, I of course make no statement whatever about the personal integrity of Mr. Conant. But that, as I have said, is not the problem.

I should like to make one further recommendation. It seems to me that this nomination, as with the prior nomination of Mr. Gibson to be head of FEA, makes it necessary for Congress to develop itself

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the standards by which conflict of interest laws may be administered. The Department of Justice recognizes that an area of uncertainty exists. It is high time that Congress itself delineate those standards with sufficient specificity that situations like the Conant case will not arise in the future.

Sincerely

A handwritten signature in dark ink, appearing to read 'Arthur S. Miller', written in a cursive style.

Arthur S. Miller  
Professor of Law

ASM/is

Senator METZENBAUM. Thank you. Do you have any questions, Senator Hansen.

Senator HANSEN. I don't have any questions, Mr. Chairman, but I would like to point out while the witness makes a comparison between Mr. Gibson's situation and Mr. Conant, I would like to observe for the record that in the case of Mr. Gibson, he was to receive \$880,000 over a 10-year period including during any Federal employment.

On the other hand, Mr. Conant received a \$90,000 single lump sum payment before coming into the Federal Government. Mr. Gibson's employment by the company he was with was for approximately 1 year before receiving termination payments. On the other hand, Mr. Conant was employed more than 12 years before receiving termination payments.

Mr. Gibson has a continuing financial interest during continuation of payments. Mr. Conant, on the other hand, received payment. Mr. Gibson's was made part of the ad hoc agreement with a particular employee. On the other hand, Dr. Conant's payment was made pursuant to a longstanding plan applicable to all Exxon employees.

Mr. Gibson, the circumstances of the agreement, did not include Government approval. No outstanding offer to return to the Federal Government.

Dr. Conant, he was an employee who sought and received Government approval from Secretary Simon before accepting the termination payment.

Mr. Gibson, no Federal legal review of proposed payment. Dr. Conant, on the other hand, received a legal review of payment by FEO, then FEA, and then finally the Department of Justice.

Thank you, Mr. Chairman.

Mr. DeLoss. Could I answer.

Senator HANSEN. That was not a question. If you want to violate the rules you have set yourself, I am willing to hear from Garry DeLoss. I guess I touched a sensitive nerve.

Senator METZENBAUM. Would you object if Senator Johnston asked a question.

Senator HANSEN. Not at all. I was talking to the witness.

Senator JOHNSTON. Mr. DeLoss, suppose this payment were made more or less pursuant to a contractual right, would you have an objection then for anyone going into Government service?

Mr. DeLoss. I think it would be easier to accept if it were a contractual right for anyone leaving Exxon for whatever reason and calculated according to past service, but I have a great deal of difficulty, especially when it is connected with Government service. I think that raises the most critical issue. If you single out employees leaving for Government service, even if you make it this contractual reward and not discretionary award we have heard so much about today, I would still object to it.

Senator JOHNSTON. I can see how you would distinguish between Government service or somebody who leaves to go with a competitor or somebody who just quits.

Mr. DeLoss. Let me respond to that. I am not sure. If a company— Well, I guess I won't respond to it. I would have to think about the distinction you are trying to make but I was going to say something that might sound facetious and I think I had better leave it out.

Senator JOHNSTON. I am concerned about how we get \$70,000 a year employees into the Federal service on \$36,000 a year salaries when the Government doesn't even pay your moving expenses. But, if all Government employees who left a company had a contractual right to a certain amount, do you think you could criticize that arrangement?

Mr. DeLoss. I have very strong reservations about that which would probably be less of a problem if it were a uniform severance benefit no matter where they went. I think singling out Government service is not a laudible thing to do.

In regard to the principle behind your question here of how to attract persons of high caliber from higher paying jobs into Government service, I would like to endorse a comment I heard a year earlier and that is, part of going into public service is making a financial sacrifice; in almost every case, in almost every level of Government, in almost every branch of Government service. I am not sure that is a bad arrangement if it contributes to a turnover of people in Government service. It might be laudible, if they can only afford to indulge themselves in Government service, say, for a limited period of time rather than as a full time career in some cases.

Senator JOHNSTON. Maybe they would do less damage in a short period of time?

Mr. DeLoss. Let me reiterate. We talk about people with civilian salaries at this scale and the jobs they take in Government. We talk about some of the highest jobs in Government where the problems apparent or real conflict of interest are the greatest.

You have this relationship here which, unfortunately, exists where the person whose capabilities are priced highest, say, in the marketplace and maybe also the person you want for the position, but that position is a very high position, where he makes the decisions, where his past employer or his industry, I think, these problems are intensified in the circumstances. I think, possibly the only answer, except for raising the salaries somewhat in Government service, is the one that has already been given. Government service does entail personal financial sacrifice.

Senator METZENBAUM. I would like, at this time, to introduce in the record responses I have received from numerous oil corporations where I inquired of them what was their policy concerning severance payments. Two of them do have severance payments although not to the dimension that Exxon had. The others do not.

At this time, the committee will take a 10-minute recess since there is a roll call. We will reconvene at quarter to five.

[The documents referred to above follow:]

[Western Union Telegram]

GULF OIL,

Pittsburgh, Pa., November 27, 1974.

HON. HOWARD M. METZENBAUM,  
Chairman, Senate Interior Committee,  
U.S. Senate, Washington, D.C.

Urgent in reply to your telegram of November 25, 1974, Gulf Oil Corporation does not have a policy regarding the payment of severance benefits to employees who leave Gulf employment to enter Federal employment.

A search of our records indicates that lump sum severance bonus payments have been granted, on a case-by-case basis, to some employees who resigned

Gulf employment to enter Federal service, dating back to World War II through 1965. The criteria for determining whether these lump sum severance payments were to be made prior to departing for Federal service were items such as the expense of moving household and personal goods and other relocation expenses, payment for earned and accrued vacation, consideration of losses in Gulf's savings-stock bonus plan, consideration of effect on existing group life insurance, accident insurance, and hospitalization/major medical benefits, and consideration of the cost of living from present location to location of Federal service. To the extent possible, our company has tried to apply the principle that any employee, who undertakes to voluntarily serve his Government, should not suffer any severe financial penalty.

Two Gulf employees presently participating in the President's executive interchange program received no severance payments since, under this program, they are on leave of absence without compensation and were not required to resign. Our company paid only the actual expenses incurred in connection with their relocation to the Washington, D.C. area.

B. R. DORSEY,  
*Chairman of the Board, Gulf Oil Corp.*

[Telegram]

SAN FRANCISCO, CALIF., *November 27, 1974.*

Re: Telegram November 25 addressed to H. J. Haynes.

Hon. HOWARD M. METZENBAUM,  
*U.S. Senate Office Building,  
Washington, D.C.*

We assume your inquiry involves only employees terminating and entering Government service as distinguished from those on leave of absence or loan to the Government or involved in matters such as our assistance under the President's commission on personnel interchange. On this basis we have not paid any severance, bonus or compensation to any employee leaving the company service to enter Government service beyond his contractual rights previously accrued under the various company plans.

STANDARD OIL CO. OF CALIFORNIA  
H. L. SEVERANCE, *Secretary.*

MOBIL OIL CORP.,  
*Washington, D.C., November 27, 1974.*

Under provisions of Mobil Employee Benefit Plans and Programs, employee participation ceases when an employee separates except for any vested benefits to which the employee is entitled or could be entitled upon reemployment, if plan requirements are met.

Payment of any amount due an employee upon separation is based on plan provisions and not on whether an employee leaves to enter Federal employment or any other type of employment.

Mobile has never paid a severance bonus or any compensation over and above an employee's entitlement under Mobil Plans and Programs, to any employee separating to enter Federal service.

STANDARD OIL CO. (INDIANA),  
*Chicago, Ill., November 27, 1974.*

Hon. HOWARD M. METZENBAUM,  
*U.S. Senator, Washington, D.C.*

In answer to your telegram to John E. Swearingen: in essence, under our severance plan, benefits are paid to employees whose services are permanently terminated for causes which are no fault of the employees involved.

There is no provision covering the payment of severance benefits or any other compensation to employees who voluntarily terminate their service to enter Federal Service. We are not aware of any departures from such policy.

L. BATES LEA,  
*General Counsel.*

CONTINENTAL OIL Co.,  
Stamford, Conn., November 26, 1974.

Hon. HOWARD M. METZENBAUM,  
Chairman, Senate Interior Committee, Washington, D.C.

Re your telegram of November 25, Continental Oil Company does not pay severance benefits or any other compensation to individuals who leave the company to enter federal service. Eligibility for severance benefits in continental is predicated on termination as a consequence of reduction in force.

HOWARD W. BLAUVELT, *Chairman.*

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ATLANTIC RICHFIELD Co.,  
Los Angeles, Calif., November 26, 1974.

Hon. HOWARD M. METZENBAUM,  
U.S. Senate, Washington, D.C.

We do not make severance payments to employees who leave our employ to go into federal service and to the best of our knowledge have not done so in the past.

W. M. READ,  
Vice President, *Employee Relations.*

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CASTENS SLACK,  
Washington, D.C.

Hon. HOWARD M. METZENBAUM,  
U.S. Senate, Washington, D.C.

Re your telegram concerning payment of severance benefits to corporate employees resigning to enter the service of the Federal Government, an employee resigning to enter governmental employment would be treated as any other resignation. He would receive pay in lieu of vacation not taken and would exercise his options under the various benefit plans including the pension and thrift plans. There would be no severance bonds or special compensation payments.

W. F. MARTIN,  
Chairman of the Board.  
PHILLIPS PETROLEUM Co.

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OCCIDENTAL CORP.,  
Los Angeles, Calif., November 27, 1974.

Hon. HOWARD M. METZENBAUM,  
U.S. Senate, New Senate Office Building, Washington, D.C.

Attention: Mr. French.

Reference your request for company policy with respect of payment of severance benefits to corporate employees who enter federal employment. Occidental Petroleum does not have such a policy for payments and therefore Occidental has made no such payments.

Certainly it would be of interest to know the results of your study.

W. MARVIN WATSON,  
Executive Vice President.

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UNION OIL Co. OF CALIFORNIA,  
Los Angeles, Calif., November 26, 1974.

Hon. HOWARD M. METZENBAUM,  
U.S. Senator,  
Washington, D.C.

You request knowledge of Union Oil Company's policy with respect to benefits to corporate employees who leave to enter Federal employment. For your information our policy is not to grant them termination or severance pay.

For this reason it appears to me that almost no one enters high level Federal service unless they are financially independent and/or inexperienced or incompetent for the job and are seeking employment. I trust your committee will work constructively to make it possible for men to serve in the government without making a financial sacrifice, such as we did so successfully in World War II with dollar-a-year men, or perhaps the companies should be obligated to make up the difference between government pay and corporate pay. This difference would then be deducted from a corporation's income tax payments in order to avoid any implication of a corporation's financial interest in the employee hired into government service.

FRED L. HARTLEY,  
*Chairman and President.*

SUN OIL Co.,  
*Philadelphia, Pa., November 27, 1974.*

Hon. HOWARD M. METZENBAUM,  
*U.S. Senator, Dirksen Senate Office Building,  
Washington, D.C.*

Sun Oil Company does not have a policy providing severance payments to employees who leave to enter Federal employment in our company, to the best of our knowledge, has never paid a severance bonus of any kind to an employee departing to enter Federal service.

We have paid, and continue to pay, special termination allowances to certain employees who have been involuntarily terminated from the company through no fault of their own due to complement reduction. If such former employees later enter Federal service we would have no knowledge of such action.

DALE D. STONE,  
*Vice President, Human Resources.*

CITIES SERVICE Co.,  
*Tulsa, Okla., November 26, 1974.*

Hon. HOWARD METZENBAUM,  
*U.S. Senate,  
Washington, D.C.*

In response to your wire of November 25 to R. V. Sellers, three (3) employees have left company service to enter Federal employment since 1968. Two employees received a separation allowance. The third employee participated in the President's executive interchange program. Criteria on severance is the same as in cases where services of management personnel are terminated by the company.

R. D. DILLSAVER, *Vice President.*

MEMORANDUM FOR THE RECORD

DECEMBER 2, 1974.

From: Jerry Gereau.  
Subject: Severance pay policy.

I talked today with Mr. Orin E. Atkins, Ashland Oil, Inc. They have no severance pay policy and, to the best of his knowledge, have given none to anyone in the past 12 years.

THE STANDARD OIL Co.,  
*Cleveland, Ohio, November 29, 1974.*

Hon. HOWARD M. METZENBAUM,  
*New Senate Office Building,  
Washington, D.C.*

An examination of our company records going back as far as twenty years indicates no employee loaned to the Federal Government for temporary or permanent service.

We have no policy on the subject of severance pay or other compensation in the case of an employee leaving the company to enter Federal service.

A. W. WHITEHOUSE, Jr., *President.*

GETTY OIL Co.,  
November 27, 1974.

Hon. HOWARD M. METZENBAUM,  
U.S. Senator,  
Washington, D.C.

Reference is made to your telegram of November 25, 1974 directed to Mr. J. Paul Getty requesting information on the subject of severance bonus or extra compensation paid to an employee departing to enter Federal service. Getty Oil Company has had no experience with employees departing to accept a permanent position. In the event an employee did leave for permanent employment in Federal service, he would be treated as a terminating employee and receive nothing more than his vested rights in the pension, thrift and vacation plans. If the employee left for temporary Federal service at the request of the government, i.e., for military service or other temporary emergency Federal service, we would consider him to be on leave of absence and his benefits would be frozen.

S. W. EVEY.

Senator METZENBAUM. I want to apologize to you. I said we would reconvene at 4:45. After Senator Hansen and I got all the way back here, we had to go back for another vote.

#### STATEMENT OF GEORGE S. FRANKLIN, JR., SECRETARY OF THE NORTH AMERICAN TRI-LATERAL COMMISSION

Mr. FRANKLIN. My name is George Franklin. I am secretary of the North American Tri-Lateral Commission.

Senator METZENBAUM. Would you state whether you are speaking for yourself.

Mr. FRANKLIN. I am speaking entirely for myself.

Senator METZENBAUM. What is the organization?

Mr. FRANKLIN. Tri-Lateral Commission.

Senator METZENBAUM. Please proceed.

Mr. FRANKLIN. I welcome very much this opportunity to speak on behalf of Mel Conant. I think he is extremely well qualified for the position for which he has been nominated. I have known him well ever since 1955 when he became director of meetings at the Council on Foreign Relations.

This program is a very important part of the council's activities. There are now about 150 speakers a year; heads of government, foreign ministers, and men who are well known in special fields.

He handled this with great distinction. It is very easy in my position to favor one's friends. I never had the slightest concern with Mel Conant that he was taking concern for anyone's interest except his own. John Campbell has already mentioned. I think, the fact he was offered in 1961 the job of deputy director of the council which was a far more significant job than he was offered by Exxon.

I was then an executive director of the council and when I offered him that job, he said, "I am very sorry, I would love to do that, but I have already told Exxon"—which was then Esso Standard Eastern—"a couple of weeks ago that I would go with them."

I felt quite smart. I had already heard of this. I asked Jack Cloy, who was a member of our board and the Exxon board that he would talk to Mr. Rathbone and get Mel out of this, and he said that would be very easy, but unfortunately, I had not consulted Mel.

Mel said, "George, I cannot do that. It is true I don't have a contract with them, but I have given them my word." We had a little argument

back and forth. Finally, we compromised, or rather I guess we went with Mel's way of doing things, and Mel said, "I'll tell you what I will do. I will speak to Mr. Collins who offered me the job, and if he doesn't really care, I will come with you, but if he does care, I am obligated to him."

Unfortunately, Mr. Collins cared very much and Mel went to Exxon rather than to the council on foreign relations.

As a result of my 18 years as Director of the Council, I have had a chance to get to know many Cabinet officers and top government officials, several of them extremely well, for judgment and, above all, for character and I am choosing these words very carefully. I would stack Mel up with any of them.

Mel, of course, was offered this position with the FEA or FEO—I get the initials mixed up. He did not seek it, but he has told me in the past when he has succeeded in making enough money to make his family and himself somewhat comfortable, his real ambition was to do something in public service, to do something for his country.

Anybody who knows Mel well knows these words are true. This is exactly what he has wanted.

I have absolutely no doubt whatsoever, as a result of my long experience with Mel that if it ever comes to a question of the interest of the oil industry or his own personal interest, the interest of the country will come first.

I—As I said this summer, this sounds almost too good to be true, but it is exactly true as far as Mel is concerned. That is all I wanted to say.

Senator METZENBAUM. Thank you very much. That is certainly a very excellent statement from you.

Senator Hansen.

Senator HANSEN. I have no questions. I am sorry I did not get back in time to hear the full statement of the witness.

Senator METZENBAUM. Mr. Franklin made an excellent statement in support of Mr. Conant.

Now, Mr. Albert Fritsch.

#### STATEMENT OF DR. ALBERT J. FRITSCH, CENTER FOR SCIENCE IN THE PUBLIC INTEREST, WASHINGTON, D.C.

DR. FRITSCH. I am Dr. Albert J. Fritsch, co-director of the Center for Science in the Public Interest here in Washington, D.C.

I speak in the name of the center and also in the name of Environmental Action on this question.

I would like to register an opposition to the Senate confirmation of Mel Conant, who has been nominated by President Ford to be Assistant Administrator of the FEA's Office of International Energy Affairs.

Exxon's advertisement on NBC news last night said, "One of our jobs is to get the oil from where it is found to where it is used." That is an international undertaking, and changes in FEA policies will affect this oil giant.

The FEA "Project Independence Report," chapter 7 on international assessment, subsection "The Structure of the Oil Industry,"

page 349 has a long statement showing the interaction of the oil industry and its interaction with the FEA policy.

This statement and others within this lengthy report show the extent of interest by major oil companies in our emerging national energy policy. Whether our policy encourages development of resources at home or greater dependence on non-Arab oil supplies, Exxon is sure to be involved.

This company made \$1.555 billion profit in the first half of 1974 compared to \$1.018 billion in the first half of 1973. For 1974 this firm may have profited \$1 billion over the last pre-embargo year.

Recently I voiced my misgivings about former oil industry executives in the FEA to the member of a big oil firm's Washington Public Relations Office. His reply was what we hear often, "If you start a hospital you look for medical people to run it." The implication was that if you open FEA, you look for experts who happen to be oil industry people.

The analogy limps: (a) If you open a hospital, you look for administrators, not practicing medical doctors to run it. (b) If you open an energy office committed to conservation, you look for disinterested energy experts, who are committed to energy conservation. And for energy conservationists, you don't turn to oil companies committed to providing as much oil as consumers can be convinced to use.

I do not want to speak about the personal qualifications of Mr. Conant. There is something far more basic at issue here, which encompasses the public trust in our Government.

Our citizens know that oil is replacing gold as the currency of our industrialized world. Petroleum's essential and global character is becoming better understood by all of us. If all citizens are to share in a fair energy policy, they must trust what the Government is doing.

Oil executives from large profitable firms such as Exxon do not normally convey an element of disinterest, but rather of special interest to the average citizen.

When people receive the most amiable separation fees and publicly express their willingness to return to such special interests, the basic trust in our Government is still more threatened.

The average citizen makes no profit off of the current energy situation. He or she will spend hard-earned cash keeping warm and running an automobile this winter. If trust is to come back to Washington, let's look elsewhere than to Exxon for our Federal Energy Administration officials.

Senator METZENBAUM. Thank you very much. I have no questions.

Senator HANSEN. I have one question, Mr. Chairman. Dr. Fritsch, when you discussed the analogy and pointed out it limps, part (b) of the analogy, if you open an energy office committed to conservation, you look for disinterested energy experts who are committed to energy conservation. My question is, is it your opinion our present energy crisis can be solved through conservation efforts?

Dr. FRITSCH. The only way we can solve our problems is to cut back on the fossil fuels to keep them at 1972 levels, up to 1985, so conservation is a major way in which we are going to solve our problem; yes.

Senator HANSEN. You feel, through conservation, we can fairly well, or in a major fashion, meet the energy crisis.

Dr. FRITSCH. Yes.

Senator METZENBAUM. Senator Abourezk.

Senator ABOUREZK. Mr. Chairman, I have no questions. I want to thank the witness for appearing and to state my support for what you are doing today. I am sorry I was not here before. We had an issue up on the floor which I was involved in, one which you voted against me, by the way.

Senator METZENBAUM. We are together on this particular matter.

Senator ABOUREZK. I just wanted to indicate my support.

Senator METZENBAUM. You didn't have to get in that dig about voting against you. You won by one vote. [Laughter.]

Senator Abourezk has been instrumental in setting up this hearing and I want to publicly indicate our appreciation. I know he was full well involved in a matter on the floor at the Senate today.

Our next witness supporting Mr. Conant's nomination is Mr. William Ginsberg.

**STATEMENT OF WILLIAM GINSBERG, ASSOCIATE PROFESSOR OF LAW AT HOFSTRA UNIVERSITY LAW SCHOOL, HEMPSTEAD, N.Y.**

Mr. GINSBERG. Mr. Chairman, my name is William R. Ginsberg. I am associate professor of law at Hofstra University Law School in Hempstead, N.Y.

I first met Mr. Conant in 1964. From 1966 to 1968, I was deputy city council president in New York. From 1968 to 1970 I was commissioner of the New York City Parks Recreation and Cultural Affairs Administration.

From 1970 to 1973 I was general counsel and director of research of the New York State Commission on the Powers of Local Government.

Since then I have been consultant to the Natural Resources Defense Council, urban affairs consultant to the National Sierra Club, and special professor of environmental law at Hofstra.

I am on the board of the Long Island Environmental Council and the Catskill Center for Conservation and Development of which organization I am also vice president. I am a trustee of the Staten Island Institute of Arts and Sciences and consultant to the Hudson Basin Study.

These activities are mentioned solely to indicate the nature of my interests and associations. I consider myself a conservationist and an environmentalist. I am not here, however, representing any of these organizations, since to the best of my knowledge, none of them, or any other major organization of a similar character, has taken an official position with respect to Mr. Conant's nomination.

Mr. Conant's activities, both public and civic, have been quite varied. When we first met in 1964, we were trustees of Antioch College in Ohio, a position also recently held by you, Mr. Chairman. We served on the board and the college's investment advisory committee for 4 years.

During this period I acquired a profound respect for his judgment, intellectual capabilities, tact, and humor, the latter traits often exercised under most trying circumstances. The latter part of the sixties were tense times, if you recall.

Mr. Conant was chairman of the investment advisory committee of the college during this period. The board of trustee's decision in entrusting this post to a freshman trustee is indicative of their collective opinion of Mr. Conant's judgment and his ability to discharge his fiduciary responsibilities.

Mr. Conant and I also shared an interest in sailing, and he invited me to join an informal association of fellow seamen known as the Long Island Rum Chowder and Sailing Society. He held the unenviable post of commodore of this organization. I mention this aspect of our relationship because a person's character is revealed while sailing on salt water in a small boat in ways that may not be apparent in other circumstances.

Certainly, the major issue before this subcommittee is one of trust and confidence. Do you believe in the quality and independence of this man's judgment and actions, in his credibility and integrity. These are difficult characteristics to quantify. I can only testify I would be hard pressed to name others for whom I have greater respect. I trust his intelligence, independence, and character, and would do so under almost any circumstances that I could contemplate.

Mr. Conant has the capacity and strength to make unpleasant decisions, a quality that is rare and increasingly important. To use the current vernacular, he will "say it like it is."

I would also comment it may be better to have a termination arrangement such as his with Exxon than an implication that something may still be owing. The termination pay was reasonable in the context of his 13 years of service. Indeed it could be argued that there is also the possibility of failure of independence when a public employee with no prior experience with an energy company wishes to curry the favor of such companies in order to obtain employment upon his leaving public service.

The question in either case is the integrity of the individual. You are considering, as I understand it, the nomination of Mr. Conant, not of Exxon.

In closing I would like to voice the concern that I am sure is felt by many with respect to this nomination. Those with extensive professional experience in dealing with the petroleum industry, particularly on an international level will, in most instance, have acquired that experience by working for the petroleum industry.

There is a real danger that their primary loyalty will, consciously or subconsciously, be to their prior employer rather than to their public trust.

However, to automatically disqualify such people from public office will deprive the Government of the services of those who are most highly qualified in their field.

The decision in each instance will be difficult and delicate based on individual circumstances and your sense of the personal qualities of the appointee.

In this case I urge you to recommend Mr. Conant's confirmation. His talents are urgently needed. It has been said today we are looking for public employees who are uncommitted, unrelated and under no suspicion.

I suspect that the net effect of such a blanket prohibition would be to obtain public employees who were also inexperienced, unskilled, insufficient and possibly inept.

It is difficult to deal with the oil companies if you have no experience with their operations.

I want to say it is difficult for me to convey my convictions about such elusive abstractions as a man's integrity and independence. I have complete and absolute confidence in these and all other aspects of Mr. Conant's character. His loyalty and dedication are to the common welfare, and his loss to public service would be nothing less than a tragic waste.

Thank you very much.

Senator METZENBAUM. Mr. Ginsberg, as a lawyer, are you familiar with 18 U.S.C. 209(a) ?

Mr. GINSBERG. Yes, I am.

Senator METZENBAUM. Have you read it prior to today?

Mr. GINSBERG. Yes.

Senator METZENBAUM. It addresses itself to the question of supplementation of salaries.

Mr. GINSBERG. Yes.

Senator METZENBAUM. You have heard the testimony of Ms. Lawton representing the Attorney General's office today. Am I correct?

Mr. GINSBERG. Yes, Mr. Chairman.

Senator METZENBAUM. Do you have the same difficulties with respect to that statute regardless of personality or the integrity or anything peculiar to Mr. Conant. As a lawyer, do you not have difficulty, in view of the evidence in this matter, as far as technical compliance for that statute is concerned or at least the intent of that statute at the very minimum?

Mr. GINSBERG. As the representative of the Justice Department was testifying, I made a brief note of this, because I was deeply perplexed by her testimony. In fact, further than that, I was rather disturbed. If one has not violated a criminal statute, and this is a criminal statute, there is no half-way question. One cannot be a little bit criminal any more than one can be a little bit pregnant. If the statute is inadequate and you are asking me about the adequacy of that statute, then I would suggest the remedy lies with Congress, not Mr. Conant.

Senator METZENBAUM. I am not asking you about the adequacy of the statute. I am asking you, as a lawyer, if you do not have difficulty with the facts and circumstances involved in this particular matter as it pertains to the legality of the Exxon payment of \$90,000 on a totally discretionary basis to Mr. Conant in view of 18 U.S.C. 209(a).

Mr. GINSBERG. No, Mr. Chairman, I do not, no more than the Justice Department did. I heard their answer to be clear and unequivocal on that and mine would be too.

Senator METZENBAUM. That there would be no criminal violation.

Mr. GINSBERG. I do not believe Mr. Conant has in any way violated that statute.

Senator METZENBAUM. Mr. Ginsberg, let me ask you another question. Let's assume for the moment you and I were prepared to stipulate that Mr. Conant, or Mr. X is a man of integrity, a man of qualification to hold a particular Federal job, but that his former employer pays him an amount of such a nature that in the minds of the public, there truly would be a concern as to whether or not that man's first loyalty would be to the public or whether he would still have an implied obligation to his former employer.

What would be your position if you were sitting on the committee?

Mr. GINSBERG. That question, in my mind, would have nothing to do with your prior question about the statute.

Senator METZENBAUM. I understand it, but I did not relate it to the prior question, did I?

Mr. GINSBERG. My answer to that question would be if that payment was of such magnitude and under such circumstances that it would clearly in the public mind constitute a public bribe rather than a termination, that Congress should certainly take this account when passing on his confirmation.

Senator METZENBAUM. Do you consider \$90,000 to be a payment of that magnitude?

Mr. GINSBERG. I certainly don't under those circumstances. That represents very little more than 1 year of Mr. Conant's salary and benefits with Exxon taken as a whole. It seems to me, given his 13 years of service with Exxon, the position of trust that he held, the importance of his experience to the company and the fact he was going to a governmental post at substantially lower pay, that that pay is quite reasonable.

In fact, while I may state I have no particular love for Exxon and most of their policies. I might even disagree with them on occasion as well as many of their policies. But, in terms of this particular policy, I think it is public spirited. I realize it could go beyond that point, but specifically in answer to your question, I don't think this payment is at all unreasonable in terms of the sacrifice that is being made.

Senator METZENBAUM. Thank you.

Senator FANNIN.

Senator FANNIN. Thank you, Mr. Chairman. Mr. Ginsberg, I am sorry I was not here to hear your testimony. I was very impressed with what you had to say and the manner in which you answered the questions.

Mr. Ginsberg, does not the Constitution provide advice and consent on the nomination of a person rather than the person's prior employer.

Mr. GINSBERG. It most certainly does.

Senator FANNIN. I have had the privilege of observing Dr. Conant's activities at the OPEC in Paris. He was there representing our country and involved in some matters of great importance to this Nation and important worldwide. I observed how he handled himself in a commendable way in answering questions and giving information regarding the work that was in progress at that particular meeting. The most important involvement was regarding the OPEC companies and the problems worldwide as far as the price of fuel is concerned, petroleum products is concerned. I think you are aware of his great knowledge in that respect. I am sorry I was not here to hear your testimony in which you perhaps covered some of the questions I may have of you.

Are you aware of his extensive knowledge in relation to international petroleum affairs?

Mr. GINSBERG. Yes, I am, Senator, but I must say my major relationship with Mr. Conant has been a social one, in terms of his civic and public activities, although I am aware of his role when he was working at Exxon.

Senator FANNIN. I was greatly impressed with what I observed. I feel we are very fortunate to have a man—We need a man of his qualifications willing to accept a position with the Federal Government at a sacrifice as far as that is concerned, so I am very pleased to lend my support to him, and I appreciate the fact you have taken time to come here and testify.

Senator METZENBAUM. Senator Hansen.

Senator HANSEN. Thank you, Mr. Chairman. Let me express my appreciation to you, Mr. Ginsberg, for your appearance here today. I think it is highly commendable that persons who have intimate knowledge about the nominee, such as you possess, would be motivated to come down and testify as you have.

I have been very much impressed with your statements. I would ask you specifically, can you point to any single action or statement made by Mr. Conant during the 11 months of his tenure of office at the Federal Energy Administration which, on its face, justifies the conclusion that Mr. Conant is either unqualified or unfit for the position for which he has been nominated?

Mr. GINSBERG. I am not aware of any.

Senator HANSEN. You spoke about your interest in the environment. I would be so bold as to say I think it is an interest shared by all Americans. I have not met anyone who does not subscribe to the objectives that are heralded, firstly and appropriately, by the environmental groups in the country.

I think the only significant arguments that develop as far as I know are between some who profess their first, and at times I believe only, interest is in environment, and other Americans on how quickly we can achieve the goals and objectives and what sacrifices or trade-offs or costs we are willing to pay in order to get from where we are now to the desired objective.

Having in mind, as I say then, your interest in the environment, how quickly, in your opinion, do you think the energy crisis might be put behind us and, second, do you believe we can meet the challenge, the shortages that are so much on our minds today with the balance of payments in such disarray simply by conservation measures or do you believe more than that may be required?

Mr. GINSBERG. Senator, I think it would be more than I could answer at this time and perhaps inappropriate to go into that in great detail. However, under specific question, I feel we can only get the answer to the situation, and get the situation under control if Congress takes steps toward reducing consumption and particularly the severe tax on weight and horsepower of automobiles.

Senator METZENBAUM. Would you repeat that, please? Would you repeat what you thought the Government action should be?

Mr. GINSBERG. I think the Government has not taken sufficient, if any, meaningful steps on the conservation end and particularly steps such as a steeply graduated tax on the weight and horsepower of private automobiles.

That, of course, would not be as effective as a prohibition beginning with a particular model year of production of automobiles above a certain weight and horsepower, but it would certainly have a strongly deterrent effect that I believe is essential.

I think we have failed, as a Nation and as a Government, and have not indicated our abilities to take the rather unpleasant steps necessary to curb our consumption. This is why I said of Mr. Conant that he can say it like it is and he can make difficult decisions and that was, to me, an extremely important trait. These things are not pleasant.

At the same time, I think we have to assure ourselves a continued supply of energy or our economy will be in even deeper trouble than it is today.

Senator HANSEN. You feel his background, his expertise in the area of international energy affairs will permit him to make a significant contribution in this latter effort, then.

Mr. GINSBERG. He might help us to get the leadtime we so desperately need to get our own practices in order, sir.

Senator HANSEN. Thank you, very much.

Senator METZENBAUM. Senator Hansen asked you if there were any matters or steps that Mr. Conant had taken in the past year, any steps he had taken that had met with your disapproval, and I think you answered, "no." My question to you is, since you have an interest in conservation matters and since you feel very strongly Mr. Conant brings to Government a "pro bono publico" attitude, do you know of any specific actions he has taken that are in the public's interest or that the FEA has taken as well?

Mr. GINSBERG. Senator, I do not know—

Senator METZENBAUM. Do you call deregulation of natural gas in the public interest? Do you think that was in the public interest?

Mr. GINSBERG. I was not aware Mr. Conant made that decision.

Senator METZENBAUM. The FEA has made that decision, have they not?

Mr. GINSBERG. I believe they have.

Senator METZENBAUM. Are you aware of the fact the Administrator who sent a letter recommending Mr. Conant in very strong and eloquent language, is the same man who recommended the 10- to 20-cent-a-gallon tax on gasoline buyers in this country? Do you think that is action in the interest of the public in this country?

Mr. GINSBERG. Yes, I do, Mr. Chairman. I think I could argue the deregulation of natural gas ought to be in the interest of the country, but on the other hand, I want to make very clear I am not here to either defend or criticize Mr. Conant's policy. I believe he is a man of unusual, unique and tremendous knowledge, and experience in terms of the international oil situation and that that experience should not be lost to this country.

Senator METZENBAUM. Let's assume what you just stated is a correct statement and let's further assume other men who are very knowledgeable about the petroleum industry and we wind up with a Federal Energy Administration totally staffed with people coming from the petroleum industry. As one quite concerned about conservation, do you think that would be in the national interest?

Mr. GINSBERG. If the hypothesis is an FEA totally staffed by the petroleum industry, no, I do not.

Senator METZENBAUM. Is the fact that Mr. Conant has been brought in and kept four major positions—

Mr. GINSBERG. No. In the FEA—

Senator METZENBAUM. We are talking about his deputy administrator and others in positions of high decisionmaking levels.

Mr. GINSBERG. If the Government wants the services of a key administrator in the FEA, he must have people with him on whose knowledge and judgment he can rely.

Senator METZENBAUM. Do you practice law?

Mr. GINSBERG. No, sir, I do not practice law.

Senator METZENBAUM. Teach law?

Mr. GINSBERG. I teach law at Hofstra University.

Senator HANSEN. Mr. Chairman, if I could just make one statement for the record.

My question to the witness was, and I will try to summarize, could he point to any single action or statement made by Mr. Conant. I did not ask him to defend every action the FEA had taken and I thought your question may have implied that. It seems to be the questions you followed up with, you are trying to see if the witness would support or defend actions that may have been taken, so I ask if you could point to any single action or statement made by Mr. Conant which would be a basis for finding him either unqualified or unfit for the position for which he is nominated. I just wanted to make certain the witness did not understand what my question was. I am certain you have no malice at all and I thought you might have read into it more than I had asked. I wanted to be certain that I was understood rather precisely.

Senator METZENBAUM. Thank you Mr. Ginsberg. Mr. Jeffrey Knight, Friends of the Earth.

#### STATEMENT OF JEFFREY KNIGHT, FRIENDS OF THE EARTH

Mr. KNIGHT. Mr. Chairman, my name is Jeffrey Knight. Thank you for inviting me to present the views of Friends of the Earth on the nomination of Melvin A. Conant to be Assistant Administrator of the Federal Energy Administration for International Energy Affairs.

Friends of the Earth opposes the nomination of Mr. Conant for the same reasons we opposed the nomination of Andrew Gibson as Administrator of FEA. The circumstances surrounding Mr. Conant's departure from his former employer, Exxon Corporation, and his many years experience as an official in that company, raise large questions about the propriety of this nomination and indeed the benefit which will accrue to the Government from his employment as Assistant Administrator of FEA.

We question the propriety of a man leaving a top-level position with the largest oil company in the United States with a \$90,000 severance payment to take a top-level position in the Government where decisions will be made that will seriously affect the fortunes of his former employer. Indeed, his statement to this committee that he might well have declined the nomination if he hadn't received the payment, and his further statement that he would return to the oil industry upon completion of his Government service are disturbing. It raises questions about his allegiance in this new post—to the United States or to Exxon? Will he not feel the tug of the long allegiance he has had to the oil industry coloring decisions the FEA Assistant Administrator must make that should not be colored?

We do not question Mr. Conant's knowledge or expertise, but these capabilities do not exist in a vacuum. They are present in a man who has worked for many years for the oil industry, who received \$90,000 upon leaving that job to take a position regulating the oil industry, and who will probably return to employment in the oil industry when his Government service is over.

These circumstances raise the larger question: should people with close ties to a regulated industry act as the regulators of that industry? The answer is an emphatic NO. Otherwise, the regulators will all too readily adopt the interests and attitudes of the industry they are supposed to control. The history of the past 30 years shows that this has been a general pattern in the history of regulatory agencies. Now that that trend is recognized, Congress must be vigilant in its efforts to counteract it. And the best way to do so is not to affirm the nominations of men such as Mr. Conant, with close ties to the regulated industry, as the regulators. While he may have very valuable knowledge and experience, the national interest, the public interest, will not be served by his affirmation.

We urge that the committee reject the nomination of Mr. Conant.

Thank you.

Senator METZENBAUM. Thank you very much.

Senator FANNIN.

Senator FANNIN. Mr. Knight, you oppose Mr. Conant's nomination. David Brower, I think, is your immediate boss. You work for David Brower.

Mr. KNIGHT. He is the head of Friends of the Earth. He is in San Francisco.

Senator FANNIN. Mr. Peterson was the former President of the Standard Oil Co. of California, was one of David Brower's close advisors and also quite a contributor to the Sierra Club. Do you think it was wrong for David Brower to be associated with Mr. Peterson and to accept his money because he was president of Standard Oil Co. of California?

Mr. KNIGHT. I don't know who you are talking about.

Senator FANNIN. I am sorry you don't. You can ask Mr. David Brower and he can tell you about it, but I certainly think you are on thin ice when you start criticizing Dr. Conant because of his experience and expertise in this field.

Mr. KNIGHT. I don't criticize his experience or expertise.

Senator FANNIN. You are criticizing him. The nation needs a man of his ability that has knowledge of the industry, that knows about international affairs in the petroleum industry and there are very few men in this country that have that knowledge.

Where do you think we are going to go for that type of information?

Mr. KNIGHT. Senator, there are lots of people between those two examples you give. I am not really sure the demands of the job are as narrow as you make them seem. There is a difference between policy and management and I think it is the policy questions and the policy decisions that Mr. Conant will make that we are concerned about. It is not his ability to manage in this job. I think there are two parts of the job and we are concerned about the policy area.

Senator FANNIN. Do you disagree with the action he has taken to date in the position he had held with FEA?

Mr. KNIGHT. Not to my knowledge.

Senator FANNIN. Have you ever personally met or talked with Dr. Conant?

Mr. KNIGHT. No, I have not.

Senator FANNIN. And still you oppose him on the basis of the information given to you. Did you hear Dr. Conant's testimony today?

Mr. KNIGHT. Yes, I did, part of it.

Senator FANNIN. Were you impressed with what he had to say?

Mr. KNIGHT. Yes, I was. I think, Senator, what I am trying to stress. Maybe I am not getting across. I think it is unfortunate that Dr. Conant is put in this position, but the point I want to make is there is a principle involved and the principle is there should not even be the appearance of a conflict of interest.

Senator FANNIN. Do you think you could ever find anyone who is knowledgeable in the oil industry that has had the executive position in the oil industry and acquired that expertise that would not have the appearance of conflict, if you wanted to go that far and if you want to eliminate people, it is very simple to do, but don't you think it is very unfair.

Mr. KNIGHT. I cannot say there are not people like that. I don't necessarily agree you have to find the person who takes this position in the oil industry and there are cases, the *Phillips* case being the most recent, of executives of oil industry coming into Government and the consumers being forced to pay for some things they may have done, so it is not just a hypothetical.

Senator FANNIN. If you want to draw that conclusion, you could say anybody who comes into Government service and has knowledge and has gained some information and had experience and made acquaintances, they can go back out into industry, perhaps, and benefit. That would be true of anybody coming in, not necessarily somebody who has expertise.

Here we are trying to get people who can make decisions who can give advice and who can counsel on decisions that could be of the utmost importance, not only to this Nation, but worldwide.

You find a man with all of this experience and dedication, and I don't think you can question his dedication, his willingness to leave a position with an oil company and come down to the salary he is going to make as a government official, and I don't think you can say he is not dedicated, and has not the best interests of the people at heart.

Mr. KNIGHT. But that is the point, Senator. There is a question raised about whether he would really have taken the job if he had to really make the sacrifice of taking the job without the \$90,000 payment. I don't question his integrity, but there is that question. I don't think the question should even be there.

Senator FANNIN. He has the \$90,000. He could go out and get a job paying twice what he was paid, but he has chosen to take a job in government. I think you are on very thin ice and making a big mistake in opposing it based on the information you have given here today.

How many members are there in your organization?

Mr. KNIGHT. I believe it is on the 24,000 to 25,000.

Senator FANNIN. How many know Dr. Conant personally or have ever heard of him, except through the way that you have heard about him?

Mr. KNIGHT. He might have some friends, I don't know.

Senator FANNIN. How many members of your organization have indicated in writing or in person they want to appear and testify in opposition to Dr. Conant.

So, you are coming here on your own.

Mr. KNIGHT. Senator, we have had an interest for a long time of staffing of a lot of regulatory agencies. I think our members and board of directors have made clear our concerns in the past.

We were notified of this hearing on Wednesday, last Wednesday, so I am not quite sure it is fair to single this one out. We are concerned about Mr. Gibson and we took an avid interest in setting up a nuclear regulatory commission and we are trying to make an input into the nominations of the men to join Mr. Anders on the nuclear regulatory commission, so we have taken an interest in a wide range of similar issues.

Senator FANNIN. You say you have taken an interest in a wide range. What procedure do you follow in your organization in reaching these conclusions as to what you are going to do with respect to nominations or with respect to any type activities.

Mr. KNIGHT. With respect to an individual nomination, it would be in regard to the kinds of guidelines that our organization, either through Mr. Brower or through the board, have set up regarding what kinds of activities they would like us here in Washington to pursue.

Senator FANNIN. In other words, just generally speaking, you oppose business.

Mr. KNIGHT. No. You have to have business.

Senator FANNIN. I think from your statement you have come to these conclusions that somebody who has been involved in the energy field or in business enterprise, just because they are large, that there is something to be questioned about them. If a person came out of your organization, you would not question them going into any public service, would you?

Mr. KNIGHT. No, but if you question—

Senator FANNIN. You have a selfish interest.

Mr. KNIGHT. If you questioned whether they had environmental bias, I would find it hard put to dispute you on some level that they did not. I think that is what is involved. You know Congress has recognized this is a problem and Congress has acted on it. It is not something we have just brought up.

Senator FANNIN. You say enacted on. We have an obligation to seek the best qualified people we can find. We are not going to get those people qualified in this field, except industry. Where else are we going to go?

Mr. KNIGHT. I can't answer that, Senator.

Senator FANNIN. I think you are in a poor position to oppose Mr. Conant.

Senator METZENBAUM. Did your organization oppose Mr. Russell Train, who was not a conservationist when he became head of the Environmental Protection Agency?

Mr. KNIGHT. No, sir.

Senator METZENBAUM. You don't normally oppose people if they do not come from one of the environmental groups in a matter as sensitive as this issue.

Mr. KNIGHT. No, sir. In regard to the nuclear regulatory commission, we have sent a letter to the President suggesting names of some gentlemen we feel would be qualified and able to serve on the Commission and they are not environmentalists. Some have had long experience with the nuclear industry or the AEC.

Senator METZENBAUM. You are not opposed to some positions in FEA being held by industry people, but Friends of the Earth opposed the top policymaking positions being held by those who may have a sense of allegiance to the oil industry.

Mr. KNIGHT. Yes. That would be right.

Senator FANNIN. Mr. Knight, mentioning Russell Train, I have great admiration and respect for him. Did you not know him before as a world renowned environmentalist? He is world renowned in that respect, isn't that true?

Mr. KNIGHT. I personally knew him as head of CEQ, the Council on Environmental Quality.

Senator FANNIN. He is very proud of the work he has done internationally, but he is an environmentalist and I am sure he has so stated. Thank you.

Senator METZENBAUM. Our next witness is Mr. Robert Nelson, legislative director of the United Mine Workers of America. Is he here?

Mr. LAWSON. Because of the rain we have had to extend ratification of the contract another day. The weather is the reason Mr. Nelson could not be here. He was held up. He has asked me to present the UMW statement. At the conclusion of the statement, I will answer whatever questions I can. Those I am unable to answer, I will refer to Mr. Nelson and see that you receive a written answer.

Senator METZENBAUM. Thank you. Please be seated.

#### STATEMENT OF DALE LAWSON, LEGISLATIVE REPRESENTATIVE OF THE UNITED MINE WORKERS OF AMERICA

Mr. LAWSON. We appreciate the opportunity to make our views known on this matter.

The UMWA finds inappropriate President Ford's nomination of Melvin A. Conant for permanent Assistant Administrator of International Energy Affairs. We also believe that President Ford should request the resignation of Mr. Conant as Acting Administrator and begin a new search for a person more representative of the American public.

Mr. Conant accepted a \$90,000 discretionary severance payment from the Exxon Corp., when he left their employ to assume his current position with the Federal Energy Administration. Furthermore, Mr. Conant has publicly stated that he may return to the industry upon termination of his service with FEA.

This situation, involving such a large discretionary gift from the world's largest oil corporation and the possible reemployment with the energy industry can only create an atmosphere of suspicion around the development of a national energy policy. For this reason alone, we think Mr. Conant is an inappropriate choice to fill this position.

Our objection to this nomination goes beyond Mr. Conant's personal unsuitability. The Federal Energy Administration is already adequately staffed with representatives of the oil industry.

Noticeably less representation is found of the labor and consumer groups that must live with the decisions made by that administration.

We suggest that the President nominate persons to fill FEA positions who are more representative of the public interest.

The solutions to the Nation's energy problems will not come easy. It is very likely that the required policies that must be developed will run contrary to the interests of the oil companies.

As a matter of fact, there are a great number of people who feel that a lack of public control of the oil industry is a significant part of the problem. We do not believe that we should rely on oil industry personnel, especially those as clearly and closely connected as Mr. Melvin A. Conant to produce policies in the public interest.

The incredible profits of the oil companies during this period when the public is paying outrageous prices for oil products is a clear indication that oil company policies are not in the public interest.

We do not believe that by placing oil industry personnel in the public policymaking agency will increase their sense of public responsibility. To the contrary, we believe that a continuation of this kind of staffing will only further insulate the oil industry from public scrutiny.

It is on these grounds that we oppose the nomination of Melvin Conant as Assistant Administrator of International Energy Affairs. The withdrawal of the nomination by President Ford would make consistent his previous action regarding Mr. Andrew Gibson and we urge him to do so.

However, should the President refuse, then a rejection of the nomination by the Committee on Interior and Insular Affairs would be an affirmation of that committee's commitment to the rapid development of a credible national energy policy.

Senator METZENBAUM. Thank you very much. I have no questions of Mr. Lawson.

Senator FANNIN.

Senator FANNIN. Thank you, Mr. Chairman. With respect to international oil companies, the position of the companies has changed greatly. Would you agree? And, some sort of Government involvement is essential.

Mr. LAWSON. I agree, but you are saying the position has changed.

Senator FANNIN. A wide range search for people who represent the public interest.

Mr. LAWSON. Yes.

Senator FANNIN. There are a wide range of considerations not generally considered, but highly essential; also stringent conservation requirements and a major strategic stockpile of reserves program. Do you agree with that statement?

Mr. LAWSON. Yes, sir.

Senator FANNIN. We wish we had a large reserve in coal. Do you agree with that statement?

Mr. LAWSON. At the present time, yes.

Senator FANNIN. I say this because I think jumping to conclusions as to how a man feels on a particular issue or what his reactions will be when he has this vast responsibility, may differ greatly from the

standpoint of looking at a person through the eyes as a business representative, I know when I went in politics, I had been in business. I looked at many factors differently than when I had been in business. I had a broader perspective.

Don't you feel Dr. Conant, with his position, has exhibited he can have a perspective of fairness and accuracy in his dealings.

Mr. LAWSON. Senator Fannin, I am unaware of any specific activities of Mr. Conant while he has been in office. The Nation is now in need of a creditable energy policy and the public's confidence in the oil companies has not been increased any considering that up until now the Exxon Corp., has not been hurt at all during this energy crisis.

As a matter of fact, profits have soared and the public is being robbed at the gas station.

Senator FANNIN. I don't want to interrupt, but we are not considering Exxon's confirmation.

Mr. LAWSON. We are not, but we are discussing Exxon oil industry personnel managing the Federal Energy Administration.

Senator FANNIN. To get back to it, we are considering Dr. Conant as an individual.

Mr. LAWSON. The particular situation involving this discretionary gift, his connection with the oil industry, his future position as an Administrator of International Energy Affairs and his possible return to the energy industry, after his completion of public service can only create an atmosphere of suspicion around any international energy policy or a national energy policy.

Senator FANNIN. I cannot agree with you on that. Would you say the present Secretary of Labor should not go back in the labor movement?

I think there is a distinction.

Senator FANNIN. I cannot agree with you, Mr. Chairman. I think you are making a false assumption. Your analogy is one, the Secretary of Agriculture going back in—we have had that argument in recent months as far as someone leaving the Agriculture Department and then going into the industry, back into industry.

Mr. LAWSON. Mr. Chairman. Referring to questions that Senator Johnston was asking earlier considering the lack of the policy concerning people coming into the public positions and going back to their industry, would we support this in any situation.

Of course, I don't know of any of the legal ramifications of it, but I would suggest it is not a clear question and certainly a uniformity of policies and procedures would be desirable and draw less adverse reaction from the public in these situations, but also in answering questions relating to this, I think we should also consider the nature of the position the man will assume when he moves into the public agency and whether or not he is going to be responsible for making decisions or actually regulating the particular business he came from and could possibly return to.

Senator HANSEN. I have no questions, but did the witness mean to imply there have been payments under the table?

Mr. LAWSON. No, sir. I said I knew of none, so obviously there were some I did not know of. I could not explain them.

Senator METZENBAUM. I think that is probably an appropriate point to bring this hearing to a conclusion unless there is somebody we have

overlooked. I think Mr. Lee White at one time representing the Consumer Federation of America, indicated he wished to be heard. I don't see him in the room and I assume nobody will have any objection if he submits a written statement for the record.

That is also true of any other groups. The record will be kept open. Senator HANSEN.

Senator HANSEN. Mr. Chairman, I am sorry I forgot to mention it, but I think it is indicated I should observe, as I recall Mr. Conant's testimony, he did not say, as seems to have been inferred by at least a few people, that he was going to go back into industry when his plans, his future was going to be discussed. I think very forthrightly he said he would not rule out that possibility or words to that effect.

He was not a man of considerable means and he felt constrained to state candidly, in order to discharge his responsibilities to himself and his family, he could very well find it incumbent to take employment in industry, but I think there may be some who have assumed it can be inferred he is going to go back to industry.

I want to make the observation, as I recall Mr. Conant's testimony, he did not say it.

Mr. LAWSON. I am unfamiliar with the present Secretary of Labor.

Senator FANNIN. He came from labor, and in your analysis, he would not go back. A lawyer who goes into Government service can't go back to his law practice, if you carry it that far.

I think we have to realize we want experienced individuals, somebody who has vast knowledge of labor problems, looking at what they can do in assisting and that is, of course, what they do in finding a Secretary of Labor; how they can assist a department we have and that person should not be precluded from going back into the labor movement when he finishes his work.

He has an assignment. If he executes an assignment—

Mr. LAWSON. We are not talking about two identical situations here. First, I doubt if the Department of Labor would give Mr. Brennan \$90,000.

Senator FANNIN. The United Mine Workers might give him \$100,000 or \$500,000. You have known of vast amounts being paid to officials in the union movement. I am sure you are aware of that.

Mr. LAWSON. None that weren't above the board.

Senator FANNIN. None that were above the board? If industry acts above the board and the unions do not, that is not a consideration. I think if you would check yourself in using that illustration—I know what you mean and I am sorry it happens, but I think Mr. Conant should be treated as an individual and not because he happened to be an employee of the Exxon Corp. There is no unusual circumstance involved in the payments being made to Dr. Conant, and it has been brought up over and over again, that does not exceed what has been paid in many other instances. In fact, it is far less than in other instances.

Senator METZENBAUM. Would the Senator yield?

Senator FANNIN. Yes.

Senator METZENBAUM. There is a distinction between a man becoming Secretary of Labor and going back to the labor movement and a man becoming Secretary of Commerce and going back to the

business world, a man being Secretary of Agriculture and going back to the agricultural field, and a man who is in a policy decision position with the Federal Energy Administration.

In the first three instances, we expect those men to be advocates of that section of the economy. With respect to the FEA, we expect the person to have one obligation only and that is to be concerned about all of the people in this country and not to have any special relation with any particular segment.

Senator METZENBAUM. The Senator is correct and I think I read that testimony earlier in the hearing in answer to a point—in answer to a question I asked Mr. Conant and he said he might.

Senator HANSEN. The testimony I have before me seems to imply, rather pointedly, the probability he was going back into industry was very good and I did not want to let that point go unchallenged.

Senator FANNIN. Mr. Chairman, it has further been implied he is perhaps going back to Exxon and with the Chair's permission, we could ask Dr. Conant if he has any plans or any arrangement with Exxon that he would go back into their employment if he were not confirmed.

Senator METZENBAUM. I will answer for him. He has none. We have asked him that question before, but go ahead, Mr. Conant.

Mr. CONANT. I would like to repeat the answer I gave September 23 as closely as possible. I have no plans whatsoever for anything that I will do upon leaving government services.

I would not rule out joining the energy industry nor would I rule out rejoining Exxon. I have no plans. I am under no obligation and I feel I am an entirely free man with respect to this question.

Senator FANNIN. You do not have any agreement with Exxon you would go back to their employment?

Mr. CONANT. No.

Senator FANNIN. Thank you.

Senator METZENBAUM. Nothing further. Thank you, Mr. Conant. Thank you for bearing with us today. Thanks to all of you for being present.

That closes our hearing subject to call of the Chair.

[Whereupon, at 6:05 p.m., the hearing was adjourned subject to the call of the Chair.]

business would be a man being Secretary of Agriculture and going back to the agricultural field, and a man who is in a policy-making position with the Federal Energy Administration.

In the first three instances we expect those men to be available to us in the future. With respect to the F.E.C. we expect the person to have one obligation only, and that is to be concerned about all of the people in this country and not to have any special relationship with any particular segment.

Senator HAZZICK: The Senator is correct and I think I read that testimony earlier in the hearing in answer to a question—was it a question I asked Mr. Conant and he said he might.

Senator HAZZICK: The testimony I have before me seems to imply that he pointed out the probability he was going back into industry work, very good and I did not want to be that point on that subject.

Senator HAZZICK: Mr. Chairman, it has further been implied he is perhaps going back to Exxon and with that man's testimony we would ask Mr. Conant if he has any plans or any arrangement with Exxon that he would go back into their employment if he were not continued.

Senator HAZZICK: I will answer for him. He has none. We have asked him that question before, but so should Mr. Conant.

Mr. Conant would like to repeat the answer I gave you earlier, as closely as possible. I have no plans whatsoever for anything that I will do upon leaving government service.

I would not rule out joining the energy industry nor would I rule out rejoining Exxon. I have no plans, I have no obligation and I feel I am an entirely free man with respect to this question.

Senator HAZZICK: You do not have any agreement with Exxon that you would go back to the employment?

Mr. Conant: No.

Senator HAZZICK: Thank you.

Senator HAZZICK: I am going to thank you, Mr. Chairman. Thank you for being willing to take the time to all of our testimony.

That closes our hearing subject to all of the 10 minutes. The hearing will be in session and adjourned subject to the chair's call.

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APPENDIX

Additional Material Supplied for the Record

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## APPENDIX

### Additional Material Supplied for the Record

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## STATEMENT OF STEPHEN A. WAKEFIELD

Mr. Chairman and Members of the Committee, I appreciate this opportunity to submit my statement for the record in support of the nomination of Melvin A. Conant to be Assistant Administrator of the Federal Energy Administration.

I am presently engaged in the private practice of law in Houston, Texas. From March 1973 through April 1974 I served as Assistant Secretary of the Interior for Energy and Minerals. Concurrently, I was Assistant Administrator for International Energy Affairs of the Federal Energy Office from its inception in December 1973 until I left the Federal Government on April 30, 1974.

When William E. Simon, then Administrator of the Federal Energy Office, placed me in charge of international matters within FEO and asked that I establish a sizable office for the purpose of monitoring developments and analyzing options in the area, the international petroleum market was in a period of rapid change and extreme uncertainty. Obviously we were in the midst of a production cut-back and selective embargo at the hands of the Arab oil producers. Of much greater concern for the longer term, the relationships between the oil producing nations and the international petroleum industry were being substantially revised, and with the shift in relative bargaining power would come a termination of stable oil prices we had enjoyed for two decades. The resultant tripling of the price of oil, dwarfed at that time in the public's perception by the Arab oil embargo, would soon create one of the greatest challenges to the world's economy in history.

In establishing an office which could provide thorough and accurate analyses of the myriad of problems which were arising from this novel situation, I was successful in locating and attracting from within the Federal Government a widely diverse group of individuals, expert in such fields as analytical techniques, overall energy problems, defense matters, international organizations, intelligence, and diplomatic relations. However, to my knowledge, there was no one in the Federal Government at that time who was experienced in the operations of international oil companies, both in terms of their internal workings and their relationships with the major producing nations. In order for such an office to be able to provide the government's top policymakers with the type of thoroughly considered, well-rounded analyses essential for development of workable policies in this area, I believed it to be imperative that someone with actual knowledge of the international industry be available to assist in those analyses.

With these thoughts in mind, in early December I commenced a search for an individual with such qualifications to be Director of the Office of Producer Country Affairs, which would be one of three non-policy-making offices which would report directly to me as Assistant Administrator. Having determined that no one within the Federal Government possessed the requisite qualifications, I was confronted with the probability that such an individual could be found only within the international oil industry. I recognized the possible criticism that could be directed toward bringing such an individual into government. Weighing this against the continuation of analyses arrived at without the benefit of expert knowledge, my view was, and is, that the potential criticism would be secondary to the public service such an individual could contribute, provided the individual was a person of unquestioned integrity.

Inquiries which I made within government led me to conclude that the person who would be best suited from the standpoint of integrity, experience, knowledge, intelligence and objectivity was Melvin A. Conant. There was, of course, the remaining question as to whether he would be willing to leave a very important, well-paying position with Exxon Corp. to take a position in the Federal Government at a fraction of the salary, particularly with a new agency with an uncertain future and with no assurances that promotions could be expected. In mid-December, I learned that Mel was at the State Department in a conference involving the Law of the Sea negotiations and arranged for a meeting. We met for the first time that afternoon in my office at the Interior Building. After I had outlined my concept of the new position, he expressed interest and a desire to explore the matter further after giving it some thought. We talked several times thereafter by telephone, culminating in an offer and acceptance of the job in late December.

During the course of our discussions, the question of the propriety of Exxon making a \$90,000 payment to Mel upon severance was raised. I placed two require-

ments upon my approval of his acceptance of the payment. First, approval from the highest legal official in FEO must be obtained. Second, all ties with Exxon must be completely severed with no promises of future employment and, all payments must be actually receiving, including not only the severance pay but all stock options and other employee benefits, prior to becoming a Federal employee. Both conditions were met.

Shortly after Mel arrived at FEO in January, the Office of International Affairs was reorganized to create three Deputy Assistant Administrators. Mel was promoted to one of these positions—a promotion which had not been foreseen prior to his arrival. Thereafter, for the next four months, I had the opportunity to work very closely with Mel and to observe his ability, assess his judgment, and confirm reports of his objectivity and integrity. Throughout this period I was regularly advised by many persons, within the U.S. government, the private sector, and foreign governments, of the high esteem with which he was held. I have never heard a single criticism that would reflect upon his capacity to perform in high public office.

When I determined to leave government for personal reasons in April 1974, both Bill Simon and John Sawhill asked for my recommendation for a successor. After discussing several candidates with them, I concluded and advised them that the best person in the nation for the job was Mel Conant. I continue to believe that today.

One of the cost complex and pervasive problems facing the world today is the future of the international petroleum market. If satisfactory solutions are to be achieved, they will be reached only through the efforts of individuals of integrity, knowledge, and intelligence. There are few enough who have such qualifications, and fewer still who are willing to make the sacrifices necessary to devote themselves to public service. I believe implicitly that Melvin A. Conant is such a man, and strongly urge his confirmation.

U.S. SENATE,  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D.C., October 3, 1974.*

Mr. J. F. MOORE,  
*Senior Adviser, Executive Compensation, Exxon Corp.,  
New York, N.Y.*

DEAR MR. MOORE: It is requested that you provide the following information for the use of the Committee during its consideration of the nomination of Mr. Melvin A. Conant to the office of Assistant Administrator for International Energy Affairs of the Federal Energy Administration. As Senator Abourezk informed you during your appearance before the Committee on September 23, 1974, this information will be treated as confidential.

Please list those senior executives who, like Mr. Conant, have since 1968 terminated employment with Exxon under the Exxon Public Service Leave of Absence and Termination Policy and whose termination pay represented a larger multiple than the one quarter month's pay stated in that policy.

In each instance indicate the executive's name; employment on departing Exxon; amount of termination payment and the method of its computation; total annual compensation at Exxon immediately prior to termination; total annual compensation paid for public service employment for which termination was authorized.

In addition, please provide the number of other Exxon employees who terminated employment with Exxon under the Public Service Leave of Absence and Termination Policy during the same period.

In order that the Committee may take action on Mr. Conant's nomination in the near future, a reply at your earliest convenience would be appreciated.

Sincerely yours,

HENRY M. JACKSON, *Chairman.*

[Staff NOTE.—A letter of reply from the Exxon Corporation dated October 8, 1974 and signed by James F. Moore, Senior Adviser, Secretary's Department, Compensation, Organization and Executive Development Division was received and made part of the committee files.]

COMMON CAUSE,  
Washington, D.C. November 25, 1974.

HENRY M. JACKSON,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR: We are writing to urge you to reopen hearings on the nomination of Melvin A. Conant to be Assistant Administrator of the Federal Energy Administration of International Policy.

We believe that the press and the public, as well as the members of the committee, deserve a fuller answer to some of the questions posed during the September 23, hearing.

The whole question of the \$90,000 *discretionary* severance payment made to Mr. Conant by Exxon should be re-examined and discussed, particularly since the nomination of Andrew Gibson for Administrator of the FEA was withdrawn primarily because of a similar severance agreement, albeit a larger one, with the Interstate Oil Transportation Company.

In addition, Mr. Conant stated during the September 23, hearing that he might well return to the oil industry after his government service. It is important that this question be taken up in fuller detail since, if confirmed, Mr. Conant would play a key role in deciding this country's energy policies—policies that directly affect the industry he has been so closely associated with in the past and may well be associated with in the future.

We urge you to reopen these hearings to explore and discuss these issues before taking any action on Mr. Conant's nomination.

Sincerely,

DAVID COHEN,  
Executive Vice President.

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## EXECUTIVE SESSION

WEDNESDAY, DECEMBER 4, 1974

The Committee on Interior and Insular Affairs met in open executive session on December 4, 1974, to consider the nomination by the President of Melvin A. Conant, of New York, to be an Assistant Administrator of the Federal Energy Administration. Those present were:

Senator Jackson, chairman.  
Senator Bible (presiding).  
Senator Metcalf.  
Senator Johnston.  
Senator Abourezk.  
Senator Nelson.  
Senator Metzenbaum.  
Senator Fannin.  
Senator Hansen.  
Senator Hatfield.  
Senator Buckley.  
Senator McClure  
Senator Bartlett.

After a brief discussion, during which several members expressed concern with respect to the legality of the nominee's having accepted severance pay from the company (Exxon) by which he was formerly employed, a rollcall vote was taken as follows:

YEAS—9

NAYS—6

Bible  
Metcalf  
Johnston  
Fannin  
Hansen  
Hatfield  
Buckley  
McClure  
Bartlett

Jackson  
Church  
Abourezk  
Haskell  
Nelson  
Metzenbaum

So the nomination of Mr. Melvin A. Conant to be an Assistant Administrator of the Federal Energy Administration was ordered favorably reported to the Senate by a vote of 9 to 6.

Those Senators who were present and voted in opposition to the nominee stated emphatically that they in no way questioned his integrity or ability, but were concerned about his acceptance of the severance pay.

EFFECTIVE SESSION

WEDNESDAY, DECEMBER 4, 1957

The Committee on Interior and Insular Affairs met in open session on December 4, 1957, to consider the nomination by the President of Helen L. Conant of New York to be an Assistant Administrator of the Federal Energy Administration. Those present were:

- Senator Jackson, chairman.
- Senator Bible (presiding).
- Senator McCaff.
- Senator Johnson.
- Senator Bohmeyer.
- Senator Nelson.
- Senator McClellan.
- Senator Lammie.
- Senator Hansen.
- Senator Hatfield.
- Senator Buckley.
- Senator McClellan.
- Senator Bartlett.

After a brief discussion during which several inquiries expressed concern with respect to the legality of the nominee's having accepted retention pay from the company (Ezzon) by which he was formerly employed, a roll call vote was taken as follows:

YEA—5 NAY—0

Bible	Yea
McCaff	Yea
Johnson	Yea
Lammie	Yea
Hansen	Yea
Hatfield	Yea
Buckley	Yea
McClellan	Yea
Bartlett	Yea
Johnson	Nay
Bohmeyer	Nay
McCaff	Nay
Nelson	Nay
McClellan	Nay

No the nomination of Mr. Helen L. Conant to be an Assistant Administrator of the Federal Energy Administration was ordered as follows:

Those Senators who were present and voted in opposition to the nominee stated emphatically that they in no way wished to be taken into account, but were concerned about the reputation of the committee.